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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building,
300 N. Los Angeles St.
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RESERVATIONS: 1–800–726–4995

SAN DIEGO CA

WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building,
880 Front St.
Conference Room 45–13
San Diego, CA
RESERVATIONS: 1–800–726–4995

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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Doc. No. 8021S]

Common Crop Insurance Regulations (Single Policy)

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) adds a new part 457 in chapter IV of title 7 of the Code of Federal Regulations (CFR), effective for the 1991 and succeeding crop years, to contain one common set of crop insurance regulations and a common policy of insurance applicable to all such regulations now contained in 7 CFR chapter IV which will be applicable to all crop insurance policies sold by FCIC, or sold by private insurance companies and reinsured by FCIC under the provisions of a Standard Reinsurance Agreement when appropriate crop provisions are published.

The intended effect of this rule is to provide a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, that will: (1) Provide a common set of crop insurance regulations and terminology between FCIC and private insurance companies under a Standard Reinsurance Agreement; (2) substantially reduce the time involved in amendment or revision; and (3) eliminate the necessity of repetitious review process thus substantially reducing the volume of paperwork processed by FCIC.

EFFECTIVE DATE: January 14, 1991.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulations 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1995.

David W. Gabriel, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

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

FCIC hereby adds one set of regulations containing one Common Policy of insurance applicable to all crops now contained in 7 CFR part 401, or in a separate part of chapter IV, and which will be applicable to crop insurance policies sold by FCIC, or sold by private insurance companies and reinsured by FCIC. These regulations will insure that all recipients of the Federal program are treated equally through commonality of policy provisions.

As revisions on individual policies are necessary, FCIC will publish a "crop provision" which will contain the language of the policy unique to that crop, and any exceptions to the common policy language necessary for that crop.

When a crop provision is published as a section of part 457, effective for a subsequent crop year, the present policy contained in 7 CFR part 401, or in a separate part of chapter IV, will be revoked at the end of the crop year then in effect and later removed and reserved.

Certain portions of the Common Policy, by virtue of the differences between FCIC policies and Reinsured policies, with respect to Federal jurisdiction, appeals vs. arbitration, and collection of amounts due (Federal offset vs. systems of collection used by private insurance companies), are not identical. For this reason, and in the applicable paragraphs, the Common Policy is published with FCIC policies in the left column of Reinsured Policies in the right column. Where a commonality of language exists, the provisions are not separated and are jointly applicable

On Wednesday, February 7, 1990, FCIC published a notice of proposed rulemaking in the **Federal Register** at 55 FR 4382, to contain one common set of crop insurance regulations and a common policy of insurance applicable to all such regulations now contained in 7 CFR chapter IV which will be applicable to all crop insurance policies sold by FCIC, or sold by private insurance companies and reinsured by FCIC under the provisions of a Standard Reinsurance Agreement, when appropriate crop provisions are published.

In addition, the notice of proposed rulemaking clarified FCIC's long standing position on the preemption of inconsistent State laws and regulations.

The rule published at 55 FR 4382 proposed to add a new part 499 in chapter IV of title 7 of the Code of Federal Regulations. This would have resulted in 7 CFR parts 457 through 498 open and unassigned and perhaps have caused confusion. In reviewing the rule, FCIC decided to add a new part 457

instead of part 499 to contain this final rule, in order to maintain correct numerical sequence and avoid the possibility of confusion. FCIC has advised the CFR Unit of the **Federal Register** of its decision to use part 457 in this final rule and to leave part 499 unassigned. The final rule herein is structured as 7 CFR part 457.

The public was given until March 9, 1990, to submit written comments, data, and opinions on the proposed rule. Comments were received from individual State Commissioners of Insurance for California, Illinois, Iowa, Massachusetts, Michigan, Minnesota, North Dakota, and Virginia, and a collective statement on behalf of State Commissioners of Insurance from the National Association of Insurance Commissioners in Washington, DC; the National Association of Crop Insurance Agents (NACIA); 12 reinsured companies; 5 law firms representing insurance associations; the Office of Inspector General, United States Department of Agriculture; the Florida Fruit and Vegetable Association; 4 divisions within FCIC; and one private citizen.

In view of the volume and nature of responses received, the preponderance of which addressed the issue of Federal preemption, FCIC determined to make final that portion of the notice of proposed rulemaking dealing with the issues involved in Federal preemption and to establish such rule in a new subpart P in part 400, to be known as 7 CFR part 400, subpart P, General Administrative Regulations; Preemption of State Laws and Regulations. That final rule was published in the **Federal Register** on June 6, 1990, at 55 FR 23066.

The notice of proposed rulemaking with respect to establishing a Common Policy of crop insurance, also contained in the **Federal Register** notice of proposed rulemaking publication at 55 FR 4382 (7 CFR part 499), and the comments pertaining to the proposed policy provisions therein, remained under consideration by FCIC and are hereby addressed in this final rule (7 CFR part 457).

Because commenters responded to certain specific paragraphs and subparagraphs contained in the notice of proposed rulemaking with respect to the Common Policy provisions, and because such paragraphs, and subparagraphs may be redesignated, or removed in this final rule and new subparagraphs added for clarity, FCIC lists the differences between the proposed rule (7 CFR part 499), and the final rule (7 CFR part 457) in a comparison table as an aid to the reader, as follows:

Proposed rule	Final rule
Section/paragraph/subparagraph	Section/paragraph/subparagraph
Sec.:	Sec.:
499.1 Applicability	457.1 Applicability.
499.2 Availability of Federal crop insurance.	457.2 Availability of Federal crop insurance.
499.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.	457.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.
499.4 OMB control numbers.	457.4 OMB control numbers.
499.5 Creditors	457.5 Creditors.
499.6 Good faith reliance on misrepresentation.	457.6 Good faith reliance on misrepresentation.
499.7 The contract	457.7 The contract. (Not included in this final rule. This paragraph now appears as 7 CFR 401.352 in 7 CFR part 400, subpart P, General Administrative Regulations; Preemption of State Laws and Regulations, published in the **Federal Register** on June 6, 1990, at 55 FR 23066.)
499.8 State and local laws and regulations preempted.	

§ 499.9 The application and policy	§ 457.8 The application and policy.
* * * * *	* * * * *
(b) * * *	(b) * * *
1. Definitions.	1. Definitions.
(a) Abandon	(a) Abandon.
(b) Acreage report	(b) Acreage report.
	(c) Acreage reporting date (Not separately defined in the proposed rule).
(c) Another use, Notice of	(e) Another use, Notice of.
	(d) Actuarial table (Not separately defined in the proposed rule).
(d) Application	(f) Application.
(e) ASCS	(g) ASCS.
(f) ASCS Farm Serial Number	(h) ASCS Farm Serial Number.
(g) Assignment of indemnity	(i) Assignment of indemnity.
(h) Billing date	(gg) Premium Billing Date.
(i) Cancellation date	(j) Cancellation date.
(j) Claim for indemnity	(k) Claim for indemnity.
	(m) Contract (Not separately defined in the proposed rule.
(k) Contract change date	(n) Contract change date.
(l) Consent	(l) Consent.
(m) County	(o) County.
(n) Coverage	(p) Coverage.
(o) Coverage begins, Date	(q) Coverage begins, Date.
(p) Crop Provisions	(r) Crop provisions.
(q) Crop year	(s) Crop year.
(r) Damage	(t) Damage.
(s) Damage, Notice of	(u) Damage, Notice of.
	(v) Delinquent account (Not separately defined in the proposed rule.
(t) Earliest planting date	(w) Earliest planting date.
(u) End of insurance period, Date of	(x) End of insurance period, Date of.
(v) Insured	(y) Insured.
(w) Insured crop	(z) Insured crop (Not included in Final Rule).
(x) Intent to abandon, Notice of	
(y) Late planting agreement	(aa) Late Planting Agreement Option.
(z) Loss, Notice of	(bb) Loss, Notice of.
(aa) Negligence	(cc) Negligence
(bb) Person	(dd) Person
(cc) Practical to replant	(ff) Practical to replant.
	(hh) Price Election (Not separately defined in the proposed rule).
(dd) Policy	(ee) Policy (see Contract).
(ee) Production report	(ii) Production report.
(ff) Representative sample	(kk) Representative sample.
(gg) Reporting date	(jj) Reporting date.
(hh) Sales closing date	(ll) Sales closing date.
(ii) Section	(mm) Section.
(jj) Share	(nn) Share.
(kk) State	(pp) State.
(ll) State provisions (this term has been changed to Special Provisions, subparagraph (oo) in the Final Rule)	(oo) Special provisions.
(mm) Summary of coverage	(qq) Summary of coverage.
(nn) Tenant	(rr) Tenant.
(oo) Termination date	(ss) Termination date (Not included in Final Rule).
(pp) Uninsurable acreage	
(qq) Unit	(tt) Unit.

§ 499.9 The application and policy (Paragraphs)	§ 457.8 The application and policy. (Paragraphs)
1. Definitions	1. Definitions.
2. Life of policy, cancellation and Termination	2. Life of policy, cancellation and Termination.

3 Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities	3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.
4. Policy Changes	4. Contract Changes.
5. Liberalization	5. Liberalization.
6. Report of Acreage	6. Report of Acreage.
7. Annual Premium	7. Annual Premium.
8. Crop Insured	8. Insured Crop.
9. Insurable Acreage	9. Insurable Acreage.
10. Share Insured	10. Share Insured.
11. Insurance Period	11. Insurance Period.
12. Causes of Loss	12. Causes of Loss.
13. Duties in the event of a loss or damage	14. Duties in the event of Loss or damage.
14. Abandonment	16. Crops as Payment (Retitled in final rule).
15. Appeals (FCIC) Arbitration (Reinsured Policies)	17. Appeals (FCIC) Arbitration (Reinsured Policies).
16. Access to Crop and Record Retention	18. Access to Insured Crop and Record Retention.
17. Other Insurance	19. Other Insurance.
18. Conformity to Food Security Act	20. Conformity to Food Security Act.
19. Amounts due us (FCIC and (Reinsured Policies)	21. Amounts Due Us (FCIC and Reinsured Policies).
20. Legal Action Against Us	22. Legal Action Against Us.
21. Production Included in Determining Indemnities	15. Production Included in Determining Indemnities.
22. Replanting Payment	13. Replanting Payment.
23. Payment and Interest Limitations	23. Payment and Interest Limitations.
24. Concealment, Misrepresentation or Fraud	24. Concealment, Misrepresentation or Fraud.
25. Transfer of Coverage and Right to Indemnity	25. Transfer of Coverage and Right to Indemnity.
26. Assignment of Indemnity	26. Assignment of Indemnity.
27. Subrogation (Recovery of loss from a third party)	27. Subrogation (Recovery of loss from a third party).
28. Nonconformity to Statutes	28. Applicability of State and Local Statutes.
29. Descriptive Headings	29. Descriptive Headings.
30. Notices	30. Notices.

As indicated in the comparison table above, FCIC has added new definitions, or subparagraphs in this final rule. Such additions are for the purpose of clarity and not considered substantive. Following, is an explanation of these additions:

Subparagraph 1.(c)—"Acreage reporting date." This is a remainder to the insured that the report of all insurable and not insurable acreage of the crop in the county, including the amount of share, must be reported by a specific date.

Subparagraph 1.(d)—"Actuarial table." This definition explains what is contained in the Acturial Table and that it is available in the agents' office.

Subparagraph 1.(m)—"Contract." (also termed "Insurance Contract") is a generic term interchangeable in common insurance practice with "Policy," which describes the documents that make up the contract of crop insurance between you and us (also see "policy," subparagraph (ee)).

Subparagraph 1.(v)—"Delinquent account." Defines the term which is used in paragraphs 7 ("Annual Premium") and 21 ("Amounts Due Us"), and specifies when penalties are incurred. Penalties are charged in accordance with 31 U.S.C. 3717, which are in addition to any amount and interest due.

Subparagraph 1.(gg)—"Premium Billing Date." The date we send you a bill for the premium which is to be paid to us. This date is marked on the statement. You are allowed 30 days from this date to pay the premium without interest. A penalty may be added if this amount due plus interest is not paid by the termination date contained in the crop provisions.

Subparagraph 1.(hh)—"Price Election." The amount you select, generally from three such amounts, at which you wish to be paid (per pound, bushel, ton, etc.), in the event your loss falls below our guarantee. This price election has a direct bearing on the premium you are charged for the crop insurance coverage.

Subparagraph 1.(oo)—"Special provisions." (Previously termed "State Provisions," subparagraphs (11) in the proposed rule). These provisions contain specific provisions of insurance for each insured corp in the particular area in which you farm and can vary by geographic location. The Special Provisions differ from "Crop Provisions" which are general terms of insurance applying to a particular corp under the Common Policy of insurance.

In addition, one subparagraphs in the proposed rule has been revised, and another has been deleted in this final rule as follows:

Subparagraph 1.(h)—"Billing Date." in the proposed rule has been redesignated as subparagraphs 1.(gg) ("Premium Billing Date") in this final rule and clarified to make reference to the acreage report upon which the premium is computed.

Subparagraph 1.(pp) in the proposed rule (Uninsurable acreage") has been deleted from this final rule as a definition because acreage planted to the insured crop is insurabele unless excepted by paragraph 9 of the policy. This makes the term "uninsurable" inappropriate since the acreage is not uninsurable but rather it is not insured by reason of the exceptions. FCIC has amended the definition of "Reporting Date" (subparagraphs 1. (jj) in this final rule) to clarify this matter.

All comments, and portions of comments, received in response to the notice of proposed rulemaking, published at 55 FR 4382, with respect to establishing a Commom Policy of crop insurance, and the comments pertaining to the proposed policy provisions therein, are addressed in this final rule as follows:

(a) *Comment:* FCIC should amend the Good Faith Reliance on Misrepresentation provisions in § 499.6, to expand the federal exemption from the equitable principle of estoppel to agents of reinsured companies. The commenter questions whether FCIC has the right to determine that, if an agent gives erroneous information to a policyholder upon which the policyholder relied, and which may result in indemnification beyond that allowed by the crop insurance policy, FCIC may allow the error to stand and grant relief to the insured under the Good Faith Reliance on Misrepresentation provisions (§ 499.6 in the proposed rule) while requiring reimbursement from the company/agent. The comment suggests that an agent should not be subjected to limitations beyond those that bind the Government

Response: Estoppel is defined as a bar against an allegation or denial that is contrary to one's previous allegation or denial of a fact. FCIC has a long standing policy of honoring the misinformation provided by its agents to insured as long as the statutory requirements of the Federal Crop Insurance Act, are followed: If further requires that private agents and brokers reimburse FCIC when such misinformation is the agent's or broker's responsibility. The innocent party (the insured) should not be penalized. Under the Good Faith Reliance provisions, FCIC may grant relief to the policyholder if an FCIC employee or a contractor's agent, gives erroneous information resulting in paid indemnity

outside ther terms of the policy (overpaid indemnity); indebtedness for additional premium owed; or, entitlement to an indemnity not yet paid. This provision is well within the powers of FCIC (7 U.S.C. 1506(e)) and continues to represent the policy of the Corporation. Therefore, FCIC has determined that no change in the rule is necessary.

(b) *Comment:* The arbitration provisions (paragraph 17) are too limiting and are nothing more than a recital of current practice making them ineffectual. At a minimum, the companies should be permitted to arbitrate all policyholder disputes under the Federal Arbitration Act (9 U.S.C 1 *et seq.*). Another commenter suggested that the Good Faith Reliance on Misrepresentation (§ 499.6) section should be deleted with respect to arbitration because present contracts provide for arbitration of loss disputes only, and in its broadened scope, this section would allow arbitration of all disputes which can be handled administratively and become more cost efficient.

Response: The arbitration provisions contained in paragraph 17 of this final rule were established by agreement with the reinsured companies and their representatives for the companies' use. The arbitration provisions for reinsured policies in the proposed rule are limited to issues involving production to be counted in the event of a claim for indemnity. Other policyholder disputes are adjudicated under the provisions in the Appeal Process (7 CFR part 400, subpart J) with respect to appeals agains classififcation determines, and in § 457.6 of this final rule, with respect to issues involving Good Faith Reliance on Misrepresentation.

While FCIC does not agree or disagree with the comment, we believe that a procedure for resolving disputes must be contained in the policy of insurance. Although questions have been raised as to the efficiency of paragraph 17, the only suggested alternative refers to the Federal Arbitration Act. However, policy provisions are not subject to arbitration since those provisions are not subject to arbitration since those provisions have the force and effect of law. The only judgement determinations under the policy relate to appraisals and those determinations are subject to this provision. FCIC has revised § 499.6 (§ 457.6 in this final rule) to make the reinsured participation more clear.

(c) *Comment:* FCIC should prescribe the application form for insurance which is incorporated by reference and made part of the policy (§ 499.9 in the proposed rule). Company prescribed applications may lessen the benefits of a common policy; increase the opportunity for substantive changes; and invite controversy.

Response: The application for insurance is defined in this rule as a part of the contract of insurance (see response to comment (f)). The FCIC application form for crop insurance was published in the **Federal Register** on February 21, 1984, at 49 FR 6316. The published application, as amended, therefore prescribes the information required to be given by a producer applying for crop insurance under the authority of the Federal Crop Insurance Act. FCIC requires that all items relating to coverage, record-keeping requirements, etc., that are contained in the FCIC application, be included on applications used by reinsured companies. FCIC has determined that proper collection of the information by a Reinsured company, as required by the codified application form, does not lessen the benefits of the Common Policy, nor is it liable to increase the opportunity for substantive change. For this reason, FCIC determines that no change to the rule is required.

(d) *Comment:* If the proposed definition of "Abandon" (subparagraph 1.(a)) is retained, FCIC should amend the loss adjustment procedures which provide that, if a crop is abandoned, the entire guarantee is eliminated. Such result is too harsh and more discretion for the adjuster will be required.

Response: The individual crop provisions being written to be used with the basic provisions in this Common Policy will provide that the full production guarantee will be charged, and the premium owed, if the insured discontinues care for the crop without our consent and there is no insurable damage to the insured crop. Subparagraph 14(b)(4) of the policy in this final rule provides that the insured must notify us and we must consent to abandonment in case of damage to the crop. The crop will be inspected and appraised. We will not consent if it is practical to replant or until we have inspected the crop. The comment suggests modification of the loss adjustment procedure. FCIC has the responsibility of paying an indemnity on an insured crop if the crop is damaged by an insured cause of loss. The insured has the statutory duty of providing care for the crop in accordance with good farming practices. It is not the responsibility of FCIC or the reinsured company to cultivate, harvest, or market the crop.

The insured has the option of continuing with the responsibility of caring for the crop or, if the crop is damaged by an insured cause, of obtaining an appraisal. If the choice is to discontinue the responsibility of caring for the crop under the policy, the insured suffers loss of insurance, but, because insurance coverage has been received to that point, the premium must be paid. No change in policy or procedure is contemplated.

(e) *Comment:* The definition of "Intent to abandon, Notice of" (subparagraph 1.(x)) should be amended to delete the phrase "because of damage from an insured cause." Notice should be required to be given for intent to abandon for any cause, whether insured or not. In this way, loss adjusters can immediately verify such loss and obtain signatures that will bar later litigation. Another commenter suggested that this subparagraph should require a notice be given within 72 hours of the abandonment.

Response: FCIC has concluded that the definition of "Intent to Abandon, Notice of" in subparagraph 1.(x) is, in reality, a reference to subparagraph 13.(a) of the proposed rule which states that in case of damage to an insured crop, an insured must provide sufficient care for the crop and is required to give FCIC notice of damage in a specified time. Subparagraph 13.(b) further provides that notice must be given within 72 hours of the time the insured crop is abandoned. FCIC intended the definition of "intent to abandon," in this context, to mean that because of damage from an insured cause, the insured intends to no longer care for the insured crop and, since the insurance only indemnifies for damage from an insured cause, notice of abandonment need only be made if due to insured causes, and the insured no longer intends to care for the crop.

In reporting damage to the insured crop, determined to be sufficient to preclude caring for the crop any further, the insured may indicate that for this reason the crop will be "abandoned." Permission must then be given by FCIC to destroy the crop; put the insured crop to another use; or, put the acreage to another use. However, this definition may be somewhat confusing because subparagraph 13.(b) of the policy in the proposed rule does not refer to "intent to abandon" as such, only that the insured give us notice within 72 hours of the time the insured abandons the crop.

FCIC has determined to delete this definition in this final rule because intent to abandon the insured crop because of damage is the basis for the policyholder's notice in paragraph 13 of the rule and not a definition in fact. Subparagraph 13.(b), referred to in this

response, has been redesignated as subparagraph 14.(b) in this final rule. This change accomplishes the commenters concern that damage itself be cause for notification and leaves the insurer to determine whether the damage was due to insured cause or not.

(f) *Comment:* The definitions of "Policy" and "Contract" (both used in subparagraph 1.(dd) of the proposed rule) have important differences and should be conformed to each other. County actuarial documents should be included in the definition of "Policy."

Response: The meaning of the term "Contract" is not separately defined in the proposed rule; however, in § 499.7 the generic term "contract" or "insurance contract' is defined as consisting of the application, the policy (Common Policy), the crop provisions (applying to a particular crop), the special provisions (containing dates etc., applying to a particular crop), the actuarial table, and any amendments or options thereto. FCIC has determined that "Policy" is a term widely used in the insurance industry and is generally meant to include the regulations, policy, amendments, and the actuarial table. However, since the "Contract" contains, among other things, the "Policy," and the separate actuarial data, and in view of the accepted usage and interchangeability of "Policy" and "Contract," FCIC agrees with this comment and, because of their respective differences, has determined to include definitions and cross reference for both "Contract" and "Policy."

(g) *Comment:* The inconsistency of times between the definition of subparagraph 1.(z) "Loss, Notice of" (10 days) and paragraph 13 of the policy (72 hours and 15 days) should be corrected.

Response: FCIC concurs and has amended the definition of "Loss, Notice of" (Subparagraph 1.(bb) in this final rule) to reflect that 72 hours notice is required after certain circumstances and 15 days notice after the end of insurance period. Because of other amendments, paragraph 13 of the proposed rule has been redesignated in this final rule as paragraph 14.

(h) *Comment:* The term "Production report" (subparagraph 1.(e) in the proposed rule) should be revised to reflect records relating to annual production instead of harvested production, which may contain several years of records.

Response: The "Production Report" (subparagraph 1.(ii) in this final rule), requires that annual production data be given which includes both planted and harvested acreage in order to provide the most complete information. For existing or "carryover" policyholders, the records of harvested production for the previous crop year, included in the report, are used to determine the yield for insurance purposes for the following crop year.

If no production report is provided for the previous crop year, FCIC assigns a yield as provided in the policy. Production reports for years before the prior crop year, as submitted by the applicant or insured, may include records of from one (1) to ten (10) years, and may be used to establish the yield for insurance purposes. Since actual production data for the previous crop year provides the most reliable information upon which to base the coming crop year yield guarantee, FCIC contemplates no change to this subparagraph.

(i) *Comment:* The unit definition's two last sentences in subparagraph 1.(qq) of the proposed rule are conflicting in that the lessee could be insured for less than 100% because the crop is shared but, the latter portion states that land rented for "* * * a crop with a minimum payment is considered owned by the lessee * * *", resulting in a 100% share.

Response: FCIC agrees with the comment. In our review and analysis of the unit definition in response to this comment, a discrepancy was discovered between the definition of unit and the definition of share, as outlined by the comment. The intent of this definition of unit provision (now appearing at subparagraph (tt) in this final rule) is to consider land rented, or leased for a crop share and a minimum payment, to be a share arrangement for the purpose of establishing the insured share in the insured crop.

The unit definition provides the insured separate insurance coverage based on ownership of the land upon which the insured crop is grown. In response to the comment, in the definition of "unit," the words "a crop share with a minimum payment," have been deleted. The definition of "share" and "unit" are now consistent with the intent of this provision.

(j) *Comment:* The definition "Summary of Coverage" (subparagraph (mm)) should be amended to delete the words (here parenthesized) from the line reading "* * * and the amount of insurance (*for which*) coverage (*is*) provided."

Response: This definition of summary of coverage contained in the proposed rule did not clearly indicate that the summary issued covers either the guarantee of insurance (pounds, tons, bushels etc.) or the amount (dollar amount) of insurance. Rather, however, the definition appeared to indicate only the crop insured and the amount of coverage (dollar amount) included on the summary. FCIC concurs with the comment dealing with the recommended deletion and has further amended this definition (appearing at subparagraph (qq) in this final rule) to read: "Our statement to you, based upon your acreage report, by unit, specifying the insured crop and the guarantee or amount of insurance coverage provided".

(l) *Comment:* The words "uninsurable" and "uninsured" are interchanged throughout the policy.

Response: FCIC agrees that the two words should not be used interchangeably. These words have been replaced with language appropriate for the context in which they were used (see explanatory notes regarding the deletion of subparagraph (pp) in Supplementary Information section of this final rule).

(m) *Comment:* The current policy states that all the farmers policies are cancelled for non payment of debt, while the current practice of FCIC is to only cancel the policy on which the debt exists.

Response: Subparagraph 2.(c) of the policy in the proposed rule provides that all policies issued under the FCIC Act will terminate if any amount owed is not paid before the termination date for any separate crop policy on which the amount is due. FCIC's position is that it is not a good business practice to provide coverage for one crop while the policyholder has a delinquent account on another crop. If FCIC's current practice is inconsistent with this provision it is wrong and will be corrected. The rule will not be changed.

(n) *Comment:* Subparagraph 13(a)(2) of the proposed policy (Duties in the event of loss or damage—Your Duties) should be replaced by subparagraph 8(a)(3) of the present general policy (Notice of damage or loss) because reporting is not limited to damage that may result in loss. The statement is too broad and adds substantial costs to loss adjustment. In addition, many types of damage are progressive requiring almost daily notices required by this proposed paragraph.

Response: The insured is responsible for, among other things, reporting to the insurer damage to the insured crop. The insurer can then ascertain the extent of the damage and whether the damage is due to an insured cause as specified in the policy, and whether such damage may result in an indemnity. These determinations should be made by the insurer based on questions asked of the insured at the time the report of damage

is made. If the insured, at the time the report is made, is asked about the severity of the damage and the insureds intention to carry the crop to harvest, or if the insured is requesting an appraisal or consent to put the acreage to another use, the insurer can determine a proper course of action. It is not the intent of this provision to require progressive notices but to specify that the insured has a duty to notify the insurer of damage to the insured crop. This protects the rights of both parties to the insurance contract and is designed to keep the insurer informed that damage has occurred and what the insureds intentions are concerning the insured crop. For this reason, FCIC believes this provision does not require amendment.

(o) *Comment:* The wording in subparagraph 19(e) (Amounts due us) is in direct conflict with subparagraph 19(b) which states that interest will accrue on any unpaid balance, therefore, subparagraph 19(e) should read * * * "Penalties will be charged in accordance with * * *" This change will allow FCIC to charge a consistent interest rate of 1¼ percent on *any* unpaid balance.

Response: Subparagraph 19(e), redesignated in this final rule as subparagraph 21(d), has not been amended to include this suggestion. This subparagraph has been amended to add language providing that a penalty of 6% shall accrue from the date the debt became delinquent in accordance with 4 CFR 102.13(e) of the Standards for the Administrative Collection of Claims. The cited regulation provides that, as is the case with debts incurred on policies issued under the provisions of the FCI Act, an interest rate may be established which differs from the interest rate established in the debt collection regulations.

(p) *Comment:* Amend the record retention provision (paragraph 16) to require that records be maintained for three years; but, with the added requirement that records be maintained which were used to establish the amount of coverage on each farm unit.

Response: FCIC concurs with this suggestion and has amended this provision to include maintaining records used to establish the amount of coverage for each farm unit for three years (see paragraph 18 in this final rule). This type of information is provided by the insured initially and is not thought to impose any additional burden on the policyholder by requiring that such records be maintained. Further, it is FCIC's belief that retention of records supporting certification of past production is essential to the process of providing an adequate basis for revision of premiums and indemnities if an insured fails to maintain correct supporting records. While these requirements are provided in FCIC procedure, their effectiveness is enhanced by inclusion in the provisions of the policy to be codified in the Code of Federal Regulations.

(q) *Comment:* Another comment received by FCIC suggested additional language to another portion of the policy (paragraph 3) to provide that revision of the production guarantee, and any indemnity paid based on such guarantee, may be made if the production report is not supported by certain verifiable records or by measurement of farm stored production, or if the insured misreports actual production.

Response: FCIC also concurs in this suggestion for the same reasons outlined in response to Comment (p) above and has added a subparagraph (d) to paragraph 3 to contain this provision.

(r) *Comment:* § 499.2 (c) and (d)—Add the phrase "in the same county" after the words "on the same crop for the same crop year."

Response: These subsections have been amended to include this suggestion (§ 457.2 (c) and (d) in this final rule).

(s) *Comment:* § 499.2(d)—Add "duplicate" before the words "multiple peril contract."

Response: This subsection has been amended to include this suggestion (§ 457.2(d) in this final rule).

(t) *Comment:* § 499.2(g)—Change the term "Multi-peril" to read "multiple peril."

Response: This term has been conformed as "multiple peril" throughout the document.

(u) *Comment:* § 499.3(a)—Delete the reference to the actuarial data being "on file in the applicable service offices for the county," since this phrase is unclear and the data is maintained by the reinsured companies.

Response: This statement has been conformed throughout the document to read "agent's offices" instead of "service offices."

(v) *Comment:* § 499.7—Insert the word "accepted" before the word "application."

Response: This section has been amended to include this suggestion (§ 457.7 in this final rule).

(w) *Comment:* § 499.8(b)—This subsection should contain a requirement that the reinsured company notify FCIC in the event of rejection of an application. It is not reasonable to require the reinsured company to refer the applicant to competing agents.

Response: If FCIC would not have rejected the application and the reinsured company does so, it is not unreasonable to require the company to refer the applicant to the proper source from which to obtain crop insurance coverage. The rejecting company need not notify the Corporation of the rejection, merely refer the rejected applicant to a source of FCIC insurance. FCIC believes subsection § 499.8(b), with respect to referring a rejected applicant to another agent authorized to sell FCIC policies, is not an unreasonable requirement and does not contemplate making a change.

(x) *Comment:* The proposed rule diminishes the role of the reinsured company and inhibits any innovation because of stringent regulatory requirements which are beyond the scope of FCIC's delegated authority. References in the proposed rule to the publication of policy provisions (as amendments to the Common Policy) and the adoption of reinsured policy provisions is contrary to reinsurance principles.

Response: The legislation which allows the FCIC to operate provides that the policy issued be published in the **Federal Register**. In addition, the Administrative Procedure Act (5 U.S.C. 701–706, as amended) requires FCIC to publish its rules and to provide the public an opportunity for comment. Nothing in the rule inhibits a company from developing new products or being innovative. The FCIC Act requires the delivery of benefits of this program in a nondiscriminatory manner. FCIC does not believe that this mandate can be addressed efficiently if each company can be allowed to deliver a different product to different recipients in the guise of innovation.

(y) *Comment:* Sixteen references in paragraph 1 (Definitions) should be deleted because they are redundant and they are specifically and adequately defined in the policy sections.

Response: FCIC has corrected the redundancy to the maximum extent possible. FCIC feels the need to go to sufficient lengths to promote a proper level of understanding by retaining a certain amount of redundancy to assure a complete and clear interpretation of the policy terms and conditions.

(z) *Comment:* Subparagraph 2.(d) fails to address the consequences of death, etc., if the event occurs after the sales closing date but before coverage begins for the crop year.

Response: This eventuality is covered in the requirements of this subparagraph although not in the specific terms the commenter raises. Under this provision the policy will terminate in the event of death, should the death occur before insurance attaches. If the death were to

occur after sales closing date, but before coverage begins, FCIC would terminate the policy as provided because the insurance technically had not yet begun. FCIC feels that this provision addresses the issue raised by the commenter and does not require change.

(aa) *Comment:* Subparagraph 2.(e) should be deleted because it is unnecessary and costly to require companies to carry zero premium policies.

Response: This subparagraph has been amended to delete this reference.

(bb) *Comment:* Subparagraph 3(b) should be amended to change the words "Summary of coverage" to "Schedule of insurance," and the remainder of the sentence deleted because it limits the flexibility of the reinsured company to offer multiple alternatives for price selection. In addition, price selections should be handled between the insurer and the insured by separate agreement.

Response: "Summary of Coverage" is used because the term more accurately describes the information contained on the form. The selection of a price at which to compute indemnities is an important option for the insured. The language permits the insurer to impose a price election which bears the same relationship to a previously elected price. To permit imposition of higher or lower prices without sufficient protection to the insured is not in the best interest of the insured or the program. Sufficient flexibility is provided by this language. Selection of prices is handled between the insurer and the insured under current and proposed terms. FCIC will not change this subparagraph.

(cc) *Comment:* Subparagraph 3(c) should be deleted and covered in the separate crop provisions.

Response: The FCIC has determined that this provision applies to a significant number of crops. To avoid repetition, it is placed in the Basic Provisions.

(dd) *Comment:* Reference to notification of the insured concerning changes should be deleted because this is administrative and not contractual.

Response: FCIC has determined that this section will be unchanged. Notification to the insured is an integral part of the process and is a contractual obligation (see subparagraph 1. (n) "Contract Change Date," and paragraph 4 of the Common Policy).

(ee) *Comment:* Subparagraph 6 in the proposed rule (Report of Acreage) should be modified to conform to the reinsured companies policy regarding report of acreage.

Response: This paragraph is a combination of previous provisions of the FCIC and reinsured companies' policies. Representatives of both agree that the paragraph as written eliminates previous administrative problems, therefore no change is contemplated. FCIC has determined that this provision provides adequate protection to both parties to the insurance contract.

In addition, following a review of the proposed rule by internal divisions of FCIC, changes to the language of the policy provisions were made which FCIC considers minor and non-substantive and made only for the purpose of clarification to reflect the insurance industry terms which are tested and proven workable.

Accordingly, with the amendments made necessary by the comments referred to above, and minor and non-substantive language and format changes for purposes of clarity, the proposed rule published in the Federal Register at 55 FR 4382, is hereby adopted as a final rule.

Since this rule only establishes a common set of terms and conditions and does not contain specific crop provisions which will effect current policyholders, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 457

Crop insurance; Common crop insurance regulations.

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby adds a new part 457, the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1991 and succeeding crop years, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1991 AND SUBSEQUENT CONTRACT YEARS

Sec.

Authority: 7 U.S.C. 1506, 1516.

§ 457.1 Applicability.

The provisions of this part are applicable only to crops for which a crop provision is published as a section to 7 CFR part 457 and then only for the crops and crop year designated by the application section.

§ 457.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this section on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The crops and counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

(b) The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing the same terms and conditions as the contract set out in this part. These contracts are clearly identified as being reinsured by the Corporation.

(c) No person may have in force more than one contract on the same crop for the same crop year, in the same county, whether insured by the Corporation or insured by a company which is reinsured by the Corporation.

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the duplicate multiple peril contract of insurance was inadvertent and without the fault of the person.

(e) If the multiple contracts of insurance are shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop in the county for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract (see § 457.8, paragraph 21).

(g) An insured whose contract with the Corporation or with a company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multiple peril crop

insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligiblity.

(h) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for insurance or policies of insurance under the Act and the present status of any such applications or insurance.

§ 457.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed for the insured crop which will be included in the actuarial table on file in the applicable agents' office for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance or a coverage level and price from among those contained in the actuarial table for the crop year.

§ 457.4 OMB control numbers.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0563–0003, 0563–0009, and 0563–0010.

§ 457.5 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 457.6 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the crop insurance contract, whenever:

(a) A person entering into a contract of crop insurance under these regulations who, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing. The Corporation reviewing officers must, upon application by the person claiming relief under this section, refer such application to the appropriate official of the Corporation for determination as to whether to grant relief under this section. Corporation reviewing officers do not have authority to grant relief under this section.

(c) The reinsured companies may use arbitration panels established under contracts for reinsurance issued by them under the FCIC Act to grant relief under the same terms and conditions as contained in paragraphs (a) and (b) of this section or, may establish procedures to administratively handle relief in accordance with such terms and conditions.

§ 457.7 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation or the reinsured company of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall consist of the accepted Application, the Basic Provisions, the Crop Provisions, the Special Provisions, the county Actuarial Table, and any amendments or options thereto. Changes made in the contract shall not affect its continuity from year to year. No indemnity shall be paid unless the insured complies with all terms and conditions of the contract. The forms referred to in the contract are available at the offices of the crop insurance agent.

§ 457.8 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation, or approved by the Corporation, must be made by any person who wishes to participate in the program, to cover such person's share in the insured crop as landlord, owner-operator, crop ownership interest, or tenant. No other person's interest in the crop may be insured under an application unless that person's interest is clearly shown on the application and unless that other person's interest is insured in accordance with the procedures of the Corporation. The application must be submitted to the Corporation or the reinsured company through the crop insurance agent and must be submitted on or before the applicable sales closing date on file.

(b) The Corporation or the reinsured company may reject or discontinue the acceptance of applications in any county or of any individual application upon the Corporation's or the reinsured company's determination that the insurance risk is excessive. If the reinsured company rejects any application and such rejection is not required by the Corporation, the applicant must be referred to an agent authorized to sell the Corporation's policies of insurance. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable agents office and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period or that such extension is required to comply with other programs of the United States Department of Agriculture. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications and will require that the reinsured companies also immediately discontinue such acceptance.

United States Department of Agriculture

Federal Crop Insurance Corporation

Common Crop Insurance Policy

This is a continuous policy. Refer to section 2.

FCIC policies	Reinsured policies
United States Department of Agriculture, Federal Crop Insurance Corporation	
This is an insurance policy issued by the Federal Crop Insurance Corporation, a United	This policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the

FCIC policies	Reinsured policies
States Government agency. The provisions of the policy are published in the **Federal Register** and in the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*) and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.	Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Federal Crop Insurance Act. The provisions of the policy are published in the **Federal Register** and in chapter IV of title 7 of the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*), and may not be waived or varied in any way by the crop insurance agent, or any other agent or employee of the company. In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by the FCIC. No state guaranty fund will be liable to pay your loss.
Throughout this policy, "you" and "your" refer to the named insured shown on the accepted application and "we", "us" and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural	Throughout this policy, "you" and "your" refer to the named insured shown on the accepted application and "we" "us" and "our" refer to the company providing the insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Agreement to insure: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If a conflict exists between the basic provisions contained herein and the specific crop provisions, the crop provisions will control.

Terms and Conditions

Basic Provisions

1. Definitions

As used in this Policy these terms are defined as follows:

(a) *Abandon*—Failure to continue providing sufficient care (For example, cultivation, irrigation, fertilization, application of chemicals, etc., consistent with good farming practices) for the insured crop to make normal progress toward harvest or maturity, or failure to harvest in a timely manner.

(b) *Acreage report*—A report required by paragraph 6 of these basic provisions which contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county whether insurable or not insurable. This report must be filed not later than the final acreage reporting date contained in the special provisions for the county for the insured crop.

(c) *Acreage reporting date*—The date (contained in the special provisions) by which you are required to submit your acreage reports.

(d) *Actuarial table*—The forms and related material for the crop year which are available for public inspection in your agent's office, and which show the amounts of insurance or production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable acreage, and other related information regarding crop insurance in the county.

(e) *Another use, notice of*—The written notice required when you wish to put acreage to another use (see section 14).

(f) *Application*—The form is required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested. If a break in insurance coverage occurs, a new application must be filed.

(g) *ASCS*—The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(h) *ASCS Farm Serial Number*—The number assigned to the farm by the ASCS County Committee.

(i) *Assignment of indemnity*—A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

(j) *Cancellation date*—The calendar date specified in each crop provision on which that crop provision will automatically renew unless canceled in writing by either you or us.

(k) *Claim for indemnity*—A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the end of the insurance period (see section 14).

(l) *Consent*—Approval in writing by us allowing you to take a specific action.

(m) *Contract*—(also see "Policy") This policy is a contract between you and us consisting of the accepted Application, these Basic Provisions, the Crop Provisions, the Special Provisions, the Actuarial Table for the insured crops, and the applicable regulations as published at 7 CFR part 401.

(n) *Contract change date*—The calendar date by which we make any contract (policy) changes available for inspection in the agent's office (see section 4).

(o) *County*—The county or other political subdivision shown on your accepted application.

(p) *Coverage*—The insurance provided by this policy, against insured loss of production or value, by unit as shown on your summary of coverage.

(q) *Coverage begins, date*—The calendar date insurance begins on the insured crop, as contained in the crop provision, or the date after planting is started on the unit (see section 11).

(r) *Crop Provisions*—The part of the policy that contains the specific provisions of insurance for each insured crop.

(s) *Crop year*—The period within which the insured crop is normally grown and designated by the calendar year in which the insured crop is normally harvested.

(t) *Damage*—Injury, deterioration, or loss of production of the insured crop due to insured to uninsured causes.

(u) *Damage, notice of*—A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 14).

(v) *Delinquent account*—Any account you have with us in which premiums, or interest on those premiums is not paid by the termination date specified in the crop provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery or notification to you of the amount due.

(w) *Earliest planting date*—The earliest date established for planting the insured crop and qualifying for a replant payment if applicable (see special provisions and section 13).

(x) *End of insurance period, date of*—The date upon which your crop insurance coverage ceases for the crop year. (See crop provisions and section 11).

(y) *Insured*—The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application (see definition of "Person" paragraph 1.(dd)).

(z) *Insured crop*—The crop defined under these basic provisions and the applicable crop provision as shown on the application accepted by us.

(aa) *Late Planting Agreement Option*—Available on selected crops. An amendment to the insurance policy which, when planting has been delayed, provides insurance coverage for acreage of an insured crop planted after the final planting date shown on the special provisions in exchange for a reduction in coverage.

(bb) *Loss, notice of*—The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period (see section 14).

(cc) *Negligence*—The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

(dd) *Person*—An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

(ee) *Policy*—(also see "Contract") The basic provisions for insuring a specific crop. The "Insurance Contract" or "Contract" which is the insurance contract between you and us consisting of the accepted application, the basic provisions, the crop provisions, the special provisions, the actuarial table for the insured crop, and the applicable regulations as published at 7 CFR part 401.

(ff) *Practical to replant*—Our determination, after loss or damage to the insured crop, based upon all factors, including, but not limited to moisture availability, condition of the field, time to crop maturity, etc., on the feasibility of replanting and harvesting the insured crop. It is not practical to replant after the final planting date (for crops without an offered Late Planting Agreement Option) or after 20

days after the final planting date (for crops with an offered Late Planting Agreement Option).

(gg) *Premium billing date*—The earliest date upon which you will be billed for insurance coverage based on your acreage report and which generally falls at or near harvest time.

(hh) *Price election*—The amounts determined by FCIC and contained in the actuarial table, to be used as a basis for computing the amount per unit of production which will be paid in the event of a loss under the policy.

(ii) *Production report*—A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 3). The report contains previous years yield information including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop or by measurement of farm stored production, or by other records of production approved by us on an individual case basis.

(jj) *Reporting date*—The acreage reporting date (contained in the special provisions) by which you are required to report all your insurable acreage in the county in which you have a share and your share at the time insurance attaches, and any acreage in which you have a share which is not insured (see section 9.).

(kk) *Representative sample*—Portions of the insured crop or insured crop residue which are required to remain in the field for examination and review by our loss adjusters when making a crop appraisal if required by the crop provisions. The samples are further defined in the crop provisions.

(ll) *Sales closing date*—The date contained in the special provisions which is the final date when an application may be filed. This is the last date for you to make changes in your crop insurance coverage for the crop year.

(mm) *Section* (for the purposes of unit structure)—A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

(nn) *Share*—Your percentage of interest in the insured crop as an owner, operator, or tenant at the time coverage begins. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest. Unless the accepted application clearly indicates that insurance is requested for a partnership or joint venture, or is intended to cover the landlord's, or tenant's share of the crop (see section 10), insurance will only cover the crop share of the person completing the application. The share will not extend to any other person having an interest in the crop except as may otherwise be specifically allowed in this policy. We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be your share. Leases containing provisions for both a cash or minimum payment and a crop share will be considered a crop share lease.

(oo) *Special provisions*—The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

(pp) *State*—The state shown on your accepted application.

(qq) *Summary of coverage*—Our statement to you, based upon your acreage report, by unit, specifying the insured crop and the guarantee or amount of insurance coverage provided.

(rr) *Tenant*—A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of "share" above).

(ss) *Termination date*—The calendar date contained in the crop provisions upon which your policy ceases for nonpayment of premium or any other amount due us under the policy.

(tt) *Unit*—All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another specific entity on a share basis.

(For example, if, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units, one for each crop share lease and one for the two cash leases and the land you own). Land rented for cash, a fixed commodity payment, or a consideration other than a share in the insured crop on such land will be considered as owned by the lessee (see "Share" above). Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in the applicable crop provisions. Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. However, no further division may be made after the acreage report date for any reason.

2. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application. After acceptance of the application, you may not cancel this policy the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(b) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the crop provisions.

(c) All policies issued by us under the authority of the Federal Crop Insurance Act will terminate as of the coincidental or next termination date contained in these policies if any amount due us is not paid on or before the termination date for the crop on which the amount is due. Such unpaid debts will also make you ineligible for any crop insurance provided under the Federal Crop Insurance Act until payment is made. If we deduct any amount due us from an indemnity, the date of payment for the purpose of this paragraph will be the date you sign the properly completed claims for indemnity

(d) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(e) Your policy will terminate if no premium is earned in any year.

(f) The cancellation and termination dates are contained in the crop provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) For each crop year the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the special provisions or in the actuarial table.

(b) You may select only one coverage level offered by us for each insured crop. By written notice to us you may change the coverage level, price election, or amount of insurance for the following crop year not later than the sales closing date for the affected insured crop. If you do not elect a coverage level, we will assign the coverage level which is designated for that purpose in the special provisions. Since the price election or amount of insurance may change each year, if you do not select a new price election or amount of insurance before the next insurance year prior to the sales closing date, we will assign the price election or amount of insurance which bears the same relationship to the price election schedule as the price election or amount of insurance in effect for the preceding year.

(c) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date. If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75% of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your production history for the purpose of determining your coverage for the current crop year. If you have filed a claim for any crop year, the production used to determine the indemnity payment will be the production report for that year.

(d) We may revise your production guarantee for any farm unit, and revise any indemnity paid based on that production guarantee, if we find that your production report under paragraph (c) above:

(1) Is not supported by written verifiable records (see paragraph 1.(ii)); or

(2) Fails to accurately report actual production.

4. Contract changes

We may change the coverage under this policy from year to year. Your crop insurance agent will have changes in policy provisions, price elections, amounts of insurance, premium rates and program dates by the contract change date contained in the crop provisions. In addition, you will be notified, in writing, of these changes. Such notification will be made at least 30 days prior to the cancellation date of the insured crop.

5. Liberalization

If we adopt any revisions which would broaden the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

6. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date shown in the special provisions. This report must include the following information, if applicable:

(1) All acreage of the crop (insurable and not insured) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The date the insured crop was planted.

(b) If you do not have a share in any insured crop in the county for the crop year, you must submit an acreage report so indicating.

(c) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity which may be due, you may not revise this report after the acreage reporting date without our consent.

(d) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances which we determine to have actually existed.

(e) If you do not sumit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice or deny liability on any unit.

(f) If the information reported by you on the acreage report for a unit results in a lower premium than the actual premium determined to be due on the basis of the share, acreage, practice, type or other material information determined to actually exists, the production guarantee or amount of insurance on the unit will be reduced proportionately. In the event that acreage is under-reported, all production or value from insurable acreage for the unit, whether or not reported as insurable, will be considered production or value to count in determining indemnity.

(g) Errors in reporting units may be corrected by us to reduce our liability and to conform to applicable unit division guidelines at the time of adjusting a loss.

7. Annual Premium

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the billing date specified in the special provisions. The premium due, plus any accrued interest, will be considered delinquent if any amount due us is not paid on or before the termination date specified in the corp provisions.

(b) Any amount due us will be deducted from any replant payment or indemnity due you under the provisions of this policy.

(c) The annual premium amount is determined by either:

(a) Multiplying the production guarantee per acre times the price election, times the premium rate, times the insured acreage, times your share at the time coverage begins, times any premium adjustment precentages that may apply; or

(3) Multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time coverage begins, times any premium adjustment percentages that may apply.

8. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the crop provisions and must be grown on insurable acreage.

(b) A corp which will NOT be insured will include, but will not be limited to, any corp:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates, production guarantees or amounts of insurance have been established;

(2) Initially planted after the final planting date, unless we allow any you agree in writing on our form, to a coverage reduction (this Late Planting Agreement Option is available only on selected crops);

(3) Of a type, class or variety established as not adapted to the area or excluded by the special provisions;

(4) That is a volunteer crop;

(5) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the crop provisions of the special provisions;

(6) Which is planted for the development or production of hybrid seed or for experimental puposes, unless permitted by the crop provisions of unless we agree, in writing, to insure such crop; or

(7) Used for sildlife protection or management.

9. Insurable Acreage

(a) Acreage planted to the insured crop in which crop you have a share in insurable unless it is acreage:

(1) On which a corp has not been planted or harvested in a least one of the three previous crop years, unless ASCS classifies such acreage as cropland;

(2) Which has been strip-mined, unless we agree in writing to insured such acreage;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) Which is planted with a crop other than the insured crop, unless allowed by the crop provisions; or

(5) Which is otherwise restricted by the crop provisions of special provisions.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and water, at the time coverage begins, to carry out a good irrigation practice.

(c) If acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as "nonirrigated," or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage which we will insure to the amount allowed under any acreage limitation program established by the United States Department of Agriculture if we notify you of that restriction prior to the sales closing date.

10. Share Insured

(a) You may only insure your share as defined in subparagraph 1(nn) above.

(b) You as a landlord (or tenant) may insure your tenant's (or landlord's) share of the crop if evidence of the other party's approval of that insurance is demonstrated (Lease, Power of Attorney, etc.). The respective shares must be clearly set out on the Acreage Report and a copy of the other party's approval must be retained by us.

11. Insurance Period

Coverage begins on each unit or part of a unit the later of the date you submit your application, when the insured crop is planted or on the calendar date for the beginning of the insurance period if specified in the crop provisions, and ends at the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) Harvest of the unit;

(c) Final adjustment of a loss on a unit;

(d) The calendar date for the end of the insurance period contained in the crop provisions;

(e) Abandonment of the crop on the unit; or

(f) As otherwise specified in the crop provisions.

12. Causes of Loss

The insurance provided is against only unavoidable loss of production directly caused by specific causes of loss contained in the crop provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(b) The failure to follow recognized good farming practices for the insured crop;

(c) Water contained by any governmental, public, or private dam or reservoir project;

(d) Failure or breakdown of irrigation equipment or facilities; or

(e) Failure to carry out a good irrigation practice for the insured crop if applicable.

13. Replanting Payment

(a) If allowed by the crop provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit (as determined on the final planting date).

(b) No replanting payment will be made on acreage:

(1) On which our appraisal establishes that production will exceed the level set by the crop provisions;

(2) Initially planted prior to the date established by the special provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the crop provisions.

(d) If the information reported by you on the acreage report results in a lower premium than the actual premium determined to be due based on the acreage, share, practice, or type determined actually to have existed, the replanting payment will be reduced proportionately.

(e) No replanting payment will be paid for replanting any crop if we determine it is not practical to replant (see subparagraph 1.(ff)).

14. Duties in the event of Damage or Loss

Your Duties—

(a) In case of damage to any insured crop you must:

(1) Protect the crop from further damage by providing sufficient care;

(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop; and

(3) Leave representative samples intact for each field of the damaged unit as may be required by the crop provisions.

(b) You must obtain consent from us before, and notify us after you:

(1) Destroy any of the insured crop which is not harvested;

(2) Put the insured crop to an alternative use;

(3) Put the acreage to another use; or

(4) Abandon any portion of the insured crop. We will not give such consent if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and

(2) Submit to examination under oath;

(e) You must establish the total production or value received for the insured crop on the unit and that any loss of production or value has been directly caused by one or more of the insured causes (see crop provisions) during the insurance period.

(f) All notices required in this paragraph that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions we will pay your loss within 30 days after:

(1) We reach agreement with you; or

(2) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30 day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

(d) We recognize and apply the loss adjustment procedures established or approved by the Federal Crop Insurance Corporation.

15. Production Included in Determining Indemnities

(a) The total production to be counted for a unit will include all production determined in accordance with the Policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

(c) If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made in accordance with the applicable Form FCI–78 or FCI–78–A, "Request To Exclude Hail and Fire" or a form which contains the same terms.

16. Crops as payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

For FCIC policies	For reinsured policies
17. Appeals All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations (7 CFR part 400, subpart J)	17. Arbitration If you and we fail to agree on the production to be counted against the production guarantee due to damage, the following procedure will be used. (a) Either party may demand in writing, that the amount of production to be counted be set by appraisal. (b) Each party will select an appraiser and notify the other of the appraiser's identity within 15 days after receipt of the written demand. (c) The two appraisers will then select an umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state in which the insured crop is grown to select an umpire. (d) The appraisers will set the production to be counted against the production guarantee in accordance with the policy requirements. When the appraisers submit a written report of an agreement to us, the amount agreed upon will be the production to be counted against the production guarantee. (e) If the appraisers fail to agree within 15 days they must submit their difference to the umpire. A signed written agreement by two of the three will establish the production to be counted against the production guarantee. Each appraiser must be paid by the party selecting that appraiser. Other expenses of the appraisal and compensation of the umpire will be paid equally by you and us.
18. Access to Insured Crop and Record Retention (a) We reserve the right to examine the insured crop as often as we reasonably require. (b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also upon our request, provide separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records may, at our option, result in: (1) Cancellation of the policy; (2) Assignment of production to units by us; or (3) A determination that no indemnity is due. (c) Any person designated by us will, at any time during the record retention period, have access: (1) To any records relating to this insurance at any location where such records may be found or maintained; and (2) To the farm. (d) By applying for insurance under the Act or by continuing insurance previously applied for, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, county ASCS offices, banks, warehouses, gins, cooperatives, marketing associations, accountants, etc. You must assist us in obtaining all records which we request from third parties.	
19. Other Insurance (a) *Other Like Insurance.* You must not obtain any other crop insurance issued under the authority of the Federal Crop Insurance Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the fraud provisions under this policy. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act. (b) *Other Insurance Against Fire.* If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, and you have not excluded coverage for fire from this policy, we will be liable for loss due to fire only for the smaller of: (1) The amount of indemnity determined pursuant to this policy without regard to any other insurance; or (2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.	

For the purpose of this paragraph, the amount of loss from fire will be the difference between the fair market value of the production of the insured crop on the unit involved before the fire and after the fire, as determined from appraisals made by us.

20. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Federal Crop Insurance Act, may cause cancellation, termination, or voidance of your insurance contract, you should be aware that your policy will be cancelled if you are determined to be ineligible to receive benefits under the Federal Crop Insurance Act due to violation of the Conservation Provision (title XII) or the Controlled Substance Provision (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated under the Act by the United States Department of Agriculture (USDA). Your insurance policy will be cancelled if you are determined, by the appropriate United States Government (USDA) Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you and your premium will be refunded.

21. Amounts Due Us

(a) Any delinquent amount due us may be deducted from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies or from any amount due you from any other United States Government Agency

(b) Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid amount due us. For the purpose of premium amounts due us, interest will start on the first day of the month following the premium billing date specified in the special provisions

(c) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph (c) will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us

(d) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days delinquent (31 U.S.C. 3717(e)(2) and 4 CFR 102.13(e) is six percent (6%) per annum

(e) Interest on any amount due us found to have been received by you because of fraud, misrepresentation or presentation by you of a false claim will start on the date you received the amount with the 6% penalty beginning on the 31st day after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other Federal criminal or civil statute

(f) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection

(g) All amounts paid will be applied first to the payment of the expenses of collection accounts, second to the reduction of any penalties which may have been assessed, then to reduction of accrued interest, then to reduction of the principal balance

21. Amounts Due Us

(a) Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start on the first day of the month following the premium billing date specified in the special provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see (d) below) if any, second, to the reduction of accrued interest, and then to the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection. Those expenses will be paid before the application of any amounts to interest or principal.

22. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(c).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

23. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1 of each year and may vary with each publication.

24. Concealment, Misrepresentation or Fraud

This policy will be void in the event you have falsely or fraudulently concealed either the fact that you are restricted from receiving benefits under the Federal Crop Insurance Act or that action is pending which may restrict your eligibility to receive such benefits. We will also void this policy if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this or any other FCIC or FCIC reinsured policy. This voidance will not affect your obligation to pay premiums or waive any of our rights under this policy, including the right to collect any amount due us. The voidance will be effective as of the time coverage began for the crop year within which such act occurred.

25. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights. The transfer must be on our form and approved by us. Both you and the person to whom you transfer your interest are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

26. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy.

27. Subrogation (Recovery of loss from a third party)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

28. Applicability of State and Local Statutes

If the provisions of this policy conflict with statutes of the State in which this policy is issued the policy provisions will prevail. State and local laws and regulations in conflict with federal statutes, this contract, and the applicable regulations do not apply to this policy.

29. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

30. Notices

All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or

notice falls on Saturday, Sunday, or Federal holiday, or, if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day. All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your Crop Insurance Agent. You should advise us immediately of any change of address.

Done in Washington, DC, on January 8, 1991.

James E. Cason,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-709 Filed 1-11-91; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

7 CFR Part 760

Dairy Indemnity Payment Program; Beekeeper Indemnity Payment Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Dairy Indemnity Payment Program regulations to extend the operation of the program through September 30, 1995, as required by the Food, Agriculture, Conservation and Trade Act of 1990. This regulation also deletes obsolete provisions in 7 CFR part 760 which were used to administer the Beekeeper Indemnity Payment Program from 1970 through 1980.

EFFECTIVE DATE: This regulation shall become effective January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Raellen Erickson, Agricultural Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; Telephone (202) 447-3561.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR part 760) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0560-0116. Public reporting burden for the collection of information contained in this regulation is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0116), Washington, DC 20503.

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic 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.

The title and number of the Federal assistance program to which this rule applies re: *Title*—Dairy Indemnity Payments; *Number*—10.053, as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The Dairy Indemnity Payment Program was originally authorized by section 331 of the Economic Opportunity Act of 1964. The statutory authority for the program has been extended several times, most recently by section 110 of the Food, Agriculture, Conservation, and Trade Act of 1990 which authorizes the program to be carried out through September 30, 1995. The objective of the program is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses with respect to milk required to be removed from commercial markets due to residues of chemicals or toxic substances or contamination by nuclear radiation or fallout.

The Food, Agriculture, Conservation, and Trade Act of 1990 made no substantive changes to the Dairy Indemnity Payment Program but merely extended the time period for conducting the program. The regulations governing the program (7 CFR part 760) currently authorized the operation of the program through September 30, 1990. Accordingly, it is necessary to amend § 760.2 of these regulations to make them effective through September 30, 1995.

Since the only purpose of this final rule is to make a technical amendment to the regulations to extend the Dairy Indemnity Payment Program through September 30, 1995 in order to conform to the statute, it has been determined that no further public rulemaking is required. Therefore, these regulations shall become effective upon date of publication in the **Federal Register.**

The regulations of 7 CFR 760.100—760.119 were used in administering the Beekeeper Indemnity Payment Program from 1970 through 1980. No funds have been appropriated for this program since 1980 and no payments have been made since 1980. Accordingly, this final rule deletes these regulations effective upon date of publication in the **Federal Register.**

List of subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

PART 760—[AMENDED]

Final Rule

Accordingly, the regulations at 7 CFR part 760 are amended as follows:

1. The authority citation for part 760 is revised to read as follows:

Authority: 7 U.S.C. 450j, 450k, and 450l.

2. In § 760.2, paragraphs (k) (1) and (2), (l), and (o) are amended by striking out "1990" each place it appears and inserting in lieu thereof "1995".

§§ 760.100—760.119 [Removed]

3. The regulations of 7 CFR 760.100—760.119 are removed.

Signed at Washington, DC on December 31, 1990.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-824 Filed 1-11-91; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 86-037F]

Ingredients That May Be Designated as Natural Flavors, Natural Flavorings, Flavors, or Flavorings When Used in Meat or Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the effective date of the final rule published on March 1, 1990, titled "Ingredients That May Be Designated as Natural Flavors, Natural Flavorings, Flavors or Flavorings When Used in Meat or Poultry Products." The original effective date of August 28, 1990, was extended to March 1, 1991, by FSIS on June 28, 1990. FSIS is again extending the effective date to provide additional time for label revisions and approvals needed to implement the final rule. The new effective date is September 3, 1991. In addition, FSIS is providing notice that temporary label approvals, granted by the Agency in conjunction with the March 1, 1990, rule, will now expire on September 3, 1991.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447-6042.

SUPPLEMENTARY INFORMATION: On March 1, 1990, FSIS published a final rule titled "Ingredients That May Be Designated as Natural Flavors, Natural Flavorings, Flavors or Flavorings When Used in Meat or Poultry Products" (55 FR 7289). The effective date of the rule was August 28, 1990.

The final rule amended the Federal meat and poultry inspection regulations to better define and limit the substances which are permitted to be designated only as "spice," "natural flavor," "natural flavoring," "flavor," or "flavoring" in the list of ingredients on labels for meat and poultry products. The final rule requires that when substances not permitted to be so designated are used in meat and poultry products, they must be identified on the label by their common or usual names. This will inform consumers of these added substances, a special concern of many consumers for a variety of cultural, health, religious and other reasons.

As a result of this final rule, manufacturers of meat and poultry products containing these ingredients must revise their labels to identify the ingredients by their common or usual names or alter their formulations, or both, by the effective date of the rule. FSIS had determined that the process for developing revised labeling materials and formulations for products affected by this rule requires more lead time. Therefore, to assure an orderly implementation of the new requirements, on June 28, 1990, FSIS extended the effective date from August 28, 1990, to March 12, 1991 (55 FR 26422). In addition, FSIS extended temporary label approvals which were granted by the Agency in conjunction with the March 1, 1990, until March 1, 1991.

FSIS has decided to again extend the effective date to provide additional time for label alterations and approvals. The effective date is hereby extended to September 3, 1991. Also, temporary label approvals, granted in conjunction with the rule, are extended as well until September 3, 1991.

FSIS continues to encourage manufacturers to voluntarily revise their labels as soon as possible and provide full disclosure of ingredients prior to the effective date of the regulation when disclosure will be mandatory.

Done at Washington, DC, on January 8, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-823 Filed 1-11-91; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215-AA13

Claims for Medical Benefits Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: On May 16, 1990, the Department of Labor published proposed revisions to subpart E of 20 CFR part 10, extending coverage of the fee schedule for medical procedures and services provided to injured Federal employees covered under the Federal Employees' Compensation Act (FECA) to certain services provided at hospitals in the outpatient setting (55 FR 20276). The outpatient hospital-based services now covered include radiology, pathology, and physical therapy. This rule will, among other things, require hospitals to submit billings for covered services in the manner prescribed including use of appropriate procedure codes.

DATES: This rule is effective May 14, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION:

The expenses for authorized medical services to injured Federal employees receiving benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*, are paid out of the Employees' Compensation Fund. The Office of Workers' Compensation Programs (OWCP), which administers the FECA under the authority granted by the Secretary, implemented a fee schedule for the reimbursement of charges for medical services based on the relative unit value system developed by the Division of Labor and Industry, State of Washington and the Physician Procedural Terminology (CPT-4) coding scheme. The fee schedule rules originally contained several exemptions from coverage, including all charges for services provided by hospitals. The exclusion from coverage under the fee schedule of all hospital services resulted in an anomaly in billing, so that the same service when billed by a physician was paid at a different rate than when billed by a hospital on an out-patient basis. As explained in the preamble to the proposed rule, this rule is designed to correct that anomaly, by extending the fee schedule to certain outpatient services provided by hospitals.

Only one response to the publication of the proposed rule was received. That response, from a Federal agency, took the form of a question as to whether or not an employee would be liable for any amount beyond that paid by the Department under the fee schedule. By extending the fee schedule rules to hospital outpatient services, all aspects of those rules are extended, including that found at 20 CFR 10.411(i)(1), which prohibits a provider whose fees have been partially reimbursed, from requesting reimbursement from the patient for any additional amount.

This extension of the fee schedule provisions requires substantial changes

to the automated bill processing system used by OWCP to pay medical bills. The Employment Standards Administration (ESA) is installing a new computer system in all of the OWCP direct offices. That system is not expected to be fully installed until after January 1991. Rather than make the substantial changes in both the old system (which will be in use in some offices until the end of 1990) and the new one (which is already installed in some offices), it was determined that the required enhancements would be made only in the new system. Hence, the effective date of this final rule has been put off until 120 days after publication, at which time installation of the new system is expected to be complete.

Statutory Authority

5 U.S.C. 8149 provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Federal Employees' Compensation Act.

5 U.S.C. 8145 provides that the Secretary of Labor shall administer the Act, may appoint employees to administer it, and may delegate powers conferred by the Act to any employee of the Department of Labor.

5 U.S.C. 8103 (a) and (b) specifies that the Secretary may approve or authorize "necessary and reasonable" expenses to be paid from the Employees' Compensation Fund; may issue regulations governing the provision of services, appliances and supplies.

Classification

The Department of Labor has concluded that the regulatory proposal does not constitute a "major rule" 'under Executive Order 12291, because it is unlikely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The outpatient hospital charges subject to the fee schedule are estimated at $18,164,000 (based on a sampling of bills taken in May 1990), while the projected reductions are approximately $819,000 per year. These estimates of the reductions differ from those given in the preamble to the proposed rule, but since then, the Department has improved its ability to sample existing billing, and these figures more accurately portray expected cost impact. While the dollar amount of the reductions is higher than initially given, the impact on the economy is still far below $100 million. No significant increase in consumer or government cost is expected; rather containment of costs is the goal. No adverse effect on competition or U.S. enterprise can be foreseen. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations have previously been approved by OMB.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although this rule will be applicable to small entities it should not result in or cause any significant economic impact, since the application of the fee schedule provisions will not significantly reduce the amount of money paid to most hospital providers for the outpatient medical services rendered to FECA beneficiaries. The Secretary has so certified to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Archives and records, Health records, Freedom of Information, Privacy, Penalties, Health professions, Workers' Compensation, Employment, Administrative practice and procedure, Wages, Health facilities, Dental health, Medical devices, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney disease, Lung disease, Tort claims.

For the reasons set out in the preamble, part 10 of chapter 1 of title 20 of the Code of Federal Regulations is amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145; 8149; Secretary's Order 1–89; Employment Standards Order 90–02.

2. Section 10.411 is amended by revising paragraph (a)(2), (c), and the first two sentences of (d)(1) to read as follows:

§ 10.411 Submission of bills for medical services, appliances and supplies; limitation on payment for services.

(a)(1) * * *

(2) Charges for medical and surgical treatment provided by hospitals shall be supported by medical evidence as provided in § 10.410. Such charges shall be submitted by the provider on the Uniform Bill (UB–82). The provider shall identify each outpatient radiology service (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures, magnetic resonance imaging, and ultrasound and other imaging services), outpatient pathology service (including automated, multichannel tests, panels, urinalysis, chemistry and toxicology, hematology, microbiology, immunology and anatomic pathology), and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services should also appear in the UB–82. Other outpatient hospital services for which HCPCS/CPT codes exist shall also be coded individually using the aforementioned coding scheme. Services for which there are no HCPCS/CPT codes available can be presented using the Revenue Center Codes (RCCs) described in the "National Uniform Billing. Data Elements specifications, current edition." The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Diseases, 9th Edition, Clinical Modification"(ICD–9–CM). If the outpatient hospital services include surgical and/or invasive procedures, the provider shall state each procedure and furnish the corresponding code using the "International Classification of Diseases—Procedures, 9th Edition, Clinical Modification."

* * * * *

(c) Bills submitted by providers which are not itemized on the American Medical Association "Health Insurance Claim Form" (for physicians) or the Uniform Bill (UB–82) (for hospitals), or are not signed by the provider and the claimant, or on which procedure are not identified by the provider using HCPCS/CPT codes or RCCs, or on which diagnoses and/or surgical procedures are not identified using ICD–9–CM codes, may be returned to the provider for correction and resubmission.

(d)(1) Payment for medical and other health services furnished by physicians, hospitals and other persons for work-

connected injuries shall, except as provided below, be no greater than a maximum allowable charge for such service as determined by the Director. The schedule of maximum allowable charges is not applicable to charges for appliances, supplies, services or treatment provided and billed for by hospitals for services rendered on an inpatient basis, pharmacies or nursing homes, but is applicable to charges for services or treatment furnished by a physician or other medical professional in a hospital or nursing home setting.* * *

* * * * *

Signed at Washington, DC, this 8th day of January, 1991.

Roderick A. DeArment,

Acting Secretary of Labor.

[FR Doc. 91–826 Filed 1–11–91; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8322]

RIN 1545–AJ74

Untimely Filing of Income Tax Returns by Nonresident Alien Individuals and Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8322, which was published in the **Federal Register** for Tuesday, December 11, 1990 (55 FR 50827). The final regulations relate to denial of deductions and credits to nonresident alien individuals and foreign corporations that do not file true and accurate income tax returns by the time limits set forth in the final regulations.

FOR FURTHER INFORMATION CONTACT: Richard Chewning, (202) 566–3452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are necessary so that the income tax returns will be filed in a timely manner.

Need for Correction

As published, T.D. 8322 contains typographical errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8322) which was the subject of FR Doc. 90–28772, is corrected as follows:

1. On page 50828, in the preamble, column 2, under the heading "Special Analyses", line 10, the language "these regulations, and, therefore, a final" is corrected to read "these regulations, and therefore, a final".

§ 1.874–1 [Corrected]

2. On page 50828, column 3, § 1.874–1(a), line 36, the language "by filing a claim therefor with the" is corrected to read "by filing a claim therefore with the".

3. On page 50829, column 3, § 1.874–1(d)(2), line 2, the language "described in §§ 1.871–7 or § 1.871–8 of" is corrected to read "described in § 1.871–7 or § 1.871–8 of".

Cynthia E. Grigsby,

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

[FR Doc. 91–775 Filed 1–11–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[T.D. 8330]

RIN 1454–AL25

Allocation of Income Attributable to Certain Notional Principal Contracts Under Section 863(a)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations which set forth the source of income attributable to certain notional principal contracts (notional principal contract income). These final regulations are necessary to provide guidance to foreign and domestic corporations and individuals.

DATES: These regulations are effective for notional principal contract income includible in income on or after February 13, 1991. Section 1.863–7(b)(2)(iv) may be applied to notional principal contract income includible in income prior to February 13, 1991. An election is provided to apply the rules of § 1.863–7 to notional principal contract income includible in income before December 24, 1986.

FOR FURTHER INFORMATION CONTACT: Charles T. Plambeck of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R) (202–566–6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–0132. The estimated average annual burden per respondent is 3 minutes. This time estimate is included in the burden of Form 1120X.

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

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

Background

On August 1, 1989 the **Federal Register** published proposed amendments (54 FR 31703) to the Income Tax Regulations (26 CFR part 1) under section 863 of the Internal Revenue Code. No written comments from the Small Business Administration or the public responding to the proposed amendments were received. No public hearing was requested or held. Accordingly, the proposed amendments are adopted as modified by this Treasury Decision.

Explanation of Provisions

In response to oral comments, § 1.863–7(a)(1) is amended to include commodity swaps and to clarify the interrelationship of these regulations with the source rules of section 988. Section 1.863–7(a)(1) provides that if the notional principal contract is a section 988 transaction, § 1.863–7 does not apply. In such a case, a cross-reference to the source rules of § 1.988–4T is provided. A "properly reflected on the books" standard is added to the qualified business unit exception of § 1.863–7(b)(2)(iv). This is intended to assure that substantially uniform source rules will apply to income from notional

principal contracts in functional and nonfunctional currencies.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted without response to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Charles Thelen Plambeck, of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in developing the regulations.

List of Subjects

26 CFR §§ 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended to read as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended in part by removing the citation "Section 1.863–7T is issued under 26 U.S.C. 863(a)" and by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.863–7 is issued under 26 U.S.C. 863(a).

§ 1.863–7T [Removed]

Par. 2. Section 1.863–7T is removed.

Par. 3. New § 1.863–7 is added in the appropriate place to read as follows:

§ 1.863–7 Allocation of income attributable to certain notional principal contracts under section 863(a).

(a) *Scope*—(1) *Introduction* This section provides rules relating to the source and, in certain cases, the character of notional principal contract income. However, this section does not apply to income from a section 988 transaction within the meaning of section 988 and the regulations thereunder, relating to the treatment of certain nonfunctional currency transactions. Notional principal contract income is income attributable to a notional principal contract. A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. An agreement between a taxpayer and a qualified business unit (as defined in section 989(a)) of the taxpayer, or among qualified business units of the same taxpayer, is not a notional principal contract, because a taxpayer cannot enter into a contract with itself.

(2) *Effective date.* This section applies to notional principal contract income includible in income on or after February 13, 1991. However, any taxpayer desiring to apply paragraph (b)(2)(iv) of this section to notional principal contract income includible in income prior to February 13, 1991, in lieu of temporary Income Tax Regulations § 1.863–7T(b)(2)(iv) may (on a consistent basis) so choose. See paragreaph (c) of this section for an election to apply the rules of this section to notional principal contract income includible in income before December 24, 1986.

(b) *Source of notional principal contract income*—(1) *General rule.* Unless paragraph (b) (2) or (3) of this section applies, the source of notional principal contract income shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(2) *Qualified business unit exception.* The source of notional principal contract income shall be determined by reference to the residence of a qualified business unit of a taxpayer if—

(i) The taxpayer's residence, determined under section 988(a)(3)(B)(i), is the United States;

(ii) The qualified business unit's residence, determined under section 988(a)(3)(B)(ii), is outside the United States;

(iii) The qualified business unit is engaged in the conduct of a trade or business where it is a resident as determined under section 988(a)(3)(B)(ii); and

(iv) The notional principal contract is properly reflected on the books of the qualified business unit Whether a notional principal contract is properly reflected on the books of such qualified business unit is a question of fact. The degree of participation in the negotiation and acquisition of a notional principal contract shall be considered in this determination. Participation in connection with the negotiation or acquisition of a notional principal contract may be disregarded if the district director determines that a purpose for such participation was to affect the source of notional principal contract income.

(3) *Effectively connected notional principal contract income.* Notional principal contract income that under principles similar to those set forth in § 1.864–4(c) arises from the conduct of a United States trade or business shall be sourced in the United States and such income shall be treated as effectively connected to the conduct of a United States trade or business for purposes of sections 871(b) and 882(a)(1).

(c) *Election*—(1) *Eligibility and effect.* A taxpayer described in paragraph (b)(2)(i) of this section may make an election to apply the rules of this section to all, but not part, of the taxpayer's income attributable to notional principal contracts for all taxable years (or portion thereof) beginning before December 24, 1986, for which the period of limitations for filing a claim for refund under section 6511(a) has not expired. A taxpayer not described in paragraph (b)(2)(i) of this section that is engaged in trade or business within the United States may make an election to apply the rules of this section to all, but not part, of the taxpayer's income described in paragraph (b)(3) of this section for all taxable years (or portion thereof) beginning before December 24, 1986, for which the period of limitations for filing a claim for refund under section 6511(a) has not expired. If a taxpayer makes an election pursuant to this paragraph (c)(1) in the time and manner provided in paragraph (c) (2) and (3) of this section, then, with respect to such taxable years (or portion thereof), no tax shall be deducted or withheld under sections 1441 and 1442 with respect to payments made by the taxpayer pursuant to a notional principal contract the income attributable to which is subject to such election. The election may be revoked only with the consent of the Commissioner.

(2) *Time for making election.* The election specified in paragraph (c)(1) of this section shall be made by May 14, 1991

(3) *Manner of making election* The election described in paragraph (c)(1) of this section shall be made by attaching a

statement to the tax return or an amended tax return for each taxable year beginning before December 24, 1986, in which the taxpayer accrued or received notional principal contract income. The statement shall—

(i) Contain the name, address, and taxpayer identifying number of the electing taxpayer;

(ii) Identify the election as a "Notional Principal Contract Election under § 1.863–7"; and

(iii) Specify each taxable year described in paragraph (c)(1) of this section in which payments were made.

(d) *Example.* The operation of this section is illustrated by the following example:

(1) On January 1, 1990, X, a calendar year domestic corporation, entered into an interest rate swap contract with FZ, an unrelated foreign corporation. X does not have a qualified business unit outside the United States. Under the contract, X is required to pay FZ fixed rate dollar amounts, and FZ is required to pay X floating rate dollar amounts, each determined solely by reference to a notional dollar denominated principal amount specified under the contract. The contract is a notional principal contract under § 1.863–7(a) because the contract provides for the payment of amounts at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for a promise to pay similar amounts.

(2) Assume that during 1990 X had notional principal contract income of $100 in connection with the notional principal contract described in (1) above. Also assume that the contract provides that payments more than 30 days late give rise to a $5 fee, and that X receives such a fee in 1990. Under paragraph (b)(1) of this section, the source of X's $100 of income attributable to the swap agreement is domestic. The $5 fee is not notional principal contract income.

(e) *Cross references.* See § 1.861–9T(b) for the allocation of expense to certain notional principal contracts. For rules relating to the source of income from nonfunctional currency notional principal contracts, see § 1.988–4T. For rules relating to the taxable amount of notional principal contract income allocable under this section to sources inside or outside the United States, see § 1.863–1(c).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by adding in the appropriate place in the table the entry "§ 1.863–7 * * * 1545–0132" and by removing the entry "§ 1.863–7T * * * 1545–0132".

Approved: November 13, 1990.

Kenneth W. Gideon,

Assistant Secretary of Treasury.

[FR Doc. 91–526 Filed 1–11–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

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

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program), as administered by the Colorado Mined Land Reclamation Division (MLRD) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to administration, alluvial valley floors, permit applications, ownership and control, permit conditions, coal exploration, archaeology and cultural resources, civil penalties, restriction on financial interests of State employees, diversions, siltation structures, impoundments, hydrologic balance protection, inspection and enforcement, use of explosives, excess spoil, coal mine waste, backfilling and grading, prime farmland, reclamation plans, and fish and wildlife. The amendment revises the Colorado program to be consistent with SMCRA and the Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program as administered by MLRD. Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82211). Actions concerning program amendments taken subsequent to the approval of the Colorado program are found at 30 CFR 906.15, 906.16, and 906.30.

II. Submission of Proposed Amendment

By letter dated July 18, 1989, Colorado submitted to OSM a proposed amendment to the rules of the Colorado program at 2 CCR 407–2 (Administrative Record No. CO–457). The amendment pertains to administration, alluvial valley floors, permit applications, ownership and control, permit conditions, coal exploration, archaeology and cultural resources, civil penalties, restriction on financial interests of State employees, diversions, siltation structures, impoundments, hydrologic balance protection, inspection and enforcement, use of explosives, excess spoil, coal mine waste, backfilling and grading, prime farmland, reclamation plans, and fish and wildlife. Colorado submitted parts of the proposed amendment at its own initiative and other parts in response to OSM's letters dated May 7, 1986, June 9, 1987, November 14, 1988, and May 11, 1989 (Administrative Record Nos. CO–282, CO–342, CO–418, and CO–441). These letters were issued in accordance with 30 CFR 732.17(d) and notified Colorado of required amendments to its program. OSM published a notice in the **Federal Register** on August 10, 1989 (54 FR 32828), announcing receipt of the proposed amendment to the Colorado program and inviting public comment on its adequacy (Administrative Record No. CO–459). The public comment period closed on September 11, 1989.

After reviewing the proposed amendment and all comments received, OSM notified Colorado by letter dated November 3, 1989 (Administrative Record No. CO–475), of several provisions in its proposed amendment that appeared to be inconsistent with the Federal regulations.

By letter dated January 17, 1990 (Administrative Record No. CO–477), Colorado submitted additional explanatory information and a revised proposed amendment. In this revised proposed amendment, Colorado withdrew its proposed rules concerning rescission of improvidently issued permits (Rule 2.11). To allow the public an opportunity to comment on the additional material submitted by Colorado, OSM published a notice in **Federal Register** on February 9, 1990 (55 FR 4625), reopening and extending the

comment period (Administrative Record No. CO–479). The reopened comment period closed on February 26, 1990.

After reviewing the additional explanatory information and the proposed revisions to the amendment and all comments received, OSM notified Colorado by letter dated March 15, 1990 (Administrative Record No. CO–494), of a few provisions of its proposed amendment that continued to be inconsistent with the Federal regulations.

By letter dated April 5, 1990 (Administrative Record No. CO–498), Colorado responded by submitting additional explanatory information and revisions to the proposed amendment. In this response, Colorado withdrew all revisions to the definition of "previously mined area" (Rule 1.04(94a)). To allow the public an opportunity to comment on the additional material submitted by Colorado, OSM published a notice in the **Federal Register** on April 27, 1990 (55 FR 17758), reopening and extending the comment period (Administrative Record No. CO–501). The reopened comment period closed on May 14, 1990.

After reviewing the proposed revisions to the amendment and all comments received, OSM notified Colorado by letter dated May 14, 1990 (Administrative Record No. CO–504), of the remaining issues for the proposed amendment.

By letter dated May 23, 1990 (Administrative Record No. CO–508), Colorado responded by submitting additional clarification of its rules and withdrawing its proposed rule concerning hydrologic protection at Rule 4.05.6(4)(f).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Colorado on July 18, 1989, as subsequently revised on January 17, April 5, and May 23, 1990. The Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and ongoing oversight of the Colorado program.

1. Substantive Revisions to Colorado's Rules That Are Substantially Similar to the Counterpart Federal Regulations

Colorado proposes revisions to the following rules that are substantive in nature and contain language substantially identical to the counterpart Federal regulations (shown in brackets).

Alluvial valley floors—Rules 2.06.8 (3)(c)(i)(B)(I) and (3)(c)(ii)(B) [30 CFR 701.5 and 785.19(a)(2)];

Permit information requirements—Rules 2.03.4; 2.03.5 (3) and (4); 2.07.7(5); and 5.03.2(1)(d) [30 CFR 778.13 (b), (c), and (d); 778.14(c); 773.17(i); and 843.11(g)];

Ownership and control—Rules 1.04(83a); and 2.07.6 (1)(b), (1)(d), (2)(h), and (10)(c) [30 CFR 773.5; and 773.15 (b)(2), (b)(3), and (e)];

Permitting—Rule 2.07.7(4) [30 CFR 773.17(g)];

Coal exploration—Rules 2.02.7(2)(a); and 4.21.4 (7) and (7)(c) [30 CFR 772.15(b) and 815.15(f)];

Civil penalties—Rules 1.04(153); 5.03.5 (1)(d) and (4)(e); and 5.04.7 (2), (3), and (4) [30 CFR Part 846];

Restriction on financial interests of State employees—Rules 1.10.2(2) and 1.10.4(1) [30 CFR 705.4(d) and 705.11(a)];

Diversions—Rules 4.05.3(1) (a), (b), and (f); 4.05.3(7)–(9); and 4.05.4(1) [30 CFR 816.43(b)(1) and 817.43(b)(1)];

Siltation structures—Rules 4.05.6 (3)(c), (3)(d), (3)(e), (4), (5), (6), (11), (11)(i), (11)(j), (11)(k), (12), and (13)(b) [30 CFR 816.46(c), 817.46(c), 816.49(a), and 817.49(a)];

Impoundments—Rules 4.05.9 (1)(a), (1)(e), and (1)(f); 4.05.9 (3) and (3)(a); 4.05.9 (4), (5), and (12) [30 CFR 816.49 (a) and (b), and 817.49 (a) and (b)];

Hydrologic balance protection—Rules 4.05.8(2) [30 CFR 816.41(f)(1)(i) and 817.41(f)(1)(i)];

Use of explosives—Rules 4.08.1(3); 4.08.4(6)(c); and 4.08.5(4)(c) [30 CFR 816.61 (b)(2) and (c), 817.61 (b)(2) and (c), 816.68, and 817.68];

Excess spoil—Rules 4.09.1(10); and 4.09.2 (2)(a) and (3) [30 CFR 816.71 (d)(2), (f)(3), and (e)(2)];

Coal mine waste—Rules 4.11.5 (3)(b) and (3)(d) [30 CFR 816.84 (b)(2) and (f), and 817.84 (b)(2) and (f)];

Backfilling and grading—Rule 4.23.2(7) [30 CFR 816.19];

Prime farmland—Rule 4.251(2) [30 CFR 823.11(a)];

Reclamation plan—Rules 2.05.3(4)(a)(ii)(B) and (4)(b) [30 CFR 780.25 and 784.16(c)(3)]; and

Fish and wildlife—Rule 2.05.6(2)(c) [30 CFR 780.16(c)].

Because the proposed revisions to these Colorado rules: (1) Contain language that is substantially identical to the counterpart Federal regulations; or (2) add specificity without adversely affecting other aspects of the program, the Director finds that these proposed Colorado rules are no less effective than the counterpart Federal regulations. Therefore, the Director approves these proposed rules.

2. Administration, Rule 1.01(9)

Colorado proposes at Rule 1.01(9) that "[T]he materials incorporated in these rules by reference do not include later amendments to or editions of the incorporated materials." Colorado stated that it was proposing this rule to comply with the terms of Colorado's Administrative Procedures Act at Colorado Revised Statutes (C.R.S.; 1989) 24–4–103(12.5)(c).

The effect of proposed Rule 1.01(9) is that any Federal regulations or technical publications incorporated by Colorado's rules would be incorporated as they existed at the time that Colorado initially proposed its rules. The rules proposed by Colorado (that are affected by proposed Rule 1.01(9)) and the Federal regulations and technical publications they incorporate by reference (shown in brackets) are:

Siltation structures, impoundments, and coal mine waste—Rules 4.05.6(11) (j) and (k), and (12); 4.05.6(13)(b), (b)(i), and (b)(ii); 4.05.9(4), and (5) (a) and (b); 4.05.9(13) and (13)(c); and 4.11.5(3)(b) [Mine Safety and Health Administration's (MSHA's) regulations at 30 CFR 77.216];

Permanent impoundments—Rules 4.05.9(1) (e) and (f) [U.S. Soil Conservation Service's (SCS's) technical publication Public Standard 378, "Ponds," Colorado, January 1989]; and

Large temporary and permanent impoundments—Rules 4.05.9(3) (a) and (b) [MSHA's Federal regulations at 30 CFR 77.216 and SCS's technical publication U.S. SCS Technical Release No. 60, "Earth Dams and Reservoirs," June 1976].

The Director is approving these rules as no less effective than the counterpart Federal regulations at 30 CFR 816.46(c), 816.49 (a) and (b), 816.84(b), 817.46(c), 817.49 (a) and (b), and 817.84(b). (See related finding Nos. 1, and 12 for Rule 4.05.9(13).) However, should MSHA or SCS publish revisions to their regulations or technical publications, OSM would require Colorado to submit a program amendment to incorporate the revisions.

There is no Federal counterpart regulation to proposed Rule 1.01(9). The Director finds that proposed Rule 1.01(9), which Colorado proposes to comply with other Colorado statutes, is not inconsistent with the Federal regulations. Therefore, the Director approves Colorado's proposed Rule 1.01(9).

3. Definition of "Impoundment," Rule 1.04(64)

Colorado's proposes at Rule 1.04(64) to define "impoundment" as "a closed basin, naturally formed or artificially built, which is built to or does in fact retain water, sediment, or slurried waste in support of *mining and reclamation operations*" (emphasis added). With one exception, the proposed definition is substantively identical to the Federal definition of "impoundments" at 30 CFR 701.5. The exception is that Colorado limits its definition to those basins used in support of "mining and reclamation operations."

Colorado does not specifically define "mining and reclamation operations," but it does define "*surface* coal mining and reclamation operations" (emphasis added) at existing Rule 1.04(133). This definition includes the definition of "surface coal mining operations" at Rule 1.04(132). The Director finds Colorado's proposed definition of "impoundment" at Rule 1.04(64) no less effective than the counterpart Federal definition of "impoundments" at 30 CFR 701.5, with the understanding that Colorado's definition of "impoundment" means all basins, naturally formed or built, in support of all activities listed under the definitions of "surface coal mining operations" and "surface coal mining and reclamation operations" at Rules 1.04(132) and 1.04(133). Therefore, the Director approves Colorado's proposed definition of "impoundment" at Rule 1.04(64).

4. Definition of "Knowingly," Rule 1.04(70a)

Colorado proposes at Rule 1.04(70a) to define "knowingly" as meaning "with respect to individual civil penalties, that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal to comply with any regulatory requirements or order of the Board." With the exception of the phrase "to comply with any regulatory requirements or order of the board," this definition is substantively identical to the Federal definition of "knowingly" at 30 CFR 846.5. The Director interprets "regulatory requirements" very broadly so as to include all substantive requirements of the approved regulatory program, including but not limited to orders of MLRD. On this basis, the Director finds Colorado's proposed Rule 1.04(70a) to be no less effective than the counterpart Federal definition of "knowingly" at 30 CFR 846.5. Therefore, the Director approves Colorado's proposed definition of "knowingly" at Rule 1.04(70a).

5. Definition of "Sedimentation Pond," Rule 1.04(115)

Colorado proposes a definition for "sedimentation pond" at Rule 1.04(115) which states in part that "[t]he State engineer's requirements at C.R.S. 37–87–105 are not applicable to those structures designed solely to control sediment and which do not store water." Colorado is repeating in its proposed rule the exemption found at C.R.S. 37–87–114.5, which exempts from the state engineer's office requirements of C.R.S. sections 37–87–105 through 37–87–114, structures not designed or operated for the purpose of storing water and siltation structures permitted under Article 33 of title 34, C.R.S.

There is no counterpart requirement in the Federal definition of "sedimentation pond" at 30 CFR 701.5. The remainder of Colorado's proposed definition is substantively identical to the Federal definition at 30 CFR 701.5.

The Director finds that the proposed definition of "sedimentation pond" at Rule 1.04(115), which Colorado in part proposes to clarify the relationship of this proposed rule to other Colorado rules, is not inconsistent with the Federal regulations concerning hydrology at 30 CFR 816.45 through 816.56, and 30 CFR 817.45 through 817.56, and is no less effective than the counterpart Federal definition at 30 CFR 701.5. Therefore, the Director approves Colorado's proposed definition of "sedimentation pond" at Rule 1.04(115).

6. Archaeology and Cultural Resources, Rule 2.02.3(1)(c)(i)

Colorado proposes at Rule 2.02.3(1)(c)(i) that a coal exploration and reclamation plan include, among other things, "[a] narrative description of * * * districts, sites, buildings or structures or objects listed on or known to be eligible for listing on the National Register of Historic Places; known archaeological resources located within the proposed exploration area; and any other information that may be required regarding historic or archaeological resources."

The Federal regulation at 30 CFR 772.12(b)(8) requires that an applicant for a permit for exploration removing more than 250 tons of coal provide a description of cultural or historical resources listed or known to be eligible for listing on the National Register of Historic Places, and known archaeological resources located within the proposed exploration area. 30 CFR 772.12(b)(8) also requires "any other information which the regulatory authority may require regarding *known or unknown* historical or archaeological resources" (emphasis added). The term "unknown" refers to resources which may exist but have, as yet, not been recorded. This reference makes explicit the authority to require a permit applicant to obtain information on not yet discovered historic or archaeological resources in order for the regulatory authority to make reasonable and informed decisions regarding the protection of such resources on the proposed permit area. This information might take the form of predictions of the probability of cultural resources existing on the area, based upon data from the surrounding area, or results of inventory or sample surveys. If sufficient data exist for the area, the regulatory authority may not need any further information, but the authority to require necessary additional data must be present within the rules.

Colorado orally indicated that it interprets the proposed rule to cover unknown as well as known resources, and furthermore, that all coal exploration permits are submitted to the State Historic Preservation Office (SHPO) for his review and recommendations concerning the need to collect additional information (March 2, 1989, meeting between Colorado and OSM, Administrative Record No. CO–430). In Colorado's April 5, 1990, revised proposed amendment, Colorado also stated in its "statement of basis and purpose" for the proposed rule that "[p]reviously unknown resources are to be considered for further research if identified in an exploration area."

The Director finds that Colorado's proposed Rule 2.02.3(1)(c)(i), which authorizes Colorado to request "any other information that may be required regarding historic or archaeological resources," as augmented by its March 2, 1989, and April 5, 1990 policy statements, is no less effective than the Federal regulation at 30 CFR 772.12(b)(8). Therefore, the Director approves Colorado's proposed Rule 2.02.3(1)(c)(i).

7. Minimum Requirements for Surface- and Ground-Water Monitoring Plans, Rules 2.04.7(1)(a)(v) and 2.05.6(3)(b)(iv)

In response to a required program amendment at 30 CFR 906.16, Colorado proposes at Rule 2.04.7(1)(a)(v) that baseline ground-water samples be analyzed for total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese.

OSM, at 30 CFR 906.16 (December 11, 1989, 54 FR 50739, 50743; see finding No. 6), required Colorado to either: (1) Amend Rule 2.05.6(3)(b)(iv) to require that ground-water monitoring plans include the monitoring of total iron and total manganese; or (2) amend Rule 2.04.7(1) to require at a minimum that ground-water baseline information include measurements of total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. The Director placed this requirement on Colorado because proposed Rules 2.05.6(3)(b)(iv) and 2.04.7(1) were less effective than the Federal regulations at 30 CFR 780.21 (b)(1) and (i) and 784.14 (b)(1) and (h).

Colorado's proposed Rule 2.04.7(1)(a)(v) satisfies the latter option

of the required amendment at 30 CFR 906.16. Therefore, the Director finds that proposed Rules 2.05.6(3)(b)(iv) and 2.04.7(1)(a)(v) are no less effective than the Federal regulations at 30 CFR 780.21(b)(1) and (i) and 784.14(b)(1) and (h). The Director approves Colorado's proposed Rule 2.04.7(1)(a)(v) and removes the required amendment at 30 CFR 906.16.

8. Confidential Information for Permits, Rule 2.07.5(3)

In another amendment to its program (Administrative Record No. CO–384), Colorado, on August 23, 1988, proposed at Rule 2.07.5(3) that "[p]ersons either seeking or opposing the disclosure or non-disclosure of confidential [permit] information under this rule may request a formal hearing of the Board in accordance with Rule 2.07.4(3) by filing a written request within 30 days of the Division's decision on confidentiality." Colorado proposed this rule in response to OSM's May 7, 1986, 30 CFR part 732 letter, requiring that Colorado, to be no less effective than the Federal regulations at 30 CFR 773.13(d)(3), must establish notice and hearing procedures for persons both seeking and opposing disclosure of confidential information (see item No. Q–6).

At 30 CFR 906.15(m), OSM approved this proposed rule (December 11, 1989, 54 FR 50739, 50744; see finding No. 1). However, when Colorado promulgated the amendment on January 3, 1990 (Administrative Record No. CO–481), it did not include the revision to Rule 2.07.5(3) that was approved by OSM.

By letter dated March 7, 1990 (Administrative Record No. CO–495), Colorado requested that proposed Rule 2.07.5(3) be withdrawn from consideration by OSM. It is not procedurally possible to withdraw a proposed rule after OSM has published its decision on it in a final rule **Federal Register** notice without republishing a proposed rule **Federal Register** notice, providing for public comment on Colorado's proposed deletion of the rule from its program.

While OSM, in accordance with 30 CFR 773.13(d)(3), requires that States establish notice and hearing procedures for persons both seeking and opposing disclosure of confidential information, there is no requirement that the procedures be submitted to OSM for review as a program amendment. However, OSM is obligated to ensure that notice and hearing procedures regarding confidential information are developed and are in effect. Therefore, for the Colorado program to be no less effective than Federal regulation 30 CFR 773.13(d), the Director requires that Colorado either: (1) Demonstrate to OSM that such procedures have already been adopted by Colorado and are in place; (2) promulgate the revision at Rule 2.07.5(3) as it was submitted by Colorado and approved by OSM on December 11, 1989; or (3) amend its program to require that notice and hearing procedures for persons both seeking and opposing disclosure of confidential information be developed.

9. Termination of Jurisdiction, Rule 3.03.3

Colorado proposes at Rule 3.03.3(1) that "[t]he Division may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when the Division determines in writing that under the permanent program, all requirements of these rules and the act have been successfully completed and where a performance bond was required, the division has made a final decision in accordance with Rule 3.03 to release the performance bond fully." It further proposes at Rule 3.03.3(2) that "[t]he Division shall reassert jurisdiction under these rules and the act over a site if it is demonstrated that the bond release or written determination referred to in paragraph (1) of this section was based upon fraud, collusion, or misrepresentation of a material fact."

Colorado's proposed Rules 3.03.3 (1) and (2) are substantively identical to the Federal regulations at 30 CFR 700.11(d). However, the U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 700.11(d) were contrary to sections 521 (a)(1) and (a)(2) of SMCRA (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 88–2416, 88–3345, 88–3586, 88–3635, 89–0039, 89–0136, and 89–0141, D.D.C., August 30, 1990). More specifically, the court interpreted sections 521 (a)(1) and (a)(2) as imposing an on-going duty upon the Secretary of the Interior to correct violations of SMCRA. Accordingly, the court remanded the Federal regulations at 30 CFR 700.11(d) to the Secretary to be withdrawn or revised.

Because the Director is pursuing an appeal of the court's remand of this rule, the Director is deferring his decision on proposed Rules 3.03.3 (1) and (2). Until such time as the Director takes action on his deferral and decides to approve or not approve the proposed rules, Colorado may not promulgate and implement proposed Rules 3.03.3 (1) and (2).

The Director will, pursuant to 30 CFR 732.17(d), notify Colorado of any regulatory changes needed for the above rules.

10. Diversions, Rules 4.05.3(1) (c), (d), and (e)

Colorado proposes respectively at Rules 4.05.3(1) (c), (d), and (e) that diversions: (1) Comply with applicable local, State, and Federal statutes and regulations; (2) be *designed and located* so as not to increase the potential for downstream flooding, or otherwise endanger property or public safety; and (3) be *designed* to minimize adverse impacts to the hydrologic balance and to be stable.

The counterpart Federal regulations at 30 CFR 816.43(a)(2) (i), (ii), and (iv) require that diversions be *designed, located, constructed, maintained, and used* to be stable, to provide protection against flooding and resultant damage to life and property, and to comply with applicable local, State, and Federal laws and regulations. In the preamble to the Federal regulations, OSM reasoned that diversions must be " 'designed, constructed, and maintained' * * * [to] provide sufficient regulatory control to assure both onsite and offsite protection of the hydrologic balance and assure that all necessary safety design factors are incorporated into diversions and their appurtenant structures" (47 FR 22712, 22723, June 25, 1982; emphasis added).

The Director finds that Colorado's proposed Rules 4.05.3(1) (c), (d), and (e) are less effective than the Federal regulations at 30 CFR 816.43(a)(2) (i), (ii), and (iv) to the extent that they do not require that all diversions be *located, constructed, maintained, and/or used* to be stable, to provide protection against flooding and resultant damage to life and property, and to comply with applicable local, State, and Federal laws and regulations. The Director is approving these proposed rules, but he is requiring that Colorado further revise Rule 4.05.3(1) to require that all diversions be located, constructed, maintained, and used to be stable, to provide protection against flooding and resultant damage to life and property, and to comply with applicable local, State, and Federal laws and regulations.

(Please note that Colorado proposes at Rule 4.05.4(1)(b) that stream channel diversions and stream channel reconstruction "comply with the requirements of rules 4.05.3 (b)–(f)." The correct citation should be 4.05.3(1) (b) through (f). The Director is approving proposed Rule 4.05.4 (see finding No. 1); however, Colorado has been notified of the need to correct the typographical error at proposed Rule 4.05 4(b).)

11. Hydrologic Protection, Rule 4.05.8(1)

Colorado proposes at Rule 4.05.8(1) a requirement that operators avoid creating drainage from acid-forming and toxic-forming spoil or underground development waste into ground or surface water by identifying, burying, and treating, where necessary, spoil and waste which "may be detrimental to vegetation or may adversely affect water quality if not treated or buried."

The Federal regulations at 30 CFR 816.41(f)(1)(i) and 817.41(f)(1)(i) require the same operator actions where spoil and waste may be detrimental to vegetation or may adversely affect water quality, but they also require such operator actions when spoil and waste may be detrimental to "public health and safety."

Because the Federal regulations contain the extra provision to protect public health and safety, they apply more broadly than does Colorado's proposed Rule 4.05.8(1). Therefore, the Director finds Colorado's proposed Rule 4.05.8(1) less effective than the Federal regulations at 30 CFR 816.41(f)(1)(i) and 817.41(f)(1)(i) to the extent that it does not specifically apply to instances where acid-forming and toxic-forming spoil and underground development waste may be detrimental to "public health and safety." The Director approves Rule 4.05.8(1) but requires that Colorado further revise Rule 4.05.8(1) to require operators to identify, bury, and treat acid-forming and toxic-forming spoil and waste where such spoil and waste may be detrimental to public health and safety.

12. Impoundments, Rules 4.05.9(1)(g), 4.05.9(2), 4.05.9(3)(b), and 4.05.9 (4) through (13)

Colorado proposes impoundment rules at Rule 4.05.9 that are organized such that Rule 4.05.9(1) is entitled "permanent impoundments," Rule 4.05.9(2) is entitled "temporary impoundments," and Rule 4.05.9(3) is entitled "large impoundments" and applies to both temporary and permanent impoundments. After these rules, Colorado proposes Rules 4.05.9 (4) through (13), which are untitled and which Colorado has stated apply to both temporary and permanent impoundments (Administrative Record No. CO–498).

(a) *Rule 4.05.9(1)(g).* Colorado proposes at Rule 4.05.9(1)(g) (previously codified as Rule 4.05.9(1)(f)) requirements regarding design of spillway systems. As the title for Rule 4.05.9(1) indicates, proposed Rule 4.05.9(1)(f) applies only to permanent impoundments. The counterpart Federal regulations at 30 CFR 816.49(a)(9) and 817.49(a)(9) apply to both temporary and permanent impoundments.

The Director finds that proposed Rule 4.05.9(1)(g) is less effective than the Federal regulations at 30 CFR 816.49(a)(9) and 817.49(a)(9) to the extent that it does not apply to temporary as well as permanent impoundments. Therefore, the Director approves Rule 4.05.9(1)(g) but requires that Colorado further revise Rule 4.05.9 to clearly indicate that Rule 4.05.9(1)(g) applies to temporary as well as permanent impoundments.

(b) *Rule 4.05.9(2).* Colorado proposes at Rule 4.05.9(2) that "temporary impoundments of water *in which the water is impounded by a dam*" shall meet various requirements of its rules. The phrase "in which the water is impounded by a dam" limits temporary impoundments only to those temporary impoundments created by a dam. This conflicts with Colorado's proposed definition of "impoundment" at Rule 1.04(64) which the Director is approving (see finding No. 3), and which includes naturally-formed basins and therefore does not limit the term to artificially built basins. The Federal definition of "impoundments" at 30 CFR 701.5 includes structures and depressions, either naturally formed or artificially built.

The Director finds Colorado's proposed Rule 4.05.9(2) less effective than the Federal regulation at 30 CFR 701.5 to the extent that it limits temporary impoundments to such impoundments created by dams. Specifically, the Director does not approve the phrase "in which water is impounded by a dam" and requires Colorado to amend Rule 4.05.9(2) to remove this phrase.

(c) *Rule 4.05.9(3)(b).* Colorado proposes at Rule 4.05.9(3)(b) requirements for the design of spillway systems. As the title for Rule 4.05.9(3) indicates, proposed Rule 4.05.9(3)(b) applies to large impoundments, both temporary and permanent. The corresponding Federal regulations at 30 CFR 816.49(a)(8) and 817.49(a)(8) apply to temporary and permanent impoundments of any size.

Colorado stated that the same spillway design requirements are specified at 4.05.9(1)(f) for permanent impoundments of any size, and at 4.05.9(2) for temporary impoundments of any size. Colorado also agreed to reorganize the structure, and thereby clarify, its hydrology rules (Administrative Record No. CO–508). OSM's review of Colorado's proposed rules confirms that the spillway design requirement for large impoundments at 4.05.9(3)(b) is repeated at Rules 4.05.9(1)(f) and 4.05.9(2), which address permanent and temporary impoundments of any size.

Therefore, the Director finds that proposed Rule 4.05.9(3)(b) is no less effective than the Federal regulations at 30 CFR 816.49(a)(8) and 817.49(a)(8). However, the Director encourages Colorado to reorganize and clarify its hydrology rules.

(d) *Rules 4.05.9(4) through (13).* Colorado proposes at Rules 4.05.9 (4) through (13) requirements concerning various performance standards and inspections of impoundments. Although Colorado has stated that Rules 4.05.9 (4) through (13) apply to both temporary and permanent impoundments, this statement is not clearly supported by the organization of Rule 4.05.9 and the specific language of proposed Rules 4.05.9 (4) through (13). The Director finds that Colorado's proposed Rules 4.05.9 (4) through (13) are less effective than the Federal regulations at 30 CFR 816.49 and 817.49 to the extent that it is not clear that they apply to both temporary and permanent impoundments. Therefore, the Director approves Rules 4.05.9 (4) through (13), but requires that Colorado amend Rule 4.05.9 to clearly indicate that Rules 4.05.9 (4) through (13) apply to both temporary and permanent impoundments.

13. Alternative Contemporaneous Reclamation Schedules, Rule 4.14.1(1)(e)

Colorado's existing Rules 4.14.1(1) (a) through (d) set forth schedules for timing of backfilling and grading for contour mining, open pit mining with thin overburden, area strip mining, and surface areas disturbed incidental to underground mining activities. Colorado's proposes at Rule 4.14.1(1)(e) that "[t]he division may approve alternative backfilling and grading schedules which are consistent with the above requirements [(a) through (d)]. Alternative schedules may apply to geographic limits, mining methods, or other categories selected by the division. Each backfilling and grading schedule approved by the division shall incorporate one of the following two standards to govern the completion of the backfilling and grading. (i) [m]aximum time interval between coal removal and the completion of backfilling and grading; or (ii) [m]aximum extent of the operation between coal removal and the completion of backfilling and grading, as measured in linear feet, number of spoil ridges, or other quantifiable equivalent."

The corresponding Federal regulation at 30 CFR 816.100 (48 FR 24638, June 1,

1983) (1) requires that reclamation efforts on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under 30 CFR 785.18, and (2) states that regulatory authorities may establish schedules that define contemporaneous reclamation.

However, the contemporaneous reclamation regulation at 30 CFR 816.100 (48 FR 24638, June 1, 1983) was remanded by the U.S. District Court for the District of Columbia to the extent that it did not specify both time and distance factors defining contemporaneous reclamation (*In re: Permanent Surface Mining Regulation Litigation (II), Rounds II and III*, No. 79–1144 (D.D.C. Oct. 1, 1984), 21 Env't Rep. Cas. 1724 and 620 F. Supp. 1519 (D.D.C. 1985, Mem. Op. at 52). The Federal regulation at 30 CFR 816.101(a) (44 FR 15312 at 15411, March 13, 1979), which had been in effect prior to OSM's promulgation of the remanded regulation at 30 CFR 816.100, did specify such time and distance factors.

Although OSM never actually suspended the remanded regulation, OSM may not, because of the court's remand, use the June 1, 1983, Federal regulation in evaluating the sufficiency of Colorado's proposed rule. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the court's decision and the applicable provisions of SMCRA.

Colorado's existing Rules 4.14.1(1) (a) through (d) are substantively identical to the March 13, 1979, Federal regulation at 30 CFR 816.101(a). Colorado's proposed Rule 4.14.1(1)(e) specifies that alternative backfilling and grading schedules be consistent with Rules 4.14.1(1) (a) through (d), and that either time or distance factor be used in determining the alternative schedules. However, because the proposed rule does not specifically define what the alternative schedules would be, the Director cannot determine whether the alternative schedules are consistent with: (1) Section 515(b)(16) of SMCRA, which requires that "all reclamation efforts proceed * * * as contemporaneously as practicable with the surface coal mining operations;" or (2) the court's decision, which required that the Federal regulation specify time and distance factors in defining contemporaneous reclamation. For these reasons, the Director finds that Colorado's proposed Rule 4.14.1(1)(e) is less stringent than section 515(b)(16) of SMCRA. Therefore, the Director is not approving proposed Rule 4.14.1(1)(e) and is requiring Colorado to remove the rule from the Colorado program.

14. Inspection and Enforcement for Inactive Mines, Rule 5.02.2(4)(b)

Colorado proposes a revision of the definition of inactive mines at Rule 5.02.2(4)(b) such that an inactive surface coal mining and reclamation operation is one for which "the permittee's performance bond has been fully released by the Division in accordance with 3.03.2 upon successful establishment of revegetation as defined in 3.03.1." Referenced Rule 3.03.2 includes procedures for seeking release of performance bonds, and referenced Rule 3.03.1 includes criteria and schedules for release of performance bonds. Rules 3.03.1(2) (a), (b), and (c) allow for 60 percent bond release (phase I), 85 percent bond release (phase II), and total bond release (phase III).

The counterpart Federal regulation at 30 CFR 840.11(f) defines an inactive surface coal mining and reclamation operation as one for which "[r]eclamation phase II as defined at [30 CFR 800.40] has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program."

Colorado does not specifically state that an inactive mine is one for which the permittee's phase II bond has been released, although this is implied by the words "upon successful establishment of revegetation." Phase II bond release at Rule 3.03.1(2)(b) is predicated upon the successful establishment of revegetation. In addition, Colorado clarified in the "basis of statement and purpose" for the proposed rule that successful establishment of revegetation is Phase II bond release.

Based upon Colorado's clarification in the "basis of statement and purpose," the Director finds Colorado's proposed Rule 5.02.2(4)(b) no less effective than the Federal regulation at 30 CFR 840.11(f). The Director approves proposed Rule 5.02.2(4)(b); however, he encourages Colorado, during its next rulemaking activity, to revise Rule 5.02.2(4)(b) to clarify that a surface coal mining and reclamation operation is considered an inactive mine only after the permittee's bond has been released in accordance with Rule 3.03.1(2)(b).

15. Abandoned Sites, Rules 5.02.2 (8) and (9)

Colorado proposes at Rules 5.02.2 (8) and (9) a definition of abandoned site which requires inspections of abandoned sites as necessary to monitor for changes of environmental conditions or operational status.

Colorado's proposed Rules 5.02.2 (8) and (9) are substantively identical to the Federal regulations at 30 CFR 840.11 (g) and (h). However, the U.S. District Court for the District of Columbia (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 88–2416, 88–3345, 88–3586, 88–3635, 89–0039, 89–0136, and 89–0141, D.D.C., August 30, 1990) found that the Federal regulations at 30 CFR 840.11 (g) and (h) are inconsistent with section 517(c) of SMCRA which provides for no exceptions to the requirement to conduct an average of one partial inspection per month and one complete inspection per calendar quarter for each surface coal mining and reclamation operation. Accordingly, the court remanded the Federal regulations at 30 CFR 840.11 (g) and (h) to the Secretary to be withdrawn or revised.

Although OSM has not yet actually suspended the Federal regulations, OSM may not, because of the court's remand, use the regulations at 30 CFR 840.11 (g) and (h) in evaluating the sufficiency of Colorado's proposed rules. Accordingly, OSM evaluated the proposed rules against the appropriate provisions of SMCRA as interpreted by the court.

Based upon the court's finding that the Federal regulations at 30 CFR 840.11 (g) and (h) are inconsistent with section 517(c) of SMCRA, the Director finds that Colorado's proposed rules at 5.02.2 (8) and (9), which are substantively identical to the Federal regulations at 30 CFR 840.11 (g) and (h), are less stringent than section 571(c) of SMCRA. Therefore, the Director is not approving Colorado's proposed Rules 5.02.2 (8) and (9) and is requiring Colorado to remove Rules 5.02.2 (8) and (9) from the Colorado program.

The Director will, pursuant to 30 CFR 732.17(d), notify Colorado of any regulatory changes needed for Rule 5.02.2.

16. Individual Civil Penalties, Rule 5.04.7(1)

Colorado proposes at Rule 5.04.7(1) that an individual civil penalty may be assessed against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal to comply with regulatory requirements or orders of the Board, but that "[a]n individual civil penalty shall not be assessed in situations resulting from a violation until a *failure to abate* cessation order has been issued by the Division to the corporate permittee for the violation,

and the cessation order has remained unabated for 30 days" (emphasis added).

Colorado's proposed rule is substantively identical to the Federal regulation at 30 CFR 846.12(b) with the exception that 30 CFR 846.12(b) discusses situations resulting from a violation in which a *cessation order* has been issued and has remained unabated for 30 days. The general term "cessation order" includes both failure to abate and imminent harm cessation orders.

Because Colorado's proposed rule limits the issuance of individual civil penalties for those unabated violations resulting in failure to abate cessation orders, and the Federal regulation allows for issuance of individual civil penalties for those unabated violations resulting in either imminent harm or failure to abate cessation orders, the Director finds Colorado's proposed Rule 5.04.7(1) less effective than the Federal regulation at 30 CFR 846.12(b). The Director is not approving Rule 5.04.7(1) to the extent that it limits the issuance of individual civil penalties for those violations resulting in failure to abate cessation orders. Specifically, he is not approving the phrase "failure to abate." Therefore, the Director is requiring Colorado to revise Rule 5.04.7(1) to remove the phrase "failure to abate."

17. Decision on Rules for which the Director Deferred a Decision in the December 11, 1989, Final Rule Federal Register Notice

Following is a discussion of individual rules for which the Director deferred decision in the December 11, 1989, final rule **Federal Register** notice (54 FR 50739, 50742; see finding No. 9). In the December 11, 1989, notice, the Director approved, with certain exceptions, Colorado's August 23, 1988, proposed amendment. In this notice, the Director is, with one exception (see item No. 17(d) below), approving the rules for which he earlier deferred decision.

(a) *Use of Explosives, Rule 4.08.5(11).* Colorado proposes Rule 4.08.5(11) which now requires that records of each blast contain the total weight of explosives used per hole and the maximum weight of explosives detonated during any 8-millisecond period. The Director finds that Colorado's proposed Rule 4.08.5(11) is no less effective than the Federal regulations at 30 CFR 816.68(k) and 817.68(k). The Director approves Colorado's proposed Rule 4.08.5(11).

(b) *Diversions, Rule 4.05.4(2)(b).* Colorado proposes Rule 4.05.4(2)(b) which now requires that the capacity of the diversion channel itself shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion. The Director finds that Colorado's proposed Rule 4.05.4(2)(b) is no less effective than the Federal regulations at 30 CFR 816.43(b)(2) and 817.43(b)(2). The Director approves Colorado's proposed Rule 4.05.4(2)(b).

(c) *Siltation Structures and Impoundments, Rules 1.04(64), 4.06.6(13), and 4.05.9(13).*

(1) *Rule 1.04(64).* Colorado proposes Rule 1.04(64) that is substantively identical to OSM's definition of "impoundments" at 30 CFR 701.5. The Director is approving the proposed definition of "impoundment" at Rule 1.04(64) (see finding No. 3 above). Colorado proposes to incorporate in its proposed definition of sedimentation pond at Rule 1.04(115) the requirement that sedimentation ponds must be designed in accordance with Rule 4.05.9. The Director is approving the proposed definition "sedimentation pond" at Rule 1.04(115) (see finding No. 5).

(2) *Rule 4.05.6(13).* Colorado proposes Rule 4.05.6(13) (previously codified as Rule 4.06.6(10)) which now requires that all ponds and impoundments be examined on at least a quarterly basis for structural weakness, erosion, and other hazardous conditions. The Director finds that proposed Rule 4.05.6(13) is no less effective than the Federal regulations at 30 CFR 816.49(a)(11) and 817.49(a)(11). The Director approves Colorado's proposed Rule 4.05.6(13).

(3) *Rules 4.05.9(13) and (13)(c).* Colorado proposes Rules 4.05.9(13) (previously codified as Rule 4.05.9(11)) and 4.05.9(13)(c) which now require that impoundments subject to 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216–3, and that other impoundments, not subject to 30 CFR 77.216–3, be examined at least quarterly. The Director finds that Colorado's proposed Rules 4.05.9(13) and (13)(c) are no less effective than the Federal regulations at 30 CFR 816.49(a)(11) and 817.49(a)(11). The Director approves Colorado's proposed Rules 4.05.9(13) and (13)(c).

(d) *Backfilling and Grading of Previously Mined Areas, Rule 1.04(94a).* Colorado withdrew all revisions to proposed Rule 1.04(94) in response to OSM's March 15, 1990, issue letter that advised Colorado of U.S. District Judge Flannery's remand of the Federal definition of "previously mined area" at 30 CFR 701.5 (*National Wildlife Fed'n* v. *Lujan*, Nos. 87–1051, 87–1814, and 88–2788, D.D.C. Feb. 12, 1990).

Because Colorado withdrew all proposed revisions to Rule 1.04(94a) from this proposed amendment, the Director's deferral of his decision on Rule 1.04(94a) still stands. The deferral will remain in place until: (1) OSM publishes a revised Federal definition of "previously mined area" that conforms with the court's remand and notifies Colorado in accordance with 30 CFR 732.17 of the required rule revision; and (2) Colorado submits a proposed revision to Rule 1.04(94a).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), OSM solicited comments from various Federal agencies with an actual or potential interest in the Colorado program.

By letters dated August 21, 1989, and February 5 and April 20, 1990 (Administrative Record Nos. CO–462, CO–480, and CO–500), the Bureau of Mines responded that it had no objection to the proposed amendment.

By letters dated August 23, 1989, and February 23 and May 2, 1990 (Administrative Record Nos. CO–463, CO–488, and CO–502), the Bureau of Land Management responded that it had no comments.

By letter dated August 30, 1989, and telephone conversation on February 27, 1990 (Administrative Record Nos. CO–466 and CO–486), the U.S. Fish and Wildlife Service responded that it had no comments.

By letter dated August 31, 1989 (Administrative Record No. CO–467), the U.S. Army Corps of Engineers responded that it found the amendment satisfactory.

By telephone conversation on March 2, 1990 (Administrative Record No. CO–489), the State Wildlife Biologist for the Soil Conservation Service (SCS) responded that he had no comments.

By letter dated May 14, 1990 (Administrative Record No. CO–506), the State Plant Materials Specialist for the SCS suggested that in implementing proposed Rules 4.05.3, 4.05.6, 4.05.9, and 4.09.2 concerning diversions, sedimentation ponds, and impoundments, Colorado apply standards specified in various technical documents published by SCS. (Colorado's proposed Rules 4.05.9(3) (a)

and (b) incorporate SCS Technical Release No. 68, Earth Dams and Reservoirs, June, 1976, and proposed Rules 4.09.9(1) (e) and (f) incorporate SCS Public Standard 378, *Ponds*, Colorado, 1989.) Colorado's proposed rules 4.05.3, 4.05.6, and 4.05.9 contain requirements that are no less effective than the requirements in the counterpart Federal regulations. Therefore, the Director is not requiring Colorado to revise its rules in response to SCS's comments.

In addition, SCS recommended that at proposed Rule 2.02.3(1)(c)(i) Colorado require that an exploration and reclamation plan include a description of "determined wetlands." Colorado's proposed Rule 2.02.3(1)(c)(i) requires for coal exploration operations, among other things, a description of "the distribution and important habitats of fish, wildlife and plants." Therefore, consistent with SCS's comment, this would require identification of wetlands prior to exploration operations occurring. The Director is not requiring Colorado to use the specific phrase "determined wetlands" because Colorado's proposed rule contains requirements that are no less effective than the requirements in the corresponding Federal regulations at 30 CFR 772.12(b)(12).

SCS also questioned whether required plans for prime farmland at Rule 4.25 should be submitted to the Soil Conservation District where the prime farmlands are located (apparently for review and consultation). Colorado's existing Rule 2.06.6(3) for prime farmlands does require consultation with the Secretary of Agriculture before any permit is issued for areas that include prime farmlands, but it does not require that the plans be sent to the Soil Conservation District. This requirement for consultation with the Secretary of Agriculture is the same as the requirement of the Federal regulations at 30 CFR 785.17(d). Therefore, the Director is not requiring Colorado to revise its rules to require that the plan be sent to the Soil Conservation District. (Please note that 30 CFR 785.17(d) states that the Secretary of Agriculture has assigned the prime farmland responsibilities arising under SMCRA to the Chief of the SCS and that the SCS shall carry out consultation and review through the State conservationist located in each State.)

By letter dated September 6, 1989 (Administrative Record No. CO–471), the Mine Safety and Health Administration (MSHA) responded by stating that the proposed rules did not appear to conflict with the MSHA's regulations. However, by letters dated March 9 and May 29, 1990 (Administrative Record Nos. CO–493 and CO–509), MSHA commented that while the proposed rules do not conflict with the MSHA regulations, a few of the proposed rules do conflict with guidelines that MSHA follows. MSHA cited three specific instances.

First, MSHA stated that publications of the Federal Emergency Management Agency indicate that safety factor analyses of embankment dams should employ methods that assume dynamic conditions. Colorado's proposed Rule 4.05.6(11)(j) specifies a seismic safety factor of at least 1.2 for sedimentation ponds meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage. This seismic safety factor of 1.2 is based on analyses that assume pseudostatic conditions rather than dynamic conditions.

Second, MSHA stated that its guidelines permit a design storm variation between a 100-year, 6-hour event and the probable maximum flood that is based upon size and hazard classification of the individual structure to be constructed.

Third, MSHA stated that it requires that the duration of the probable maximum precipitation (PMP) event be increased to 36-hour event or longer when storage capacity of a maximum storm event is used.

With respect to the first and second comments above, MSHA cited Colorado's proposed Rule 4.11.5(3)(b) which requires that a dam constructed of or impounding coal mine waste, that meets the size or other criteria of 30 CFR 77.216(a), have sufficient storage to contain, or a combination of storage capacity and spillway capacity to safely control, the PMP of a 24-hour event or greater event as specified by Colorado.

On October 27, 1987, the Director published a final rule **Federal Register** notice promulgating Federal regulations at 30 CFR 780, 784, 816, and 817 pertaining to standards for siltation structures and impoundments. These regulations incorporate certain of MSHA's design requirements at 30 CFR part 77. Colorado has incorporated requirements for its rules that are no less effective than the requirements of the counterpart Federal regulations. Therefore, the Director is not requiring Colorado to revise its rules in response to MSHA's comments.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed and revised amendments, which include provisions that may have an effect on historic properties, to the SHPO and the ACHP for comment. No response was received from the ACHP.

By letter dated August 31, 1989 (Administrative Record No. CO–468), the SHPO commented that Colorado's rules addressing historical and archaeological resources were satisfactory. By letter dated February 28, 1990 (Administrative Record No. CO–492), the SHPO also responded by supporting the proposed revision at Rule 2.02.3(1)(c)(i) and questioned whether the requirement for an exploration permit applicant to submit to Colorado any other information that may be required regarding eligible historic or archaeological resources meant that any such required information would be determined in consultation with the SHPO.

As explained in the preamble to the Federal regulations at 30 CFR 772.12 that were promulgated on February 10, 1987 (52 FR 4244, 4255), OSM expects that the State regulatory authority would take into consideration any comments from the SHPO and any other interested parties in determining whether additional information is needed.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

By letters dated August 31, 1989, and February 26, 1990 (Administrative Record Nos. CO–470 and CO–485), EPA's headquarters and Region VIII offices, respectively, responded with no comments, and each concurred with the proposed revisions.

By letter dated July 2, 1990 (Administrative Record No. CO–511), EPA's headquarters office responded with a second letter concurring with the proposed amendment insofar as Colorado's proposed rules do not authorize instream treatment which is not allowed by the Clean Water Act. EPA raised this issue during review of a

previously-submitted Colorado amendment, dated August 23, 1988, which the Director approved on December 11, 1989. In response to EPA's concern at that time, Colorado stated, by letter dated June 28, 1989, that it follows the rules of the Colorado Department of Health, Water Quality Control Division, concerning instream treatment of wastes and stated that "instream treatment of mine wastes is not allowed" (54 FR 50739, 50743, December 11, 1989). Therefore, Colorado has satisfied EPA's concern regarding instream treatment.

EPA has granted concurrence with those provisions of the proposed amendment which relate to water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and with additional requirements, Colorado's program amendment as submitted on July 18, 1989, and revised on January 17, April 5, and May 23, 1990. The exceptions are (1) Rule 3.03.3, termination of jurisdiction; (2) Rule 4.05.9(2), temporary impoundments; (3) Rule 4.14.1(1)(e), alternative contemporaneous reclamation schedules; (4) Rules 5.02.2 (8) and (9), abandoned sites; and (5) Rule 5.04.7(1), individual civil penalties. As discussed in findings Nos. 12(b), 13, 15, and 16, the Director has determined that proposed Rules 4.05.9(2), 4.14.1(1)(e), 5.02.2 (8) and (9), and 5.04.7(1) are less effective than the Federal regulations and/or less stringent than SMCRA. He is therefore not approving them, and is requiring further regulatory program amendments. As discussed in finding No. 9, the Director is not approving but is deferring his decision on Rule 3.03.3, termination of jurisdiction. As discussed in finding No. 17(d), the Director's deferral decision for Rule 1.04(94a), definition of previously mined areas, still stands. In addition, as discussed in findings Nos. 7, 10, 11, and 12 (a) and (d), the Director is requiring that Colorado amend: Rule 2.07.5(3), confidential information; Rules 4.05.3(1)(c), (d), and (e), diversions; Rule 4.05.8(1), hydrologic protection from acid- and toxic-forming materials; and Rule 4.05.9, impoundments.

Except as noted, the Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public. However, the Director reserves the right to require further changes to these rules in the future as a result of Federal regulatory revisions, court decisions, and OSM's continuing oversight of the Colorado program.

The Federal regulations at 30 CFR part 906 codifying decisions concerning the Colorado program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision. Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that alteration of an approved program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Colorado program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Colorado of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, this action by OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 7, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

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

PART 906—COLORADO

1. The authority citation for part 906 continues to read as follows:

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

2. In § 906.15 paragraph (j) is removed, paragraphs (k) through (m) are redesignated as paragraphs (j) through (l), and a new paragraph (m) is added to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(m) With the exceptions of Rules 3.03.3, termination of jurisdiction; 4.05.9(2), temporary impoundments to the extent that temporary impoundments are limited to such impoundments created by a dam; 4.14.1(1)(e), alternative contemporaneous reclamation schedules; 5.02.2(8) and (9), abandoned sites; and 5.04.7(1), individual civil penalties to the extent that individual civil penalties are limited to those unabated violations which result in a failure to abate cessation order, the revisions to the following provisions of 2 CCR 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on July 18, 1989, and revised on January 17, 1990, April 5, 1990, and May 23, 1990, are approved effective January 14, 1991. (The Director is deferring his decision on Rule 3.03.3, and his deferral decision on Rule 1.04(94a) still stands.)

Administration—1.01(9)
Alluvial valley floors—2.06.8(3)(c)(i)(B)(I) and (3)(c)(ii)(B)
Permit information requirements—2.03.4; 2.03.5 (3) and (4); 2.07.7(5); and 5.03.2(1)(d)
Ownership and control—1.04(83a); and 2.07.6 (1)(b), (1)(d), (2)(h), and (10)(c)
Permitting—2.07.7(4)
Coal exploration—2.02.7(2)(a); and 4.21.4 (7) and (7)(c)
Archaeology and cultural resources—2.02.3(1)(c)(i)

Civil penalties—1.04(70a) and (153); 5.03.5 (1)(d) and (4)(e); and 5.04.7 (2), (3), and (4)
Restriction on financial interests of State employees—1.10.2(2) and 1.10.4(1)
Diversions—4.05.3(1), and (7) through (9); and 4.05.4(1) and (2)(b)
Siltation structures—4.05.6 (3)(c), (3)(d), (3)(e), (4), (5), (6), (11), (11)(i), (11)(j), (11)(k), (12), (13), and (13)(b)
Impoundments—1.04(64); 1.04(115); 4.05.9 (1)(a), (1)(e), and (1)(f); 4.05.9 (3), (3)(a), and (3)(b); and 4.05.9 (4), (5), (12), (13), and (13)(c)
Hydrologic balance protection—2.04.7(1)(a)(4); and 4.05.8 (1) and (2)
Inspection and enforcement—5.02.2(4)(b)
Use of explosives—4.08.1(3); 4.08.4(6)(c); 4.08.5(4)(c); and 4.08.5(11)
Excess spoil—4.09.1(10); and 4.09.2 (2)(a) and (3)
Coal mine waste—4.11.5 (3)(b) and (3)(d)
Backfilling and grading—4.23.2(7)
Prime farmland—4.25.1(2)
Reclamation plan—2.05.3 (4)(a)(ii)(B) and (4)(b)
Fish and wildlife—2.05.6(2)(c)

3. Section 906.16 is revised to read as follows:

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17, Colorado is required to make the following program amendments:

(a) By April 15, 1991, Colorado shall (1) amend its program to require that notice and hearing procedures for persons both seeking and opposing disclosure of confidential information be developed, (2) demonstrate to OSM that such procedures have already been adopted by Colorado and are in place, or (3) promulgate the revision at Rule 2.07.5(3) as it was submitted by Colorado and approved by OSM on December 11, 1989.

(b) By April 15, 1991, Colorado shall submit an amendment to revise Rule at 4.05.3(1) to require that all diversions be located, constructed, maintained, and/or used to be stable, to provide protection against flooding and resultant damage to life and property, and to comply with applicable local, State, and Federal laws and regulations.

(c) By April 15, 1991, Colorado shall submit an amendment to revise Rule 4.05.8(1) to require operators to identify, bury, and treat acid-forming and toxic-forming spoil and underground development waste where such spoil and waste may be detrimental to public health and safety.

(d) By April 15, 1991, Colorado shall submit an amendment to revise Rule 4.05.9 to clearly indicate that Rules 4.05.9(1)(g) and 4.05.9(4) through (13) apply to both temporary and permanent impoundments.

(e) By April 15, 1991, Colorado shall submit an amendment to revise Rule 4.05.9(2) to remove the phrase "in which the water is impounded by a dam."

(f) By April 15, 1991, Colorado shall submit an amendment to remove Rule 4.14.1(e) regarding the Divisions authority to approve alternative contemporaneous reclamation schedules.

(g) By April 15, 1991, Colorado shall submit an amendment to remove Rules 5.02.2(8) and (9) regarding the definition and inspection of abandoned sites.

(h) By April 15, 1991, Colorado shall submit an amendment to revise Rule 5.04.7(1) to remove the phrase "failure to abate."

[FR Doc. 91–783 Filed 1–11–91; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 89-07]

Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of request for enforcement of commission rules.

SUMMARY: The Commission by final rule published January 22, 1990 (55 FR 2071), found (under section 19(1)(b)) of the Merchant Marine Act, 1920) that unfavorable conditions existed in the foreign oceanborne trade between the United States and Ecuador with respect to the carriage of liquid bulk cargoes. In order to adjust those conditions, the Commission ordered a fee of $50,000 assessed per outbound voyage from the U.S. to Ecuador on vessels of Maritima Transligra, S.A. ("Transligra"), an Ecuadorian-flag carrier. Overseas Enterprises, Inc. now has filed a request for Commission enforcement of this final rule, alleging that Transligra continues to operate in the trade under the same operating structure as before, but apparently under a changed operating identity. The Commission by this notice solicits comments by interested persons on the request for enforcement.

DATES: Comments due on or before February 4, 1991.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Copies of the request for enforcement may be obtained from the Secretary, Federal Maritime Commission. A copy of any comments filed shall also be served on parties of record in this proceeding. A list of parties of record is available from the Office of the Secretary, (202) 523–5760.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–773 Filed 1–11–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Television Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of Television Allotments to conform the channels listed in the Table to those listed in the authorizations for those stations. This action is taken on the Commission's own motion as announced in the *Memorandum Opinion and Order* in MM Docket No. 88–526, FCC No. 90–374, adopted November 8, 1990, and released November 30, 1990.

EFFECTIVE DATE: January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, adopted December 19, 1990, and released January 4, 1991. 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., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Alabama, is amended by removing Channel *2— at Andalusia and adding Channel *2—, Dozier, by removing Channel 21— at Birmingham and adding Channel 21—, Homewood, and by removing Channel *7— at Munford and adding Channel *7—, Mount Cheaha.

3. Section 73.606(b), the Table of Television Allotments under Alaska, is amended by removing Channel 4+ at Fairbanks and adding Channel 4+, North Pole.

4. Section 73.606(b), the Table of Television Allotments under Arkansas, is amended by removing Channel *17 at Batesville and adding Channel *17, Newark.

5. Section 73.606(b), the Table of Television Allotments under California, is amended by removing Channel 43 at Fresno and adding Channel 43, Clovis, by removing Channel 59 at Fresno and adding Channel 59, Sanger, by removing Channel 9 at Los Angeles and adding Channel 9, Norwalk, by removing Channel 46 at Riverside and adding Channel 46, Ontario, by removing Channel 2+ at San Francisco and adding Channel 2+, Oakland, by removing Channel *50— at Santa Ana and adding Channel *50—, Huntington Beach, and by removing Channel 26+ at Tulare and adding Channel 26+ at Visalia.

6. Section 73.606(b), the Table of Television Allotments under Colorado, is amended by removing Channel *12 at Boulder and adding Channel *12, Broomfield.

7. Section 73.606(b), the Table of Television Allotments under District of Columbia, is amended by removing Channel 14— at Washington.

8. Section 73.606(b), the Table of Television Allotments under Florida, is amended by removing Channel 61 at West Palm Beach and adding Channel 61, Palm Beach.

9. Section 73.606(b), the Table of Television Allotments under Georgia, is amended by removing Channel 28— at Savannah.

10. Section 73.606(b), the Table of Television Allotments under Kentucky, is amended by adding Channel 19+, Newport.

11. Section 73.606(b), the Table of Television Allotments under Louisiana, is amended by removing Channel 14— at Monroe and adding Channel 14—, West Monroe, and by removing Channel 39+ at Monroe and adding Channel 39+ at West Monroe.

12. Section 73.606(b), the Table of Television Allotments under Maine, is amended by removing Channel 8— at Lewiston and adding Channel 8—, Poland Spring, and by removing Channel *26— at Portland and adding Channel *26—, Biddeford.

13. Section 73.606(b), the Table of Television Allotments under Massachusetts, is amended by removing Channel 56 at Boston and adding Channel 56, Cambridge, by removing Channel 19 at North Adams and adding Channel 19, Adams, by removing Channel 62 at Middleton and adding Channel 62, Lawrence, and by removing Channel 66 at Worcester and adding Channel 66, Marlborough.

14. Section 73.606(b), the Table of Television Allotments under Michigan, is amended by removing Channel *19+ at Bay City and adding Channel *19+, University Center, and by removing Channel 10— at Parma and adding Channel 10—, Onondaga.

15. Section 73.606(b), the Table of Television Allotments under Mississippi, is amended by removing Channel 25— at Biloxi and adding Channel 25—, Gulfport, and by removing Channel 27 at Columbus and adding Channel 27, West Point.

16. Section 73.606(b), the Table of Television Allotments under Nevada, is amended by removing Channel 5+ at Boulder City and adding Channel 5+, Henderson.

17. Section 73.606(b), the Table of Television Allotments under New Hampshire, is amended by removing Channel 31 at Hanover, by removing Channel 50— at Manchester and adding Channel 50—, Derry, and by removing Channel 60+ at Manchester and adding Channel 60+, Merrimack.

18. Section 73.606(b), the Table of Television Allotments under New Jersey, is amended by removing Channel *50+ at Little Falls and adding Channel *50+, Montclair, and by removing Channel 47+ at New Brunswick and adding Channel 47+, Linden-Newark.

19. Section 73.606(b), the Table of Television Allotments under New York, is amended by removing Channel 5 at Lake Placid and adding Channel 5, North Pole, by removing Channel *21— at Levittown and adding Channel *21—, Garden City, by removing Channel *18 at Massena and adding Channel *18, Norwood, and by removing Channel 67 at Patchogue and adding Channel 67, Smithtown.

20. Section 73.606(b), the Table of Television Allotments under Ohio, is amended by removing Channel 19+ at Cincinnati, and by removing Channel 19 at Cleveland and adding Channel 19, Shaker Heights.

21. Section 73.606(b), the Table of Television Allotments under Oklahoma, is amended by removing Channel 8+ at Elk City and adding Channel 8+, Sayre.

22. Section 73.606(b), the Table of Television Allotments under Oregon, is amended by removing Channel 11 at North Bend and adding Channel 11 at Coos Bay.

23. Section 73.606(b), the Table of Television Allotments under Pennsylvania, is amended by removing Channel 49+ at York and adding Channel 49+, Red Lion.

24. Section 73.606(b), the Table of Television Allotments under Puerto Rico, is amended by removing Channel 64 at Vega Baja and adding Channel 64, Naranjito.

25. Section 73.606(b), the Table of Television Allotments under South Carolina, is amended by adding Channel 28—, Hardeeville.

26. Section 73.606(b), the Table of Television Allotments under South Dakota, is amended by removing Channel 3— at Watertown and adding Channel 3—, Florence.

27. Section 73.606(b), the Table of Television Allotments under Texas, is amended by removing Channel 23 at Richardson and adding Channel 23, Garland, and by removing Channel 46— at Temple and adding Channel 46—, Belton.

28. Section 73.606(b), the Table of Television Allotments under Vermont, is amended by adding Channel 31, Hartford.

29. Section 73.606(b), the Table of Television Allotments under Virginia, is amended by removing Channel *53 at Fredericksburg and adding Channel *53, Goldvein, and by adding Channel 14—, Arlington.

30. Section 73.606(b), the Table of Television Allotments under West Virginia, is amended by removing Channel 4 at Beckley and adding Channel 4, Oak Hill.

31. Section 73.606(b), the Table of Television Allotments under Wisconsin, is amended by removing Channel *28— at Colfax and adding Channel *28—, Menomonie.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–836 Filed 1–11–91; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1103

[Ex Parte No. 55 (Sub-No. 70)]

ICC Nonattorney Practitioners Licensing

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is changing its policies and procedures regarding the licensing of nonattorney ICC practitioners to ensure that the practitioners' examination is conducted as cost-effectively as possible. The Commission's modifications are intended to provide the Commission with greater flexibility in administering this examination and to streamline the examination process.

EFFECTIVE DATE: The revisions will become effective January 14, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert A. Voltmann, Office of Vice-Chairman Emmett, (202) 275–7363.
Kathleen King, Assistant Secretary, (202) 275–7429 [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: The number of applicants for the annual practitioner's examination (see 49 CFR 1103.3) has decreased dramatically in recent years. In 1990, for example, there were only eight applicants for the examination, compared to 204 in 1980. Because the preparation, administration, and grading of the examination require the use of substantial Commission resources at a time when Commission resources are becoming increasingly scarce, the Commission seeks to make certain that the practitioner's examination is conducted in the most cost-effective manner possible while, at the same time, ensuring that the quality of the examination is not compromised.

In December 1988, the Commission issued an Advance Notice of Proposed Rulemaking (ANPR) presenting several alternatives to address this situation. (53 FR 53029, December 30, 1988) In November 1990, the Commission issued a Notice of Proposed Rulemaking (NPR) proposing two modifications to the regulations at 49 CFR 1103.3 concerning nonattorney practitioners. (55 FR 49544, November 29, 1990) Specifically, the NPR proposed the following:

1. To amend the regulations to allow the annual examination to be cancelled when the demand is insufficient to justify the staff resources involved. The examination would be offered in the year immediately following a year in which the examination was cancelled.

2. To amend the regulations to change the May 15 registration deadline for the July examination to May 1 to allow more time for preparation and review of the examination within the Commission. Should the Commission determine that the examination would be cancelled in a given year, the Commission would notify any applicants by June 15 of that year and refund their application fees at that time. Comments were received from James J. McKay, Inspector General of the ICC, and from four practitioners. The Inspector General proposed that the fitness criteria for admission as a practitioner be strengthened and explained clearly and he suggested questions that should be added to the application form. He also recommended that the Commission consider clarifying who may file applications in proceedings before the Commission. Three of the four practitioners supported in full the proposed modifications outlined in the NPR. The fourth suggested that the examination be scheduled for every other or every third in order to maximize the number of persons taking it and to facilitate preparation for the examination by applicants.

After review of the comments received in response to the NPR, the Commission has determined that the two modifications proposed in the NPR should be adopted. The Commission will continue to offer the examination every year unless the demand for the examination is insufficient to justify the staff resources involved. The Commission is sensitive to the concern that applicants expend a great deal of effort in studying for this examination. The Commission emphasizes that the examination would be cancelled only in extreme circumstances where the cost of administering the examination for so few applicants was exceptionally high. The Commission will make every effort to offer the examination each year when possible.

The Commission will not adopt the Inspector General's recommendations at this time. The present rulemaking has focused primarily on the practitioner's examination. The Inspector General's suggestions have merit and should be considered by the Commission in a separate proceeding dealing with the qualifications of nonattorney practitioners and the standards for admission into the practitioner's program. At that time, the Commission could seek public comment on these recommendations.

Environmental and Energy Considerations

We conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Purusant to 5 U.S.C. 603, the Commission is required to examine specifically the impact of the proposed action on small business and small organizations. We conclude that this decision will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1103

Administrative practice and procedure, Lawyers.

Decided: January 4, 1991.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1103 of the Code of Federal Regulations is amended as set forth below:

PART 1103—PRACTITIONERS

1. The authority citation for part 1103 continues to read as follows:

Authority: 49 U.S.C. 10308 and 10321; 5 U.S.C. 559; 21 U.S.C. 853a.

2. Section 1103.3 is amended by revising the date "May 15" to read "May 1" in paragraph (c)(1); by redesignating paragraphs (i) through (o) as paragraphs (j) through (p), respectively, and adding a new paragraph (i) to read as follows:

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.

* * * * *

(i) *Cancellation of examination.* If the Commission determines that there is an insufficient number of applicants to warrant conducting the examination, the Commission will cancel the examination for that year. Notice of the cancellation will be mailed to applicants on or before June 15 and the application fee will be refunded. The Commission will conduct the examination the next year following the cancellation of the examination.

* * * * *

[FR Doc. 91–820 Filed 1–11–91; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 56, No. 9
Monday, January 14, 1991

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

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Mining Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Hydrologic Balance

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

ACTION: Extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior extends until February 28, 1991, the public comment period on the rule it proposed in the November 13, 1990 **Federal Register** (55 FR 47430). The proposed rule would govern protection of the prevailing hydrologic balance at surface and underground mining operations through the use of best technology currently available.

DATES: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on February 28, 1991.

ADDRESSES: Hand-deliver written comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1100 L Street, NW, Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Douglas Growitz, PHG, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., room 5101–L, Washington, DC 20240: Telephone: 202–343–1507 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSM proposed a rule in the November 13, 1990, **Federal Register** which would govern protection of the prevailing hydrologic balance at surface and underground mining operators through the use of best technology currently available (55 FR 47430). That notice announced a public comment period on the proposed rule closing January 14, 1991. In response to a request for more time to submit public comments on this rule, OSM is extending the closing date of the public comment period by 45 days. Comments will now be accepted at the location given above (**"ADDRESSES"**) until 5 p.m. eastern time on February 28, 1991.

Dated: January 8, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 91–782 Filed 1–11–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 299

Public Access to Records of the National Security Agency/Central Security Service

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the National Security Agency/Central Security Service's (NSA/CSS) regulations governing the disclosure of information under the Freedom of Information Reform Act of 1986 (Pub. L. 99–570). As a component of the Department of Defense, the Departmental rules and schedules with respect to the Freedom of Information Reform Act will also be the policy of the NSA/CSS. See 32 CFR Part 286. The effect of the proposed rulemaking is to implement recent amendments to the FOIA concerning fees and fee waivers. In addition, the proposed rulemaking makes technical changes to the existing regulation to conform with DoD 5400.7–R (32 CFR Part 286).

DATES: Comments must be submitted by February 13, 1991.

ADDRESSES: Send comments to: Vito T. Potenza, Assistant General Counsel (Administration/Litigation), Office of General Counsel, National Security Agency, Fort George G. Meade, Maryland 20755–6000.

FOR FURTHER INFORMATION CONTACT: Robin Klugman, (301) 688–5015.

SUPPLEMENTARY INFORMATION: This rule does not constitute a major rule within the meaning of Executive Order 12291. Neither the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), nor the reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) apply. It is hereby certified that this proposed rule does not exert a significant economic impact on a significant number of small entities. This determination is made based upon the fact that the rule merely recodifies the procedural aspects of the NSA/CSS Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the NSA/CSS; imposes no new requirements, rights, or benefits on small entities; will have neither a beneficial nor an adverse affect on small entities, and is not a major rule under the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 299

Freedom of information.

Accordingly, title 32, chapter I, part 299 is proposed to be amended as follows:

PART 299—PUBLIC ACCESS TO RECORDS

1. The authority citation for part 299 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Section 299.1 is revised to read as follows:

§ 299.1 Purpose.

Pursuant to the requirements of the Freedom of Information Act as amended (5 U.S.C. 552), the following rules of procedure are established with respect to public access to the records of the National Security Agency/Central Security Service.

3. § 299.4(d) is revised to read as follows:

§ 299.4 Procedures for request of records.

* * * * *

(d) *Fees*—(1) *General.* As a component of the Department of Defense, the applicable published Departmental rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also

be the policy of the NSA/CSS. See § 286.33 et seq.

(2) *Advance payments*—(i) Where a total fee to be assessed is estimated to exceed $250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requester with a history of prompt payment. Where a requester has previously failed to pay a fee within 30 days of the date of billing, the requester will be required to pay the full amount owed as well as make an advance payment of the full amount of any estimated fee before processing of the request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment owed for work already completed is not an advance payment, however, responses will not be held pending receipt of fees from requesters with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Chief, Office of Policy, and made payable to the Treasurer of the United States.

4. § 299.5 is revised to read as follows:

§ 299.5 Appeals.

Any person denied access to records, or denied a fee waiver may, within 60 days after notification of such denial, file an appeal to the Freedom of Information Act Appeals Authority, National Security Agency/Central Security Service. Such an appeal shall be in writing addressed to the Freedom of Information Act Appeals Authority, National Security Agency/Central Security Service Fort George G. Meade, Md. 20755–6000, shall reference the initial denial and shall contain in sufficient detail and particularity the grounds upon which the requester believes release of the information, or granting of the fee waiver is required. The Freedom of Information Act Appeals Authority shall respond to the appeal within 20 working days after receipt of the appeal.

§ 299.6 [Removed]

5. § 299.6 is removed.

Dated: January 7, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–762 Filed 1–11–91; 8:45 am]

BILLING CODE 3810–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[GEN Docket No. 91–1; FCC 91–5]

NPRM To Implement Television Decoder Circuitry Act of 1990

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Television Decoder Circuitry Act of 1990, Public Law 101–431, requires that most new television receivers marketed in the United States after July 1, 1993, be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions. This legislation also requires that the FCC promulgate rules providing performance and display standards for such built-in decoder circuitry. Through this Notice of Proposed Rule Making (NPRM), the FCC proposes specific performance and display standards and invites comment on alternatives.

DATES: Comments must be submitted on or before February 15, 1991. Reply comments must be submitted on or before March 1, 1991.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard B. Engelman, Chief, Technical Standards Branch, Office of Engineering and Technology, 202–653–6288.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in GEN Docket No. 91–1, FCC 91–5, adopted January 3, 1991.

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 also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street NW., Washington, DC.

Summary of the Notice of Proposed Rule Making

1. Closed captions are used to provide a visual depiction of information simultaneously being provided on the audio portion of a television signal. Closed captions are permitted to be transmitted as part of the television broadcast signal in accordance with FCC rules. However, the rules do not specify either the information encoding format or the resulting display characteristics. In a 1980 engineering report, the Public Broadcasting Service (PBS) established signal and display specifications for closed captioning. The National Captioning Institute (NCI) also established closed-caption decoder performance specifications in 1985.

2. The Television Decoder Circuitry Act of 1990 (Decoder Act) was enacted into law on October 15, 1990. The purpose of this legislation is to serve the needs of the deaf and hearing-impaired and others by expanding the accessibility of closed-caption technology. The legislation is intended to reduce significantly the cost to consumers to receive closed captioning, make closed captioning more widely available, and create market incentives for broadcasters to invest in and provide more closed-captioned programming.

3. The Decoder Act: (1) Assigns the Commission responsibility for requiring that television receivers with picture screens 13 inches or greater in size, when manufactured or imported for use in the United States, be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions; (2) makes it illegal to ship in interstate commerce, manufacture, assemble, or import any television receiver that is subject to closed-caption decoder requirements except in accordance with Commisson rules; (3) requires the Commission to promulgate rules providing performance and display standards for such built-in decoder circuitry; (4) requires that the built-in decoder circuitry be able to receive and display closed captions that are transmitted on line 21 of the television signal vertical blanking interval and that conform to the PBS/NCI specifications; and, (5) directs the Commission to take appropriate action to ensure that closed-captioning service continues to be available as new video technology is developed. The requirements of the Decoder Act will become effective on July 1, 1993. However, the Decoder Act directs the Commission to promulgate rules implementing the legislation within 180 days. The Commission must, therefore, adopt a Report and Order in this proceeding by April 12, 1991.

4. Congress indicated that the Commission's performance and display standards must ensure that television viewers can receive and read closed captions with the same clarity and consistency, and to the same extent, as viewers would be able to receive and read closed captions produced entirely in accordance with the PBS/NCI specifications. Congress did not intend

however, to require the standardization of a specific decoding chip or specific decoding circuitry, but simply to mandate that television receivers be capable of decoding and displaying closed captions adequately. It was envisioned that television receiver manufacturers would be permitted to develop cost-effective approaches to closed-caption decoding, and the Commission was instructed to pay due regard to considerations of cost-effectiveness and evolving technical capability, as well as the benefits to the competitive process of allowing manufacturers latitude consistent with the purposes of the bill.

5. In response to the legislation, a task force consisting of representatives from the Electronic Industries Association R–4 Television Receiver Committee, and from several organizations that provide television-program captioning, prepared a receiver performance and display standard. A copy of this standard is contained in the Appendix of the NPRM. This standard was derived from the PBS/NCI specifications.

6. The task force's proposed standard contains certain new features. In addition, other existing features of the PBS/NCI specifications are changed to make them optional or to allow them to be implemented in new ways. The Senate Report accompanying this legislation points out that the Commission has some flexibility in complying with the Congressional intent. For instance, even though Congress found that the technology will soon exist to provide closed captioning at a nominal cost, the Commission is permitted to take manufacturers' costs into consideration. Whether the Commission may make optional certain features of the PBS/NCI specifications without functional alternatives, as the task force has recommended in some instances, is less clear. Furthermore, the Commission questions if the Congress intended to permit decoders built into television receivers to have fewer capabilities than existing decoders. Most existing decoders do not fully implement the PBS/NCI specifications. In order to determine whether the Commission should adopt in their rules the task force's proposed standard, with or without change, interested parties are urged to comment on the standard in general, and on specific issues discussed in the NPRM.

7. The Commission's initial regulatory flexibility analysis, pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, is contained in the full text of the Commission's decision. In summary, the proposed rules and standards would affect only the manufacturers of television receivers with picture screens 13 inches or larger. There are no known small entities manufacturing such television receivers. The NPRM would propose no new record keeping requirements; however, compliance with the proposed rules and standards would be mandatory. The proposal does not duplicate or conflict with existing federal rules, and no significant alternatives to compliance are available.

8. The NPRM has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

9. Interested parties may file comments on or before February 15, 1991, and reply comments on or before March 4, 1991. In order to comply with the requirement of the Decoder Act that FCC rules be promulgated within 180 days of enactment, the Commission is proceeding with this NPRM without furnishing a prior text as provided by article 607 of the United States-Canada Free-Trade Implementation Act of 1988 (Pub. L. 100–499, 102 Stat. 1851). To do so would frustrate achievement of a legitimate domestic objective. In addition, the Commission is not likely to be able to accommodate requests for extension of these comment periods.

List of Subjects in 47 CFR Part 15

Television, Communications equipment, Deaf, Bilingual education, Motion pictures.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–774 Filed 1–11–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 73

[MM Docket No. 90–628, RM–7576]

Radio Broadcasting Services; Gilman, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition by Jerry Rosalius proposing the allotment of Channel 277A at Gilman, Illinois, as the community's first local FM channel. Channel 277A can be allotted to Gilman in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.3 kilometers (5.2 miles) south of the community, in order to avoid short-spacings to Station WFXF(FM), Channel 277B, Indianapolis, Indiana, and a construction permit for Station WAIV(FM), Channel 277A, Spring Valley, Illinois. The coordinates for this proposed allotment are North Latitude 40–41–45 and West Longitude 88-00-55.

DATES: Comments must be filed on or before February 25, 1991, and reply comments on or before March 12, 1991.

ADDRESSES: 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: Jerry Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Attorney for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–628, adopted December 12, 1990, and released January 8, 1991. 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 Transportation 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.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-835 Filed 1-11-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 901239-0339]

Pacific Halibut Fisheries

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

ACTION: Notice of proposed catch sharing plan in Area 2A and request for comments.

SUMMARY: NOAA announces and requests comments on the proposed continuation into 1991 of the 1990 Catch Sharing Plan developed by the Pacific Fishery Management Council (Council) to allocate the catch of Pacific halibut between treaty Indian and non-Indian commercial and recreational fishermen in International Pacific Halibut Commission (IPHC) statistical Area 2A. The proposed 1991 Catch Sharing Plan allocates the total allowable catch of Pacific halibut in Area 2A as established by the IPHC in January 1991 between domestic users in accordance with the Northern Pacific Halibut Act of 1982.

DATES: Comments on the proposed plan must be received by January 15, 1991.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act), 16 USC 773c(c) authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with, the regulations of the IPHC. The geographic area herein involved is all U.S. marine waters lying south of the U.S./Canadian border including Puget Sound, known as IPHC statistical Area 2A.

The Pacific halibut harvest in Area 2A historically has been undertaken almost entirely by one user group, the non-Indian commercial longline fishery. In recent years, the treaty Indian tribes have begun to develop a commercial halibut fishery with tribal fishing effort and harvests increasing from four treaty Indian tribes with 17,000 pounds harvested in 1986 to twelve treaty Indian tribes with over 152,000 pounds of halibut harvested in 1989. In addition, the non-Indian recreational fishery has undergone a dramatic increase from a catch of about 50,000 pounds in 1983 to a peak catch of about 461,000 pounds in 1987. These increases culminated in a combined harvest of over a million pounds of halibut in Area 2A in 1987 by treaty Indian and non-Indian commercial and sport users, which exceeded the maximum sustained yield of 800,000 pounds set by the IPHC. The increased effort and catch by the three user groups needs to be controlled and reduced to meet conservation goals established by the IPHC. Therefore, the Council began allocating the total allowable catch (TAC) in Area 2A in 1988 in compliance with a directive by the Under Secretary of Oceans and Atmosphere that the Pacific and North Pacific Fishery Management Councils should allocate halibut catches among user groups if allocation is necessary.

The Council developed a Catch Sharing Plan in 1990 that was approved by the Secretary (55 FR 11590, Mar. 29, 1990) and implemented by IPHC regulations (55 FR 11929, Mar. 30, 1990). The Plan allocates 25 percent of the Area 2A total allowable catch (TAC) to Washington treaty Indian tribes and 75 percent to non-Indian fishermen. The treaty Indian allocation includes both tribal commercial and ceremonial and subsistence (C&S) fisheries. The allocation among non-Indian fishermen is divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation is further divided 61 percent to Washington, users and 39 percent to Oregon and California users. The Washington recreational allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon recreational allocation applies to waters off Oregon south of Cape Falcon and includes the California coast.

A Catch Sharing Plan for the three user groups in Area 2A is again necessary in 1991 because the combined fishing power of the user groups exceeds the IPHC's anticipated 450,000 pound TAC for Area 2A in 1991. However, the Council has advised NMFS that it does not intend to reconsider allocation of halibut in Area 2A for 1991. Since the anticipated 1991 TAC of 450,000 pounds is 70,000 pounds less than the 1990 TAC and other factors that influence the fishery have not substantially changed since last year, a plan is necessary. Therefore, in the absence of Council recommendations for 1991 or information that indicates that the 1990 percentage allocations might be inappropriate, NMFS is proposing to continue the 1990 allocations into 1991. Public comments are requested on the 1990 allocations and their appropriations for continuation into 1991.

This Plan would distribute the IPHC's estimated 1991 TAC of 450,000 pounds in Area 2A as sub-quotas between the user groups as follows:

Treaty Indian sub-quota	112,500 pounds.
Non-Indian Commercial sub-quota.	168,750 pounds.
Non-Indian Washington Recreational sub-quota.	102,938 pounds.
Non-Indian Oregon Recreational sub-quota.	65,812 pounds.
Total	450,000 pounds.

A final 1991 Catch Sharing Plan will be approved by the Secretary after consideration of public comments. Specific regulations to implement the final plan will be developed by the IPHC at its January 28-31, 1991, public meeting in Vancouver, B.C., consistent with its responsibilities under the international convention. The actual amounts allocated to each group may change if the IPHC establishes a TAC that is different than the IPHC staff recommended 450,000 pounds; however, the percentage for each group will remain the same.

Classification

This proposed 1991 Catch Sharing Plan is published with a request for public comments as a general statement of agency policy, which does not require notice and comment rulemaking under the Administrative Procedure Act at 5 U.S.C. 553(b) or any other law. Consequently, the Regulatory Flexibility Act does not apply. A regulatory impact review prepared for the 1990 Catch Sharing Plan to fulfill the requirements of E.O. 12291 concluded that actions taken under the plan are not "major" and a Regulatory Impact Analysis is not required. An Environmental Assessment (EA) was prepared for the 1990 IPHC regulations incorporating the 1990 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA) and the Assistant Administrator for Fisheries, NOAA, determined that there would be no significant adverse environmental impact resulting from the regulations and that preparation of an environmental impact statement was

not required by section 102(2)(C) of NEPA or its implementing regulations. This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. Copies of the 1990 environmental assessment and the 1990 regulatory impact review are available at the address above. This action has been determined to be consistent to the maximum extent practicable with applicable State coastal zone management programs as required.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

Dated: January 8, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–794 Filed 1–11–91; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 56, No. 9
Monday, January 14, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Lost River Watershed, West Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Rollin N. Swank, responsible Federal official for projects administered under the provisions of the Flood Control Act of 1944, Public Law 78–534, in the State of West Virginia, is hereby providing notification that a Record of Decision to proceed with the installation of the Lost River Watershed project is available. Single copies of this Record of Decision may be obtained from Rollin N. Swank at the address shown below.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10–904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)"

Dated: January 7 1991

Rollin N. Swank,

State Conservationist.

[FR Doc. 91–837 Filed 1–11–91; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports Wave II Mandatory.

Form Number(s): Various.

Agency Approval Number: 0607–0395.

Type of Request: Revision of a currently approved collection.

Burden: 28,200 hours.

Number of Respondents: 22,664.

Avg Hours Per Response: 45 minutes.

Needs and Uses: The Current Industrial Reports program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and inventories on a national basis for selected manufactured products. Government, businesses, trade associations, and research and consulting organizations use these data to make trade policy, production, and investment decisions. This package requests approval to revise 2 of the Wave II Mandatory forms, as follows:

MQ35W, "Metalworking Machinery"—We are increasing the cutoff value for small machine tool categories from "under $2500" to "under $3025" to comply with a Voluntary Restraint Agreement between the U.S. and Taiwan.

MA33L, "Insulated Wire and Cable"—We are dropping survey MA32J, "Fibrous Glass" (OMB Approval Number 0607–0476) because of budgetary reasons. We propose to move 2 (of 10) questions on fiber optics formerly collected on the MA32J to the MA33L.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly, Quarterly, and Annually

Respondent s Obligation. Mandatory

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 8, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–781 Filed 1–11–91; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held February 6, 1991, 9:30 a.m., in the Herbert C. Hoover Building, Room 1629, 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Election of Chairman.
4. Discussion of nonproliferation items.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 1600, U S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: January 9, 1991.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91–839 Filed 1–11–91; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

A–791–502

Low-Fuming Brazing Copper Wire and Rod From South Africa; Intent to Revoke Antidumping Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping order on low-fuming brazing copper wire and rod from South Africa. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1991.

EFFECTIVE DATE: January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1986, the Department of Commerce published an antidumping order on low-fuming brazing copper wire and rod from South Africa (51 FR 3640). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than January 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by January 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by January 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 7, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–838 Filed 1–11–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 591]

Marine Mammals; Modification of Permit; Southwest Fisheries Science Center (P77 #26)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing Marine Mammals (50 CFR part 216), and § 220.24 of the regulations on endangered species (50 CFR parts 217–222), Scientific Research Permit No. 591 issued to the Southwest Fisheries Science Center, P.O. Box 271, La Jolla, California 92038, on December 4, 1987 (52 FR 47442) is modified in the following manner:

Section B.8 is replaced by:

8. The authority to capture, harass, tag or other activities authorized herein, shall extend from the date of issuance through December 31, 1994.

This modification became effective on December 31, 1990.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland, 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: January 3, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–765 Filed 1–11–91; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION ON INTERSTATE CHILD SUPPORT

Commission Meeting

The Commission on Interstate Child Support will meet on Thursday, January 24, 1991, from 2 p.m. until 6 p.m. and again on Friday, January 25, 1991, from 9 a.m. until 12:30 p.m. The agenda of the meeting will include discussion of issues related to funding of interstate case processing, child support and military families, parent location, medical support enforcement, and plans for the national conference of the Commision.

For more information, contact Vernon Drew at 202–254–8093.

Margaret Campbell Haynes,

Chair.

[FR Doc. 91–800 Filed 1–11–91; 8:45 am]

BILLING CODE 6820–64–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form and Applicable OMB Control Number: Pearl

Harbor Commemorative Medal Application/Information; DD Form 2567.

Type of Request: Expedited submission—approved date requested: February 1, 1991.

Average Burden Hours/Minutes Per Response: 20 Minutes.

Responses Per Respondent: One.

Number of Respondents: 100,000.

Annual Burden Hours: 33,333.

Annual Responses: 100,000.

Needs and Uses: The Pearl Harbor Commemorative Medal Application/Information form may be used by eligible veterans who were present in Hawaii on 7 December 1941 during the Japanese attack, DoD civilians who were wounded or killed, or their next of kin to request issue of the Pearl Harbor Commemorative Medal authorized by Public Law 101–510.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. Sprehe at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS, DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: January 8, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–761 Filed 1–11–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revised Rates; Correction

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates: Correction.

SUMMARY: This notice corrects a previous notice which was published to provide revised adjusted standardized amounts (ASA) and the cost-share per diem to be used under the CHAMPUS diagnosis related group (DRG) payment system. These changes are required in order to conform to changes made to the Medicare Prospective Payment System (PPS).

EFFECTIVE DATE: The revised adjusted standardized amounts and cost-share per diem in this notice are effective for admissions occurring on or after January 1, 1991.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361–4005.

To obtain copies of this document, see the "**ADDRESSES**" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published on August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), and October 22, 1990 (55 FR 1990). An explicit tenet of these final rules, and one based on the statute authorizing use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, wherever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS.

Pursuant to these final rules, we publish a notice of revised rates on November 5, 1990, (55 FR 46545) to update the rates and weights used in the CHAMPUS DRG-based payment system. This update was intended to conform to the update to the Medicare PPS as published in the **Federal Register** on September 4, 1990 (55 FR 35990). Our updated rates and weights were effective for admissions occurring on or after October 1, 1989.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), contains provisions which affect the Medicare PPS. Some of these provisions modify the update to the Medicare PPS and consequently also affect the CHAMPUS DRG-based payment system. As a result, we previously prepared a notice of revised rates which identified and explained the changes we were making to the rates and weights used in the CHAMPUS DRG-based payment system. Unfortunately, when this notice was published in the **Federal Register** on December 20, 1990, (55 FR 52208) the preamble for a previous, and unrelated, notice was inadvertently used to replace the correct preamble. The table which was published and which provided the revised ASAs and retiree cost-share per diem was correct, though.

We are publishing this notice to provide the necessary explanation, which should have been provided in the December 20 notice, of the changes we are making to the CHAMPUS DRG-based payment system as a result of Public Law 101–508. The actual changes we are making as a result of these OBRA 90 provisions are detailed below.

I. Changes to the Updates of the CHAMPUS DRG-Based Payment System

A. Update Factors

The update factors required to be used for the Medicare PPS have been changed to: 3.2 percent for urban hospitals (including both large urban and other urban areas), and 4.5 percent for rural hospitals. We have recalculated ASAs for the CHAMPUS DRG-based payment system using these update factors.

As a result of the revised ASAs, we have also recalculated the cost-share per diem amount to be used for beneficiaries other than dependents of active duty members.

B. Wage Index

In our notice of revised rates which was published on November 5, 1990, we stated that the CHAMPUS DRG-based payment system would use the same wage indexes used for the Medicare PPS including any delays in implementing updated wage indexes. This was written in anticipation of possible delays in implementation of the wage indexes for Medicare. In fact, Joint Resolution 655 initially delayed implementation of the updated wage indexes until October 21, 1990, and this was subsequently further delayed by OBRA 90.

C. Effective Date of Changes

According to OBRA 90, both the revised ASAs and the updated wage indexes are to be effective January 1, 1991. Therefore, we will implement them, and the revised cost-share per diem, effective for admissions occurring on or after January 1. For admissions occurring on or after October 1, 1990,

and before January 1, 1991, DRG-based payments will be calculated using the FY 1990 ASAs, the FY 1990 wage indexes, and the FY 1991 DRG weights and outlier thresholds contained in the November 5, 1990, **Federal Register**. During this time, the cost-share per diem for beneficiaries other than dependents of active duty members will continue to be $235.

II. Revised Adjusted Standardized Amounts.

Table 1 provides the revised adjusted standardized amounts and cost-share per diem to be used under the CHAMPUS DRG-based payment system effective for admissions occurring on or after January 1, 1991. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: January 8, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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

Effective for admissions occurring on or after January 1, 1991.

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

TABLE 1.—NATIONAL URBAN AND RURAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR, AND COST-SHARE PER DIEM

National Large Urban Adjusted:	
Standardized amount	$3,008.20
Labor portion	2,130.41
Nonlabor portion	877.79
National Other Urban Adjusted:	
Standardized amount	2,939.95
Labor portion	2,082.07
Nonlabor portion	857.88
National Rural Adjusted:	
Standardized amount	2,938.60
Labor portion	2,222.46
Nonlabor portion	716.14
Cost-Share per diem for beneficiaries other than dependents of active-duty members	262.00

[FR Doc. 91-763 Filed 1-11-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Monday, January 21, 1991, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 11 a.m. The agenda for the meeting is as follows:

1. Adoption of agenda and introductory remarks.
2. Approval of Record Note of the IAB meeting of October 18, 1990.
3. International oil supply/demand situation.
4. IAB organization.
5. Date of next IAB meeting.

II. A meeting of the IAB will be held Tuesday, January 22, 1991, at the offices of the OECD, at the above address beginning at 9:30 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the offices of the OECD on January 22. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the agenda.
2. Summary Record of SEQ meeting of December 5, 1990.
3. Gulf situation and possible IEA emergency responses.
4. Any other business.

As provided in seciton 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the IAB, their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, January 8, 1991.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 91-818 Filed 1-11-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Form EIA-191, "Underground Gas Storage Report"

AGENCY: Energy Information Administration, (EIA), Department of Energy (DOE).

ACTION: Notice of Proposed Change to Confidentiality Statement for Form EIA-191, "Underground Gas Storage Report," and Solicitation of Comments.

SUMMARY: The Energy Information Administration (EIA) is required by the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. 3501 *et seq.* to provide the general public and other Federal agencies with an opportunity to comment on proposed changes to reporting forms. This helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. EIA is soliciting comments concerning a proposed revision to the confidentiality provision on form EIA-191 "Underground Gas Storage Report." The form as currently approved by the Office of Management and Budget (OMB) provides that information submitted by underground gas storage companies which are not subject to the Federal Energy Regulatory Commission's jurisdiction will be kept confidential to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), the DOE regulations implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. 1905. On November 15, 1990, EIA requested OMB approval to modify the form by and extend reporting requirements to all underground natural gas storage companies. In addition, EIA is proposing that information required to be submitted in the future will no longer be subject to the confidentiality provision cited above. Instead, any data submitted would be considered not confidential.

DATES: Comments must be filed on or before February 13, 1991. If you anticipate that you will be submitting comments, but find it difficult to do so within the time allowed by this notice, you should advise the OMB Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to Ms. Natof, of EIA, at the address below.)

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE RELEVANT MATERIALS CONTACT: Ms. Margo Natof,

Office of Oil and Gas (EI–441), Forrestal Building, Energy Information Administration, Washington, DC 20585. Ms. Natof may be telephoned at (202) 586–6303.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy (DOE) Organization Act (Pub. L. 95–91), the EIA is obliged to carry out a central comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resources reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

On November 16, 1990, EIA submitted to OMB for approval a request for a 3-year extension of its natural gas surveys with minor revisions. The EIA–191, "Underground Gas Storage Report," is one of these forms. It collects monthly data at the reservoir level on natural gas storage activities, including injections, withdrawals, and peak-day sendout. Data are used in EIA publications and for analyses and forecasting.

II. Current Actions

The EIA is proposing that in the future information submitted on the Form EIA–191 will no longer be subject to the provision that it will be kept confidential to the extent that it satisfies the criteria for exemption in the FOIA, the DOE regulations implementing the FOIA, and the Trade Secrets Act (18 U.S.C. 1905).

EIA experience has shown that most companies do not hold the information confidential and, in fact, almost all companies' data have been released under the FOIA requests. Companies filing the data labeled as confidential on the current EIA–191 would file nonconfidential data on the proposed EIA–191.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed change to the confidentiality statement on form EIA–191. Comments should be submitted to the DOE Desk Officer and to the EIA contact listed above.

Comments submitted in response to this notice will become a matter of public record.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52 of Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC January 7, 1991.

Douglas R. Hale,

Acting Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–819 Filed 1–11–91, 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TQ91–3–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 7, 1991.

Take notice that ANR Pipeline Company ("ANR"), on December 31, 1990, tendered for filing as part of it's F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective February 1, 1991:

Thirty-Seventh Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

Thirty-Seventh Revised Sheet No. 18 reflects a $0.0567 per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD–1/MC–1 Rate Schedules, from rates reflected in the November 1, 1990 Out-of-Cycle PGA in Docket No. TQ91–2–48–000 and a decrease of $0.0032 per dth from rates reflected in the January 1, 1991 Interim Adjustment ("Flexible") PGA in Docket No. TF91–3–48–000.

There is a decrease of $0.171 in the gas cost component of the monthly D–1 demand rate from rates reflected in the November 1, 1990 Out-of-Cycle PGA and a decrease of $0.151 from rates reflected in the January 1, 1991 "Flexible" PGA. The gas cost component of the D–2 demand rate decreased by $0.0004 from rates reflected in the November 1, 1990 Out-of-Cycle PGA. There is no change in the D–2 demand rate from that reflected in the January 1, 1991 "Flexible" PGA.

The instant filing further reflects a decrease in the gas cost component of ANR's one-part rate applicable to SGS–1 of $0.0749 per dth from rates reflected in the November 1, 1990 Out-of-Cycle PGA. There is also a decrease of $0.0182 per dth in the SGS–1 rate from rates reflected in the January 1, 1991 "Flexibile" PGA.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–753 Filed 1–11–91, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–65–000]

Arkla Energy Resources, a Division of Arkla, Inc.; Proposed Changes in FERC Gas Tariff

January 7, 1991

Take notice that Arkla Energy Resources (AER), a division of Arkla, Inc., on December 31, 1990 tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume 1–A, with a proposed effective date of February 1, 1991. AER simultaneously filed Second Revised Volume No. 1 and First Revised Volume 1–A electronically in compliance with Commission Order 493. AER states that the proposed tariff sheets reflect an annual overall jurisdictional rate increases of approximately $18.2 million, based on the 12-month period ending August 31, 1990, as adjusted. AER states that the principal reason for the proposed rate increases is general increases in operating expenses since its last rate case was filed.

AER states that copies of the filing were served upon AER's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing 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 (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 91-749 Filed 1-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 7, 1991

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 31, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1991.

Ninth Revised Sheet No. 26
Ninth Revised Sheet No. 26A
Ninth Revised Sheet No. 26B
Ninth Revised Sheet No. 26C
Eighth Revised Sheet No. 163

Columbia states that the sales rates set forth on Ninth Revised Sheet No. 26 reflect an overall increase of 3.81¢ per Dth in the Commodity rate, and a decrease of $.312 in the Demand rate. In addition, the transportation rates set forth on Ninth Revised Sheet No. 26C reflect an increase in the Fuel Charge component of .11¢ per Dth.

The purpose of the revised tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) A continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1991;

(3) A Transportation Fuel Charge Adjustment; and

(4) A Transportation Cost Recovery Adjustment.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-754 Filed 1-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-58-000]

Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

January 7, 1991.

Take notice that on December 18, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. RP91-58-000 a petition requesting authorization for waiver of the scheduling penalty provisions of Rate Schedules FTS-1, PTS-1 and ITS-1 of FGT's FERC Gas Tariff for penalties incurred during the month of September, 1990.

FGT states that good cause exists to waive the scheduling penalties for September, 1990.

Any person desiring to be heard or to protest to said petition should on or before January 14, 1991, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-760 Filed 1-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

January 7, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on December 31, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Twenty-Fifth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective February 1, 1991. The revised tariff sheet reflects a current decrease of $.0007 in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.4800. It also reflects a Deferred Gas Cost Adjustment of ($.0016) in accordance with the Federal Energy Regulatory Commission's regulations.

Kentucky West states that, effective February 1, 1991, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.4926 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the Untied States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in Kentucky West Virginia Gas Co. v. FERC, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-750 Filed 1-11-91, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

January 7, 1991

Take notice that North Penn Gas Company (North Penn) on December 28, 1990, tendered for filing Fourth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

This filing is North Penn's Annual PGA rate filing proposed to become effective March 1, 1991 and is designed to reflect changes in the cost of gas for the period March 1, 1991 through May 31, 1991. The changes in the cost of gas for this period result in a decrease of $1.38350 per Mcf to the G-1 Rate Schedule.

North Penn has also computed a surcharge credit of $.29066 per Mcf to amortize over twelve months the overrecovered purchased gas costs accumulated in Account 191 during the period November 1, 1989 through October 31, 1990.

North Penn requests waiver of any of the Commission's Rules and Regulations as may be deemed necessary in order to permit the proposed tariff sheet to become effective March 1, 1991.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and state commissions shown on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-755 Filed 1-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ 91-2-86-000]

Pacific Gas Transmission Co.; Change in Sales Rates Pursuant to Purchased Gas Adjustment

January 7, 1991.

Take notice that on December 31, 1990, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations, a proposed change in rates applicable to service rendered under Rate Schedules PL-1 and S-1, affected by and subject to Paragraph 21, "Purchased Gas Cost Adjustment" (PGA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such rates are proposed to become effective February 1, 1991.

PGT states that a copy of this filing has been served on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-758 Filed 1-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-41-000]

Paiute Pipeline Co.; Proposed Change in FERC Gas Tariff

January 7, 1991

Take notice that on December 31, 1990, Paiute Pipeline Company (Paiute) tendered for filing, pursuant to part 154 of the Commission's regulations, a Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served under rate schedules affected by and subject to the PGA provisions contained in section 9 of the General Terms and Conditions of Paiute's FERC Gas Tariff, Original Volume No. 1.

Paiute tendered Eighteenth Revised Sheet No. 10 to Original Volume No. 1 of its tariff, which reflects a proposed decrease of 39.55 cents per dekatherm in its commodity sales rate compared to that in effect on December 1, 1990. The proposed effective date for the tendered tariff sheet is February 1, 1991.

Paiute also tendered for filing Substitute Seventeenth Revised Sheet No. 10, to be effective December 1, 1990, in order to bring Paiute's surcharge rate set forth in its October 31, 1990 out-of-cycle PGA filing in Docket No. TQ91-1-41-000 to the same level reflected in Paiute's subsequent November 30, 1990 compliance filing submitted in Paiute's annual PGA proceeding in Docket No. TA91-1-41-002.

Paiute states that copies of this filing have been mailed to all jurisdictional sales customers of Paiute, interested parties and affected state regulatory agencies.

Any persons 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 January 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-751 Filed 1-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-28-000, TM91-9-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

January 7, 1991

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on December 28, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Eighty-Fourth Revised Sheet No. 3-A
Sixty-First Revised Sheet No. 3-B
Eighth Revised Sheet No. 3-B.1

The proposed effective date of these revised tariff sheets is March 1, 1991.

Panhandle further states that these revised tariff sheets filed herewith

reflect the following changes to Panhandle's rates:

(1) A decrease of ($1.20) for D1 pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) An increase of $.142 for D1 and a decrease of (0.32¢) for D2 pursuant to section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

(3) An increase of 7.53¢ per Dt in the non-gas commodity rate pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.305 (Annual PGA filing) of the Commission's Regulations and pursuant to §§ 18.1 and 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers) and section 22 (ANGTS tracking mechanism) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional sales rates effective March 1, 1991.

Panhandle states that it should be noted that by orders dated June 30, 1989, August 4, 1989 and August 28, 1989, issued in Docket Nos. RP89–185–000, *et al.* the Commission accepted for filing Section 25 (Seasonal Sales Program) of Panhandle's FERC Gas Tariff, Original Volume No. 1. Pursuant to § 25.31 thereof, §§ 18.2, 18.3, 18.5, 18.6, 18.7 and 18.8 are suspended until re-established in accordance with § 25.32. Accordingly, Panhandle is reflecting as a current adjustment only the changes in its jurisdictional sales rates mentioned above.

Panhandle states that copies of its filing have been served on all Jurisdictional sales customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 325.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell.

Secretary.

[FR Doc. 91–757 Filed 1–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–62–000]

Superior Offshore Pipeline Co.; Proposed Initial Depreciation Rate

January 7, 1991.

Take notice that on December 28, 1990, Superior Offshore Pipeline Company ("SOPCO") filed, a "Notice of Proposed Initial Depreciation Rate Determination" and supporting documentation necessary to implement an initial system-wide depreciation and amortization rate of 2.15% per year. The filing seeks approval of SOPCO's depreciation and amortization rate pursuant to the Commission's exercise of its authority under section 9 of the Natural Gas Act (NGA). The filing is not being made as a rate change application under section 4 of the NGA. The proposed effective date of the initial depreciation and amortization rate proposed herein is January 1, 1991.

SOPCO states that the sole purpose of this filing is to comply with the Final Audit Report issued October 15, 1990 by the Chief Accountant of the Commission in Docket No. FA89–57–000, which directed SOPCO to file an initial depreciation and amortization rate with the Commission on or before December 31, 1990 in order to resolve SOPCO's outstanding FERC audit proceeding. SOPCO proposes to set an initial depreciation and amortization rate of 2.15% per year for ratemaking and accounting purposes. SOPCO further states that no change in the level of SOPCO's currently effective Rate Schedules T–1 and T–2 firm and interruptible transportation rate of $0.0100 per MMBtu is sought herein. SOPCO further requests that the proposed initial depreciation and amortization rate be allowed to become effective as of January 1, 1991.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 N 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). All such motions or protests should be filed on or before January 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 91–759 Filed 1–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–67–000, RP88–81–000, RP88–221–000, RP90–119–000, (Phase I/ Rates)]

Texas Eastern Transmission Corp., Informal Settlement Conference

January 7, 1991.

Take notice that, at the request of Texas Eastern Transmission Corporation, a conference will be convened in this proceeding on January 30, 1991 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of several issues remaining in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin (202) 208–0042 or Arnold H. Meltz (202) 208–0737.

Lois D. Cashell.

Secretary

[FR Doc. 91–756 Filed 1–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–2–49–000]

Williston Basin Interstate Pipeline Co.; Notice of Purchased Gas Adjustment Filing

January 7 1991.

Take notice that on December 31, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

First Revised Volume No. 1

Thirty-second Revised Sheet No 10

Original Volume No. 1–A

Twenty-fifth Revised Sheet No. 11
Thirty-first Revised Sheet No. 12
Fifteenth Revised Sheet No. 97A

Original Volume No. 1–B

Twentieth Revised Sheet No. 10
Twentieth Revised Sheet No. 11

Original Volume No. 2

Thirty-third Revised Sheet No. 10
Twenty-sixth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is February 1, 1991.

Williston Basin states that Thirty-second Revised Sheet No. 10 (First Revised Volume No. 1) and Thirty-third Revised Sheet No. 10 (Original Volume No. 2) reflect an increase in the Current Gas Cost Adjustment applicable to Rate Schedules G–1, SGS–1, E–1 and X–1 of 4.439 cents per dkt as compared to that contained in the Company's September 28, 1990 PGA filing in Docket No. TQ91–1–49–000, which became effective November 1, 1990.

Williston Basin further states that Twenty-fifth Revised Sheet No. 11, Thirty-first Revised Sheet No. 12 and Fifteenth Revised Sheet No. 97A (Original Volume No. 1–A), Twentieth Revised Sheet Nos. 10 and 11 (Original Volume No. 1–B), Thirty-third Revised Sheet No. 10 and Twenty-sixth Revised Sheet No. 11B (Original Volume No. 2) reflect an increase of .101 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's September 28, 1990 filing in Docket No. TQ91–1–49–000. Such increase in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas.

Consistent with the Company's filing of both primary and alternative tariff sheets in Docket No. RP91–56–000, which filing is pending before the Commission, Williston Basin also submitted alternate tariff sheets for filing to become a part of Williston Basin's FERC Gas Tariff in the event that the Commission requires the use of the alternate tariff sheets submitted in Docket No. RP91–56–000.

The tariff sheets filed by Williston Basin also incorporate the base tariff rate revisions filed by the Company on December 14, 1990 in Docket No. RP90–2–001, the Gas Research funding unit filed on November 30, 1990 in Docket No. TM91–2–49–000 and the partial recovery of additional take-or-pay buyout/buydown costs sought by Williston Basin in a December 17, 1990 filing in Docket No. RP91–56–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–752 Filed 1–11–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3897–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 13, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Information Requirements for Importation of Nonconforming Vehicles. (ICR #0010.04; OMB #2060–0095). This is an extension of the expiration date of a currently approved collection.

Abstract: Importers of nonconforming motor vehicles or engines for resale must provide EPA with information sufficient to determine whether these vehicles/engines have been brought into conformity with Federal requirements. The information required includes: vehicle/engine identification, vehicle/engine emissions test results, U.S. Customs entry data, and importer/owner name and address, together with certification that all the information given is correct. EPA uses this information to ensure compliance with the Clean Air Act.

Burden Statement: The public reporting burden for this collection of information is estimated to average .5 hour per response for reporting, and 113 hours per recordkeeper annually. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Importers of nonconforming vehicles or engines for resale.

Estimated No. of Respondents: 3,050

Estimated No. of Responses per Respondent: 3.5

Estimated Total Annual Burden on Respondents: 6,447 hours

Frequency of Collection: Upon importation of vehicle or engine.

Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530

Dated: January 3, 1991.

Paul Lapsley,

Regulatory Management Division.

[FR Doc. 91–809 Filed 1–11–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3897–3]

Science Advisory Board Environmental Engineering Committee Open Meeting

February 7–8, 1991.

Pursuant to the Federal Advisory Committee Act, Pubic Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will conduct a planning, coordination and review meeting on Thursday, February 7, and Friday, February 8, 1991. The meeting will be in the Caucus Room of the One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037. The meeting will begin at 9 a.m. on Thursday, February 7th and 8:30 a.m. on Friday, February 8th and will adjourn no later than 3 p.m. on February 8th.

At this meeting, the EEC will plan and coordinate upcoming EEC review

activities, discuss the status of reviews-in-progress and review briefings on possible additional review topics for FY 1991 and beyond. Reviews-in-progress include the Leachability Subcommittee's current working draft on recommendations and rationale for analysis of contaminant release, a draft letter resulting from the OSWER Modeling Subcommittee consultation of December 7, 1990, and a draft letter resulting from the Municipal Solid Waste (MSW) Recycling Subcommittee's consultation of December 19, 1990 on the potential hazards of MSW recycling. The EEC plans to receive a briefing by the staff in the Corrective Action Branch of the Office of Solid Waste (OSW) on advances in ground water monitoring. The EEC will conduct a consultation to assist the Information Management Staff (IMS) of the Office of Solid Waste and Emergency Response (OSWER) in selection of an Agency-wide panel or task force on modeling as an implementation phase of OSWER's Models Management Initiative.

Other EEC FY 1991 topics which require planning and coordination will be discussed, but will not be reviewed at this time. It is also expected that topics requiring coordination with other SAB standing committees and ad-hoc subcommittees will be addressed as time permits.

The meeting is open to the public. Any member of the public wishing further information on the meeting or those who wish to submit written comments or who wish to attend should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Marcy Jolly, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382–2552 by January 31, 1991. Seating will be on a first come basis.

Dated: January 7, 1991.

Donald G. Barnes,

Staff Director, Science Advisory Board (A101F).

[FR Doc. 91–806 Filed 1–11–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–53133; FRL 3842–4]

Premanufacture Notices; Monthly Status Report for JULY 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for JULY 1990.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE–G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPTS–53133)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm L–100, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm EB–44, 401 M St., SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during JULY; (b) PMNs received previously and still under review at the end of JULY; (c) PMNs for which the notice review period has ended during JULY; (d) chemical substances for which EPA has received a notice of commencement to manufacture during JULY; and (e) PMNs for which the review period has been suspended. Therefore, the JULY 1990 PMN Status Report is being published.

Dated: January 8, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report for JULY 1990

I. 169 Premanufacture notices and exemption requests received during the month:

PMN No.

P 90–1594	P 90–1595	P 90–1596	P 90–1597
P 90–1598	P 90–1599	P 90–1600	P 90–1601
P 90–1602	P 90–1603	P 90–1604	P 90–1605
P 90–1606	P 90–1607	P 90–1609	P 90–1610
P 90–1611	P 90–1612	P 90–1613	P 90–1614
P 90–1615	P 90–1616	P 90–1618	P 90–1619
P 90–1620	P 90–1621	P 90–1622	P 90–1623
P 90–1624	P 90–1625	P 90–1626	P 90–1627
P 90–1628	P 90–1629	P 90–1630	P 90–1631
P 90–1632	P 90–1633	P 90–1634	P 90–1635
P 90–1636	P 90–1637	P 90–1638	P 90–1639
P 90–1640	P 90–1641	P 90–1642	P 90–1643
P 90–1644	P 90–1645	P 90–1646	P 90–1647
P 90–1648	P 90–1649	P 90–1650	P 90–1651
P 90–1652	P 90–1653	P 90–1654	P 90–1655
P 90–1656	P 90–1657	P 90–1658	P 90–1659
P 90–1660	P 90–1661	P 90–1662	P 90–1663
P 90–1664	P 90–1665	P 90–1666	P 90–1667
P 90–1668	P 90–1669	P 90–1670	P 90–1671
P 90–1672	P 90–1673	P 90–1674	P 90–1675
P 90–1676	P 90–1677	P 90–1678	P 90–1679
P 90–1680	P 90–1681	P 90–1682	P 90–1683
P 90–1684	P 90–1685	P 90–1686	P 90–1687
P 90–1688	P 90–1689	P 90–1690	P 90–1691
P 90–1692	P 90–1693	P 90–1694	P 90–1696
P 90–1697	P 90–1698	P 90–1699	P 90–1700
P 90–1701	P 90–1702	P 90–1703	P 90–1704
P 90–1705	P 90–1706	P 90–1707	P 90–1708
P 90–1709	P 90–1710	P 90–1711	P 90–1712
P 90–1713	P 90–1714	P 90–1715	P 90–1716
P 90–1717	P 90–1718	P 90–1719	P 90–1720
P 90–1721	P 90–1722	P 90–1723	P 90–1724
P 90–1725	P 90–1726	P 90–1727	P 90–1728
P 90–1729	P 90–1730	P 90–1731	P 90–1732
P 90–1733	P 90–1734	P 90–1735	P 90–1736
P 90–1737	P 90–1738	P 90–1739	P 90–1740
P 90–1741	P 90–1742	P 90–1743	P 90–1744
P 90–1745	P 90–1746	P 90–1747	P 90–1748
P 90–1749	P 90–1750	P 90–1751	P 90–1940
Y 90–0246	Y 90–0247	Y 90–0248	Y 90–0249
Y 90–0250	Y 90–0251	Y 90–0252	Y 90–0253
Y 90–0254	Y 90–0255	Y 90–0256	Y 90–0257
Y 90–0258			

II. 218 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84–0660	P 85–0433	P 85–0619	P 86–1602
P 86–1607	P 86–1771	P 87–0105	P 87–0323
P 87–0723	P 87–1555	P 87–1760	P 87–1872
P 87–1881	P 87–1882	P 88–0083	P 88–0217
P 88–0319	P 88–0320	P 88–0353	P 88–0468
P 88–0515	P 88–0576	P 88–0836	P 88–0894
P 88–0918	P 88–1020	P 88–1021	P 88–1035
P 88–1211	P 88–1212	P 88–1473	P 88–1567
P 88–1568	P 88–1618	P 88–1619	P 88–1620
P 88–1621	P 88–1622	P 88–1630	P 88–1631
P 88–1632	P 88–1690	P 88–1761	P 88–1763
P 88–1783	P 88–1807	P 88–1809	P 88–1811
P 88–1937	P 88–1938	P 88–1980	P 88–1982
P 88–1984	P 88–1985	P 88–1995	P 88–1999
P 88–2000	P 88–2001	P 88–2100	P 88–2169
P 88–2177	P 88–2179	P 88–2180	P 88–2181
P 88–2188	P 88–2196	P 88–2210	P 88–2212
P 88–2213	P 88–2228	P 88–2229	P 88–2230
P 88–2231	P 88–2236	P 88–2237	P 88–2469
P 88–2473	P 88–2484	P 88–2518	P 88–2529
P 88–2530	P 88–2568	P 89–0089	P 89–0090
P 89–0091	P 89–0225	P 89–0254	P 89–0279
P 89–0292	P 89–0321	P 89–0326	P 89–0385
P 89–0386	P 89–0387	P 89–0538	P 89–0539
P 89–0589	P 89–0721	P 89–0764	P 89–0775
P 89–0867	P 89–0870	P 89–0924	P 89–0942
P 89–0957	P 89–0958	P 89–0959	P 89–0963
P 89–0977	P 89–0978	P 89–0979	P 89–0980
P 89–1010	P 89–1038	P 89–1058	P 89–1104
P 89–1125	P 89–1148	P 90–0002	P 90–0009
P 90–0013	P 90–0142	P 90–0158	P 90–0159
P 90–0187	P 90–0211	P 90–0220	P 90–0226
P 90–0231	P 90–0237	P 90–0248	P 90–0249
P 90–0260	P 90–0261	P 90–0262	P 90–0263
P 90–0319	P 90–0321	P 90–0331	P 90–0333
P 90–0335	P 90–0347	P 90–0360	P 90–0364
P 90–0372	P 90–0383	P 90–0384	P 90–0404
P 90–0405	P 90–0406	P 90–0440	P 90–0441

P 90-0456 P 90-0480 P 90-0489 P 90-0512
P 90-0550 P 90-0558 P 90-0559 P 90-0560
P 90-0564 P 90-0578 P 90-0581 P 90-0584
P 90-0594 P 90-0603 P 90-0608 P 90-0643
P 90-0657 P 90-0667 P 90-0668 P 90-0669
P 90-0707 P 90-1280 P 90-1285 P 90-1308
P 90-1311 P 90-1318 P 90-1319 P 90-1320
P 90-1321 P 90-1322 P 90-1337 P 90-1338
P 90-1353 P 90-1357 P 90-1358 P 90-1364
P 90-1366 P 90-1384 P 90-1393 P 90-1413
P 90-1422 P 90-1454 P 90-1464 P 90-1472
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P 90-1515 P 90-1516 P 90-1517 P 90-1518
P 90-1525 P 90-1526 P 90-1527 P 90-1528
P 90-1529 P 90-1530 P 90-1531 P 90-1535
P 90-1541 P 90-1555 P 90-1556 P 90-1564
P 90-1565 P 90-1592

III. 509 Premanufacture notices and exemption request for which thenotice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 87-1192 P 88-0671 P 88-1844 P 88-2271
P 89-0701 P 89-1005 P 90-0299 P 90-0624
P 90-0625 P 90-0627 P 90-0628 P 90-0629
P 90-0630 P 90-0631 P 90-0632 P 90-0633
P 90-0634 P 90-0635 P 90-0636 P 90-0637
P 90-0638 P 90-0639 P 90-0640 P 90-0641
P 90-0642 P 90-0643 P 90-0644 P 90-0645
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P 90-0663 P 90-0664 P 90-0665 P 90-0666
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P 90-0674 P 90-0675 P 90-0676 P 90-0677
P 90-0678 P 90-0679 P 90-0680 P 90-0681
P 90-0682 P 90-0683 P 90-0684 P 90-0685
P 90-0686 P 90-0687 P 90-0688 P 90-0689
P 90-0690 P 90-0698 P 90-0699 P 90-0700
P 90-0701 P 90-0702 P 90-0703 P 90-0704
P 90-0705 P 90-0706 P 90-0708 P 90-0709
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P 90-1005 P 90-1006 P 90-1007 P 90-1008
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P 90-1310 P 90-1312 P 90-1313 P 90-1314
P 90-1315 P 90-1316 P 90-1317 P 90-1375
P 90-1376 Y 90-0234 Y 90-0235 Y 90-0236
Y 90-0237 Y 90-0238 Y 90-0239 Y 90-0240
Y 90-0241 Y 90-0242 Y 90-0243 Y 90-0244
Y 90-0245 Y 90-0246 Y 90-0247 Y 90-0248
Y 90-0249

IV. 85 Chemical Substances for which EPA has received notices of commencement to manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 81-0002	G Water reducible siliconized alkyd resin	May 22, 1990.
P 82-0228	2-Propenoic acid, methylester, benzene, diethenyl 1,3-propanediamine, *n,n*-dimethyl methane, chloro	September 6, 1983.
P 83-0288	G 1-Methyl-1-phenylethyl peroxyester	June 4, 1990.
P 83-0490	G Modified coconut-phthalic-mixed polyol alkyd polymer	May 25, 1990.
P 83-1157	G Substituted oxirane	January 31, 1990.
P 83-1222	G Substituted alkyl halide	January 17, 1990.
P 83-1227	G Perhalo alkoxy ether	February 5, 1990.
P 84-1134	G Hydroxy acrylic resin	March 6, 1985.
P 85-0092	G Hydroxyethylthiopolyalcohol	May 15, 1990.
P 85-0228	G Disubstituted pyridinium bromide	June 15, 1990.
P 85-1398	G Aliphatic polyurethane aqueous dispersion	June 30, 1990.
P 86-1224	G Titanium(4+)alkanolamine polyol complex	June 13, 1990.
P 87-1223	G Bis(substituted phenyl)cycloalkane	June 1, 1990.
P 87-1277	G Vinylacetate acrylate copolymer	June 11, 1990.
P 87-1664	G Substituted aromatic amude	June 20, 1990.
P 88-0383	G Aliphatic amine derivative and aliphatic amine derivative copolymer	June 6, 1990.
P 88-0837	G Epoxy resin	September 23, 1989.
P 88-1875	G Polyamide from aliphatic diamine and aliphatic diacid	June 18, 1990.

IV. 85 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 88-2019	G Substitued-substituted-substituted-benzene polymer aminomethylated, dimethylated.	June 14, 1990.
P 88-2051	G Substituted phthalic anhydride.	June 20, 1990.
P 89-0042	G Acrylic solution resin.	May 25, 1990.
P 89-0265	G Ethylene copolymer.	July 2, 1990.
P 89-0272	G Isocyanate terminated urethane prepolymer.	May 9, 1990.
P 89-0273	G Substituted aromatic ketone.	June 15, 1990.
P 89-0353	G Alkyd resin.	July 29, 1990.
P 89-0380	G Substituted pyrylium salt.	June 12, 1990.
P 89-0388	G Alkyleneamine alkylphenol mannish.	August 8, 1989.
P 89-0465	G Toluene diisocyanate prepolymer.	June 22, 1990.
P 89-0492	G Epoxy modified polyester polymer.	July 18, 1989.
P 89-0510	G Polyamido polyurea.	May 22, 1990.
P 89-0518	G Toluene diisocyanate prepolymer.	June 3, 1990.
P 89-0519	G Toluene diisocyanate prepolymer.	June 22, 1990.
P 89-0520	G Organosiloxane.	June 3, 1990.
P 89-0593	G Reaction product of sodium metabisulfite with polymer of polyalkylene glycol; alkyldiol; and monocyclic dicarboxylic acid, dialkyl ester..	May 29, 1990.
P 89-0629	G Alkanal alkyl substituted oxide.	June 11, 1990.
P 89-0749	G Methacrylated polyurethane prepolymer, methacrylated MDI mixture.	June 8, 1990.
P 89-0758	G Potassium salt of maleate ester.	June 14, 1990.
P 89-0769	G Resorcinol-formaldehyde resin.	June 26, 1990.
P 89-0794	G Cyclohexanamine 4, 4'-methylene bis-*N*-(2-hydroxy-3-(4-(methyl-1-(4-(oxiranylmethoxy) phenyl) ethyl) phenoxy) propyl) derivatives..	July 25, 1990.
P 89-0927	G Substituted aromatic amide.	June 22, 1990.
P 89-0938	G Substituted naphthalene disulfonic acid.	June 11, 1990.
P 89-0961	G Substituted aniline.	June 6, 1990.
P 89-1065	G Aliphatic amine salt of phosphoric acid.	May 21, 1990.
P 89-1073	G Diureas.	December 27, 1989.
P 89-1074	G Diureas.	December 27, 1989.
P 89-1075	G Diureas.	December 27, 1990.
P 89-1076	G Diureas.	December 28, 1989.
P 89-1077	G Diureas.	December 28, 1989.
P 90-0089	G Monohalosubstituted polyheteromonocyclic derivative of a sulfonated bis-azo-dyestuff.	May 22, 1990.
P 90-0106	G Perfluoroalcohol.	June 1, 1990.
P 90-0113	G Toluene sulfonamide A epoxy adduct.	June 19, 1990.
P 90-0183	G Macromer.	May 29, 1990.
P 90-0293	G Branched alcohol sulfate.	June 2, 1990.
P 90-0348	G 1-Tetradecanaminium, *n,n*-dimithyl-*n*-tetrdecyl-, hexa-.mu.-oxotetra-. mu.3-oxdi-. mu.5-oxotetradecaoxo-octamolybdate(4-) (4:1).	June 7, 1990.
P 90-0380	G Polyurethane prepolymer.	June 12, 1990.
P 90-0384	G Alkyl phosphate ester, alkyl amine salt.	June 8, 1990.
P 90-0389	G Substituted ethylene copolymer.	June 11, 1990.
P 90-0410	G Complex epoxy resin/amine adducts.	June 22, 1990.
P 90-0412	G Epoxy resin.	June 13, 1990.
P 90-0413	G Silicone polyester.	June 11, 1990.
P 90-0417	G Amines, salts with fatty polycarboxylic acid and alkylaryl sulfonic acid.	June 19, 1990.
P 90-0418	G Fatty polycarboxylic acid salts of a fatty acid/amine condensate.	June 19, 1990.
P 90-0438	G Polymer of aliphatic acids, aromatic acids, and aliphatic diols.	June 25, 1990.
P 90-0450	G Diphenol dicyanate.	May 15, 1990.
P 90-0451	G Aqueous acrylic resin dispersion.	June 21, 1990.
P 90-0467	Sulphited tannis.	May 25, 1990.
P 90-0494	G (Disubstitutedhydroxypolycycle)(alkylhydroxypolycycle)substituted heteropolycycle.	June 11, 1990.
P 90-0495	G (Disubstitutedhydroxypolycycle)(alkylhydroxypolycycle)substituted heteropolycycle.	June 21, 1990.
P 90-0518	G Phenolic polyol.	June 3, 1990.
P 90-0519	G Phenolic polyol.	June 3, 1990.
P 90-0520	G Phenolic polyol.	June 3, 1990.
P 90-0521	G Polyester urethane polymer.	May 31, 1990.
P 90-0525	G Polyurethane prepolymer of aliphatic polyisocyanate, polyester polyols, butanediol, and *N,N*1,*N*1-tetrakis (2-hydroxypropyl)ethylene diamine..	June 7, 1990.
P 90-0592	G Polybisphenol-A Phthalate.	June 30, 1990.
Y 89-0225	G Fatty acid polyether polyester.	May 14, 1990.
Y 90-0025	G Blocked polyether polyurethane.	June 14, 1990.
Y 90-0118	G Acrylic resin.	April 16, 1990.
Y 90-0125	G Modified polybutylene terephthalate.	June 12, 1990.
Y 90-0185	G Short oil, chain-stopped alkyd.	July 19, 1990.
Y 90-0202	G Acrylic copolymer.	June 6, 1990.
Y 90-0211	G Poly(aryl alkyl ether ester) resin.	July 6, 1990.
Y 90-0212	G Poly(aryl alkyl ether imide ester) resin.	July 5, 1990.
Y 90-0227	G Acrylate copolymer.	August 9, 1990.
Y 90-0228	G Acrylate copolymer.	August 9, 1990.

IV. 85 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
Y 90-0231	G Modified olefin-based polymer	June 29, 1990.

V. 25 Premanufacture notices for which the Period has been suspended.

PMN No.

P 88-1618 P 88-1619 P 88-1620 P 88-1621
P 88-1622 P 88-1783 P 88-2231 P 88-2237
P 89-0701 P 90-0145 P 90-0481 P 90-0581
P 90-0594 P 90-0657 P 90-0669 P 90-0707
P 90-1280 P 90-1285 P 90-1308 P 90-1311
P 90-1337 P 90-1345 P 90-1503 Y 90-0243
Y 90-0253

[FR Doc. 91-811 Filed 1-11-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3896-1]

Proposed Approvals and Disapprovals of Partial Lists of Wastes, Point Sources and Pollutants and Certain Individual Control Strategies (ICSs) for Region V; Determinations in Response to Public Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region V, in this action, announces its determinations in response to public comments regarding EPA Region V's proposed approvals and disapprovals of partial lists of waters, point sources and pollutants and certain individual control strategies (ICSs) submitted by the States of Illinois, Michigan, Ohio and Wisconsin pursuant to section 304(l) of the Clean Water Act (CWA) (33 USC 1314(l)). The public comments were received in response to EPA Region V's notice in the **Federal Register** on September 5, 1990 (55 FR 36309).

ADDRESSES: Complete records may be viewed at U.S. Environmental Protection Agency, Region V, Library (16th floor), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jane E. DeRose-Bamman, Permits Section, Water Quality Branch, U.S. EPA Region V, 5WQP, 230 South Dearborn Street, Chicago, Illinois 60604: telephone (312) 353-2105.

SUPPLEMENTARY INFORMATION: On June 5, 1989, the EPA Region V announced its proposed approvals and disapprovals of determinations made by the six States in EPA Region V pursuant to the requirements of section 304(l), and invited comments on those proposals for 120 days thereafter. The public comment period closed on October 4, 1989. In response to the 61 comments which were received, the EPA Region V provided notice, on September 5, 1990, of (1) approvals and disapprovals, required pursuant to section 304(l); and (2) proposed approvals and disapprovals with an opportunity for public comment on those tentative decisions which affected a limited number of waters and point sources in Illinois, Michigan, Ohio, and Wisconsin. In response to the September 5, 1990, announcement, the Region received 12 sets of written comments before October 5, 1990, which pertained to 9 facilities and 7 waterbodies. The Region has reviewed the comments and has reached decisions regarding the proposed actions.

This notice contains EPA Region V's responses to the written comments received between September 5, 1990 and October 5, 1990, and announces EPA Region V's decisions regarding the partial list of facilities and waterbodies.

A. EPA Region V Responses to Comments Submitted Pursuant to September 5, 1990, Public Notice

The September 5, 1990, notice contained tentative decisions for 12 facilities and 12 waterbodies. The EPA Region V received 12 written comments which pertained to 9 facilities and 7 waterbodies. A summary of the comments and the EPA Region V response for each comment is listed below.

Comment Summary: Two commentors requested additional time in which to supply comments to EPA Region V because they claimed that the September 5, 1990, **Federal Register** announcement was the first notice of the short listing for the City of De Pere, Wisconsin and the Tuscarawas River in Ohio.

EPA Region V Responses: EPA Region V granted the City of De Pere additional time, until December 10, 1990, in which to provide EPA Region V with comments regarding the listing decision since the facility was not originally listed in the June 5, 1989, **Federal Register** notice. The September 5, 1990, notice was the first time that De Pere was proposed for 304(l) listing, so EPA Region V believed it reasonable to supply additional time for comment to De Pere, which was similar to but not more than that given to others after the June 5, 1989, notice. The City of De Pere supplied additional comments which are addressed elsewhere in this notice.

EPA Region V denies the request for additional time from Squire, Sanders, & Dempsey on behalf of Republic Engineered Steels, formerly LTV Steel—Massillon (Republic). The request for additional time was based on the June 5, 1989, notice erroneously including Nimishillen Creek on the short list as a waterbody impaired by Republic. EPA Region V denies the request for additional time, because Republic had previously been given notice that the Tuscarawas River was to be included on the short list. The June 5, 1989, notice was a proposed approval of Ohio's February 1, 1989, listing of the Tuscarawas River. The June 5, 1989, notice also included approval of ICSs, including that of Republic. ICSs are NPDES permits plus supporting documentation. Republic's NPDES permit authorized discharges to the Tuscarawas River, not Nimishillen Creek. Supporting documentation which Republic reviewed and commented on in its letter of October 3, 1989, also references the discharge to the Tuscarawas River, not Nimishillen Creek. EPA Region V's December 28, 1989, response to Republic's previous comments stated that the short list of waterbodies published on June 5, 1989 would be corrected. Republic had 10 months to prepare additional technical comments. Lastly, Republic already had the opportunity, which it exercised, to provide comments on its inclusion on the short list. Nevertheless, Republic was given an additional thirty (30) days to comment after the correction was published. In fact, Republic submitted comments during this time period. In an October 4, 1990, letter, Squires, Sanders, and Dempsey stated that Republic believes that the Plan of Study, submitted with the October 4, 1990 comment letter, represents "the most comprehensive and up-to-date study of the effect of the discharge from Republic's HRB plant on instream conditions. . ." There is therefore no other possible benefit to be gained from allowing additional time for comments.

For these reasons, EPA Region V denies Republic's request for additional time.

Comment Summary: The City of De Pere (De Pere) submitted two sets of comments in response to the September 5, 1990, **Federal Register** notice. De Pere commented that it was not reasonable to list De Pere as a source which "entirely or substantially" contributes to nonattainment of a waterbody when that waterbody is impacted by a complex mix of industrial, municipal, and non-point sources of pollution. De Pere also commented that 90% of the stream segment, listed by EPA Region V as impaired by De Pere's effluent, lies upstream of the discharge point. In addition, the exceedances of water quality standards have been only of acute aquatic life standards. After dilution with the stream, there is no information demonstrating further impacts on aquatic life. Therefore, De Pere proposes that the facility, if listed at all, should be listed for impacting the area only at the point of discharge. In addition, De Pere submitted more recent data to demonstrate that the levels of the pollutants of concern have decreased. De Pere averred that the cyanide levels are considered suspect because the higher cyanide data points may be laboratory anomalies due to nitrate interference. De Pere also noted that the high level of heavy metals and cyanide in the past were due to waste from a superfund site which De Pere accepted at the request of EPA and the State.

EPA Region V Responses: Despite the merit of some of De Pere's comments, they nonetheless failed to demonstrate that the facility does not meet the criteria for listing on the short list pursuant to section 304(l). The administrative record contains documentation that since 1987, there have been exceedances of acute aquatic life standards for copper, silver, zinc, and cyanide. Although, in some cases, the concentrations of these substances have decreased, the data indicates exceedances for each substance in the last two years which would cause the facility to be listed under section 304(l)(1)(C). In the case of cyanide, data were not submitted to substantiate the possibility of laboratory errors. In addition, a cyanide exceedance has been reported after the laboratory had been notified to check for possible nitrate interference. Regarding De Pere's comment that 90% of the stream segment, listed by EPA Region V as impaired by De Pere's effluent, lies upstream of the discharge point—EPA Region V agrees that De Pere's discharge does not impact the majority of the stream segment specified in the September 5, 1990 notice. De Pere's discharge, however, does impact other portions of the Lower Fox River. The short list designation for the waterbody to which De Pere discharges will be the "Lower Fox River downstream of the De Pere dam." Because of the arguments listed above, the De Pere Wastewater Treatment Plant will therefore remain on the 304(l) short list for exceedances of water quality stnadards in the Lower Fox River.

Comment Summary: Some commentors supplied additional data which they claimed demonstrated that the waterbodies and facilities in question did not belong on the 304(1) short lists. In addition, one commentor added that the tests at 40 CFR 103.10(d)(5) (i) and (ii) were not met and therefore the waterbody and facility should not be listed<

EPA Region V Response: Squire, Sanders and Dempsey provided effluent data on behalf of Republic. EPA Region V evaluated all available data using Ohio's revised water quality standards (WQS) which became effective on May 1, 1990. This evaluation showed that cadmium no longer should be listed as a Pollutant of Concern (POC), however, copper will remain as a POC for the Tuscarawas River and Republic. Therefore, the Tuscarawas River and Republic will remain on the section 304(l)(1) (B) and (C) lists, respectively.

American Brass Company (ABC) in Wisconsin also provided additional data to demonstrate that neither are there water quality standard violations for copper in Lake Michigan nor is ABC contributing copper in amounts to cause violations. EPA Region V reviewed the data from ABC. EPA Region V disagrees with ABC's analysis that with dilution, the WQS for copper is not being exceeded in Lake Michigan. It is not appropriate to apply dilution from Lake Michigan for the aquatic life WQS which protects against acute toxicity. The effluent data which ABC supplied in its October 4, 1990, comment letter show that the contribution of cooper from ABC is still great enough to cause violations of Wisconsin's acute WQS for copper. The test at 40 CFR 130.10(d)(5)(ii) is met. Therefore, Lake Michigan will remain on the section 304(l)(1)(B) list and an ICS for ABC must be issued.

Comment Summary: One commentor requested that EPA Region V disapprove the ICS for the Mead Paper Corporation—Escanaba (Mead) and that EPA Region V issue the ICS. The commentor claims that the National Pollutant Discharge Eliminator System (NPDES) permit conditions for 2,3,7,8 tetrachlorodibenzo-p-dioxin (dioxin) that are the state-issued NPDES permit are ineffective because of a contested case hearing request. The commentor believes that the stayed permit does not constitute a final NPDES permit for the purposes of 40 CFR 123.46.

EPA Region V Response: EPA Region V does not agree that the above comment constitutes cause for disapproval of the Mead ICS. As stated in the preamble to the final rule implementing section 304(l), "An NPDES permit usually becomes effective 30 days after a final decision to issue or modify the permit unless an evidentiary hearing is requested under 40 CFR 124.74. Evidentiary hearings can delay the effective date of the conditions challenged in the permit. Because these potential delays could jeopardize the ability of EPA and the states to meet the deadlines in section 304(l), and because a final permit reflects the final decision of the permitting authority with respect to the permit, EPA will accept a final (but not necessarily fully effective) NPDES permit as an ICS." (54 FR 23888) Although the ICS conditions may be revised, if the State unacceptably modifies the permit during the hearing process, EPA still has the recourse of reviewing the permit pursuant to section 402(d) of the CWA and objecting to the modification of the permit/ICS.

Comment Summary: Warner, Norcross & Judd, on behalf of Mead Paper Corporation—Escanaba (Mead), objects to EPA's proposed approval of the discharge limit for dioxin as set forth in Mead's NPDES permit as an ICS for purposes of section 304(1) of the CWA. Mead asserts that the Michigan Department of Natural Resources (MDNR) developed the discharge limit on the basis of unpromulgated guidelines that are not binding on Mead. Mead asserts that MDNR's analysis of the dioxin issue is based upon outdated assumptions regarding carcinogenicity of dioxin. In addition, Quarle & Brady, on behalf of Nekoosa Papers. Inc. (Nekoosa), claimed that the effluent limit for dioxin in Nekoosa's permit is inappropriate in light of the uncertainty with Wisconsin's dioxin WQS.

EPA Region V Response: The comments, as summarized above, relate to the issue of how Michigan and Wisconsin developed water quality standards for dioxin which formed the basis for the discharge limits for dioxin in the NPDES permits/ICSs for the two facilities. Under section 304(l)(1)(B) of the CWA, each State must submit to EPA, for approval, "a list of all navigable waters in such State for which

the State does not expect the applicable standard under section 303 of this Act will be achieved..." For the purposes of listing waters under section 304(l)(1)(B), the federal regulations at 40 CFR 130.10(d)(4) implementing section 304(l) define applicable standard as:

> A numeric criterion for a priority pollutant promulgated as part of a state water quality standard. Where a state numeric criterion for a priority pollutant is not promulgated as part of a state water quality standard, for the purposes of listing waters "applicable standard" means the state narrative water quality criterion to control a priority pollutant (e.g. no toxics in toxic amounts) interpreted on a chemical-by-chemical basis by applying a proposed state criterion, an explicit state policy or regulation, or an EPA national water quality criterion, supplemented with other relevant information.

Michigan Water Resource Commission's MWRC's) Rule 323.1057(1) is the applicable water quality standard for dioxin under 40 CFR 130.10(d)(4) because it is a state narrative water quality criterion interpreted on a chemical-by-chemical basis by applying an explicit state regulation. Michigan Rule 323.1057 was promulgated by the State of Michigan as a state water quality standard pursuant to section 303 of the CWA on January 2, 1985 and was approved by EPA Region V on March 14, 1985. Michigan Rule 323.1057(1) states:

> Toxic substances shall not be present in the waters of the State at levels which are or may become injurious to the public health, safety, or welfare; plant and animal life; or the designated uses of those waters. Allowable levels of toxic substances shall be determined by the commission using appropriate scientific data.

Mich. Admin. Code R 323.1057(1)(1990). MDNR interprets the state narrative water quality criterion (Rule 323.1057(1) on a chemical-by-chemical basis, in this case dioxin, by applying a state regulation, R 323.1057(2)(e). Thus, EPA Region V's proposed approval of Mead's NPDES permit MI0000027 as an ICS is properly based on the applicable standard, R 323.1057(1), pursuant to subsection 304(l)(1)(B) of the CWA.

Similarly, Chapter NR 105, Wisconsin Administrative Code (WAC), is the applicable standard for Nekoosa. The Wisconsin WQS became effective on March 1, 1989 and were approved by EPA Region V on May 15, 1989. The promulgated WQS contains a numerical criterion for dioxin which is used to develop an effluent limition based on procedures in chapter NR 106, WAC. Thus, EPA Region V's proposed approval of Nekoosa's NPDES permit as an ICS is properly based on the applicable standard, NR 105, pursuant to subsection 304(l)(1)(B) of the CWA.

Consequently, the permittees' objections to the WQSs for dioxin are not germane to the issue of EPA Region V's proposed approval.

Comment Summary: In Mead's comments to EPA Region V, Mead includes excerpts from its comments on the dioxin provisions of its NPDES permit. Mead states that a "major issue is the accuracy and precision of the specified analytical procedure for dioxin." This concern was repeated by Nekoosa. Additionally, Mead objects to the "proposed dioxin provision because it sets a moving limit based on changes in the level of detection." Mead also objects to the specification of a goal of eliminating all detectable sources of dioxin into the wastewater collection system since such a reference is unnecessary and invalid.

EPA Region V Response: Mead's and Nekoosa's comments relate to the permit conditions in the NPDES permits issued by the State of Michigan and Wisconsin, respectively. Each state must submit to EPA Region V an ICS, for each point source identified in section 304(l)(1)(C), which, as required by 304(1)(1)(D):

> The State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State . . . through the establishment of effluent limitations under section 402 of this Act and water quality standards under section 303(c)(2)(B) of this Act, which reduction is sufficient . . . to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

When EPA Region V approves a state permit as an ICS, EPA Region V has made a determination, as required by section 304(l), that the limitations will be sufficient to protect water quality standards. This finding is not a substitute for the normal permitting process in which the necessity of particular limitations is determined by the permitting authority. Thus, EPA Region V believes that its approval of an ICS can be challenged, if at all, only on claims that the Agency's finding under section 304(l) is in error; this means reviewing EPA Region V's determination that the limitations will be sufficient to satisfy the requirements of that section. EPA Region V has stated the bases for its approval of NPDES permits for Mead and Nekoosa as ICSs, pursuant to section 304(l). Both permittees have commenced an administrative proceeding at the state level to contest various provisions of their respective NPDES permits. As contemplated under section 304(l), that is the proper forum for their objections to the specific conditions contained in their NPDES permits.

Comment Summary: Nekoosa also claimed that section 304(l) does not preclude the use of monitoring and best management practices (BMPs) as acceptable ICSs. Effluent limitations are inappropriate and unreasonable, and are not required by section 304(l).

EPA Region V Response: The Clean Water Act specifically states that when an ICS is needed, the strategy should contain effluent limitations. EPA Region V believes that monitoring and BMPs are acceptable ICS conditions when placed in permits in conjunction with appropriate effluent limitations which are to be met within the three-year time frame. The statute and regulations do not provide for substituting other requirements for effluent limitations. Acceptable ICSs must have effluent limitations.

Comment Summary: The Fort Howard Corporation (FHC) claimed that EPA Region V incorrectly calculated the loading from its facility in Green Bay, applied the wrong WQS for the facility, and was not consistent with other EPA Regions.

EPA Region V Response: EPA Region V believes that the methodology used to calculate the loading of polychlorinated biphenyls (PCBs) was correct as specified in the supplemental information supplied with the September 5, 1990, **Federal Register** notice. EPA Region V used the PCBs standard in chapter NR 105.09(3), WAC, as the applicable standard. This particular provision of the Wisconsin WQSs contains a footnote which, as applied to point sources, only regulates discharges which contain two specific types of PCBs. FHC believes that the WQS for PCBs in NR 105.09 does not apply to its discharge because its discharge does not contain either one of the two types of PCBs specified in the footnote at significant levels. EPA Region V conditionally approved NR 105.09(3) on May 15, 1989. This approval was conditioned on the removal of the footnote from the WQSs before May 15, 1990. The State of Wisconsin is in the process of modifying NR 105 to remove the footnote. With the WQSs in their current form, it is unclear whether or not the Lower Fox River and FHC meet the criteria for listing pursuant to section 304(l)(1) (B) and (C), respectively for PCBs. Because of this question, and due to the fact that the existing permit is already adequately controlling the discharge of PCBs via an effluent limitation for PCBs, the EPA Region V has decided that FHC should not be retained on the section 304(l)(1)(C) list. The waterbody will remain on the

section 304(l)(1)(A)(i) list for PCBs, however.

Comment Summary: All requirements of section 301(b) including section 301(b)(1)(C) must be applied and the effects measured before listing waters and facilities on section 304(l)(1) (B) and (C) lists, respectively.

EPA Region V Response: Section 301(b) requires attainment with effluent limitations based upon both technology-based standards and water quality-based standards. Section 301(b)(1)(C) requires effluent limitations which are based upon water quality standards. Sections 301(b)(1) (A) and (B) and 301(b)(2) require effluent limitations which meet best practicable control technology currently available (BPT), secondary treatment, best available technology economically achievable (BAT), pretreatment standards for both BPT and BAT levels, and best conventional pollutant control technology (BCT), all technology based standards.

The Agency believes that section 304(l) would be meaningless if indeed section 301(b)(1)(C) needed to be applied prior to listing waters and facilities on the section 301(l)(1) (B) and (C) lists. The legislative history of section 304(l) and the preamble to the 304(l) regulations show that it was intended that section 304(l) apply solely after the effects of technology based limits cited under 301(b) were measured. The Conference Report to the 1987 amendments, explaining new section 304(l), provides that ". . . States are required to undertake a progressive program of toxic pollutant load reduction *where BAT is not sufficient to meet State water quality standards* . . ." Conf. Rep. No. 99–1004, 99th cong., 2d Sess. 128 (1986) (emphasis added). Representative Hammerschmidt stated that the Section "contains important provisions relating to water pollution control levels to be achieved *after the Act's technology-based BPT/BCT/BAT standards have been met.*" The preamble to the regulations describes the section 304(l)(1)B) list as "[a] list of those waters which, after application of *technology-based effluent limits*, the state does not expect will achieve applicable water quality standards . . ." 54 FR 23869, col. 3 (emphasis added). The preamble also states that all waters should be listed that are not meeting water quality standards due to point source discharges of toxic pollutants unless "a state demonstrates that enforceable permit limits derived from *technology-based standards* will bring the water into compliance with applicable water quality standards." 54 FR 23881, cols. 1–2 (emphasis added).

As evident from the positions and interpretations cited above, section 301(b)(l)(C) does not have to be applied before listing pursuant to Section 304(l) can occur.

Comment Summary: Ross & Hardies, on behalf of North Chicago Refiners & Smelters (NCRS), claimed that EPA Region V and the State of Illinois have no basis to list the facility, since there are not recent water quality violations or effluent data which show potential or actual violations. In addition, the commentor believes that the receiving water has been subject to other current and past discharges, as there is great doubt as to whether this facility has substantially caused violations of WQS. The Illinois Environmental Protection Agency (IEPA) also commented on the proposed listing of NCRS. IEPA stated that the ICS for NCRS should include both the NPDES permit and the consent decree.

EPA Region V Response: EPA Region V has reviewed the information regarding NCRS in addition to visiting the facility. NCRS is an intermittent discharger of contaminated storm water to a storm sewer. There are several unknown sources to the storm sewer. Based upon NCRS's current effluent data and the nature of the discharge, there is insufficent evidence to demonstrate that the tests at 40 CFR 130.10(d)(5) (i) and (ii) are met. Therefore, EPA Region V has decided that Pettibone Creek and NCRS should not be retained on the 304(1)(1) (B) and (C) lists, respectively.

Comment Summary: Listing of waters pursuant to section 304(1) is not authorized until BAT limitations for dioxin have been developed and applied.

EPA Region V Response: The preamble to the June 2, 1989, section 304(1) final rule, explained that any waterbody that was not expected to meet its applicable water quality standards by February 4, 1989 must be placed on one or more of the three lists of waters. An exception to this requirement is provided when a State demonstrates that enforceable permit limits derived from technology-based standards will bring the water into compliance with applicable water quality standards. Although dioxin is not specifically limited in the applicable BAT requirements, pulp and paper mill permits are based upon BAT. This degree of treatment, however, has not reduced the levels of dioxin enough to meet the water quality standard (WQS) for dioxin. In addition, it is not anticipated that any BAT limit for dioxin will be promulgated and/or become effective within the next three years. Therefore, section 304(1)(1)(C) and 40 CFR 123.46 require that an ICS be issued with effluent limitations to meet water quality standards within three years, despite the fact that BAT limits specifically for dioxin have not been developed.

Comments from the Village of Sauget will be addressed in a separate notice.

B. Summary of Actions for Facilities and Waterbodies

This section gives EPA Region V's decisions regarding the 12 facilities and 12 waterbodies for which additional comments were solicited on September 5, 1990. The decisions listed below reflect EPA Region V's conclusions after consideration of any and all comments received during the comment period. The comment period is closed for these waterbodies and facilities.

Status of ICS and Waterbody Approval/Disapproval

Waterbodies and facilities no longer required on the 304(1)(1) (B) and (C) lists:

State	Facility	Permit No.	Waterbody	POCs
IL	N. Chicago Refiners & Smelters	IL0002755	Pettibone Cr.	Cu, Pb, Ni, Zn.
WI	Fort Howard Corp.	WI0001848	Lower Fox Rr.	PCBs.

State	Facility	Permit No.
	Approved ICSs	
IL	Outboard Marine Corporation	IL0002267
MI	BASF Pigments Div	MI0000761

State	Facility	Permit No.
MI	Mead Paper—Escanaba	MI0000027
OH	Mead Paper—Chillicothe	OH0004481
WI	Consolidated Papers	WI0037991
WI	Nekoosa Papers	WI0003620

State	Facility	Permit No.
WI	Vulcan Chemicals	WI0003565

State	Facility	Permit No.
	Disapproved ICSs	
OH	Republic Engineered Steels....	OH0004871
WI	American Brass Company.....	WI00000299
WI	De Pere Wastewater Treatment Plant.	WI0023787

As explained above, the arguments which EPA Region V received regarding the listing of the Tuscarawas River did not compel EPA Region V to disapprove the listing of the waterbody. The Tuscarawas River will remain on the section 304(1)(1)(B) list for copper. Therefore the list of Ohio waterbodies developed pursuant to section 304(1)(1)(B) reported in the September 5, 1990, notice remains unchanged.

Any questions concerning the actions announced by EPA Region V today, may be directed to the individual identified above.

Dated: December 28, 1990.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 91–807 Filed 1–11–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications: Harbor Islands Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

Applicant, city and state	File No.	MM docket No.
	I	
A. Harbor Islands Broadcasting, Inc.; Wrightsville Beach, NC.	BPH–880519MA	90–557
B. Praise Broadcasting Network, Inc.; Wrightsville Beach, NC.	BPH–88051IME	
C. Wrightsville Beach Radio Limited Partnership; Wrightsville Beach, NC.	BPH–880519MI	
D. George S. Flinn, Jr.; Wrightsville Beach, NC.	BPH–880519NT	
E. David McGowan and E.L. Finch d/b/a Oleander Radio Partners; Wrightsville Beach, NC.	BPH–880519OJ	
Issue Heading and Applicants		
1. See Appendix, A		
2. See Appendix, A		
3. See Appendix, A		
4. Air Hazard, A, C, E		
5. Comparative, A–E		
6. Ultimate, A–E		
	II	
A. Grant County Broadcasters; Williamstown, KY.	BPH–890228MB	90–542
B. Grant County Broadcasting Company; Williamstown, KY.	BPH–890301MB	
Issue Heading and Applicants		
1. Comparative, A, B		
2. Ultimate, A, B		
	III	
A. LaVerne J. Falk; Whitewater, WI.	BPH–880823MD	90–541
B. Patrick L. Lopeman and Robert M. Weidenbaum d/b/a Whitewater Wireless Partnership; Whitewater, WI.	BPH–880824MQ	
C. Beth Ann & Beverly J. Peterson; Whitewater, WI.	BPH–880824MR	
D. Kingsley H. Murphy, Jr. Partnership; Whitewater, WI.	BPH–880824MU	
E. State Long Distance Telephone Company; Whitewater, WI.	BPH–880825MO	
F. Julie Ann Albrecht d/b/a Walworth Radio Company; Whitewater, WI.	BPH–880825NF	
G. Tri-M Communications, Inc.; Whitewater, WI.	BPH–880825NV	
H. Sheboygan County Broadcasting Co., Inc.; Whitewater, WI.	BPH–880825NZ	
Issue Heading and Applicants		
1. Financial, G		
2. Air Hazard, F, G		
2. Comparative, A–H		
3. Ultimate, A–H		
	IV	
A. Brian E. Lamont; Dennysville, ME.	BPH–880720MJ	90–556
B. Rosemary A. Chausse; Dennysville, ME.	BPH–880721MA	
Issue Heading and Applicants		
1. See Appendix, B		
2. See Appendix, B		
3. Comparative, A, B		
4. Ultimate, A, B		
	V	
A. Rogers Broadcasting, Inc.; St. James, MN.	BPH–890420MF	90–558
B. Bruce Linder; St. James, MN.	BPH–890420MG	
C. Radio Ingstad Minnesota, Inc.; St. James, MN.	BPH–890420MJ	
D. Robert J. Ramstorf; St. James, MN.	BPH–890420ML	
E. St. James FM, Inc.; St. James, MN.	BPH–890420MM	
Issue Heading and Applicants		
1. Comparative, A, B, C, D, E		
2. Ultimate, A, B, C, D, E		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Wrightsville, North Carolina)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of A (Harbor).

2. To determine whether A's (Harbor's) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether A (Harbor) possesses the basic

qualifications to be a licensee of the facilities sought herein.

Appendix (Dennysville, Maine)

1. To determine, whether B (Chausse) violated 47 CFR '1.65 of the Commission's Rules.

2. To determine, from the evidence adduced pursuant to Issue 1 above, whether B (Chausse) possesses the basic qualifications to be a Commission licensee.

[FR Doc. 91-834 Filed 1-11-91 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

HSBC Holdings Limited, Hong Kong; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Companies

HSBC Holdings Limited has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1824) to become a bank holding company. HSBC Holdings Limited has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire companies engaged in nonbanking activities that are listed in § 225.25 of Regulation Y or that have been approved by Board Order as closely related to banking and permissible for bank holding companies.

HSBC Holdings Limited, Hong Kong, has applied to become a bank holding company by acquiring 100 percent of the outstanding voting shares of The Hong Kong and Shanghai Banking Corporation Limited, Hong Kong, and thereby indirectly acquiring all of the outstanding voting shares of Kellett, N.V., Curacao, Netherlands Antilles, HSBC Holdings, B.V., Amsterdam, The Netherlands, Marine Midland Banks, Inc., Buffalo, New York, all registered bank holding companies, and Marine Midland Bank, N.A., Buffalo, New York. Upon the acquisition of Marine Midland Banks, Inc., Applicant will also acquire warrants to purchase up to 24.9 percent of the outstanding ordinary voting shares of Statewide Bancorp, parent of The First National Bank of Toms River and The First National Bank of New Jersey/Salem County, located in Toms River and Penns Grove, New Jersey, respectively.

Applicant also has applied to acquire indirtectly: American Interest Arbitrage Corporation and thereby engage in buying and selling fixed income securities for affiliates pursuant to *Hongkong and Shanghai Banking Corporation*, 72 Federal Reserve Bulletin 245 (1986); Carroll McEntee & McGinley Incorporated and thereby engage in dealing in government obligations pursuant to § 225.25(b)(16); CM&M Asset Management Company, Inc. and thereby engage in providing financial advice or management services pursuant to § 225.25(b)(4); CM&M Futures, Inc. and thereby engage in providing securities brokerage services and acting as a futures commission merchant pursuant to § 225.25(b)(15) and (b)(18); Concord Asset Management, Inc. and thereby engage in providing commercial finance and leasing services pursuant to § 225.25(b)(1) and (b)(5); Concord Commercial Corporation and thereby engage in providing commercial finance and leasing services pursuant to § 225.25(b)(1) and (b)(5) and letters from the Federal Reserve Bank of New York dated March 31, 1989 and September 10, 1987; Concord Leasing Inc. and thereby engage in providing commercial finance and leasing services pursuant to § 225.25(b)(1) and (b)(5) and letters from the Federal Reserve Bank of New York dated March 31, 1989, January 6, 1989, and September 10, 1987; Delaware Credit Corp. (USA) and thereby engage in providing commercial mortgage banking and other financing services pursuant to § 225.25(b)(1); Intermarket Securities Corporation and thereby engage in trading in money market instruments pursuant to § 225.25(b)(16); Investors Arbitrage Corporation and thereby engage in providing investment or financial advice pursuant to § 225.25(b)(4); James Capel Incorporated and thereby engage in financial and investment advisory services, securities brokerage, and futures commission merchant activities pursuant to *The Hongkong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990), and § 225.25(b)(18) and (b)(19); a 4.69 percent shareholding in Liberty Brokerage Inc. which engages in providing brokerage services for dealers in government securities pursuant to § 225.25(b)(15) and (b)(16); Marine Midland Business Loans, Inc. and thereby engage in providing asset-based financing services pursuant to § 225.25(b)(1); Marine Midland Capital Markets Corporation and thereby engage in providing securities brokerage and underwriting services pursuant to § 225.25(b)(15) and (b)(16); Marine Midland Leasing Corporation and thereby engage in providing equipment leasing services pursuant to § 225.25(b)(5); Marine Midland Mortgage (U.S.A.), Inc. and thereby engage in providing residential first mortgage loans pursuant to § 225.25(b)(1); Marine Midland Payment Services Inc. and thereby engage in providing the issuance of payment instruments pursuant to § 225.25(b)(12); Marine Midland Services Corporation and thereby engage in providing commercial lending and equipment leasing pursuant to § 225.25(b)(1) and (b)(5); Marinvest Inc. and thereby engage in providing investment advisory services pursuant to § 225.25(b)(4); Marmid Life Insurance Company and thereby engage in providing credit life and credit accident and health insurance as a reinsurer pursuant to § 225.25(b)(8); an 11.12 percent shareholding in New York Switch Corporation which engages in providing data processing and related activities pursuant to § 225.25(b)(7); TKM Mid-Americas Inc. and thereby engage in providing trade finance services pursuant to § 225.25(b)(1); U.S. Concord Inc. and thereby engage in providing commercial finance and leasing services pursuant to § 225.25(b)(1) and (b)(5); and Wardley Incorporated and thereby engage in financial and investment advisory services, securities brokerage, and futures commission merchant activities pursuant to *The Hongkong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990), and § 225.25(b)(18) and (b)(19).

Applicant has also applied for permission to acquire: Equator Limited and thereby engage in the activities of an export trading company pursuant to section 4(c)(14) of the Bank Holding Company Act; Marine Midland Trade, Inc. and thereby engage in activities of an export trading company pursuant to section 4(c)(14) of the Bank Holding Company Act; and Marine Midland Overseas Corporation, an agreement corporation chartered under section 25 of the Federal Reserve Act.

The applications are available for immediate inspection at the Federal Reserve Bank of New York. After the applications 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 on the question of 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 comply with § 262.3(e) of

the Board's Rules of Procedure (12 CFR 262.3(e)).

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 6, 1991.

Board of Governors of the Federal Reserve System, January 8, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-780 Filed 1-11-91; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Being Reviewed by the Office of Management and Budget; Multiple Award Schedule (MAS) Data Collections

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to approve information collections under control number 3090-0235 initially granted by OMB on April 30, 1987.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th and F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, Office of GSA Acquisition Policy (202-501-1224).

SUPPLEMENTARY INFORMATION:

A. Background and Description of the Information Collection

Under its multiple award schedule (MAS) program, GSA collects information as prescribed in the GSA MAS policy statement of October 1, 1982 (47 FR 50242, November 5, 1982). Specifically, the October 1982 policy statement requires an offeror when responding to a MAS solicitation to complete the Discount Schedule and Marketing Data (DSMD) sheets and to report price reductions under a resultant MAS contract. The DSMD requests certain pricing information on a sample of models which meet a commerciality test and have the highest volume sales under the MAS contract and for all models that do not meet the commerciality test. Such pricing information includes the amount of sales to Government and non-Government customers, sales to non-Government customers at catalog price less discount, if applicable, and at other than catalog price. It also requests information on the best discount from the catalog price given to various categories of customers and the best price at which the offeror sold the particular model. Other general information on an offeror's marketing practices, such as warranties, quantity discounts, trade-in allowances, return/exchange policy, cumulative discounts or other concessions, is also requested. The sales and discount information has practical utility in determining whether to grant an exemption from the statutory requirement for certified cost or pricing data based on catalog price, in establishing the Government's negotiation objectives, and in determining price reasonableness. With respect to the price reductions clause, the clause requires a MAS contractor to report certain price reductions. The purpose of the clause is to maintain the Government's price in relation to the price to the customer or category of customer upon which MAS award was predicated for the contract price. To maintain this relationship, the MAS contractor reports price reductions to the GSA contracting officer who, in turn, determines whether the price reductions affect the MAS price relationship. The MAS contract price is adjusted when the price reduction affects the MAS price relationship. Additionally, the MAS contractor must certify at the end of the MAS contract that all price reductions have been reported to the contracting officer.

In April 1987, OMB approved under control number 3090-0235, the information collection to support GSA's multiple award schedule (MAS) procurement program and resultant contracts. In approving this collection, OMB recognized the requirement for sales and discount information and price reductions information associated with the MAS program. When OMB initially approved these information collections under the control number 3090-0235, it was envisioned that such number would remain in effect pending action on GSA's proposed MAS policy clarifications, proposed GSAR change, and resulting information collections. Since then, GSA has used this control number for its information collections associated with the GSA MAS policy statement of October 1982. The control number remained on the OMB inventory of approved collections until it was deleted through inadvertent administrative action. GSA has requested expedited action by OMB to act within ten days to restore control number 3090-0235 to cover the information collections associated with the MAS policy statement of October 1982 that are described in the preceding paragraph. GSA has requested that this approval remain in effect for 18 months pending completion of the MAS review by GSA.

B. Annual Reporting Burden

Estimated as follows: DSMD sheets, 6,740 respondents and 101,100 hours; Price Reductions clause, 1,830 respondents and 12,720 hours.

Dated: January 8, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-748 Filed 1-11-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 28 and 29, 1991, 8 a.m., Conference Rm. D, Parklawn Bldg., Rockville, MD.

Type of meeting and contact person. Open public hearing, January 28, 1991, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4:30 p.m.; open public hearing, January 29, 1991, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 12:30 p.m.; open committee discussion, 12:30 p.m. to 3 p.m.; Jack Gertzog, Center for Drug Evaluation and Research, Rm. 8B-45 Food and Drug Administration, 5600

Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 22, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 28, 1991, the committee will discuss influenza vaccine formulation for the 1991–1992 flu season, and a review of the intramural scientific program; on January 29, 1991, the committee will discuss pertussis vaccine and the National Vaccines Program activities.

Closed committee deliberations. On January 28, 1991, the committee will discuss the intramural science evaluation. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). On January 29, 1991, the committee will discuss trade secret or confidential commercial information regarding a pending investigational new drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or

information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 7, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-776 Filed 1-9-91; 10:57 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N-91-3187]

Submission of Proposed Information Collection to OMB—Comprehensive Housing Affordability Strategy

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

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 proposal.

DATES: Comment due date: January 22, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by title and docket number and should be sent to both of the following:

Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Joan Campion, Rules Docket Clerk, Department of H.U.D., 451 Seventh Street., SW., Washington, DC 20410.

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) 708-2087. 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 expedited processing, an information collection package with respect to the requirement for State and local governments to develop Comprehensive Housing Affordability Strategies (CHAS).

A CHAS is comprised of fifteen statutory elements, principal among which are an assessment of housing assistance needs, a description of market conditions, a statement of resources available, and a plan of action to address the needs.

The information collection requirements in this package are required by title I of the Cranston-Gonzalez National Affordable Housing Act of November 28, 1990, Public Law 101-625. In order to receive direct funding for a wide variety of HUD programs, applicants that are governmental units must have an approved CHAS, and applicants that are not governments must obtain a certification that their applications are in compliance with the CHAS for the jurisdiction.

The Department is requesting comments by the public on the information collections within a short period of time. We are also requesting the Office of Management and Budget (OMB) to complete its paperwork review of the Comprehensive Housing Strategy Interim Rule by January 24, 1991, because time is of the essence in making this rule effective. An effective rule is needed at the earliest possible date because funding in the current fiscal year may depend on completion of a CHAS by a jurisdiction and approval of it by HUD, and funding in the next fiscal year almost certainly will. The process of developing a CHAS is time consuming, so jurisdictions need to know the requirements for one early in 1991.

The development of a CHAS requires a substantial period of time, because the jurisdiction is required by statute not only to assess housing assistance needs and develop a plan, but also to obtain citizen comments on its proposed strategy. Each jurisdiction is to obtain citizens comments by conducting public hearings. After the hearings the jurisdiction must summarize the citizen comments, and its final submission to HUD must reflect consideration of these comments. The rule from which these information collections is taken is being published as an interim rule, to take effect in early 1991, to allow enough time for jurisdictions to develop the capacity to do this data gathering and planning in sufficient time to submit a complete housing strategy no later than October of 1991.

Applicants for funding under most HUD programs will not have to certify to compliance with a CHAS until submitting applications for Fiscal Year 1992 funding (based on a CHAS submitted in October of 1991). However, applicants for funding under a few programs will have to certify to compliance before receiving Fiscal Year 1991 funding (based on a CHAS submitted considerably before October of 1991). These programs include Supportive Housing for Persons with Disabilities and Supportive Housing for the Elderly, authorized under section 801 of the Cranston-Gonzalez National Affordable Housing Act and section 202 of the Housing Act of 1959, respectively. If funding becomes available for the HOME program during Fiscal Year 1991, a CHAS certification will be required. The need to have the rule operational for these programs makes it all the more important that this rule and its information collections be effective as soon as possible.

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):

(1) *Title of the information collection proposal:* Comprehensive Housing Affordability Strategy.

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Community Planning and Development.

(3) *Description of the need for the information and its proposed use:* States and units of general local government are required to obtain HUD approval of, and to implement, a Comprehensive Housing Affordability Strategy (CHAS) as a condition for receiving funds made available under title II of the National Affordable Housing Act, the Housing and Community Development Act of 1974, the Stewart B. McKinney Homeless Assistance Act, and funds under various other program (described more fully in exhibit below).

(4) *Agency form number:* Not applicable at this time.

(5) *Members of the public who will be affected by the proposal:* State and local governments.

(6) *How frequently information submissions will be required:* Annually.

(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:* See the chart under

the heading "Findings and Certifications" in the exhibit below.

(8) *Type of Request:* New.

(9) *The names and telephone numbers of an agency official familiar with the proposal:* Nancy Blauvelt or David Cohen, Office of Urban Rehabilitation, (202) 708–2470.

Excerpts from the draft interim rule, 24 CFR part 91, that deal with information collections are set forth following my signature in this notice as an exhibit only. Asterisks (**) are used to indicate where material has been omitted from the draft interim rule. The paperwork burden is stated on a chart under the heading "findings and certifications" in the preamble of that document.

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: January 8, 1991.

Anna Kondrates,

Assistant Secretary for Community Planning and Development.

Exhibit 1—Draft Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 91

* * * * *

Comprehensive Housing Affordability Strategies

* * * * *

SUMMARY: President Bush signed the Cranston-Gonzalez National Affordable Housing Act of November 28, 1990. The Act affirms the national goal that every American family be able to afford a decent home in a safe and livable neighborhood. Among the new housing programs the Act created to assist State and local governments achieve this national housing policy are the HOME Investment Partnerships (created by title II of the Act) and the HOPE programs (created by titles IV, V and VII of the Act). The centerpiece to these new programs, as well as to management of existing programs, is the Act's requirement that State and local governments must have Comprehensive Housing Affordability Strategies. This rule implements section 105 of the Act, which prescribes the development of these housing strategies, as well as sections 107 and 108, which prescribe the citizen participation procedure for development of the housing strategies and the compliance procedures to be followed by State and local governments.

* * * * *

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in §§ 91.15, 91.20, 91.25, 91.30, 91.35, 91.40, 91.45, 91.50, 91.55, 91.70, and 91.75 of this rule have been submitted to the Office of Management and Budget (OMB) for expedited review under the Paperwork Reduction Act of 1980. When these collections have been approved, a Notice will be published to that effect in the **Federal Register.** Until that time no person may be subjected to a penalty for failure to comply with these information collection requirements.

The annual public reporting burden of these requirements, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is stated in the chart included under the heading of Findings and Certifications. We note that much of the data to be used by State and local governments to comply with the requirements of this rule is available from the Census Bureau, and that HUD will supply the jurisdictions with the relevant portions of that data, as well as with data on the HUD-assisted housing inventory, minimizing the burden on the jurisdictions. Send comments regarding burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development Rules Docket Clerk, at the address stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. At the end of the public comment period on this rule, the Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collections.

II. Background

Since Fiscal Year 1975, the Department has required the preparation of a local housing planning document as a condition to receipt of certain types of funding to local governments. First, a Housing Assistance Plan (HAP) was required under the Community Development Block Grant Program (and used in connection with assisted housing programs). Then, when the Stuart B. McKinney Homeless Assistance Act was enacted, a Comprehensive Homeless Assistance Plan (CHAP) was required as a condition of approval of funding for a locality's program to provide shelter for homeless persons. Now the Cranston-Gonzalez National Affordable Housing Act (Cranston-Gonzalez Act or the Act) has created a new planning document for use by States as well as units of general local government—the Comprehensive Housing Affordability Strategy (CHAS or housing strategy). This CHAS incorporates useful elements of the HAP and CHAP, and it will eventually replace both of them. Inclusion of all housing related elements in a single planning document will reduce the overall burden, and the resulting document will be a more useful tool for addressing housing needs. Instead of dealing with a specific funding source, the housing strategy will create the impetus for a jurisdiction to examine its housing needs in a holistic way, establish goals, and develop a plan for carrying out those activities.

The housing strategy will serve as an action-oriented management tool for States and local governments. It will also serve as a monitoring tool for HUD to determine how effectively a jurisdiction is satisfying the needs identified within available resources. In its CHAS, a State or local government will estimate the housing assistance needs of its very low-income, low-income, and moderate-income families, including the needs of homeless individuals and families, and will assess the availability of unassisted housing, assisted housing, and other resources for addressing these needs. On the basis of this information, the jurisdiction will develop a strategy for meeting these housing assistance needs over the next five years. Each year, the jurisdiction will decide how the available resources will be used to provide affordable housing for needy families.

The Comprehensive Housing Assistance Strategy document will consist of five components, each with tabular summaries and supporting narrative, that integrate the fifteen statutory items described in more detail in this rule. (References below to paragraphs are to the lettered paragraphs of both §§ 91.15 and 91.20, unless otherwise noted.) Beginning in FY 1993 (October 1, 1992), HUD will provide special tabulations of decennial census data from the U.S. Census Bureau as the Basis for the tabular summaries of need and market and inventory conditions integral to the first two components. the community may accept and submit this information as is, or may present its own updated estimates in a format at least as detailed, in accordance with standards prescribed by HUD. (Detailed

statistics will be optional for the 1991 and 1992 CHAS submissions, but jurisdictions will be responsible for providing estimates of need and market conditions on which to base the rest of the CHAS.) In addition, HUD will provide to jurisdictions, to the extent feasible, data on the HUD-assisted housing stock.

—The first part, the Needs Assessment, (corresponding to paragraphs a and b) will summarize available data on the current needs of the homeless and of income-eligible families with housing. Jurisdictions are required to project those needs for the ensuing five-year period.

—Part two, Market and Inventory Conditions, will summarize local market and inventory characteristics, including trends in population, household formation, and housing (paragraph c). Information on the assisted housing and the public housing stock (§ 91.15 (i)) will also be presented here.

—The third part, Strategies, will integrate the review of needs and conditions in a structured format, to determine priorities for investment over the ensuing five-year period (paragraph g). The relevant local polices (and State policies) (paragraph d), local institutional structure (paragraph e), and local activities to involve public housing residents in management and ownership (paragraph j) will be considered.

—Part four, Resources, will review the various types of resources needed and anticipated to be available to implement the strategy (including resources for homelessness, paragraph b), including the private, Federal, and non-Federal resources (paragraph f) and plans for coordination (paragraph h) and use of the Low-Income Housing Tax Credit (§ 91.20(i)). The summary table will show the dollars anticipated from each Federal program over the coming year, and indicate the State/local resources available to meet matching requirements for different types of uses.

—the final part, Implementation, translates the five-year strategy and the available resources into plans (paragraph g) and goals (paragraph n) for the number of families to be assisted in the ensuing year, including the number to be provided affordable housing as defined in the HOME Program (paragraph n) with the resources identified in the fourth part. It will also cover specifics of the plans for assisting the homeless (called for in paragraph b), and include monitoring details and certifications regarding fair housing and relocation (paragraphs k, l, and m).

The Act requires that, in order to receive funding under certain HUD programs, a State or unit of general local government must have a Comprehensive Housing Affordability Strategy that has been approved by HUD for a fiscal year. In addition, for certain other programs, the Act requires that an application include a certification of consistency of the proposal with an approved housing strategy for the jurisdiction in which the proposed project will be located. (All Section numbers stated throughout this Preamble relate to the Cranston-Gonzalez Act, unless otherwise noted.)

For FY 1991 funding, a certification is necessary for applications for the Supportive Housing for Persons with Disabilities Program, authorized under section 801 of the Act (to be a new CFR part 890), for the Supportive Housing for the Elderly Program, authorized under section 202 of the Housing Act of 1959 (to be a new part 889), and for the HOME Program (Section 215)—if funding becomes available this year.

With respect to many of the programs for which a certification of consistency is required, HUD has the discretion to continue using other planning documents for a period of time. The Department is exercising its authority to provide for a transition from the current planning documents (CHAP or HAP) until October 31, 1991, so that jurisdictions need not submit a housing strategy before October 1991 for the following programs: Homeless Housing Assistance, such as Emergency Shelter Grants (ESG) (part 576); Transitional Housing (part 577), Permanent Housing for Handicapped Homeless (part 578), Supplemental Assistance for Facilities to Assist the Homeless (part 579), and Single Room Occupancy for the Homeless (part 882, subpart H); Community Development Block Grants (CDBG, including Entitlements, Small cities, States, and Special Purpose) (part 570); Hope I, II and III Homeownership Programs (sections 411, *et seq.*; 421, *et seq.*; and 441, *et seq.*, respectively); Low-Income Housing Preservation (prepayment avoidance incentives, section 601); Shelter Plus Care (section. 837); and Housing Opportunities for Persons with AIDS (section 854).

Public Housing and Indian Housing funding and Section 8 assistance, generally, are not dependent on existence of, or certification of consistency with, an approved housing strategy for the jurisdiction. Programs that refer to the housing strategy, but do not require a certification of consistency with it, are the Section 8 Program—as one basis for determination of exception rents and allocation of funding (sections 543(b) and 556), and the Family Self-Sufficiency Program (section 554) for determination of when a public housing agency is not required to operate that type of program. In addition, as a homeless assistance program, the Section 8 Moderate Rehabilitation Single Room Occupancy is dependent on it (Section 441, McKinney Act).

Indian Tribes are not included in the Act's definition of a "jurisdiction", the entity charged with submitting a CHAS. The Department has concluded that they need not submit a housing strategy, and meed not submit a certification of consistency with a housing strategy. Therefore, there is no mention of Indian Tribes in the rule itself. The Indian CDBG Program, authorized by section 106 of the Housing and Community Development Act of 1974, The HOPE I Program, authorized by section 411 of this Act, and the HOPE III Program, authorized by section 441 of the Act, permit participation of Indian Tribes and Indian Housing Authorities,and those programs refer to certification of compliance with an approved housing strategy. However, the Department believes that, given the sovereign status of Indian Tribes, it would be inappropriate for a State to be deemed the "appropriate" jurisdiction to apply its housing strategy to programs administered by Indian Tribes.

III. Purposes of the Cranston-Gonzalez Act.

The purposes of the Act, as stated in Section 103 of the Cranston-Gonzalez Act, are the following:

(1) To help families not owning a home to save for a downpayment for the purchase of a home;

(2) To retain wherever feasible as housing affordable to low-income families those dwelling units produced for such purpose with Federal assistance;

(3) To extend and strengthen partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of housing affordable to low-income and moderate-income families;

(4) To expand and improve Federal rental assistance for very low-income families; and

(5) To increase the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

This rule's goal is to promote those purposes by requiring the preparation of a single planning document that encompasses a jurisdiction's housing needs, with a focus on affordable housing for low-income families. The objectives to be promoted through this planning process are to preserve affordable housing units developed with Federal assistance; to produce housing for low-income and moderate-income families through private-public partnerships; to expand the availability of rental assistance for very low-income families, to increase the supply of supportive housing, and to help families aspiring to become first-time homebuyers.

IV. Monitoring

Each jurisdiction with an approved housing strategy will monitor recipients of assistance for compliance with contractual requirements and applicable regulations, and it will report annually to HUD on the progress made in implementing its housing strategy. This rule imposes very few specific requirements beyond the statutory performance reports. After a year of experience with the system, a future rule may specify more detailed requirements.

V. Transition

In accordance with section 105(a), the Secretary has determined that Comprehensive Housing Affordability Strategies generally will first be submitted for Federal Fiscal Year 1992. The submissions will be due on October 31, 1991, to cover the period of October 1, 1991 through September 30, 1992. Housing strategies submitted by October 31, 1991 will be approved by December 30, 1991, if they are complete and are consistent with the purposes of the Act. If HUD finds that there are deficiencies in the CHAS, it could take up to an additional five months to correct these deficiencies. Funding decisions made after a strategy is approved will depend on the approved CHAS (perhaps as early as January 1992, for strategies submitted by October 31, 1991). Since funds may be made available for Fiscal Year 1992 early in calendar year 1992, it will be to a jurisdiction's benefit to start the process as early as possible, so that an approved CHAS will be in place when funding availability is announced.

The purpose of publishing this rule in early 1991 as an interim rule is to permit jurisdictions to know, at the earliest possible time, what may be required of them no later than early 1992. Most programs will require the submission of a CHAS or certification of compliance with a CHAS by October 31, 1991. The development of a CHAS, including solicitation of citizen comments in a public hearing process, will take at least six months. To be able to gear up to perform these tasks, many jurisdictions will need significant additional time, particularly if they have never before prepared such documents (such as several of the States).

In addition, there are two principal types of circumstances that would warrant submission of a housing strategy before October 1991: an application for funds under the HOME program, if Federal Fiscal Year 1991 funding becomes available for that program, or an application for FY 1991 funding under the Supportive Housing for the Elderly (section 202 of the 1959 Act) or Supportive Housing for Persons with Disabilities (section 811) Programs, which require a certification of consistency with an approved housing strategy. In either of these cases, the period to which the housing strategy applies should be greater than a 12-month period, starting from the date of submission and running through September 30, 1992.

If funds become available for the HOME Program in FY 1991 and a formula allocation is published, jurisdictions that want to participate will have only 30 days to notify the Department of their interest in participating, and only 90 days thereafter to submit a housing strategy. Unlike some other programs created by the Cranston-Gonzalez Act, there is no other planning document that is authorized to be substituted for the housing strategy in the HOME program.

Since funding during FY 1991 of the Supportive Housing Programs depends on certification of compliance with an approved housing strategy, that document must be submitted before the generally applicable submission date—in time to be approved as part of the funding award process. If funding is not available for the HOME Program when applications are solicited for the Supportive Housing Programs, and there is no State CHAS, then an abbreviated strategy may be submitted under § 91.25. In FY 1991, the abbreviated strategy may be the approved HAP for that jurisdiction or, if there is no approved HAP, an identification of needs of elderly persons or persons with disabilities, as appropriate, and a strategy to meet those needs.

It should also be pointed out that the applicant for funding may not always be a State or local government, responsible for submitting a CHAS. In the case of Supportive Housing for the Elderly or Persons with Disabilities, an application for funding will be submitted by a nonprofit corporation, which would have to obtain a certification from the State or local government that its application is consistent with the CHAS. If the jurisdiction does not anticipate applying for other forms of assistance for which approval of a CHAS is necessary, it must submit a housing strategy to enable applications for Supportive Housing for the Elderly or Persons with Disabilities to be funded in the jurisdiction. In such a case, the local jurisdiction will be permitted to submit an abbreviated housing strategy, with which it can certify the proposed project is consistent. (For FY 1991, the abbreviated strategy can be as described in the previous paragraph.)

This problem may not arise after fiscal year 1992, when States will, doubtless, have approved housing strategies. At that point, the applicant should seek certification of consistency with the approved strategy of the lowest level of government that has one. (If State and local governments do not submit housing strategies, they may, in effect, deprive their jurisdictions of funding for such programs.)

In some cases, States and localities now have their own housing affordability strategies. If, at the time a jurisdiction first submits a CHAS, whether for 1991 or 1992, it already has its own housing strategy that contains most of the elements required under this rule, it may comply with the CHAS requirements by submitting a modified version of its own strategy. With its strategy, the jurisdiction must supply information about the location of the HUD-required elements, supplemented with information required by HUD that is not included in its own strategy. In addition, this submission, including the supplement, must be prepared in compliance with the citizen participation requirements of this rule.

Since the Department recognizes that the CHAS imposes new requirements, it expects the first year or two to be a time for capacity building. In the first year, HUD will accept data already obtained by jurisdictions, delaying until October 1992 strict compliance with the requirement for detailed statistical presentation of household needs and market conditions. During the first year, HUD will work with jurisdictions on developing their CHAS, providing them with census data appropriate for the CHAS as soon as possible. It also will provide information developed by the Secretary's Task Force on Affordable Housing, which will be useful in determining the effects of public policy on affordable housing. Any data other than that from the U.S. Decennial Census that is used for the CHAS must conform with HUD standards, to be specified in administrative instructions.

Findings and Certifications

Information collection requirements. The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on the public reporting burden of the provisions of this rule that the Department has determined contain information collection requirements is provided as follows:

ANNUAL REPORTING BURDEN INTERIM RULE—COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY COMPLETE SUBMISSION (EVERY 5 YEARS)

Description	Respond-ents	Annual Hrs.	Hourly Rate	Annual Cost
CHAS (§§ 91.15, 91.20, 91.25, 91.30, 91.35, 91.55, 91.70)	1078	240	$15.00	$3,880,000
Citiz. part. (§§ 91.40, 91.45, 91.50)	1078	[1] 8	15.00	129,360
Publica. cost (§ 91.40(b))	1078		($100 per year)	107,800
Perf. Rep. (§ 91.75)	1078	40	15.00	646,800
Total Annual Cost to Jurisdictions				$4,764,760
Annual Updates (following 4 years)				
CHAS	1078	80	$15.00	$1,293,600
Citizen participation	1078	[1] 8	15.00	129,360
Publication costs	1078		($100 per year)	107,800
Performance report	1078	40	15.00	646,800
Total Annual Cost to Jurisdictions				$2,177,560

[1] It is anticipated that jurisdictions that are CDBG recipients will hold their CHAS public hearings in conjunction with their CDBG public hearings.

Accordingly, a new part 91 is added to title 24 of the Code of Federal Regulations, to read as follows:

PART 91—STATE AND LOCAL HOUSING AFFORDABILITY STRATEGIES

Subpart A—General

Sec.
91.1 Purpose and applicability.
91.5 Definitions.
91.10 Review by courts.

Subpart B—Contents of Strategy

91.15 Strategy for a unit of general local government.
91.20 Strategy for a State.
91.25 Abbreviated strategy.

Subpart C—Coordination and Consultation

91.30 Coordination of State and local housing strategies.
91.35 Consultation with social service agencies.

Subpart D—Citizen Participation

91.40 Preparation of housing strategy.
91.45 Substantial amendment to housing strategy or submission or performance report.
91.50 Resolution of citizen complaints.

Subpart E—HUD Review and Approval

91.55 Submission of housing strategy.
91.60 Approval of a strategy.
91.65 Actions in case of disapproval of a strategy.
91.70 Amendment and resubmission of a housing strategy.

Subpart F—Performance Reports and Reviews

91.75 Performance reports.
91.80 HUD performance reviews.

Subpart G—Miscellaneous

91.99 Waiver authority.

Authority: Secs. 101–108, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, 105 Stat. 4079); sec. 7(d), Department of Housing and Urban Development Act of 1965 (42 U.S.C. 3535(d)).

Subpart A—General

§ 91.1 Purpose and applicability.

(2) *Programs covered.* Proposed housing activities to be funded under the following programs will be approved by HUD only if there is a certification of consistency with an approved housing strategy covering the jurisdiction in which the housing is to be located (Under some of these programs there are transition provisions delaying the effective date of their reliance on the CHAS—check the regulations for the individual programs.):

(i) The HOME Program (title II of the Act);

(ii) The HOPE I (Public Housing Homeownership) Program (sections 411–419 of the Act, adding title III to the United States Housing Act of 1937);

(iii) The HOPE II Program (Homeownership for Tenants of Multifamily Projects) (Sections 421–431 of the Act);

(iv) The HOPE III Program (Homeownership of Single Family Property) (sections 441–448 of the Act);

(v) The Low—Income Housing Preservation Program (prepayment avoidance incentives, sections 601–613, creating the Low-Income Housing Preservation and Resident Homeownership Act of 1990);

(vi) The Shelter Plus Care Program (sections 451–484 of the Stewart B. McKinney Homeless Assistance Act, as amended by Section 837 of the Act);

(vii) The Housing Opportunities Program for Persons with AIDS (sections 851–863 of the Act);

(viii) The Supportive Housing for the Elderly Program (Section 202 of the Housing Act of 1959, as amended by section 801 of the Act; 24 CFR part 889);

(ix) The Supportive Housing for Persons with Disabilities Program (section 811 of the Act, 24 CFR part 890);

(x) The Homeless Housing Assistance Programs (sections 411–443 of the Steward B. McKinney Homeless Assistance Act; see 24 CFR parts 576, 577, 578, 579, and subpart H of Part 882); and

(xi) The Community Development Block Grant Programs—Entitlement, Small Cities, States and Special Purpose (sections 106 and 107 of the Housing and Community Development Act of 1974, section 905 of the Act; see 24 CFR part 570).

(3) *Programs not covered.* Public Housing and Indian Housing funding (authorized under titles I and II of the United States Housing Act of 1937) is not dependent on the existence of, or a certification of compliance with, an approved housing strategy for the jurisdiction. Section 8 funding is not dependent on the existence of, or certification of compliance with, an approved housing strategy, except for the section 8 Moderate Rehabilitation Single Room Occupancy Program (authorized under section 441 of the McKinney Act). However, HUD funding allocations for the section 8 Certificate and Voucher Programs are to be made in a way that enables participating jurisdictions to carry out their housing strategies (section 556 of the Act). In addition, one basis for approval of rents for the section 8 Programs that are higher than 110 percent of the fair market rents for the area based on special local conditions is a HUD determination that implementation of the approved housing strategy for the area requires the higher rents (section 543(b) of the Act).

§ 91.5 Definitions.

Act. The Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, 104 Stat. 4079).

Annual update. A submission by a jurisdiction to HUD in a year in which a complete submission is not required (in accordance with § 91.55(b)), which provides new information for the next year about all the elements required by

§ 91.15 of § 91.20, as appropriate, including new certifications about fair housing enforcement and relocation assistance (see §§ 91.15(m) and 91.20(m)).

Certification. A written assertion, based on supporting evidence which must be kept available for inspection by HUD, by the Inspector General of HUD, and by the public. The assertion shall be deemed to be accurate unless HUD determines otherwise, after inspecting the evidence and providing due notice and opportunity for comment.

Complete submission. a strategy that fulfills the requirements of § 91.15 or § 91.20, as appropriate, with respect to the entire five year period to follow.

Cost burden. The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Disabled family. A household composed of one or more persons at least one of whom is an adult (a person of at least 18 years of age) who has a disability. A person shall be considered to have a disability if the person is determined to have a physical, mental or emotional impairment that (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that the ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–6007). The term "disabled family" also includes the surviving member or members of any household described in the first sentence of this paragraph who were living in an assisted unit with the deceased member of the household at the time of his or her death.

Elderly family. Family in which the head of the household or spouse is at least 62 years of age.

Family. A household comprised of one or more individuals.

Housing. Includes manufactured housing and manufactured housing lots.

Housing strategy (CHAS). A Comprehensive Housing Affordability Strategy prepared in accordance with this part, consisting of either a complete submission or an annual update.

HUD. The United States Department of Housing and Urban Development.

Jurisdication. A State or unit of general local government.

Large families. Families of five or more persons.

Large family unit. Unit of at least three bedrooms.

Low-income families. Families whose income do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent if the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs of fair market rents, or unusually high or low family incomes.

Moderate-income families. Families whose incomes are between 80 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Overcrowding. More than one person per room.

Participating jurisdiction. Any State or unit of general local government that has been so designated in accordance with the HOME Program (title II of the Act).

Resubmission. A revised housing strategy submitted to HUD in response to HUD's disapproval of a previous proposed housing strategy.

Severe cost burden. The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, as published by the U.S. Census Bureau.

State. Any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Substantial amendment. A major change in a housing strategy submitted between scheduled annual submissions. It will usually involve a change to the goals or the plan, which may be occasioned by a decision to apply for assistance under a program not previously mentioned in the strategy.

Unit of general local government. A city, town, township, county, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, Palau, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with the HOME Program (title II of the Act); and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to HUD assistance.

Very-low income families. Low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

§ 91.10 Review by courts.

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Subpart B—Contents of Strategy

§ 91.15 Strategy for a unit of general local government.

The comprehensive housing affordability strategy must be submitted in a form that is approved by HUD, and it must contain the following information based on the most recent data published by the U.S. Census Bureau, or data collected locally in conformance with HUD standards:

(a) *Needs data.* A description of the jurisdiction's current needs for housing assistance for very low-income, low-income, and moderate-income families and estimates of needs for the ensuing five-year period.

(1) Information must include available data on the structural condition of housing, the extent of overcrowding and cost burden, including severe cost burden, and the extent to which families already receive housing assistance, ownership or rental status, and family type, including elderly families, families with children (including large families), disabled families, and single persons.

(2) Information must be presented separately for families for whom inadequate housing is a factor in foster home placement of children; for families requiring supportive services in connection with housing, including families who are participating in an organized program to achieve economic independence and self-sufficiency and persons with acquired immunodeficiency syndrome; for persons residing in the jurisdiction, and persons working in the jurisdiction but not residing there; and for any other households that are potentially eligible for housing or homeless assistance under Federal programs.

(3) In addition, this needs assessment shall include information on the need for housing of households not requiring assistance.

(4) Information presented in accordance with paragraphs (1), (2) and (3) must be specified by racial and ethnic status;

(b) *Homeless assistance needs and strategy.* A description of the nature and extent of homelessness within the jurisdiction, including the estimated number and special needs of homeless persons who are mentally ill, alcoholic, or drug abusers, runaway or abandoned youth, abused spouses, veterans, persons with acquired immunodeficiency syndrome, and other categories that HUD may specify, with racial and ethnic status indicated, to the extent available. Information on these populations must be organized by whether the persons have a primary nighttime residence that is a shelter or that is a place not ordinarily designed for, or used as, a regular sleeping accommodation for human beings. The description must include a brief inventory of the facilities (including overnight sleeping capacity and occupancy) and services within the various geographic areas that address the needs of homeless persons. The description also must include the jurisdiction's strategy for providing (1) Emergency shelter and services, (2) housing and services for transition to permanent housing and independent living, and (3) housing and supportive services for those not capable of achieving independent living. The strategy also must include a description of the characteristics and special needs of low-income families who are in imminent danger of becoming homeless and an action plan to help these families avoid emergency shelters;

(c) *Market characteristics.* A description of the significant characteristics of the jurisdiction's housing market, indicating how the current and anticipated conditions in the area will influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units. The information must include data on total population, household population, and total housing inventory, to provide context and to assure that trends are accurately represented. Data on the housing inventory must include the ownership or rental status of the units, whether they are occupied or vacant, their structural condition or habitability, their cost and size, and should indicate whether units are suitable for occupancy by elderly families, disabled families, families with children, and any other applicable categories of need identified elsewhere in the housing strategy statement, including any identified special housing needs. The inventory also must include an assessment of the extent of concentration of racial/ethnic minorities and of low-income families in the jurisdiction, along with the locations of these concentrations. Data must be presented separately regarding the use of all government assisted housing and homeless resources already available to address identified needs, such as public housing, section 8 and section 235/236 housing, homeless shelters and services, and any State or locally funded programs. For all types of assisted housing, information must be provided, to the extent practicable, on the number of units in the program, the number of habitable units, and the number of units occupied as of a recent date, and, with respect to rental housing, whether units are expected to be lost from the assisted housing inventory for any reason, including public housing demolition or conversion to homeownership, or prepayment or voluntary termination of a Federally assisted mortgage;

(d) *Relevant public policies.* An explanation of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by State or local public policies, as embodied in statutes, ordinances, regulations, or administrative procedures and processes. Of particular concern are the policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential investment. The explanation must describe the jurisdiction's strategy to remove or ameliorate any negative effects of these policies, including any effects contributing to concentration of racial/ethnic minorities;

(e) *Institutional structure.* An explanation of the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the jurisdiction will carry out its housing strategy. The explanation must assess the strengths and gaps in that delivery system and describe what the jurisdiction will do to overcome those gaps;

(f) *Resources.* An indication of how Federal funds expected to be made available to the jurisdiction in the next year will be used to leverage private and non-Federal public resources that are reasonably expected to be available.

(1) *Private resources.* A statement of resources from private sources, such as financial institutions, pension funds, foundations and non-profit organizations, that are reasonably expected to be made available to carry out the purposes of the Act, as stated in § 91.1, and the extent to which they will be used in connection with government funds;

(2) *Government resources.* A statement identifying the resources reasonably expected to be made available to the jurisdiction from HUD, other Federal, or State and local governments for rental assistance, homeless assistance, production of new units, rehabilitation of existing units, acquisition of existing units, and any other assistance provided to carry out the purposes of the Act, as stated in § 91.1. These resources will include, where the jurisdiction deems it appropriate, the identification of any publicly owned land or property located in the jurisdiction that may be used to carry out the purposes of the Act.

(g) *Plan.* A statement setting forth the jurisdiction's plan for investment or other use of housing funds and other assistance anticipated under the title II of the Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Steward B. McKinney Homeless Assistance Act, and other programs covered under this part, during the next year, and over the next five-year period, indicating the general priorities for allocating investment geographically within the jurisdiction and among different activities and housing needs, including new homeownership. The plan must include estimates of assistance to be provided for the same categories of need, using the same definitions, as the needs data provided in paragraph (a) and (b) of this section;

(h) *Intergovernmental cooperation.* A description of the means of cooperation and coordination between the unit of general local government and the State in the development, submission, and implementation of their housing strategies;

(i) *Public housing stock.* A description of the number of public housing units in the jurisdiction, their physical condition, and the restoration and revitalization needs of public housing projects within the jurisdiction. The strategy of the jurisdiction and the public housing agency for improving the management and operation of public housing projects and for improving the living environment of low- and very low-income families residing in public housing must be included;

(j) *Public housing homeownership.* A description of the jurisdiction's activities

to encourage public housing residents to become more involved in management and to participate in homeownership;

(k) *Monitoring procedures.* A description of the standards and procedures the jurisdiction will use to monitor activities authorized under the Act and to ensure long-term compliance with the provisions of the Act;

(l) *Fair housing.* A certification that the jurisdiction will affirmatively further fair housing;

(m) *Replacement of low-income housing and relocation assistance.* A certification that the jurisdiction is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)), to the extent those requirements are applicable; and

(n) *Goals.* A statement of the number of families that will be assisted using funds reasonably expected to be made available from HUD, either alone or in combination with other sources, as identified in accordance with paragraph (f) of this section. Of those families, a statement of the number of families for whom the jurisdiction will provide affordable housing, as defined in the HOME Program, authorized by section 215 of the Act. Information must be displayed for new homeownership and for the various groups as it is for the needs data, described in paragraph (a) of this section.

§ 91.20 Strategy for a State.

In formulating its housing strategy for the State, the State government must include data covering all areas within the State, both metropolitan and non-metropolitan areas. A State may use a housing strategy prepared by a unit of general local government to cover that portion of the State's jurisdiction, by appending the local government's document to its own, but it is not required to do so. (See § 91.30 concerning coordination of State and local housing strategies.) The housing strategy submitted to HUD by the State must contain the elements that follow. Data on needs for housing assistance (paragraph (a)), for homeless assistance (paragraph (b)), and for market characteristics (paragraph (c)), may be presented by different geographic areas within the State. The data may be presented by metropolitan area, county, unit of general local government, or some combination thereof, such as a recognized planning district. The comprehensive housing affordability strategy must be submitted in a form that is approved by HUD, and it must contain the following information based on the most recent data published by the U.S. Census Bureau, or data collected locally in conformance with HUD standards:

(a) *Needs data.* A description of the jurisdiction's current needs for housing assistance for very low-income, low-income, and moderate-income families and estimates of needs for the ensuing five-year period, by metropolitan and non-metropolitan areas.

(1) Information must include available data on the structural condition of housing, the extent of overcrowding and cost burden, including severe cost burden, and the extent to which families already receive housing assistance, ownership or rental status, and family type, including elderly families, families with children (including large families), disabled families, and single persons.

(2) Information must be presented separately for families for whom inadequate housing is a factor in foster home placement of children; for families requiring supportive services in connection with housing, including families who are participating in an organized program to achieve economic independence and self-sufficiency and persons with acquired immunodeficiency syndrome; for persons residing in the jurisdiction, and persons working in the jurisdiction but not residing there; and for any other households that are potentially eligible for housing or homeless assistance under Federal programs.

(3) In addition, this needs assessment shall include information on the need for housing of households not requiring assistance.

(4) Information presented inaccordance with paragraphs (1), (2) and (3) must be specified by racial and ethnic status;

(b) *Homeless assistance needs and strategy.* A description of the nature and extent of homelessness within the State, including the estimated number and special needs of homeless persons who are mentally ill, alcoholic, or drug abusers, runaway or abandoned youth, abused spouses, veterans, persons with acquired immunodeficiency syndrome, and other categories that HUD may specify, with racial and ethnic status indicated, to the extent available. Information on these populations must be organized by whether the persons have a primary nighttime residence that is a shelter or that is a place not ordinarily designed for, or used as, a regular sleeping accommodation for human beings. The description must include a brief inventory of the facilities (including overnight sleeping capacity and occupancy) and services within the various geographic areas that address the needs of homeless persons. The description also must include the State's strategy for providing (1) Emergency shelter and services, (2) housing and services for transition to permanent housing and independent living, and (3) housing and supportive services for those not capable of achieving independent living. The strategy also must include a description of the characteristics and special needs of low-income families who are in imminent danger of becoming homeless and an action plan to help these families avoid emergency shelters;

(c) *Market characteristics.* A description of the general characteristics that pertain throughout the State and, to the extent practicable, specific housing market conditions within individual housing market areas that differ from the general characteristics. This description must indicate how the current and anticipated conditions in the various areas will influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units. The information must include data on total population, household population, and total housing inventory, to provide context and to assure that trends are accurately represented. Data on the housing inventory must include the ownership or rental status of the units, whether they are occupied or vacant, their structural condition or habitability, their cost and size, and should indicate whether units are suitable for occupancy by elderly families, disabled families, families with children, and any other applicable categories of need identified elsewhere in the housing strategy statement, including any identified special housing needs. The inventory also must include an assessment of the extent of concentration of racial/ethnic minorities and of low-income families in the various geographic areas of the State along with the locations of these concentrations. Data must be presented separately regarding the use of all government assisted housing and homeless resources already available to address identified needs, such as public housing, section 8 and section 235/236 housing, homeless shelters and services, Farmers Home Administration funded programs, and any State or locally funded programs. For all types of assisted housing, information must be provided, to the extent practicable, on the number of units in the program, the number of habitable units, and the number of units occupied as of a recent date, and, with respect to rental housing, whether units are expected to be lost

from the assisted housing inventory for any reason, including public housing demolition or conversion to homeownership, or prepayment or voluntary termination of a Federally assisted mortgage;

(d) *Relevant public policies.* An explanation of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the geographic area of the State are affected by State as well as local public policies, as embodied in statutes, ordinances, regulations, or administrative procedures and processes. The State must consider the extent to which its policies are encouraging the removal of barriers to affordable housing. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential investment. The explanation must describe the State's strategy to remove directly or ameliorate any negative effects, as well as to work with the units of general local government involved to remove or ameliorate any negative effects, including effects of local policies contributing to concentration of racial/ethnic minorities. The strategy should consider direct State action, reform of State enabling legislation to remove or ameliorate any negative effects of local policies, encouragement of use of model codes and standards, and provision of technical assistance for local governments;

(e) *Institutional structure.* An explanation of the institutional structure at the State level, such as a State Housing Finance Agency or a State-wide non-profit organization, through which the State will carry out its housing strategy. The explanation must assess the strengths and gaps in that delivery system and describe what the State will do to overcome those gaps;

(f) *Resources.* An indication of how Federal funds expected to be made available to the State in the next year will be used to leverage private and non-Federal public resources.

(1) *Private resources.* A statement of resources from private sources, such as financial institutions, pension funds, foundations and non-profit organizations, that are reasonably expected to be made available to carry out the purposes of the Act, as stated in § 91.1, and the extent to which they will be used in connection with government funds;

(2) *Government resources.* A statement identifying the resources reasonably expected to be made available from HUD, other Federal agencies or the State for rental assistance, homeless assistance, production of new units, rehabilitation of existing units, acquisition of existing units, and any other assistance provided to carry out the purposes of the Act, as stated in § 91.1. These resources will include, where the State deems it appropriate, the identification of any Federally or State-owned land or property located in the geographic area that may be used to carry out the purposes of the Act.

(g) *Plan.* A statement setting forth the State's plan for investment or other use of housing funds and other assistance anticipated under the title II of the Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, the Stewart B. McKinney Homeless Assistance Act, and other programs covered under this part, during the next year, and over the next five-year period, indicating the general priorities for allocating investment geographically within the State and among different activities and housing needs, including new homeownership. If the State plans to distribute its funds competitively, it should describe its priorities for distribution and its procedure. The plan must specifically provide for the distribution of assistance to non-metropolitan areas in amounts that take into account the non-metropolitan share of the State's total population. The plan must include estimates of assistance to be provided for the same categories of need (using the same definitions) as the needs data provided in paragraph (a) of this section;

(h) *Intergovernmental cooperation.* A description of the means of cooperation and coordination between the State and the unit of general local government, and between States if appropriate, in the development, submission, and implementation of their housing strategies;

(i) *Tax credits.* A description of the State's strategy to coordinate the Low-Income Tax Credit with development of housing for which rents are affordable to very low-income and low-income families, as determined in accordance with U.S. tax law;

(j) *Public housing homeownership.* A description of the State's activities to encourage public housing residents to become more involved in management and to participate in homeownership;

(k) *Monitoring procedures.* A description of the standards and procedures the State will use to monitor activities authorized under the Act and to ensure long-term compliance with the provisions of the Act, whether administered directly by the State or through a unit of general local government;

(l) *Fair housing.* A certification that the State will affirmatively further fair housing. A similar certification must be required of any unit of general local government to which the State allocates HUD funds;

(m) *Replacement of low-income housing and relocation assistance.* A certification that the State is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)), to the extent those requirements are applicable. A similar certification must be required of any unit of general local government to which the State allocates HUD funds; and

(n) *Goals.* A statement of the number of families that will be assisted using funds reasonably expected to be made available within the area from HUD, either alone or in combination with other sources, as identified in accordance with paragraph (f) of this section. Of those families, a statement of the number of families for whom the State will provide affordable housing, as defined in the HOME Program, authorized by section 215 of the Act. Information must be displayed for new homeownership and for the various groups as it is for the needs data, described in paragraph (a) of this section.

§ 91.25 Abbreviated Strategy

A jurisdiction that is not expected to be a participating jurisdiction may submit an abbreviated housing strategy that is appropriate to the types and amounts of assistance sought from HUD. The elements of strategies required under §§ 91.15 and 91.20 must be included except to the extent that they are clearly unnecessary or inapplicable, as determined by HUD.

Subpart C—Coordination and Consultation

§ 91.30 Coordination of State and Local Housing Strategies

States and units of general local government that are participating jurisdictions must establish a method of coordinating the development and implementation of their housing strategies. States are encouraged to take a leadership role in convening and coordinating meetings to coordinate efforts to increase the availability of affordable housing. A State may adopt

the housing strategy of a unit of general local government as its own for that geographic area of the State, provided that this procedure does not delay the State's submission. A unit of general local government need not seek approval of any elements of its housing strategy by the State government, nor may the State require such approval for purposes of this part.

§ 91.35 Consultation With Social Service Agencies

In the preparation of its housing strategy, a jurisdiction must make reasonable efforts to confer with appropriate social service agencies regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by the agencies.

Subpart D—Citizen Participation

§ 91.40 Preparation of Housing Strategy

Before submitting a housing strategy under this part, a jurisdiction must—

(a) Make available to its citizens, public agencies, and other interested parties information concerning the amount of assistance the jurisdiction expects to receive and the range of investment or other uses of the assistance that the jurisdiction may undertake;

(b) Make the proposed housing strategy for the jurisdiction available to the public by publishing a summary of the strategy in an appropriate number of newspapers of general circulation, and by offering copies of the entire strategy itself at an appropriate number of local libraries, local government offices and other appropriate public places. The length of time provided for affected citizens, public agencies, and other interested parties to examine its content and to submit comments on the proposed housing strategy must be reasonable (at least sixty days, except thirty days in the case of a strategy to be submitted before October 1991);

(c) Hold one or more public hearings to obtain the views of citizens, public agencies, and other interested parties on the housing needs of the jurisdiction. The hearings held on the housing strategy may be combined with other public hearings required in the CDBG programs, provided that the two subjects are treated separately. In the case of a State, there must be an appropriate number of hearings held in various parts of the State to effectively solicit comments from the public affected by the housing strategy;

(d) Provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of any assistance the jurisdiction may have received during the preceding five years; and

(e) Consider any comments or views of citizens. A summary of these comments or views must be attached. The submitted housing strategy or substantial amendment must be made available to the public.

§ 91.45 Substantial Amendment to Housing Strategy or Submission of Performance Report

Before submitting any performance report or substantial amendment to a housing strategy under this section, a participating jurisdiction must provide citizens with reasonable notice of, and opportunity to comment on, the performance report or substantial amendment, and it must consider any comments or views of citizens. When a substantial amendment to a housing strategy, or a performance report is submitted, it must include a summary of citizen views received. The amendment or report must be made available to the public.

§ 91.50 Resolution of Citizen Complaints

A jurisdiction must establish appropriate and practicable procedures to handle complaints from citizens related to the housing strategy or performance reports. At a minimum, the jurisdiction must respond to every written citizen complaint, either orally or in writing, within an established period of time.

Subpart E—HUD Review and Approval

§ 91.55 Submission of Housing Strategy

(a) *General.* A housing strategy (either a complete submission or an annual update) must be submitted annually. To assure eligibility for HUD competitive grant funding and favorable allocation of Section 8 Program funding, the housing strategy should be submitted by October 31 of each year. It will cover the period from October 1 of that year through September 30 of the following year, unless, because of submission late in a fiscal year, the HUD Field Office approves a longer period that ends on September 30. (During the period from [INSERT EFFECTIVE DATE] until October 31, 1991, a jurisdiction may submit a housing strategy to HUD for approval that covers the period from the date of submission through September 30, 1992.) Before funding for any fiscal year can be approved under a program requiring certification of compliance with an approved housing strategy, the jurisdiction must have submitted a housing strategy that has been approved in accordance with § 91.60.

(b) *Type of submission.* The first time a housing strategy is submitted, it must be a complete submission (as defined in § 91.5). Thereafter, the annual submission may be an annual update, as defined in § 91.5, until five years after the previous complete submission. A complete submission may need to be made more frequently than every five years if a significant change has occurred in the locality's housing market, because of a natural disaster or other factors, or if more recent data or information become available that would have a significant impact on the housing needs assessment and the housing plan. However, if major new census data become available, a complete housing strategy must be submitted. Whenever a complete submission is made, the five-year cycle starts over again.

§ 91.60 Approval of a Strategy

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§ 91.65 Actions in Case of Disapproval of a Strategy

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§ 91.70 Amendment and Resubmission of a Strategy

HUD will permit amendments to, or resubmission of, any housing strategy that is disapproved, for a period of 45 days following the date of first disapproval. HUD will approve or disapprove a housing strategy within 30 days after receiving the amendments or resubmission.

Subpart F—Performance Reports and Reviews

§ 91.75 Performance Reports

(a) *General.* Each jurisdiction that has an approved housing strategy shall annually review and report, in a form prescribed by HUD, on the progress it has made in carrying out its housing strategy. This report must include an evaluation of the jurisdiction's progress in meeting its goal of serving the number of families described in accordance with § 91.15(n) or § 91.20(n). The report must provide information on the number and types of households served, including the number of very low-income, low-income, and moderate-income persons served and the racial and ethnic status of persons served that were assisted with funds made available.

(b) *Submission.* Reports must be submitted no later than October 31 of each year following the year of approval of the first housing strategy, covering the

period of October 1 through September 30 of the year just ended.

(c) *Failure to report.* If a jurisdiction fails to submit a report satisfactory to HUD in a timely manner, HUD may take one of the following actions with respect to assistance to the jurisdiction under title II of this Act, the Housing and Community Development Act of 1974, or the Stewart B. McKinney Homeless Assistance Act:

(1) Suspend assistance until a satisfactory report is submitted to HUD; or

(2) Withdraw and reallocate the assistance if HUD finds, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report. The hearing must be presided over by an administrative law judge appointed under 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344. Hearing will be governed by the procedures set forth at 24 CFR part 30, subpart D.

§ 91.80 HUD Performance Reviews

(a) *General.* HUD must review the activities of each jurisdiction that has an approved housing strategy at least annually to assure that the purposes of the Act, as described in § 91.1, are being carried out. The review must include, insofar as practicable, on-site visits by HUD employees and must include an assessment of the jurisdiction's—

(1) Management of funds made available under programs administered by HUD;

(2) Compliance with its housing strategy;

(3) Accuracy in the preparation of performance reports under § 91.80; and

(4) Efforts to ensure that housing assisted under programs administered by HUD are in compliance with contractual agreements and the requirements of law.

(b) *Report by HUD.* HUD must report to the jurisdiction on its performance review in writing and give the jurisdiction not less than 30 days to review and comment on the report. After taking into consideration the comments of the jurisdiction, HUD may revise the report and must make the jurisdiction's comments and the report, with any revisions, readily available to the public within 30 days after receipt of the jurisdiction's comments.

Subpart G—Miscellaneous

§ 91.99 Waiver Authority

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[FR Doc. 91-831 Filed 1-11-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-01-4212-21; N-52775]

Realty Action; Proposed Change of Use of Airport Lease, White Pine County, NV

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Proposed Change of Use; White Pine County, Nevada.

SUMMARY: It is proposed to change the use of an existing public airport (N-38766), now under lease to Placer U.S., Inc., to a private airstrip (N-52775). The lessee has applied for a change of use. The existing airport is authorized under the Act of May 24, 1928 (70 Stat. 728; 49 U.S.C. 211). The proposed private use lease would be issued noncompetitively under the provisions of section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762) in accordance with the provisions of 43 CFR part 2920. The proposed private airstrip is for the exclusive use of Placer Dome U.S., Inc. and involves a 38.87 acre strip of land located within the following described public land:

Mount Diablo Meridian, Nevada

T. 24 N., R. 56 E.,
Sec. 23 S½SE¼;
Sec. 26 NW¼NE¼, E½NW¼, SW¼NW¼, N½SW¼.

A more detailed description of the land involved can be obtained from the address given below.

The airstrip would be maintained in its existing condition. No new surface disturbance is proposed. The lease would be authorized for a term of 10 years and could be renewed at the discretion of the Authorized Officer. No appraisal has been made at this time; therefore, no estimate of rent is available. However, rent will not be less than the appraised fair market value.

The airstrip would be operated in accordance with Federal Aviation Administration requirements.

COMMENT DATES: On or before March 22, 1991, interested parties may submit comments to the Bureau of Land Management at the address given below. Any adverse comments will be evaluated by the Bureau of Land Management, Nevada State Office Director, who may sustain, vacate, or modify this realty action. In the absence of any timely objections, this realty action will become the final determination of the Department of the Interior.

FURTHER INFORMATION: Information related to cost reimbursement, terms and conditions, application procedures or other information concerning this proposed lease is available by contacting Shirley Hawkins or Ron Sjogren at the Bureau of Land Management, Ely District Office, HC33 Box 150, Ely, NV 89301-9408, telephone (702) 289-4865.

Dated: January 3, 1991.

Timothy B. Reuwsaat,

Acting District Manager.

[FR Doc. 91-745 Filed 1-11-91; 8:45 am]

BILLING CODE 4310-HC

Bureau of Reclamation

South Delta Water Management Program, Sacramento-San Joaquin Delta, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of comment period extension; DES 90-20.

SUMMARY: The Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) are extending the public comment period for the Draft Environmental Impact Report/Draft Environmental Impact Statement for the South Delta Water Management Program (DES 90-20). The DEIS was filed with the Environmental Protection Agency on July 30, 1990. Notices regarding the extension have been distributed to all persons and agencies that received the document.

DATES: Comment period is extended from November 30, 1990, to March 15, 1991.

SUPPLEMENTARY INFORMATION: DWR released the Draft Environmental Impact Report/Draft Environmental Impact Statement for the North Delta Water Management Program in November 1990, and released a Draft Environmental Impact Report for the Los Banos Grandes Reservoir in December 1990. DWR and Reclamation are extending the comment period to provide for concurrent review of the South Delta Water Management Program with these other draft environmental documents.

Dated: January 7, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-795 Filed 1-11-91; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use By Reebie Associates

The Commission has received a requests from Reebie Associates for permission to use certain data from the Commission's 1989 ICC Waybill Sample.

A copy of the requests may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they shall file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash (202) 275–6864

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–821 Filed 1–11–91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31806]

St. Louis Southwestern Railway Co., Trackage Rights Exemption—Dallas Area Rapid Transit Property Acquisition Corp.

Dallas Area Rapid Transit Property Acquisition Corporation (DART) has agreed to grant local and overhead trackage rights to St. Louis Southwestern Railway Company between North Fort Worth, TX (milepost 632.27), and Wylie, TX (milepost 578.20), a distance of approximately 54.07 miles, in Dallas, Tarrant, and Collin Counties, TX.[1] The trackage rights were to become effective on or after December 27, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, St. Louis Southwestern Railway Company, One Market Plaza, Room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 9, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–822 Filed 1–11–91; 8:45 am]

BILLING CODE 7035-01-M

[1] This trackage rights arrangement is in furtherance of the transaction approved in Finance Docket No. 31786, *Dallas Area Rapid Transit Property Acquisition Corporation—Acquisition and Operation Exemption—Rail Lines of Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, and Dallas Terminal Railway and Union Depot Company* (not printed), served December 3, 1990.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91–8; Exemption Application Nos. D–5381 and D–6499]

Individual Exemption for the Equitable Life Assurance Society of the United States (Equitable)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains a final exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The exemption permits the provision of certain real estate property management and, in some instances, leasing services by Equitable Real Estate Investment Management, Inc. (EREIM), an indirect wholly owned subsidiary of Equitable, affiliates of EREIM and Tishman Speyer Properties (TSP), a partnership in which Equitable has a 50 percent ownership interest, to various real estate separate accounts (the Accounts) in which employee benefit plans participate. The Accounts are managed by Equitable, EREIM or subsidiaries thereof. The exemption also permits the provision, by the law department of Equitable (the Law Department), of certain legal services to the Accounts required in connection with individual properties held by the Accounts. The exemption will affect participants and beneficiaries of, and fiduciaries with respect to, plans investing in the Accounts and other persons who engage in the described transactions. The exemption will be temporary in nature and, unless extended pursuant to timely application by Equitable, will expire five years from its effective date.

EFFECTIVE DATE: This exemption is effective on the date of publication in the **Federal Register** of the notice granting this exemption. The exemption will expire five years from its effective date.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, U.S. Department of Labor, telephone (202) 523–6881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 28, 1990, the Deparmtent of Labor (the Department) published in the **Federal Register** (40 FR 7057) a notice of proposed exemption from certain of the restrictions of section 406 of the Act, and from certain taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in two exemption applications (D–5381 and D–6499) filed with the Department by Equitable on April 18, 1984 and December 12, 1985.

The Department received four written comments with respect to the notice of proposed exemption, one of which contained a request for a public hearing which was subsequently withdrawn. Of the comments received, three were filed by representatives of jointly-trusteed multiemployer pension plans that participate in Separate Account No. 8 (SA–8), Equitable's primary real estate separate account. Each of these comments raised issues about one or more aspects of the proposed exemption. These three comments were subsequently sent by the Department to Equitable for response to the issues raised therein. The fourth comment was filed by Equitable and generally requests technical amendments and clarifications to the notice of proposed exemption.

Upon consideration of the entire record, including the written comments received and Equitable's response thereto, the Department has determined to grant the proposed exemption subject to certain modifications. A summary of the proposal, a discussion of the comments, as well as Equitable's response and the Department's modifications are discussed below.

I. Description of the Exemption

As stated briefly above, this exemption will permit, for a five year period, the provision of fee-producing property management, and in some instances, leasing services to Equitable-managed Accounts by EREIM and TSP, both of which are affiliated with Equitable. Additional exemptive relief is provided for the provision of property

management and/or leasing services by TSP to an Account pursuant to the acquisition, by Equitable or EREIM, on behalf of an Account, of a property subject to a contract for the provision of such services by TSP, and the transfer to TSP by SA–8 of a contract for property management services by an affiliate of the non-Equitable partners in TSP. Lastly, the exemption will permit Equitable's Law Department to provide certain free-producing legal services to the Accounts in connection with Account-held properties.

In order to ensure that the transactions operate in the interests of the Accounts, and are protective of the Accounts and the participating plans therein, the exemption contains extensive structural safeguards. The primary safeguards include: (a) The review, approval and periodic monitoring of each transaction by independent fiduciaries (the Independent Fiduciaries) acting on behalf of the Accounts with regard to the provision of property management, leasing and legal services; (b) full and understandable disclosures to investing plans; (c) relative plan investor sophistication; (d) percentage limitations on plan investment in the Accounts; and (e) certain limitations on the fees Equitable and/or its affiliates will receive for the aforementioned services. In addition to these safegaurds, the exemption provides for a number of other protective conditions that must be met by Equitable and its affiliates with respect to the Accounts and the transactions to which the exemption will apply.

II. Discussion of the Comments

One commentator questioned whether the benefits of the proposed exemption outweigh the potential risks, and whether exemptive safeguards will be in place prioir to the implementation of the proposed exemption. In this regard, the Deparmtent notes that the proposed transactions would be exempt from the prohibited transaction restrictions of the Act only if each of the applicable conditions set forth in section II of the proposed exemption is satisifed. The Department also notes that neither legal services nor property management services may be provided to an Account under the terms of the exemption until notice has been given to plans participating in an Account and the plans have been given an opportunity to withdraw from the Account without penalty prior to the implementation of such service policy (the Policy).

With regard to the question raised by the comment concerning the benefits of the exemption, the Department discussed this issue with the applicant. Equitable responded by providing that the exemption will assure the provision of high quality services to the Accounts which, in turn, should enhance the value of the properties held by the Accounts and the returns provided to investing plans. In addition, Equitable explained that the proposed exemption would have an initial term of only five years and that it had developed standards which the Department could apply at the end of this period to determine whether the exemption had, in fact, operated in the interests of the Accounts. Equitable noted that these standards had been reviewed and approved by Jackson Cross Company (Jackson-Cross), the Independnet Fiduciary for property management and leasing services.

After considering the comment, the Department has determined that the concerns raised by the commentator have been adequately addressed by the extensive structural safeguards contained in the exemption as revised below, and that no additional modifications to the exemption are necessary.

A second commentator questioned whether Equitable must comply with all of the representations contained in the proposed exemption and whether certain of the representations set forth in the exemption are intended to serve as express conditions for exemptive relief. In this regard, the commentator noted that there are several representations which appear in the Summary of Facts and Representations which may offer plans important safeguards as conditions of the exemption. The comment also raised an issue regarding whether the provision of legal services by the Law Department could result in the performance of duplicate services by the Law Department and by outside counsel. Finally, the commentator expressed concern with respect to whether the Independent Fiduciaries for property management and leasing services and for legal services would, pursuant to their described roles in the exemption, have a "built-in" conflict of interest.

The Department notes that an exemption is subject to the truth and accuracy of the material facts and representations contained in the exemption application and summarized in the summary of facts and representations of the proposed exemption. Accordingly, the transactions described in the proposed exemption would be subject to the representations cited by the commentator which appear only in the Summary of Facts and Representations but not made express conditions of the exemption. However, for purposes of clarity, and following discussions with the applicant, the Department has determined that it would be helpful to modify the exemption as described below.

The commentator noted that the representations concerning the fees that would be paid by the Accounts for legal services provided by the Law Department indicate that the Law Department would charge the Accounts direct costs for compensation and benefits and an allocable share of the Law Department's overhead but without any element of a profit. However, the commentator also noted that section II(11) of the proposed exemption stipulates that the compensation paid for legal services must not be in excess of that which would be paid in an arm's length transaction and, in any event, must not be in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act. After considering the comment, and to avoid any ambiguity on this matter, the Department has determined to modify section II(11) by adding the following language:

> Compensation paid to the Law Department shall be calculated in a manner which is intended to reimburse it solely for the direct and indirect cost of providing legal services pursuant to this exemption and to assure that items of expense which represent a profit will not be reimbursed.

The comment further stated that the conditions of the proposed exemption focus on the Independent Fiduciary's consideration of the compensation paid to Equitable in determining whether to approve a multiple services arrangement, but do not include the fees paid to the Independent Fiduciary in such consideration. This, the comment stated, is inconsistent with the Summary of Facts and Representations which suggests that the fees to be paid to the Independent Fiduciary for its services will be taken into account in making these determinations. The Department notes that section II (6), (7) and (8) of the proposed exemption requires that the terms of each transaction be reviewed and approved by an Independent Fiduciary and, in accordance with section II (4) and (8), that the Independent Fiduciaries be furnished with certain specified information and any additional information that the Independent Fiduciaries shall reasonably request. The Department does not intend to suggest that the specified information to be supplied to the Independent Fiduciary is, by any means, all inclusive

and, in the Department's view, should certainly include the information described in the Summary of Facts and Representations. However, for the sake of clarity and to emphasize that it is important for the Independent Fiduciaries to consider the fees that they will receive from an Account prior to approving a multiple services arrangement, the Department has modified section II(6) of the proposed exemption by adding new subsection (6)(b):

(6)(b) The Independent Fiduciaries for property services and legal services shall negotiate the contracts for the provision of services by EREIM, TSP and the Law Department. The Independent Fiduciaries shall also consider the cost to the Account of such fiduciary's involvement in connection with its consideration of whether to approve the particular transaction.

The commentator next noted that the representations contained in part VI of the Summary of Facts and Representations describe the Independent Fiduciary's role with regard to legal services and indicate, among other things, that quarterly reports from the Law Department to the Independent Fiduciary will be sent and a detailed review by the Independent Fiduciary of approximately 10 percent of all completed transactions will be accomplished. However, the comment indicated that these representations had not been incorporated into the exemption. On the basis of this comment, the Department has modified section II(6) of the proposed exemption as follows by adding new subsections (6)(d) and (6)(e):

(6)(d) In connection with the Independent Fiduciary's determination of whether a charge submitted by the Law Department relates to a previously approved transaction and is within the acceptable range of estimated fees for the type of transaction involved, quarterly bills submitted to the Independent Fiduciary will identify for each Account the properties and transactions with respect to which services were rendered, briefly describe the services rendered and indicate the amount of time spent on the service. Each bill will also identify the attorneys or other professionals who were involved in the service, the number of hours each charged and the billing rate for each attorney or professional.

(6)(e) To assure that the services rendered by the Law Department were necessary, authorized, perfomed in a satisfactory and professional manner, and in a manner consistent with the criteria for using and assigning tasks among Law Department attorneys, the Independent Fiduciary for legal services will perform a detailed review of approximately 10 percent of all completed transactions submitted quarterly, which will include a cross-section of all different types of approved transactions and all of the attorneys who regularly perform work on Account-related transactions. In connection with this detailed review, the Independent Fiduciary for legal services will review billing statements rendered by outside counsel for services performed in connection with approved transactions in order to assure that there is no duplication of effort.

In response to the comment regarding the possibility that legal services performed by Equitable's Law Department pursuant to the exemption will duplicate the services that are performed by outside counsel, the Department has added language to section II(6)(e), as described above, which requires the Independent Fiduciary for legal services to review billing statements rendered by outside counsel with respect to a previously approved transaction to assure that there is no duplication of effort. Additionally, the Department has also modified section II(8) of the exemption by adding the following language:

(8)(c) With respect to the Independent Fiduciary's approval of a transaction requested by the Law Department, the Independent Fiduciary will be provided with: a description of the services expected to be provided and the estimated fees expected to be paid to outside counsel in connection with any transaction with respect to which it is proposed that the Law Department provide legal services.

Last, the commentator suggested that the Independent Fiduciaries for the transactions would have an inherent conflict of interest in their roles of initially and periodically approving the arrangements with respect to which their ongoing compensation as Independent Fiduciaries is dependent. Specifically, the comment suggested that the exemption require that the Independent Fiduciary who approves the transactions on behalf of the Accounts be different from the Independent Fiduciary who will monitor the transactions.

The Department is not persuaded by the arguments in favor of multiple Independent Fiduciaries to approve and monitor the transactions. The exemptive conditions contained in section II of the exemption are designed to ensure that the relevant Independent Fiduciaries are, in fact, independent. These conditions place limitations on the Independent Fiduciaries' dealings with Equitable and the aggregate amount of compensation that such Fiduciaries may receive from Equitable. In the present case, Equitable notes that the compensation that will be paid by Equitable to Rosenman and Colin (Rosenman and Colin), the Independent Fiduciary for legal services, will be so small in relation to the total income received by the firm such that there is no reasonable basis for concluding that Rosenman and Colin's integrity can be swayed by the expectation of receiving additional compensation. Accordingly, the Department has concluded that no modification of the exemption is necessary with respect to the commentator's concern regarding the potential conflict of interest in the roles of the Independent Fiduciaries.

A third commentator urged the Department to deny the exemption citing the conflict of interest inherent in the arrangement. In particular, the comment stated that the appointment and removal of an Independent Fiduciary is "in theory" subject to confirmation by plans that participate in an Account but that, in reality, confirmation would be automatic and removal impossible. The Department notes that although Equitable is given the initial responsibility for selecting each Independent Fiduciary subject to confirmation by the plans that participate in each Account, the proposed exemption includes express standards of professional expertise and independence with which it must comply in making the selection decisions. Equitable has indicated that its initial selections of the Independent Fiduciaries were consistent with these standards. Equitable also has explained in its comment filed with the Department that under the proposed exemption, its role in the continued retention of the Independent Fiduciaries is so limited that there would be no basis for an Independent Fiduciary to conclude that it must rely upon Equitable's goodwill in order to continue serving as the Independent Fiduciary. Equitable has noted that once the Independent Fiduciary is selected and confirmed by the participating plans, it may be removed by Equitable only for cause, but not for taking actions that may be contrary to Equitable's wishes.

The commentator also contended that the exemption would impose an irreconcilable conflict of interest on attorneys of the Law Department inasmuch as they are employees of Equitable and it would be inconceivable that an employee would ever act contrary to Equitable's best interests. It is the view of the Department that the structure and safeguards contained in the exemption are specifically intended to assure that the services performed by Law Department attorneys, and the fees charged for those services, will be carefully monitored and controlled.

Finally, the comment stated that plans investing in the Accounts would be unable to determine whether the return

to the Accounts would have been even greater if legal services or property management and leasing services had been performed by independent parties. The Department notes that the proposal provided that, each plan invests in an Account voluntarily and can withdraw from an Account, without penalty, prior to the implementation of the exemption. Furthermore, a plan elects to participate in an Account because fiduciaries of that plan have made an independent determination that implementation of the exemption is likely to enhance the anticipated returns on the properties in which the Account invests and the quality of the services provided. Equitable notes in response to the comment that it does not believe there is any possibility that service cost data will go unnoticed in reports describing aggregate fees paid by an Account because of the rigid reporting requirements of the exemption. Equitable points out that section II of the proposed exemption requires it to provide each fiduciary that authorizes a plan's participation in an Account with an annual report (the Annual Report) which details the total of all fees incurred by an Account for servies provided by EREIM or TSP or by the Law Department, describes the services performed and estimates the fees anticipated to be paid to EREIM or TSP for the coming year.

After considering this comment, Equitable's response thereto, and the safeguards and conditions of the exemption, the Department has determined to grant the exemption as modified.

Equitable's Comments

Equitable has commented on or clarified certain aspects of the proposed exemption. Equitable noted that section II(10) of the proposed exemption provides a limitation on the percentage of total plan assets that can be invested in the Accounts by plans other than those covering Equitable employees. This 20 percent limitation will apply prospectively such that any plan that has more than 20 percent of its assets invested in the Accounts as of the date the proposed exemption will not be required to reduce its investment to 20 percent. In this regard, Equitable stated that it is unclear from the language of the proposed exemption how fluctuations in the percentage of a plan's assets invested in Accounts that occur solely as a result of changes in the value of those investments relative to the value of the plan's other assets will be treated after the effective date of the exemption. In Equitable's view, the 20 percent test should be applied on an "acquisition" basis to ensure that the exemption will not be unavailable for an Account solely because of fluctuations in value that are not subject to the control of Equitable or the authorizing plan fiduciaries.

After considering the comment, the Department concurs that the "20 percent test" of section II(10) should be applied on an acquisition basis. Accordingly, the Department has clarified section II(10) with respect to application of the 20 percent limitation.

Equitable further commented that section II(10) of the proposed exemption provides that the exemption will be available for an Account if no more than 5 percent of the assets of any plan maintained for employees of Equitable or its affiliates is invested in the Account. Because a master trust (the Master Trust) which currently holds the assets of three Equitable in-house plans has invested approximately 6.8 percent of its assets in SA–8, Equitable represents that the exemption, as proposed, would be unavailable for SA–8.[1] Because the Master Trust's investment in SA–8 represents only about 1.75 percent of the total net assets of SA–8 and will remain a small percentage of that Account's assets, Equitable does not believe there is any risk that the assets of the Master Trust will be used to provide a source of revenue to Equitable or its affiliates in a manner contrary to the intent of the proposed exemption. Accordingly, Equitable suggests that the 5 percent limitation be implemented prospectively in a manner similar to the 20 percent limitation discussed above.

The Department concurs that SA–8, which contains many independent plans, should not be penalized by losing the availability of the exemption because Equitable's in-house plans investments therein currently exceed 5 percent of such Account. Accordingly, the Department has determined to modify that portion of section II(10) pertaining to the participation in an Account by Equitable's in-house plans to provide for prospective application of the 5 percent limitation as long as none of Equitable's in-house plans make an additional investment in an Account, if immediately after such investment, more than 5 percent of the assets of such Equitable plan is invested in such Account.

Equitable further notes that section II(10) of the proposed exemption limits the investment in an Account by Equitable's in-house plans to 10 percent of the total assets of the Account. For purposes of clarification, Equitable represents that this test will be met on a continuing basis. Thus, if plans that are unaffiliated with Equitable withdraw from an Account and the investements in the Account by Equitable's in-house plans exceed 10 percent of the total investments in the Account, Equitable states that either: (1) Its in-house plans must withdraw their investments from the Account (on the same terms as the other plans participating in the Account) in an amount sufficient to meet the 10 percent limitation or; (2) the performance of services for the Account pursuant to the exemption will be suspended or terminated.

Equitable also notes that, in addition to the property management fees that will be paid to EREIM and TSP, its property management agreements will generally provide for the reimbursement of direct on-site expenses that are incurred by the property manager in performing property management services. Equitable notes that such reimbursements of direct expenses have been disclosed in prior descriptions of EREIM's reimbursement practices and are clearly permitted under the Act. Although Equitable states that it is not requesting any further modification of the exemption, it wishes to clarify that the fee limitations for property management services will not take into account the amount of any reimbursements for direct expenses to which the property manager may be entitled. Moreover, Equitable explains that such reimbursements must be approved by the appropriate Independent Fiduciary.

In connection with the part IV fee limitations, Equitable also wishes to clarify that, in some instances, EREIM's property management agreements may provide for prenegotiated "minimum fees" payable where the lease revenues on properties are less than projected (e.g., minimum fees are typically paid during start-up periods). Equitable notes that such fees apply only to the provision of property management services and do not apply to leasing services.

Although not intended, Equitable explains that minimum fee arrangements could be considered inconsistent with part IV percentage limitations on property management fees inasmuch as such fees could exceed the stated percentages if such percentages are based on actual rather than anticipated rental income. Accordingly, Equitable requests that the fee representation for property

[1] By letter dated August 24, 1990, Equitable represents that none of its in-house plans has made any new investments in SA–8 since February 28, 1990.

management services, as set forth in part IV of the Summary of Facts and Representations, be modified to provide that, in the case of properties that are not fully leased or which are leased at less than market rents as a temporary concession to new tenants, the property management fees will not exceed a minimum fee intended to cover minimum overhead as determined by a prenegotiated percentage of the gross rental revenue which would have been received if the property had been fully leased at rates not in excess of the prevailing market rates for the type of property in the geographic area in which the property is located, and in any event, would not exceed the fee limitation set forth in the exemption. Equitable indicates that 18 months will represent the maximum period during which such minimum fee payments would be permitted. Further, Equitable states that such charges will be reviewed, negotiated, and subject to the approval of the appropriate Independent Fiduciary. The Department concurs with this comment.

According to Part V of the Summary of Facts and Representations, the fees for legal services provided by the Law Department will be based on hourly rates that are calculated to cover the Law Department's direct costs for compensation and benefits for the individual performing the services as well as the individuals's allocable share of the Law Department's overhead, but without any element of a profit. Although the essential elements of its prior billing procedures as described in the application for exemption have not been eliminated or changed as applied to the Accounts, Equitable indicates that the method of recovering costs of Law Department operations has been modified whereby the Law Department has developed procedures to allocate its costs to its clients and thereby recover the direct and indirect costs of providing legal services. Equitable explains that the modifications to the Law Department's cost recovery procedures do not affect the representations made in Part V of the Summary of Facts and Representations in that charges to the Accounts for legal services are intended only to allow Equitable to recover the direct and indirect costs of providing such services. Therefore, Equitable believes that no modification to the exemption is required.

Part VI of the Summary of Facts and Representations states that the law firm of Rosenman and Colin will serve as the initial Independent Fiduciary for legal services provided to the Accounts by the Law Department and that Mr. Mendes Hershman, counsel to Rosenman and Colin, will assume the tasks required of the Independent Fiduciary. Equitable wishes to clarify this representation by noting that, although Mr. Hershman will perform many of the oversight functions comtemplated by the proposed exemption, Rosenman and Colin is expected to be the initial Independent Fiduciary. Equitable also expects that Mr. Hershman will delegate some of his Independent Fiduciary duties to other professionals within Rosenman and Colin where such delegation is appropriate and, if Mr. Hershman should cease to be actively involved in the firm's activities, other partners will assume his responsibilities.

Equitable notes that the definition of the term "Independent Fiduciary" contained in section IV(6)(f) of the proposed exemption includes a provision that precludes an Independent Fiduciary from negotiating a transaction with Equitable or its affiliates for its own account. However, Equitable requests clarification that this provision would not preclude the Independent Fiduciary from representing third-party clients in negotiations with Equitable or its affiliates. Equitable wishes to further note that if the Independent Fiduciary were restricted from representing third-party clients in dealings with Equitable and its affiliates, it would be impossible for Equitable to locate a law firm or real estate expert with appropriate qualifications and reputation to serve as Independent Fiduciary for the services covered by the exemption. The Department concurs with this comment.

Equitable explains that part II(B) of the Summary of Facts and Representations provides that it or EREIM, as investment manager, will first consider whether it is in the best interest of an Account to retain EREIM or TSP to provide services before submitting a proposal for the provision of such services to the Independent Fiduciary. However, Equitable notes that this representation has not been incorporated into the exemption and believes that it should be included as a condition of the exemption. The Department concurs with this comment and has incorporated the following new language into section II(6):

Prior to proposing a transaction to the Independent Fiduciary, Equitable or EREIM will first determine that such transaction is in the best interests of the Account * * *

Equitable further notes that part II(B) of the Summary of Facts and Representations provides that if it or EREIM hold Account properties and general account properties in the same real estate market creating potential leasing competition, EREIM will hire a third party leasing agent. Equitable suggests that this requirement be added to section II of the proposed exemption by the inclusion therein of certain conditional language. The Department concurs with this suggestion and has incorporated the language into new subsection (7)(b) as follows:

(7)(b) If Equitable or EREIM hold Account properties and general account properties in the same real estate market during a period when there is leasing competition between those properties, EREIM will hire, during such period, a third party leasing agent for Account properties.

Finally, Equitable represents that parts III(c) and VI of the Summary of Facts and Representations provide that for each proposal submitted to the Independent Fiduciaries for property services and legal services, respectively, Equitable will provide certain specified information to the appropriate Independent Fiduciary to assist in its consideration of the transaction. Equitable believes that additional languge should be added to section II(8)(b) of the proposed exemption in order to clarify the information that will be provided to the Independent Fiduciaries by Equitable pursuant to a request that a transaction be approved by the Independent Fiduciary. The Department concurs with this suggestion and has added new subsections (8)(b) and (8)(c) as follows:

(8)(b) With respect to EREIM or TSP, such information will include: a description of the Policy of the Account for property services and the plan clients investing therein; a description of the real estate services which are required; the qualifications of EREIM or TSP to do the job; a statement, supported by appropriate factual representations, of the reasons for Equitable's belief that EREIM or TSP is qualified to provide the services; a copy of the proposed arrangement for services and the terms on which EREIM or TSP would provide the services; the reasons why Equitable believes the retention of EREIM or TSP would be in the best interests of the Account; information demonstrating why the fees and other terms of the arrangement are reasonable and comparable to fees customarily charged by similar firms for similar services in comparable locales; the identities of non-affiliated service providers and the terms under which these service providers might perform the services; and in any case that it is determined that the property manager will also provide leasing services; Equitable will disclose whether any affiliated property manager under consideration by the Independent Fiduciary is a property manager to any properties that are in competition for tenants with the property for which EREIM or TSP is under consideration.

(8)(c) With respect to the Independent Fiduciary's approval of a transaction requested by the Law Department, the Independent Fiduciary will be provided with: A description of the general nature of the transaction with respect to which services are to be performed; the names and rates of compensation paid to the attorneys who will be assigned to the matter; the estimated cost of the services; an explanation of why the provision of Law Department services would be in the best interests of the Account; and a description of the services expected to be provided and the estimated fees expected to be paid to outside counsel in connection with any transaction with respect to which it is proposed that the Law Department will provide legal services.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions of the Act and the Code to which the exemption does not apply, and to the extent jurisdiction exists under Title I of the Act, the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption will not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code.

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of proposed exemption, the Department makes the following determinations:

(a) The exemption set forth herein is administratively feasible;

(b) It is in the interests of the plans investing in the Accounts and their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plans.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transactions which are the subject of this exemption.

(5) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(6) This exemption is applicable to particular transactions only if the transactions satisfy the conditions specified in the exemption.

Exemption

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I—Covered Transactions

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the following transactions described below if each of the applicable conditions set forth in section II is met.

(1) The provision of property management and/or leasing services by EREIM or TSP to an Account (as defined in Section IV);

(2) The transfer of the Excluded Contract (as defined in section IV) to TSP;

(3) The provision of property management and/or leasing services by TSP to an Account pursuant to the acquisition by Equitable or EREIM, on behalf of an Account, of a property subject to a contract for the provision of such services by TSP; and

(4) The provision by the Law Department of certain legal services required in connection with individual properties held by the Accounts.

Section II—Conditions

(1) The arrangement under which the covered transactions is performed is subject to the prior authorization of an independent plan fiduciary with respect to each plan whose assets are invested in an Account, following disclosure of information in the manner described in paragraph (2) below. In the case of a plan whose assets are proposed to be invested in an Account subsequent to implementation of the applicable Policy, the plan's investment in the Account is subject to the prior written authorization of an independent plan fiduciary following disclosure of the information described in paragraph (2). The requirement that the authorizing fiduciary be independent of Equitable shall not apply in the case of plans maintained by Equitable on behalf of its employees.

(2) Not less than 45 days prior to the implementation of either the Policy for property management and leasing services (the Property Services Policy) or the Policy for legal services (the Legal Services Policy), Equitable or EREIM, as investment manager, shall furnish the authorizing plan fiduciary with any reasonably available information which Equitable or EREIM believe to be necessary to determine whether such approval should be given, as well as such information which is reasonably requested by the authorizing plan fiduciary. Such information will include: a description of the services to be performed by EREIM, TSP or the Law Department; identification of properties for which services will be required; an estimate of the fees that would be paid to EREIM, TSP or the Law Department if they are selected to provide such services; an explanation of the potential conflicts of interest involved in selecting EREIM, TSP or the Law Department; and explanation of the selection process; and a description of the terms upon which a plan may withdraw from an Account.

(3) In the event an authorizing plan fiduciary of any plan whose assets are invested in an Account submits a notice in writing to Equitable or EREIM, as investment manager, at least 15 days prior to implementation or either the Property Services Policy or the Legal Services Policy, objecting to the implementation of, the applicable Policy, the plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Account, without penalty. With the exception of a plan which has invested in a closed-end Account under which the rights of withdrawal from the Account may be limited as provided in the plan's written agreement to invest in the Account, if written objection to either Policy is submitted to Equitable or EREIM any time after 15 days prior to implementation of either the Property Services Policy or the Legal Services Policy (or after implementation), the plan must be able to withdraw without penalty, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. However, Equitable or EREIM need not discontinue

operating pursuant to a Policy, once implemented, by reason of a plan electing to withdraw after 15 days prior to the scheduled implementation date of either the Property Services Policy or the Legal Services Policy. Any plan which has a discretionary asset management arrangement with Equitable may terminate such arrangement and withdraw from an Account at any time.

(4) Equitable or EREIM shall furnish the authorizing plan fiduciary and the Independent Fiduciary acting on behalf of the plans participating in the Account with the Annual Report containing the information described in this paragraph, not less frequently than once a year and not later than 45 days following the end of the period to which the report relates. Such Annual Report shall disclose the total of all fees incurred by the Account during the preceding year under contracts with EREIM, TSP or the Law Department; include a description of the properties and the services that have been performed by EREIM, TSP or the Law Department for an Account; and delineate the fees that are anticipated to be paid to EREIM, TSP or the Law Department in the coming year for services provided by these entities in connection with properties held by an Account. The Annual Report will also contain a description of method for the termination of the multiple services arrangement and for the confirmation and/or removal of the Independent Fiduciary by investing plans in the Accounts.

(5) The multiple services arrangement for an Account shall be subject to annual confirmation following receipt of the Annual Report, pursuant to which the arrangement shall be terminated by a vote in favor of such termination by the holders of a majority of the units of benefiicial interests in the Account. In the event of a vote to terminate the arrangement, Equitable shall cease submitting to the Independent Fiduciary (as defined in Section IV) any new proposals to engage in covered transactions and Equitable will not renew or extend any covered transactions. Moreover, within 180 days after the vote of the contract holders, Equitable shall cease engaging in any existing covered transactions.

(6)(a) Each transaction shall be reviewed and approved by an Independent Fiduciary. However, prior to proposing a transaction to the Independent Fiduciary, Equitable or EREIM shall first determine that such transaction is in the best interests of the Account.

(b) The Independent Fiduciaries for property services and legal services shall negotiate the contracts for the provision of services by EREIM, TSP and the Law Department. The Independent Fiduciaries shall also consider the cost to the Account of such fiduciary's involvement in connection with its consideration of whether to approve the particular transaction.

(c) The Independent Fiduciaries shall review, as applicable, the performance of EREIM, TSP or the LAW Department under each of their contracts with the Accounts at least once each year and shall instruct Equitable and EREIM of any action which should be taken by Equitable on behalf of the Accounts with respect to the continuation, termination or other exercise of rights available to the Account under the terms of the contracts. Equitable will carry out such instruction from the Independent Fiduciary to the extent it is legal and permitted by the terms of the service provisions arrangement.

(d) In connection with the Independent Fiduciary's determination of whether a charge submitted by the Law Department relates to a previously approved transaction and is within the range of estimated fees for the type of transaction involved, quarterly bills submitted to the Independent Fiduciary will identify for each Account the properties and transactions with respect to which services were rendered, briefly describe the services rendered and indicate the amount of time spent on the service. Each bill will also identify the attorneys or other professionals who were involved in the service, the number of hours each charged and the billing rate for each attorney or professional.

(e) To assure that the services rendered by the Law Department were necessary, authorized, performed in a satisfactory and professional manner, and in a manner consistent with the criteria for using and assigning tasks among Law Department attorneys, the Independent Fiduciary for legal services will perform a detailed review of approximately 10 percent of all completed transactions submitted quarterly, which will include a cross-section of all different types of approved transactions and all of the attorneys who regularly perform work on Account-related transactions. In connection with this detailed review, the Independent Fiduciary for legal services will review billing statements rendered by outside counsel for services performed in connection with approved transactions in order to assure that there is no duplication of effort.

(7)(a) The terms of each such arrangement shall be in writting and must be reviewed by the appropriate Independent Fiduciary prior to implementation.

(b) If Equitable or EREIM hold Account properties and general account properties in the same real estate market during a period when there is leasing competition between those properties, EREIM will hire, during such period, a third party leasing agent for Account properties.

(c) In the case of any emergency circumstances, EREIM or TSP may provide property services to an Account for a period not exceeding 90 days, but no compensation may be paid by an Account for such services without the prior approval of the Independent Fiduciary for property management and leasing services.

(8)(a) Equitable and EREIM shall furnish the Independent Fiduciaries acting on behalf of the Accounts with respect to the property services and legal services with any reasonably available information which Equitable reasonably believes to be necessary or which the Independent Fiduciaries shall reasonably request to determine whether such approval of the transactions described above should be given or to accomplish the Independent Fiduciaries' periodic reviews of the performance of EREIM, TSP or the Law Department under the contracts.

(b) With respect to EREIM or TSP, such information will include: a description of the Policy of the Account for property services and the plan clients investing therein; a description of the real estate services which are required; the qualifications of EREIM or TSP to do the job; a statement, supported by appropriate factual representations, of the reasons for Equitable's belief that EREIM or TSP is qualified to provide the services; a copy of the proposed arrangement for services and the terms on which EREIM or TSP would provide the services; the reasons why Equitable believes the retention of EREIM or TSP would be in the best interests of the Account; information demonstrating why the fees and other terms of the arrangement are reasonable and comparable to fees customarily charged by similar firms for similar services in comparable locales; the identities of non-affiliated service providers and the terms under which these service providers might perform the services; and in any case that it is determined that the property manager will also provide leasing services, Equitable will disclose whether any affiliated property manager under consideration by the Independent Fiduciary is a property manager to any properties that are in competition for tenants with the property for which EREIM or TSP is under consideration

(c) With respect to the Independent Fiduciary's approval of a transaction requested by the Law Department, the Independent Fiduciary will be provided with: a description of the general nature of the transaction with respect to which services are to be performed, the names and rates of attorneys who will be assigned to the matter; the estimated cost of the services; an explanation of why the provision of Law Department services would be in the best interests of the Account; and a description of the services expected to be provided and the estimated fees expected to be paid to outside counsel in connection with any transaction with respect to which it is proposed that the Law Department will provide legal services.

(9) Seventy-five percent or more of the units of beneficial interests in an Account must be held by plans or other investors having total assets of at least $50 million. In addition, 50 percent or more of the plans investing in an Account must have assets of at least $50 million. For purposes of the 50 percent test above, a group of plans will be counted as a single plan if either the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than Equitable who exercises such discretion with respect to plan assets in excess of $50 million.

(10)(a) Not more than 5 percent of the assets of a plan covering employees of Equitable will be invested in an Account. Notwithstanding the foregoing, this percentage requirement will continue to be satisfied by any plan that exceeds the 5 percent limitation of this subsection provided that no portion of any excess results from an increase in the assets transferred by such plan to the Accounts. Morever, this 5 percent limitation shall not apply to any Equitable plan which as of the date of the proposed exemption has more than 5 percent of its assets invested in the Accounts provided that the plan make no additional contribution to the Account subsequent to that date if, immediately after such contribution, the investment of such plan in the Account exceeds 5 percent of the total assets of such plan.

(b) Not more than 10 percent of the assets of an Account will be represented by the plans covering employees of Equitable.

(c) For other plans, not more than 20 percent of the assets of each such plan can be invested in the Accounts. Notwithstanding the foregoing, this percentage requirement will continue to be satisified by any plan that exceeds the 20 percent limitation of this subsection provided that no portion of any excess results from an increase in the assets transferred by such plan to the Accounts. Morever, this 20 percent limitation shall not apply to any plan which, as of the date of the proposed exemption, has more than 20 percent of its assets invested in the Accounts provided that the plan makes no additional contribution to an Account subsequent to that date if, immediately after such contribution, the aggregate investments of such plan in the Accounts exceeds 20 percent of the assets of such plan.

(11) At the time the transactions are entered into, the terms of the transactions must be at least as favorable to the Accounts as the terms generally available in arm's length transactions between unrelated parties. In addition, the compensation paid to EREIM, TSP or the Law Department for services under its contracts with any Account must not exceed payments in an arm's length transaction between unrelated parties for comparable properties in similar locales, and shall not be in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act and regulation 29 CFR 2550.408b–2. Compensation paid to the Law Department shall be calculated in a manner which is intended to reimburse it solely for the direct and indirect cost of providing legal services pursuant to this exemption and to assure that items of expense which represent a profit will not be reimbursed.

Section III—Recordkeeping

(1) Equitable or EREIM will maintain for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met. Included in these records maintained by Equitable or EREIM will be written records of the Independent Fiduciary which had been periodically furnished by the Independent Fiduciary to EREIM or Equitable. Such records are described in Parts III and VI of the Summary of Facts and Representations of the notice of proposed exemption. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond Equitable's or EREIM's control, the records are lost or destroyed or the records of the Independent Fiduciary are not maintained or produced prior to the end of the six-year period.

(2)(a) Except as provided in subsection (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this section are unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department and the Internal Revenue Service;

(2) Any fiduciary of a plan who has authority to acquire or dispose of the interests of the plan in the Accounts or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any plan that has an interest in the Accounts or any duly authorized employee or representative of such employer;

(4) Any participant or beneficiary of any plan participating in the Accounts, or any duly authorized employee or representative of such participant or beneficiary; and

(5) The Independent Fiduciary.

(b) None of the persons described in subparagraphs (2)–(5) of this paragraph shall be authorized to examine trade secrets of Equitable, EREIM, TSP or commercial or financial information which is privileged or confidential.

Section IV—Definitions

(1) The Accounts—The Accounts are Equitable's Separate Account No. 8, Separate Account No. 16–I, Separate Account No. 16II, Separate Account No. 16IV, two IBM single-customer real estate separate accounts; the Westinghouse single-customer real estate advisory account; and such other pooled or single-customer accounts, joint ventures, general or limited partnerships or other real estate investment vehicles that may be established by Equitable for the investment of employee benefit plan assets in real estate related investments to the extent disposition of its assets is subject to the discretionary authority of Equitable.

(2) Equitable—For purposes of this exemption, the term Equitable includes Equitable and/or affiliates of Equitable as defined in paragraph (3) of this section which act as investment managers with respect to an Account, but does not include TSP.

(3) An affiliate of a person means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person.

(4) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(5) The Excluded Contract—The Excluded Contract consists of a property

management agreement between Equitable on behalf of SA–8 and an affiliate of the non-Equitable partners in TSP.

(6) Independent Fiduciary—A person who:

(a) Is not an affiliate of Equitable or TSP as defined in section IV(3);

(b) Is not an officer, director, employee of, or partner in, Equitable or TSP [or affiliates thereof as defined in Section IV(3)];

(c) Is not a corporation or partnership in which Equitable or TSP has an ownership interest or is a partner;

(d) Does not have an ownership interest in Equitable, TSP or its partners;

(e) Is not a fiduciary with respect to any plan participating in an Account; and

(f) Has acknowledged in writing acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of Independent Fiduciary, no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from Equitable, TSP or their affiliates, (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of its or his annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or 10 percent or more partner or shareholder, may acquire any property from, sell any property to or borrow any funds from Equitable, TSP, their affiliates, or any Account maintained by Equitable or its affiliates, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of 6 months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

Signed at Washington, DC, this 8th day of January, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–764 Filed 1–11–91; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before February 28, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, as many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–91–8). Routine personnel records.

2. Department of the Army (N1–AU–89–15). Routine records relating to logistics reviews.

3. Department of the Army (N1–AU–90–18). Routine records relating to material configuration.

4. Department of the Navy (N1–NU–91–1). Routine records relating to audiovisual activities and products.

5. Defense Contract Audit Agency (N1–372–91–1). Routine records relating to the preparation of the Field Audit Office administrative manual.

6. Defense Logistics Agency (N1–361–91–3). Routine records relating to legislative affairs and Congressional liaison matters.

7. Department of Commerce, Bureau of Export Administration of Industrial Resources Administration (N1–476–90–1). Comprehensive records disposition schedule.

8. Department of Commerce, Bureau of Export Administration, Office of Technology and Policy Analysis (N1–476–90–2). Comprehensive records disposition schedule.

9. Office of the Comptroller of the Currency (N1–101–90–1). Foreign currency reports, 1984–89.

10. Department of Energy, Idaho Operations Office (N1–434–89–10). Radiographs, safe work permits, and visitor access control records.

11. Federal Communications Commission (N1–173–91–2). General correspondence, internal publications, and register of assignment of delegated authority numbers.

12. General Services Administration, Federal Supply Service, Bureau of States Services (N1–137–90–2). Records relating to the administration of procurement, the handling of contracts, and the tracking of purchase orders and contract awards.

13. Department of Health and Human Services, Health Resources and Services Administration, Office of Population Affairs, (N1–90–90–9). Grants case files.

14. Department of Justice, Federal Bureau of Investigation (N1–65–91–2). Routine administration control files maintained on the movement of foreign nationals.

15. Department of Justice, Federal Bureau of Investigation (N1–65–91–3). Field Office statistical worksheets maintained in connection with surveillance operations.

16. Department of Labor, Job Corps (N1–369–91–1). IBM Cards created by the Evaluation and Research Branch for the production of numerous studies and tests, 1969–70.

17. Selective Service System (N1–147–90–1). Routine Records relating to draft registration.

18. Tennessee Valley Authority, Nuclear Power Function (N1–142–90–14). Comprehensive records schedule.

19. Department of the Treasury, United States Customs Service (N1–36–90–1). Treasury Enforcement Communications System (TECS) San Diego system On.line audit tapes, October 1975–November 1987.

20. Department of the Treasury, United States Secret Service (N1–87–91–1). Routine records from the Office Protective Operations' correspondence file, dated 1948–78, to be removed during archival processing because they lack sufficient archival value to warrant permanent retention.

21. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–90–1). Records documenting routine, repetitive activities including inquiries for benefit information.

22. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–91–2). Folders which document the application and benefits for veterans under the Montgomery GI Bill Educational Assistance Program.

Dated: January 3, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–789 Filed 1–11–91; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

January 8, 1991.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 14–15, 1991.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recomendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 14–15, 1991, will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated November 13, 1989.

The agenda for the sessions on February 14, 1991, will be as follows:

Committee Meetings

8:30–9 a.m.: Coffee for Council Members, room 526

9:00–10 a.m.: Committee Meetings—Policy Discussion (Open to the Public)

Education Programs, room M–14
Fellowship Programs, room 316–2
General Programs, room 415
Research Programs/Preservation Grants, room 315
State Programs/Challenge Grants, room M–07

10 a.m. until Adjourned: (Closed to the Public for the reasons stated above)—Consideration of specific applications

1:30 p.m. until Adjourned: Joint Meeting of State and General Committees to review Frankel Award nominees, room 415 (Closed to the Public)

3:30 p.m. until Adjourned: Jefferson Lecture Committee, to review Jefferson Lecture nominees, room 430

The morning session on February 15, f1991, will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30–9 a.m.)

Minutes of the Previous Meeting
Reports
A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Application Report and Matching Report
E. Status of Fiscal Year 1991 Funds
F. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. Research Programs
4. Public Programs
5. State Programs
6. Challenge Grants
7. Jefferson Lecture
8. Preservation Grants

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Ms. Catherine Wolhowe, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786–0322.

Catherine Wolhowe,

Advisory Committee, Management Officer.

[FR Doc. 91–840 Filed 1–11–91; 8:45 am]

BILLING CODE 7536–01–M

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings

of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Alternate Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. Date: February 1, 1991
   Time: 8:30 a.m. to 6 p.m.
   Room: 430
   Program: This meeting will review applications for Special Competition—Distinguished Teaching Professorships, submitted to the Office of Challenge Grants, for projects beginning after July 1, 1991
2. Date: February 4, 1991
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Interpretive Research/Projects applications for World History, submitted to the Division of Research Programs, for projects beginning after July 1, 1991.
3. Date: February 5, 1991
   Time: 9:00 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1991
4. Date: February 5, 1991
   Time: 8:30 a.m. to 6 p.m.
   Room: 430
   Program: This meeting will review applications for Special Competition—Distinguished Teaching Professorships, submitted to the Office of Challenge Grants, for projects beginning after July 1, 1991
5. Date: February 7, 1991
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1991
6. Date: February 8, 1991
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Interpretive Research/Projects applications for Arts, Literature, and Philosophy, submitted to the Division of Research Programs, for projects beginning after July 1, 1991
7. Date: February 11, 1991
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Interpretive Research/Projects applications for New World Archaeology, submitted to the Division of Research Programs, for projects beginning after July 1, 1991
8. Date: February 12, 1991
   Time: 8:30 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Interpretive Research/Projects applications for Cultural Anthropology, submitted to the Office of Preservation, for projects beginning after July 1, 1991

Catherine Wolhowe,

Alternate, Advisory Committee, Management Officer.

[FR Doc. 91–841 Filed 1–11–91; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Meeting of the MELCOR Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The MELCOR Peer Review Committee will meet to review the technical adequacy of the MELCOR code.

DATE AND TIME: January 14–16, 1991—8:30 a.m.

ADDRESSES: Sandia National Laboratory, Building 823, room 2279, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: R.B. Foulds, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION: MELCOR is fully integrated severe accident anlaysis code that has been developed for the U.S. Nuclear Regulatory Commission by Sandia National Laboratories. Among the targeted applications of the code are its use in probabilistic risk assessment studies to address the perceived risk from a nuclear plant and evaluation of accident management strategies. MELCOR development activities have focused on improving physical models beyond those in precursor codes, flexibility for future modification, and ease of use. MELCOR is capable of treating the complete accident sequence from the initiating event to the fission product release.

The newest version of MELCOR, MELCOR 1.8, was released in March 1989. This version has the capabilities for modeling both boiling and pressurized number or organizations in the U.S.A. an abroad are planning to use the current version. Although the quality control and validation efforts are seen to be proceeding there is a need to have a broad technical review by recognized experts to determine or confirm the technical addequacy of the code for the serious and complex analyses it is expected to perform.

A peer review committee has been organized using recognized experts from the national laboratories, universities, MELCOR user community, and independent contractors. Meetings are held to discuss and evaluate the applicability and state of validation of the various MELCOR phenominological models. The meeting scheduled for January 14–16, 1991, is the third meeting of the MELCOR Peer Review Committee. The larger part of the meeting will be presentations by members of the MELCOR Peer Review Committee providing initial findings regarding the nine phenomenological packages in MELCOR. These packages are (1) Hydrodynamic behavior, (2) Heat structure thermal response, (3) Core heatup and degradation, (4) Fission product and aerosol transport, (5) Fuel-coolant dispersal interactions, (6) Core-concrete interactions, (7) Gas combustion, (8) Engineered safety features, and (9) Properties. Presentations and discussions providing initial findings regarding the integral code performance will also be provided. The Committee will also consider previously identified lists of "Dominant Severe Accident Phenomena" and

review and comment on the proposed outline for the final report.

Dated at Rockville, Maryland, this 3d day of January, 1991.

For the U.S. Nuclear Regulatory Commission.

F. Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 91-817 Filed 1-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-54]

Cintichem, Incorporated Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders authorizing Cintichem, Incorporated (the licensee) to dismantle the reactor facility and dispose of the component parts, and termination of Facility License No. R-87, in accordance with the licensee's application dated October 19, 1990.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commissioin will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By February 15, 1991, the licensee may file a request for a hearing with respect to issuance of the subject Orders 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 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 and Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555. 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 petitition 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 sheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the basis of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such as 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, the Gelman Building, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message address to Seymour H. Weiss: Petitioner's name and telephone number; date petition was mailed; Cintichem, Incorporated, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Phillip Yachmetz, Senior Counsel, Hoffman-LaRoche, 340 Kingsland Avenue, Building 85, Nutley, New Jersey 07110-1199, attorney for licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the 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).

For further details with respect to this action, see the licensee's application dated October 19, 1990, which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 4th day of January 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III, IV, V. and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc 91-815 Filed 1-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 134 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Specifications for opertion of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to establish a new Technical Specification 3/4.4.12, "Failed Fuel Rods," with a limit of 160 failed fuel rods during operation of Cycles 16 and 17. The proposed limit of 160 failed fuel rods is consistent with the dose equivalent iodine limit of Microcurie/gm in the Technical Specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 23, 1990 (55 FR 29926) corrected July 31, 1990 (55 FR 31116). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated June 25, 1990, as supplemented July 19, 1990, (2) Amendment No. 134 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Russell Library, 123 Broad Street, Middletown, Connecticut. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 4th day of January 1991.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-814 Filed 1-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 143 to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation (GPUN, the licensee), which revised the license for the operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revises Provisional Operating License No. DPR-16, License Condition 2.C.(7) to accommodate implementation of a 21 month operating cycle with a 3 month outage, or a 24 month plant refueling cycle for the core spray spargers surveillance intervals. License Condition 2.C.(7) requires that inspections of all accessible surfaces and welds of both core spray spargers and repair assemblies be performed. The remainder of the application will be acted upon at a later date.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 18, 1990 (55 FR 42294). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commissioin has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) The application for amendment dated September 21, 1990, (2) Amendment No. 143 to License No. DPR-16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-I/II.

Dated at Rockville, Maryland this 27th day of December 1990.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-816 Filed 1-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260, 50-296]

Tennessee Valley Authority (Browns Ferry Nuclear Plant Units 1, 2 and 3), Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Operating License Nos. DPR-33, DPR-52 and DPR-68 which authorizes operation of the Browns Ferry Nuclear Plant, Units 1, 2 and 3, respectively. These licenses provide, among other things, that Browns Ferry (BFN), is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect. BFN, Units 1, 2 and 3 are boiling water

reactors (BWR) at the licensee's site located near Decatur, Alabama.

The revision to 10 CFR part 55, "Operators' Licenses," which became effective on May 26, 1987, established requirements for the administration of operating tests on nuclear power plant simulators. These regulations, in conjunction with 10 CFR 50.54(i-1), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalification. These regulations further require that a certified or NRC-approved simulation facility must be used to administer operating tests after May 26, 1991. By letter dated July 13, 1990, TVA requested an exemption concerning the schedule requirements for certification of a plant-referenced simulator.

The licensee intends to comply with 10 CFR 55.45(b) by certifying a plant-referenced simulator. Section 55.45(b)(2)(iii) of 10 CFR part 55 requires that facility licensees proposing to use a simulation facility consisting solely of a plant-referenced simulator submit Form NRC–474, "Simulation Facility Certification," no later than 46 months after the effective date of this rule, that is, by March 26, 1991. On July 13, 1990, TVA requested an exemption from this filing requirement to allow for the submittal of NRC Form-474 after March 26, 1991, but no later than December 31, 1991. Additionally, TVA requested an exemption from the requirements of 10 CFR 55.45(b)(2)(iv) to allow the simulation facility portion of the operating tests to be administered on the existing BFN simulator prior to certification of their new simulator.

After assessing the capabilities of the existing BFN simulator pursuant to the requirements for its certification, TVA elected to replace its current simulator software, instructor's station and computer complex and only retain the existing control panels. Although the existing simulator could have been certified with a number of exceptions, the licensee concluded that the best approach to meeting their training and certification needs was to purchase a new simulator. The exemption was requested because the replacement simulator will not be ready for certification by March 26, 1991.

The existing BFN simulator became operational in 1976. The licensee has implemented numerous design changes over the past 13 years to ensure the existing simulator reflected the operating plant. However, after a detailed analysis, which included a comparison of simulator transient data to best-estimate engineering code data, TVA concluded that major software modifications were warranted which were not practical to implement with the existing computer software and hardware.

TVA proposes to comply with 10 CFR 55.45(b) for BFN by certifying a plant referenced simulator by December 31, 1991. The licensee also proposes to continue to use the existing BFN simulator to administer the simulation facility portion of operating tests until the new simulator is certified. During the proposed exemption period, from May 26, 1991 until certification of the new simulator, three sets of operating tests are scheduled. In May and June of 1991, the 1991 annual operating tests for operator requalification are scheduled. Also in June of 1991, initial licensing examinations are scheduled for 12 candidates: Five reactor operators (ROs) and seven senior reactor operators (SROs). In December of 1991, initial licensing examinations are scheduled for 24 candidates: Sixteen ROs and eight SROs.

III

The Commission has determined, pursuant to 10 CFR 55.11, that this exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This exemption grants a temporary relief period of nine months from the March 1991 date for submittal of the BFN simulation facility certification. Additionally, this exemption allows the licensee to continue to use the existing BFN simulator for the administration of the simulation facility portion of operating tests scheduled before December 31, 1991 or until the new simulator is certified if this occurs sooner. Good faith efforts to comply with the regulation were made as follows:

(1) The existing BFN simulator became ready for training in 1976 and the licensee has kept it up-to-date by installing modifications made to BFN Unit 2.

(2) In May 1988, TVA completed the engineering specifications for the new simulator.

(3) In June 1988, TVA solicited competitive proposals in accordance with the requirements of the Federal Acquisition Regulations.

(4) In December 1988, proposal evaluations were completed. Final negotiations were concluded in February 1989.

(5) On March 31, 1989, the contract for the new simulator was awarded.

(6) The new simulator is scheduled to be ready for training in November 1991.

The Commission hereby grants an exemption from the schedular requirements of 10 CFR 55.45(b)(2)(iii) for submittal of NRC Form-474, "Simulation Facility Certification." This exemption is effective until December 31, 1991. Furthermore, the Commission hereby grants an exemption from the requirements of 10 CFR 55.45(b)(2)(iv) for administration of the simulation facility portion of operating tests only on certified or approved simulation facilities after May 26, 1991. This exemption is effective until receipt of NRC Form-474 but does not include any operating tests after December 31, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (55 FR 53372, December 28, 1990).

The licensee's exemption request dated July 13, 1990 is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Local Public Document Room located at Athens Public Library, South Street, Athens, Alabama 35611.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 19th day of December 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–813 Filed 1–11–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Defense Policy Advisory Committee on Trade; Determination of Closing of Meetings

The Defense Policy Advisory Committee on Trade (DPACT) (including its Executive Committee) has been established to advise the United States

Trade Representative and the Secretary of Defense, in accordance with subsection 135(a) of the Trade Act of 1974, as amended (the Act) with respect to the operation of any trade agreement once entered into and with respect to other matters arising in connection with the administration of the trade policy of the United States.

I, therefore determine that, for the duration of its charter, meetings of the Advisory Committee will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions and with matters listed in section 552b(c) of title 5 of the United States Code. Therefore, meetings of the Advisory Committee will be closed to the public unless otherwise determined by the United States Trade Representative or her designee.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91-832 Filed 1-11-91; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 28752]

Meeting/Conference Travel

January 8, 1991.

The Securities Exchange Act of 1934, as amended in August, 1983, gives the Commission authority to accept payment and reimbursement from non-federal entities to defray the cost to travel and subsistence expenses incurred by Commission members and staff while participating in meetings and conferences concerning the agency's responsibilities.

James M. McConnnell, Executive Director, today released the following compilation of payments and reimbursements for such travel during the quarters ending June 30, 1990, September 30, 1990, and December 31, 1990:

	Type of traveller	Number of trips	Host paid	SEC paid
Quarter ending June 30, 1990	Member	19	$8,097	$6,626
	Staff	186	64,750	5,928
Quarter Ending September 30, 1990	Member	8	6,134	1,593
	Staff	90	39,535	7,324
Quarter Ending December 31, 1990	Member	24	16,063	12,168
	Staff	218	106,572	9,180

For the Commission, by the Executive Director, pursuant to delegated authority under 17 CFR 200.30-15.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-799 Filed 1-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28745; Filed No. SR-DTC-90-12].

Self-Regulatory Organizations; The Depository Trust Co.; a Proposed Rule Change Relating to DTC's Proposed Automated Due-Bill Processing of Delivery Order Fails

January 7, 1991

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 14, 1990, The Depository Trust Company ("DTC") failed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-90-12) as described in Items I, II and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change offers deliverers the opportunity to instruct DTC to allocate automatically cash from the deliverer to the receiver where a fail creates the need for a due bill.[1] Under the proposed rule change, the deliverer may accomplish this by supplying certain information in its deliver order ("DO") instruction. No subsequent action will be required by the reciever to recover the cash distribution owed to it. DTC automatically will debit the deliverer and credit the receiver for the cash distribution attributable to the quantity of securities in the failed delivery. The proposed rule change also provides reports and inquiry functions to participants.

The proposed rule change will not apply to free, interdepository or continuous net settlement-related deliver orders, and initially will not apply to stock distribution due bills. Only distributions payable during the six months before the delivery is effected will be allocated automatically on a due bill.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change offers deliverers the opportunity to use a more automated DTC procedure than is currently available in DTC's book-entry system to compensate a receiver where a failure to settle causes a seller to have an obligation to the buyer for a missed cash dividend or interest payment. To achieve the book-entry equivalent of transfer with a due-bill attached under DTC's current procedures, the seller must insert "Code 70" in the "Reason Code" field of the DO instruction used to make its late delivery. The receiver of the Code 70 DO would then take action to recover its cash compensation from the seller. For example, the receiver could instruct DTC by securities payment order instruction.[2] to debit the

[1] A "due-bill" is an instrument used for the purpose of evidencing the transfer of title to any dividend interest or rights pertaining to securities contracted for, or evidencing the obligation of the seller to deliver such dividend, interest or right to a subsequent owner See New York Stock Exchange Rule 255 (1990).

[2] A securities payment order instruction is an instruction by a DTC member that directs DTC to debit the account of another DTC member and credit the instructing member's account with the amount so debited.

seller's DTC settlement account and credit the receiver's for the cash in question. The proposed rule change provides an alternative to the currently available Code 70 DO procedure. The alternative procedure would eliminate the need for the receiver of the DO to take any additional action to receive its cash payment from DTC. The Code 70 DO procedure is not being eliminated by DTC and participants may continue to use it if they wish. However, deliverers who issue Code 70 DOs risk reclamation by the receiver, and participants who wish to avoid Code 70 reclamation problems may modify their systems to flag deliveries for the automated due-bill processing provided by the proposed rule change.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In its Important Notice of April 19, 1989, DTC invited participants to comment on a proposal it was then considering to enhance its DO function to automate due bill processing for late deliveries. Under that proposal, DTC would have provided a new DO delivery activity code that deliverers could use to supply DTC with the information needed to pend dividend debits and credits and process them in participant settlement accounts on payable dates for deliveries subject to due bills.

As noted in an Important Notice dated April 12, 1990, the variety of participants' responses to the April 1989 Notice prompted DTC to: (1) Retain existing procedures for Code 70 DOs without mandating acceptance by receivers; (2) forgo development of a new activity code; and (3) develop the proposed rule change for processing due bills by book-entry in place of the proposal distributed in April 1989.

Although participants' comments were incorporated into the development of the current proposed rule change, no written comments have been received by DTC

DTC believes that the proposed rule change is consistent with section 17A of the Act because it will promote the prompt and accurate clearance and settlement of securities transactions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submisson, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above.

Copies of such filing will also be available for inspection and copying at the principle office of DTC. All submissions should refer to the file number SR–DTC–90–12 and should be submitted by February 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91–766 Filed 1–11–91; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34–28751; File No. SR–NASD–90–66]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to change its budgeting and financial reporting period from a fiscal year running from October 1 to September 30, to a calendar year running from January 1 through December 31. The NASD is also proposing to adopt an interim budget for the calendar quarter running from October 1, 1990 to December 31, 1990; and to amend Schedule A, section 1 of the NASD By-Laws to provide for a continuation of the current assessment on members for that calendar quarter.

In order to address the fact that the NASD's fees and assessments would only be collected for a quarter of a year, the proposed rule change sets forth a new subsection (e) to section 1 to provide for an additional credit of 75% against the assessment set forth in section 1 for the calendar quarter of October 1, 1990 to December 31, 1990. Below is the text of the proposed subsection (e); in italics:

(e) *For the calendar quarter October 1, 1990 through December 31, 1990 each member shall receive an additional credit of 75% against any fee or assessment calculated in accordance with this section.*

The proposed rule change subsequently deletes new subsection (e). This amendment would not become effective until January 1, 1991. In November 1990, the NASD approved its budget for the calendar year January 1, 1991 to December 31, 1991 and continued the same annual assessment as in prior years. Therefore, the NASD is proposing to amend section 1 of Schedule A to continue the same assessment for calendar year January 1, 1991 to December 31, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1990 the NASD elected to change its budgeting and financial reporting period from a fiscal year running from October 1 to September 30, to a calendar year running from January 1 through December 31. In making this change, the NASD adopted an interim budget for the last calendar quarter of 1990 (October 1, 1990 through December 31, 1990) to provide for a transition to its new calendar year. In order to provide revenues for the interim budget, the NASD must continue to collect the assessments from its members in substantially the same manner and amounts as its has previously.

The purpose of the rule change is to amend section 1 of Schedule A of the NASD By-Laws to change the effective date of the credit against the assessment and to credit portions of the fees assessed to the members on a pro-rata basis in a manner which will recognize the change-over to the NASD's new calendar year. The first proposed rule change to section 1(d) and proposed adoption of new section 1(e) to said Schedule A reflects the assessment authority necessary for the last calendar quarter of 1990. Provided the first proposed rule change takes effect, the NASD is simultaneously proposing to amend section 1(d) and to delete section 1(e) to implement the assessment authority necessary for calendar year 1991. This amendment would not become effective until January 1, 1991.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change became effective November 29, 1990, pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b-4 thereunder in that it constitutes a fee or assessment imposed exclusively upon the NASD's members.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to the file number in the caption above and should be submitted by February 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 7, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-797 Filed 1-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28744; File No. SR-PTC-90-09]

Self-Regulatory Organizations; the Participants Trust Company; Filing of Proposed Rule Change Relating to the Allocation and Distribution of Collected Principal and Interest Payments on Securities Held in PTC

January 7, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1990, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-PTC-90-09) as described in Items I, II, and III below, which items have been prepared by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to the rules of PTC amends Article III, Rule 2 by the insertion of a new section 1A following current section 1. New section 1A provides a mechanism for the distribution of collected principal and interest payments by a *pro rata* allocation of collected funds to all participants entitled to receive principal and interest for a particular payment date, without regard to which payments have been collected on behalf of which participants and notwithstanding the collection of less than all principal and interest due on that date. Below is the text of the proposed rule change. (Brackets indicate deletions, italics indicate additons.)

Article II, Rule 2:

Section 1A, Distribution of Collected Principal and Interest.

Prior to the crediting of principal and interest or the making of principal and interest advances for a Principal and Interest Payment Date with respect to Securities subject thereof (the "subject Securities"), all as provided in section 1 of this rule 2, the Corporation may, in its sole discretion and at such time and to such extent as the Corporation shall determine, distribute principal and interest which has been collected in respect of some or all of the subject

Securities in immediately available funds (the "collected funds") to Participants and Limited Purpose Participants as follows:

(a) The collected funds shall be distributed among all Participants and Limited Purpose Participants entitled, pursuant to section 1 of this rule 2, to receive principal and interest payments in respect of the subject Securities for the applicable Principal and Interest Payment Date.

(b) The collected funds shall be allocated to the subject Securities of each such Participant or Limited Purpose Participant by Account, pro rata in accordance with the ratio of the principal and interest payable for that Principal and Interest Payment Date on the subject Securities of the Participant or Limited Purpose Participant for that Account, to the total principal and interest payable for all subject securities for such Principal and Interest Payment Date (for each Participant or Limited Purpose Participant, its "allocation"). The allocation shall be credited to the Cash Balance for each such Account, notwithstanding any provision to the contrary in these Rules or the Procedures.

(c) Any allocation pursuant to paragraph (b) of this section 1A shall be made irrespective of the specific subject Securities to which the collected funds relate and notwithstanding the right, pursuant to section 1 of this rule 2, of any Participant or Limited Purpose Participant to be credited for principal and interest received on account of specific subject Securities.

(d) Each Participant or Limited Purpose Participant receiving an allocation pursuant to paragraph (b) of this section 1A shall be obligated, upon demand by the Corporation, to return any portion of such distribution if, after a reasonable time, it shall be determined that some or all of the principal and interest payments attributable to subject Securities of that Participant or Limited Purpose Participant has not been received from the issuer, its paying agent or GNMA (the amount of distribution returned being referred to hereinafter as the "returned funds").

(e) The Corporation shall charge the returned funds against the Cash Balance for the Account to which the collected funds were credited as provided in paragraph (b) of this section 1A, notwithstanding any provision to the contrary in these Rules or the Procedures. If the Cash Balance for the Account shall be insufficient to charge in full the returned funds as provided in preceding paragraph (d), the Corporation shall take such actions as are otherwise permitted under these Rules and the Procedures to satisfy in full the obligation of the Participant or Limited Purpose Participant.

(f) The returned funds shall be held in trust by the Corporation for the benefit of each of the Participants or Limited Purpose Participants entitled thereto in respect of certain subject Securities pursuant to thse Rules to the extent each such Participant and Limited Purpose Participant has not been paid a principal and interest payment or advance pursuant to section 1 of this rule 2; to the extent any such Participant or Limited Purpose Participant has received a principal and interest payment or advance pursuant to section 1 of this rule 2, the Corporation shall be entitled to retain the returned funds when received for its own account or for the account of any third party lender as otherwise provided in section 2 of this rule.

(g) To the extent any Participant or Limited Purpose Participant is entitled to some or all of the returned funds in respect of certain subject Securities as provided in paragraph (f) preceding, the Corporation shall credit the returned funds to the Cash Balance for the Account relating to said subject Securities of each such Participant or Limited Purpose Participant so entitled, notwithstanding any provision to the contrary in these Rules or the Procedures.

(h) If collected funds are allocated and distributed for a certain Principal and Interest Payment Date as provided in this Section 1A and the Corporation concurrently or thereafter makes principal and interest payments or advances in accordance with section 1 of this rule 2 in respect of the same Principal and Interest Payment Date, the distribution of collected funds pursuant to this Section 1A shall not be or be deemed to be the making of principal and interest payments or advances as provided in section 1 of this rule 2. This section 1A shall control the distribution of collected funds, and the provisions of the balance of this rule and the Rules and Procedures generally shall apply, insofar as they are not inconsistent herewith. With respect to the making of principal and interest payments or advances and the use of available funds as provided therefor in section 1 of this rule 2, section 1 and the balance of this rule 2 shall apply, as well as the balance of these Rules and the Procedures generally, without regard to this section 1A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to reduce borrowing by PTC to finance timely principal and interest ("P&I") payments to participants. This will reduce the cost of borrowing and thereby facilitate the absorption of those costs by PTC and the reduction of charges to participants as provided in SR–PTC–90–7. The rules of PTC currently permit PTC to either (i) Credit principal and interest ("P&I") when collected or (ii) at a time PTC shall determine, to supplement collected funds with borrowed funds and/or PTC's own funds and to credit P&I to all participants, whereupon participants whose funds were collected shall have been paid P&I to which they are entitled and participants for whom P&I payments have not been collected shall have received a P&I "advance." In the latter case, PTC typically credits P&I on "P+I", the day after the P&I Payment Date (as defined in the PTC rules, the date the issuer establishes for the payment of P&I on its securities), although there is no requirement that PTC pay on this or any other specific date. When the P&I Payment Date falls on a weekend or in other unusual circumstances, it may not be practicable to pay on P+1 because a considerably smaller proportion of P&I funds will have typically been collected than in ordinary circumstances. Under these conditions, there would be a materially higher cost of borrowing. The proposed rule change addresses this situation by providing a mechanism to distribute collected funds, within borrowing the uncollected amount, by allocating to all participants a share of what has been collected, without regard to which P&I payments have been received from issuers or which participants are entitled thereto. All participants entitled

to receive P&I for a P&I Payment Date would thus get at least a partial credit on P+1, although no participant would be paid in full. In effect, the participants agree by this proposed rule to share in a fungible pool of collected P&I; for any P&1 Payment date, some participants may benefit by receeiving more than has been collected (but not more than their entitlement) in respect of securities credited to their accounts while other participants may receive less than has been collected in respect of securities credited to their accounts. If PTC has not received all P&I payments due for the P&I Payment Date and a subsequent P&I borrowing occurs, the underpaid participant may be subordinated to the P&I lender in the payment of funds later collected, if less than all funds are collected. Notwithstanding this remote possibility, PTC understands from certain participants that this is a desirable mechanism for the timely disbursement of collected P&I. Participants in receipt of such a credit would have the benefit of overnight earnings on funds they would otherwise not receive until at least the next business day (P+2). PTC has recently, in SR–PTC–90–7 made a related change to its P&I payment system by eliminating the proration charge of financing costs to participants for receiving P&I advances. PTC has made a business decision to absorb those costs, premised in part on this proposed rule change which, by reducing the need to borrow reduces PTC's costs; the proposed rule is thus essential to the financial feasibility of the reduction in charges to participants. Both changes are part of a program approved by the Board of Directors of PTC to serve participants more efficiently and economically in respect of P&I collection and disbursement.

The basis for this proposed rule change under the Act is the requirement under section 17A(b)(3)(D) that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

While PTC has consulted certain participants concerning the concept of the proposed rule change, PTC has not solicited, and does not intend to solicit, comments on the proposed rule change. PTC has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PTC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proosed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be avaialble for inspection and copying at the principal office of PTC. All submission should refer to File No. SR–PTC–90–09 and should be submitted by February 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–796 Filed 1–11–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

January 7, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Conner Peripherals, Inc.
Common Stock, No Par Value (File No. 7–6472)
Micron Technology, Inc.
Common Stock, $.10 Par Value (File No. 7–6473)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–767 Filed 1–11–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 7, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Airlease Ltd. L. P.
Common Stock, No Par Value (File No. 7–6474)
American Wast Services, Inc.
Class A Common Stock, No Par Value (File No. 7–6475)
Catellus Development Corp.
Common Stock, $0.01 Par Value (File No. 7–6476)
RJR Nabisco Holdings Corp.

11.5% Cum. Conv. Pfd. $0.01 Par Value (File No. 7–6477)
Sauve Shoe Inc.
Common Stock, $0.01 Par Value (File No. 7–6478)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written commments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–768 Filed 1–11–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 7, 1991.

The Above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Laidlaw, Inc.
Class A Common Stock, No Par Value (File No. 7–6490)
Laidlaw, Inc.
Class B Non-Voting Shares of Common Stock, No Par Value (File No. 7–6491)
Danielson Holding Corporation
Common Stock, $.10 Par Value (File No. 7–6492)
US Intec, Inc.
Common Stock, $.02 Par Value (File No. 7–6493)
Bio-Electro Systems, Inc.
Callable Class A Common Stock, $.01 Par Value (File No. 7–6494)
International Murex Technologies Corporation
Common Stock, No Par Value (File No. 7–6495)
Nuveen California Investment Quality Municipal Fund
Common Stock, $.01 Par Value (File No. 7–6496)
Nuveen New York Investment Quality Municipal Fund
Common Stock, $.01 Par Value (File No. 7–6497)
Texscan Corporation
Common Stock, $.01 Par Value (File No. 7–6498)
American Realty Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–6499)
Convest Energy Corporation
Common Stock, $.01 Par Value (File No. 7–6500)
Johnson Products Co., Inc.
Common Stock, $.50 Par Value (File No. 7–6501)
Urcarco, Inc.
Common Stock, $.01 Par Value (File No. 7–6502)
Texas Meridian Resources Corporation
Common Stock, $.01 Par Value (File No. 7–6503)
GR Foods, Inc.
Common Stock, $.16⅔ Par Value (File No. 7–6504)
Nuveen Insured Quality Municipal Fund
Common Stock, $.01 Par Value (File No. 7–6505)
The Exploration Company of Louisiana, Inc.
Common Stock, $.01 Par Value (File No. 7–6506)
Pinelands, Inc.
Common Stock, $.01 Par Value (File No. 7–6507)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–769 Filed 1–11–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Pacific Stock Exchange, Inc.

January 7, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Alliant Techsystems, Inc.
Common Stock, $.01 Par Value (File No. 7–6479)
Esco Electronics Corp.
Common Stock, No Par Value (File No. 7–6480)
Frisch's Restaurants, Inc.
Common Stock, No Par Value (File No. 7–6481)
Genentech, Inc.
New Common Stock, $.02 Par Value (File No. 7–6482)
Intermark, Inc.
Common Stock, $.10 Par Value (File No. 7–6483)
Koger Equity, Inc.
Common Stock, $.10 Par Value (File No. 7–6484)
Micron Technology
Common Stock, $.10 Par Value (File No. 7–6485)
Midwest Resources, Inc.
Common Stock, No Par Value (File No. 7–6486)
Nuveen California Investment Quality Municipal
Common Stock, $.01 Par Value (File No. 7–6487)
Nuveen New York Investment Quality Municipal
Common Stock, $.01 Par Value (File No. 7–6488)
NWNL Companies, Inc.
Common Stock, $1.25 Par Value (File No. 7–6489)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following the opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair

and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-770 Filed 1-11-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 7, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Go Video, Inc.
Common Stock, $.001 Par Value (File No. 7-6469)
Met-Pro Corporation
Common Stock, $0.10 Par Value (File No. 7-6470)
OEA, Inc.
Common Stock, $0.10 Par Value (File No. 7-6471)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 29, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-771 Filed 1-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17938; 812-7610]

Freedom Investment Trust, et al.; Application

January 8, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Freedom Investment Trust ("Freedom I") and its portfolio series (Freedom Gold & Government Trust, Freedom Regional Bank Fund, Freedom Government Income Fund, Freedom Equity Value Fund, Freedom Managed Tax Exempt Fund, and Freedom Money Market Fund), Freedom Investment Trust II ("Freedom II") and its portfolio series (Freedom Global Fund, Freedom Global Income Fund, and Freedom Short-Term World Income Fund), Freedom Investment Trust III ("Freedom III") and its portfolio series (Freedom Environmental Fund), Freedom Mutual Fund ("Freedom Mutual") and its portfolio series (Freedom Cash Management Fund and Freedom Government Securities Fund), and Freedom Group of Tax Exempt Funds ("Freedom Tax Exempt") and its portfolio series (Freedom Tax Exempt Money Fund and Freedom California Tax Exempt Money Fund).

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) that would grant an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and from rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the 1940 Act that would amend prior orders that permitted applicants to assess a contingent deferred sales load ("CDSL") on certain redemptions of shares.

FILING DATE: The Application was filed on October 4, 1990 and amendments were filed on December 19, 1990 and January 4, 1991.

HEARING OR NOTIFICTION OF A HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 5, 1991, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicants, One Beacon Street, Fourth Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants are registered open-end management investment companies organized as Massachusetts business trusts. Applicants distribute their shares through Tucker Anthony Incorporated and Freedom Distributors Corporation. Freedom Capital Management Corporation is the investment adviser of each applicant.

2. Freedom I and Freedom II, except for the Freedom Money Market Fund series of Freedom I and the Freedom Short-Term World Income Fund series of Freedom II, currently offer their shares at net asset value subject to a CDSL for shares redeemed within five years of purchase. See Investment Company Act Release Nos. 15118 (May 28, 1986), 15455 (December 4, 1986), 15745/15745A (May 19, 1987/June 2, 1987), 16487 (July 20, 1988), 16997 (June 12, 1989), and 17373 (March 12, 1990). The Freedom Money Market Fund of Freedom I, the Freedom Short-Term World Income Fund of Freedom II, the Freedom Mutual series, and the Freedom Tax Exempt series offer their shares at current net asset value without any sales load. Freedom III offers its shares at net asset value plus a traditional front-end sales charge.

3. Applicants propose to amend the current CDSL schedule approved by prior Commission orders. The proposed CDSL schedule may range from one to seven years and the applicable percentage applied to redemptions may range from one to five percent. The new CDSL will be imposed only on shares issued after the order requested by applicants is granted and applicants' prospectuses are supplemented to describe the new CDSL schedule. Shares of any series of applicants that are subject to the current CDSL and are purchased prior to the date the proposed CDSL becomes effective will remain subject to the current CDSL. Except for

the new range of years and percentages, the application of the proposed CDSL will be identical to the current CDSL previously approved.

4. No CDSL will be imposed when the investor redeems: (a) Shares representing the amount of the increase in the value of a series' shares due to capital appreciation, (b) shares on which an investor previously paid a front-end sales charge, (c) shares that the investor has held for more than the maximum applicable CDSL period, and (d) shares acquired through reinvestment of dividend income or capital gain distributions.

5. In determining whether a CDSL is payable, applicants propose to assume that shares, or amounts representing shares, that are not subject to any deferred sales load are redeemed first, and other shares are then redeemed in the order purchased, consistent with applicants' undertaking to comply with proposed rule 6c–10 under the 1940 Act in the form proposed or as it may eventually be adopted.

6. Pursuant to exising orders, applicants may waive the CDSL on the following redemptions: (a) Redemptions following the death or disability of a shareholder; (b) redemptions in connection with certain distributions from individual retirement accounts and other qualified retirement plans; (c) redemptions by officers, directors, trustees, employees, and sales representatives of applicants and certain affiliated persons thereof; (d) redemptions effected under an applicant's right to liquidate a shareholder's account; (e) redemptions effected under an applicant's systematic withdrawal plan; (f) redemptions by clients of Tucker Anthony Advisers; (g) redemptions of shares purchased in an aggregate amount of $1 million or more by a bank or a trust company acting as a trustee; (h) certain redemptions from shares in a retirement plan account qualified under the Internal Revenue Code section 401(k); and (i) redemptions in connection with the merger or reorganization between applicants and another investment company. Upon granting the requested relief, applicants will expand the waiver for banks to include aggregate purchases of $1 million or more by a trust company, bank trust department, or any similar institution holding shares in a fiduciary or advisory capacity.

7. Applicants may reduce the CDSL for redemptions by shareholders who have purchased more than a stated minimum number of shares. Currently, the CDSL is reduced by one-half for purchases of at least $2 million and by three-fourth's for purchases of at least $4 million. The proposed relief will permit applicants to vary the minimum amounts required to reduce the CDSL based on the specific CDSL for the particular fund.

Applicants' Legal Analysis

1. Section 2(a)(32) of the 1940 Act defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSL will not restrict a shareholder from receiving a proportionate share of the current net assets, but will merely defer the deductions of a sales charge and make it contingent upon an event that may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)(32) of the 1940 Act to the extent necessary to permit the imposition of the proposed CDSL.

2. Section 2(a)(35) of the 1940 Act defines sales load to be the amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased. In this case, applicants will pay the CDSL to the relevent distributor to reimburse it for expenses related to the sale of shares; therefore, applicants submit that this arrangement is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event that may not occur, does not change the basic nature of this charge, that is in every other respect a sales charge.

3. Section 22(c) of the 1940 Act and rule 22c–1 thereunder require that the price of a redeemable security issued by an open-end management company for purposes of sale, redemption, and repurchase be based on the company's current net asset value. Applicants contend that the redemption price of their shares is based on current net asset value. The CDSL is then deducted from this redemption price. However, to avoid any question as to the potential applicability of section 22(c) and rule 22c–1, applicants request an exemption from rule 22c–1 to the extent necessary to permit applicants to impose the proposed CDSL.

4. Applicants request an exemption from the provisions of section 22(d) of the 1940 Act to permit the waiver of the CDSL as described in this notice. Section 22(d) requires a registered investment company, principal underwriter, or dealer in redeemable securities to sell these securites only at a current public offering price described in the company's prospectus. Subject to certain conditions, rule 22d–1 provides an exemption from section 22(d) allowing investment companies to charge different loads to different classes of investors. Traditionally, rule 22d–1 has applied to sales loads at the time of purchase. Applicants, however, will comply with the conditions of rule 22d–1 as if the CDSL was a front-end sales load and request that the waivers of the CDSL as described be permitted.

Applicants' Condition

If the request to issue the order is granted, applicants expressly consent to the following condition:

Applicants will comply with proposed rule 6c–10 under the 1940 Act as currently proposed and as adopted or modified in the future.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–798 Filed 1–11–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17942; 812–7649]

First Investors Corp., et al.; Application

January 10, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: First Investors Corporation ("First Investors"), First Investors Single Payment and Periodic Payment Plans for Investment in First Investors Fund for Income, Inc. (the "Income Fund Plan"), First Investors Periodic Payment Plans for Investment in First Investors High Yield Fund, Inc. (the "High Yield Plan"), First Investors Fund for Income, Inc. (the "Income Fund"), First Investors High Yield Fund, Inc. (the "High Yield Fund"), and First Investors Government Fund, Inc. (the "Government Fund").

Relevent Act Section: Order requested under section 26(b) approving a proposed substitution, under section 6(c) granting an exemption from section 12(d)(1), and under sections 11(a) and 11(c) permitting certain offers of exchange.

Summary of Application: Applicants seek in order under section 26(b) approving (a) the substitution of share of the Government Fund for shares of the Income Fund as the underlying

investment medium of the Income Fund Plan, and (b) the substitution of shares of the Government Fund for shares of the High Yield Fund as the underlying investment medium of the High Yield Plan. The substitution would apply only to purchases made after a specific date; the Plans would continue to hold previously purchased shares of the Income Fund and High Yield Fund, each of which has suspended sales of shares. If shares of the income Fund or High Yield Fund become available for purchase by the Income Fund Plan or High Yield Fund Plan, respectively, after at least 30 days advance notice to unitholders that Plan will discontinue purchases of shares of the Government Fund (except for the reinvestment of dividends and distributions from such Fund) and commence purchases of the Income Fund or the High Yield Fund, as the case may be, with payments received. Applicants also seek an order under section 6(c) granting an exemption from section 12(d)(1) to permit the Plans to own shares of two Funds, and approval of certain offers of exchange under sections 11(a) and 11(c) of the Act.

Filing Date: The application was filed on December 7, 1990 and amended on January 7, 1991.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 1, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 5th Street, NW., Washington, DC 20549. Applicants, First Investors Corporation, 95 Wall Street, New York, New York 10005, Attention: Robert J. Grosso, Esq., Secretary and General Counsel, with a copy to Richard M. Phillips, Esq., Kirkpatrick & Lockhart, 1800 M Street, NW., suite 900 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Barry Mendelson, Staff Attorney, at (202) 504–2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. First Investors is a registered broker-dealer organized under the laws of the State of New York in 1968. Its primary business is as co-underwriter of the First Investors Group of open-end investment companies and as sponsor and underwriter of single payment and periodic payment plans for investment in certain of those investment companies.

2. The Income Fund Plan is a registered unit investment trust that provides for long-term investment programs through single payment and periodic payment plans for investment in shares of the Income Fund. As of November 30, 1990, the Income Fund Plan had net assets of $187,327,682 and 76,435 investors ("Planholders").

3. The Income Fund is a Maryland corporation and a diversified open-end management investment company registered under the Act. The primary investment objective of the Income Fund is to earn a high level of current income, with capital growth as a secondary objective. The Income Fund invests in both fixed income securities (including preferred stock and bonds) and common stock, with emphasis on lower-grade, high-yielding, high-risk debt securities, commonly known as junk bonds. As of November 30, 1990, the Income Fund had net assets of $630,068,385.

4. The High Yield Plan is a registered unit investment trust that provides for long-term investment programs through periodic payment plans for investment in shares of the High Yield Fund. As of November 30, 1990, the High Yield Plan had net assets of $27,158,954 and 16,329 Planholders.

5. The High Yield Fund is a Maryland corporation and a diversified open-end management investment company registered under the Act. The High Yield Fund invests primarily in high-yield, high-risk debt securities with the primary objective of seeking high current income and a secondary objective of seeking capital appreciation. As of November 30, 1990, the Income Fund had net assets of $380,335, 358.

6. The Government Fund is a Maryland corporation and a diversified open-end management investment company registered under the Act. The investment objective of the Government Fund is to achieve a significant level of current income which is consistent with security and liquidity of principal by investing no less than 80% of the Fund's assets in obligations issued or guaranteed as to principal and interest by the United States government, its agencies or instrumentalities. The Government Fund's portfolio securities currently consist primarily of Government National Mortgage Association (Ginnie Mae) securities. As of November 30, 1990, the Government Fund had net assets of $274,474,215.

7. On November 8, 1990, the Securities Division of the Commonwealth of Massachusetts instituted an administrative action and the State of New York filed a complaint in New York State Supreme Court against First Investors, the co-underwriter of the Funds and the sponsor of the Plans, the Income Fund and the High Yield Fund and several affiliated persons of First Investors and the Funds. These affiliated persons include First Investors Management Company, Inc., the investment adviser and other co-underwriter of the Funds; First Investors Consolidated Corporation, the parent corporation of the co-underwriters; and certain officers and directors of such companies, including David D. Grayson and Glenn O. Head, who are also officers and directors of the Funds.

8. In addition to the state actions, six private class actions (five in federal district court and one in state court) and two derivative actions (both in federal district court) have been filed against the respondents. The federal class actions have been consolidated as *In Re First Investors Securites Litigation*, 90 Civ. 7225 (S.D.N.Y.). The class action in state court is *Schmaeling* v. *First Investors Corp.*, Index No. 26482–90 (N.Y. Sup. Ct., New York County). The two derivative actions are both captioned *Penzner* v. *First Investors Corp.*, and are designated as 90 Civ. 7571 (S.D.N.Y.) (filed on behalf of the Income Fund) and 90 Civ. 7630 (S.D.N.Y.) (filed on behalf of the High Yield Fund).

9. The legal actions allege that the respondents engaged in unlawful sales practices and failed to make proper disclosure in the Income and High Yield Funds' prospectuses. The various complaints allege, among other things, that the sales force that solicited purchases of the Funds' shares was inadequately trained and supervised; that the sales force represented or implied that the Funds' securities were safe, "guaranteed" or "insured," and suitable for potential investors without regard to their investment objectives, income, or net worth; that sales practices improperly emphasized the potential yield rather than the total return of investments in the Funds,

made improper comparisons between the Funds and bank instruments, and omitted to disclose applicable sales loads; that defendants did not make timely delivery of prospectuses to certain investors and advised or implied that investors should ignore the information contained therein; and that the Funds' prospectuses contained numerous material misstatements and omissions with respect to, among other things, the selection, evaluation, and diversification of investments in the Funds' portfolios and the relative risk versus return on investments in junk bonds. In addition to the allegations discussed above, the two *Penzner* derivative actions allege that the Funds paid excessive advisory, underwriting, and transfer agency fees and expenses, and that various respondents breached their fiduciary duties to the Funds by accepting or approving such fees.

10. The relief sought by the various complaints includes the payment of substantial monetary restitution and damages by the respondents, a prohibition on each respondent's involvement in the offer or sale of securities in New York and Massachusetts, and the appointment of a receiver to take possession of property derived by means of allegedly fraudulent practices. The complaints also seek to prohibit the individual respondents from associating with or controlling any broker-dealer or issuer of securities.

11. Pursuant to section 9(a) of the Act, if certain preliminary or permanent relief sought by the complaints is granted, some or all of the respondents would be prohibited from continuing to serve in their current capacities as investment adviser, principal underwriter, depositor, officer, or director of either the Funds or the Plans unless the SEC were to grant exemptive relief to those respondents.

12. The respondents deny, and intend to contest, all material allegations of the complaints filed against them. While these proceedings are pending, respondents who are Fund officers and directors, or which provide services to the Funds, intend to continue to serve the Funds in their current capacities.

13. Following commencement of the New York State and Massachusetts proceedings on November 8, 1990, the Funds suspended sales of new shares, including the reinvestment of dividends and capital gain distributions. At the same time, First Investors also suspended sales of new interests in the Plans. First Investors will not resume offering new interests in the Plans before such time as the Plans resume the purchase of shares of the Income Fund and the High Yield Fund, respectively, as the Plans' underlying investment (as described below).

14. Pursuant to a stipulation entered into by the defendants and the State of New York on December 14, 1990, the respondents agreed to not resume sales of the Funds' shares (except that the Funds were permitted to resume the reinvestment of dividends and capital gain distributions for shareholders who had selected that option) without 30 days' prior notice to the State of New York. Pursuant to the stipulation, respondents have distributed to all shareholders of the Funds and to all Planholders a letter describing the allegations against the respondents in the legal actions described above and a revised prospectus for the appropriate Fund.

15. Each Plan provides that if the shares used as the underlying investment for the Plan are not available for purchase for a period of 90 days, and if the sponsor (First Investors) does not substitute other shares, the Plan must be terminated. Although applicants intend to use their best efforts to resume sales of the Funds' shares within the 90 day period, which ends on February 6, 1991, it is not certain that the Funds will be able to do so. Accordingly, applicants seek to obtain an order permitting the substitution by February 6, 1991, to prevent termination of the Plans.

16. Payments received from Planholders between the date of suspension of sales of the shares of the Income Fund and the High Yield Fund and the date of the proposed substitution are being held by the Plans' custodian, The Bank of New York, in an interest bearing account. Upon the date of any substitution, the money in that account, including interest, but subject to normal deductions for sales loads and other charges, will be invested by the Plans in shares of the Government Fund at the next determined net asset value of the Government Fund.

17. Applicants propose to substitute shares of the Government Fund as the underlying investment for payments received from Planholders under the Income Fund Plan and the High Yield Plan while shares of the Income Fund and the High Yield Fund are not available for purchase. Under applicants' proposal, each Plan will purchase shares of the Government Fund with Plan payments received after November 8, 1990 (the date of suspension of sales of shares of the Income Fund and High Yield Fund) and through reinvestment of dividends and capital gain distributions attributable to the Government Fund shares held by the Plans. At the same time, each Plan will continue to hold the previously acquired shares of its original underlying fund (the Income Fund or the High Yield Fund) and will acquire additional shares of such Fund through the reinvestment of dividends and capital gain distributions attributable to such Fund.

18. Following the substitution, each Plan's portfolio will consist of the shares of two investment companies, the Government Fund and the Fund originally underlying the Plan. Each Planholder will own a pro rata undivided interest in his Plan's portfolio, regardless of whether his contributions to the Plan were invested before or after November 8, 1990.

19. If and when shares of either the Income Fund or the High Yield Fund become available, upon 30 days' notice to Planholders, the Income Fund Plan or the High Yield Fund Plan, as the case may be, will resume purchasing shares of the original underlying Fund and will cease purchasing shares of the Government Fund with any subsequent Plan payments. Thereafter, such Plan would continue to hold the previously acquired shares of the Government Fund, but would not acquire additional shares thereof except through the reinvestment of dividends and capital gain distributions attributable to shares of the Government Fund already in the Plan's portfolio.

20. Before the substitution, First Investors will send a current prospectus for the Government Fund to each Planholder. Within five days following the substitution of the Government Fund for the Income Fund and the High Yield Fund as the underlying investment medium of the Plans, First Investors will send each Planholder a notice that the substitution has occurred.

21. All expenses and charges of the substitution will be borne by First Investors. The maintenance and custodian fees and other charges will not change as a result of the substitution.

22. The substitution will not alter Planholders' rights under the Plans. Planholders will continue to have the same dividend, voting, exchange, redemption, termination, and other rights as they currently have under the Plans.

23. A Planholder who does not wish to continue his participation in a Plan in light of the proposed substitution, or for any reason, will be offered the following alternatives:

(a) *Exchange into Another Plan.* A Planholder may exchange into another First Investors periodic payment plan without any sales load or other charge by terminating his participation in the

current Plan and investing some or all of the proceeds in a new plan at net asset value. First Investors will waive all restrictions and fees usually placed on such exchanges. Additional payments would be subject to the same schedule of fees and charges as are applicable to the current Plan.

(b) *Termination of Plan and Receipt of a Refund.* A Planholder whose periodic payment plan certificate was issued within the past 18 months may, pursuant to section 27(d) of the Act, surrender his certificate for the value of his account plus an amount sufficient to reduce the overall sales load paid by the investor to 15% of his gross payments. Similarly, pursuant to section 27(f) of the Act, within 45 days of the mailing by the custodian of a statement of charges and notice of withdrawal rights (which must be mailed within 60 days of the purchase of a certificate), a Planholder may surrender his certificate for the value of his account plus a refund of the entire sales load.

Applicants have agreed that any Planholder entitled to a refund under section 27(d) or 27(f) on November 8, 1990, but whose refund rights otherwise would have terminated before March 1, 1991, will be entitled to request such a refund at any time up to February 28, 1991. A Planholder who receives a refund may open a shareholder accumulation account within six months of the refund and invest all or part of the proceeds in any First Investors open-end investment company (other than the Income Fund or the High Yield Fund) directly, rather than through a plan, at net asset value. An investor who opens a shareholder accumulation account will not be obligated to make any additional purchases of the new company's shares. However, an investor electing this option will be entitled to make additional purchases of the new company's shares during the period covered by the current plan, up to the face amount of the current plan (minus payments already made), at the company's normal sales load.

(c) *Termination of Plan without a Refund and Direct Fund Purchase.* A Planholder who does not receive a refund also may terminate his plan and invest all of the proceeds in a share accumulation account for shares of any First Investors open-end investment company (other than the Income Fund or the High Yield Fund) at net asset value. Again, an investor who elects this option will not be obligated to make additional purchases, but may make additional purchases of the new fund at any time. Each former Planholder who elects this option will be entitled to make additional purchases of the new company (up to the face amount of the former Plan, minus Plan payments already made) during the period covered by the Plan at a discounted sales load that will not exceed the sales and other charges that would have been paid under the Plan (assuming the Planholder invests the full face amount during the period covered by the Plan); provided that if a Planholder has made less than 13 payments, the amount of future purchases that may be made at the discounted sales charge will be reduced *pro rata* in the proportion that the number of Plan payments already made bears to 13.

(d) *Simple Termination of Plan.* A Planholder may terminate his plan and receive, at his option, his *pro rata* share of the Plan's underlying securities or the cash value thereof.

Applicants have sent a letter to the Planholders informing them of the proposed substitution and describing each of the options summarized above.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires SEC approval before the depositor of a registered unit investment trust holding the security of a single issuer may substitute another security for such security. The section provides that the SEC shall issue an order approving the substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants seek an order under section 26(b) approving: (a) the substitution of shares of the Government Fund for shares of the Income Fund and the High Yield Fund, as applicable, by the purchase of Government Fund shares with payments received after the Funds' suspension of sales of their shares (except for reinvestment of dividends and distributions from the Income Fund and High Yield Fund); and (b) the re-substitution of shares of the Income Fund and the High Yield Fund, as applicable, by the purchase of such shares by the respective Plans if and when sales of those Funds' shares are resumed (except for the reinvestment of dividends and distributions from the Government Fund).

3. Section 12(d)(1)(A) of the Act prohibits an investment company from acquiring the securities of other investment companies in excess of specified limits. Section 12(d)(1)(B) of the Act prohibits an investment company from selling its own securities to another investment company in excess of certain specified limits. The purchase of Fund shares by, and the sale of Fund shares to, the Plans is presently excluded from section 12(d)(1) by section 12(d)(1)(E), which generally renders section 12(d)(1) inapplicable to the purchase or acquisition of any security that is the only investment security held by an investment company.

4. As a result of the substitutions, each Plan would hold the securities of two registered investment companies and the exception provided by section 12(d)(1)(E) would be inapplicable. Applicants request an exemption under section 6(c) of the Act from section 12(d)(1) to the extent necessary for each Plan to hold the securities of more than one registered investment company in excess of the percentages specified in sections 12(d)(1)(A) and 12(d)(1)(B).

5. Under sections 11(a) and 11(c) of the Act, an offer of exchange involving securities issued by a registered unit investment trust must be approved in advance by the SEC. Applicants seek permission to offer investors the ability to exchange their securities for those issued by other Plans and Funds under the terms described in paragraph 23 of applicants' representations, above.

6. Substitution of the Plans' underlying investment vehicles is required by a compelling business reason, the suspension of sales of shares of the Income Fund and the High Yield Fund. The unavailability of the underlying vehicle makes the substitution of another fund necessary to avoid automatic termination of the Plans.

7. The proposed substitution is preferable to the consequences of involuntary termination. Under the terms of the Plans, if substitution is not permitted Planholders would only have the option to (a) terminate their Plans and receive shares or cash or (b) exchange into other First Investors plans. Substitution would permit Planholders to retain their current investment, although new payments would, at least temporarily, be invested in shares of the Government Fund. Also, applicants are making the additional alternatives described above available to Planholders. Finally, substitution would be particularly important for those Planholders (whom applicants believe would be many) who do not elect any option. Those Planholders would lose the opportunity to make future investments at reduced sales loads, having paid high sales loads on their initial payments in return for reduced sales loads thereafter.

8. Involuntary termination of the Plans is likely to result in significant redemptions of shares of the Funds. The need to satisfy redemptions could cause

the underlying Funds to sell portfolio securities at depressed prices, adversely affecting both Planholders and other Fund shareholders.

9. First Investors has determined, as required by the Plans' prospectuses, that the shares of the Government Fund are generally comparable to the shares of Income Fund and High Yield Fund and have virtually identical rights and privileges. First Investors has also determined that the Government Fund is a suitable and appropriate substitute investment vehicle for Planholders because it is the First Investors fund available for purchase by the Plans with the investment objective most closely comparable to those of the Income Fund and High Yield Fund. Government Fund is the only other income fund (other than tax free of tax exempt funds) in the First Investors complex. Government Fund seeks "a significant level of current income" by investing in United States government obligations, while Income Fund seeks "a high level of current income" and High Yield Fund seeks "high current income." Thus, all three Funds have a primary objective emphasizing current income, although there are differences in the type of obligations in which the funds invest, and hence in the respective investment policies (the Income Fund and High Yield Fund have as a secondary objective capital growth or appreciation, while the Government Fund does not).

Applicants' Condition

Following the substitution proposed by applicants, each Plan would hold the shares of more than one issuer. As an express condition to the requested relief, First Investors and each Plan agrees to seek Commission approval, under section 26(b) of the Act, with respect to any substitution (other than the transactions proposed in the instant application) by either Plan of any of its underlying investments as if the Plan were literally subject to section 26(b) of the Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-938 Filed 1-10-91; 1:30 pm]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Canadian Pacific Limited a request for waivers of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

The Canadian Pacific Limited

[Docket Number SA-90-10]

The Candian Pacific Limited (CP Rail) seeks a waiver of compliance from certain sections of 49 CFR part 231, Railroad Safety Appliance Standards. CP Rail is requesting that it be permitted to operate approximately 2200 "Bathtub" gondola cars in unit train service in the United States. They propose to operate 4 trains on a 12-day cycle over two routes: (a) Soo Line Railroad Company (Soo Line) from Portal, North Dakota to the Chicago, Illinois area. A distance of about 1200 miles, and (b) Burlington Northern Railroad (BN) from Noyes, Minnesota, to Powder River, Wyoming, a distance of about 1200 miles.

The car's construction is nearer to that of a high-side gondola with fixed ends and should conform to those requirements as defined in 49 CFR 231.2, "Hopper cars and high-side gondola cars with fixed ends."

CP Rail reported the following deviations of those requirements: Section 231.2 (b) refers to brake step requirements. A brake step is not used on the "Bathtub" gondola cars. Actually the handbrake is turned 180 degrees and is operated from the shear plate which serves as the end platform. The carrier states that because of its size and location, anti-skid material was not used.

Section 231.2(d) refer to ladders requirements. The "Bathtub" cars are not equipped with any ladders. The cars have a vertical handhold on each side of the sill step to help in climbing to the platforms. The cars are operated in unit trains and there is no requirement for employees to climb to the top of the cars. The cars also have side and end sill handholds which are not intended to be used as ladder treads as they do not have foot guards.

The requirements of § 231.2(e) refer to side handhold requirements which states in part— "Horizontal, one near each end on each side of car. Side handholds shall be not less than 24 inches nor more than 30 inches above center line of coupler." Side handholds on "Bathtub" cars are located on the side sill approximately 4 inches above center line of coupler. The vertical side handholds are located approximately 12 inches above center line of coupler and extend vertically 23½ inches. There is also a handrail which serves as a vertical handhold for 38$^{3}/_{16}$ inches and then acts as a horizontal handrail to the car body.

Section 231.1(i) refers to horizontal end handhold requirements—at least eight are required, four on each end of car. There is one handhold near each side of each end of car on end sill as specified in § 231.1(i)(3)(ii).

There is a "B" end horizontal handrail about 34 inches above the end platform which extends to the nearest side of the handbrake vertical stanchion.

Section 231.2(h) requires that handles of uncoupling levers, except those shown on plate B and of similar designs, shall be not more than 6 inches from side of car. The "B" end uncoupling lever on the "Bathtub" car is 7¼ inches from side of car.

CP Rail advised that these "Bathtub" gondola cars have been in operation for 20 years and the fleet in general has accumulated in excess of 2-billion miles of service over this period without any known incidents resulting from the deviaition with respect to safety appliance arrangement. Also, CP Rail currently ship in excess of 1-million tons of coal annually from south eastern British Columbia to steel mills located in the Chicago area. The majority of this coal is delivered to Thunder Bay, Ontario and transferred to lake vessels for final delivery to Chicago. The balance is delivered directly by rail if and when the supply of compatible Soo Line car allow. Both the steel mills and the railways involved would prefer to receive an increasing amount of coal directly by rail.

Further, other steel mills, which can only receive coal by rail, have expressed an interest in the delivery of low sulphur coal by unit train.

In addition, a major Canadian public utility, intending to expand its import of coal from Powder River has also expressed its preference for direct rail routing by use of these cars. To satisfy these requirements, CP Rail would like to divert additional coal traffic currently moving over Thunder Bay, as well as increase shipments to those mills who can only receive by rail, by using their "Bathtub" gondola cars.

This change would increase the use of the forecasted surplus of the "Bathtub" cars in the medium term. Given the limited availability of existing compatible cars and the cost of acquiring, and/or modifying equipment, they believe it would be preferable to utilize the "Bathtub" gondola cars rather than to augment their supply of U.S.

compatible cars to service these Chicago steel mills. Therefore, a waiver is being requested to operate the cars through to Chicago based on unprecedented safety record and minimal nature of deviations from published standards.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number—SA–90–10 and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before February 26, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Issued in Washington, DC on January 3, 1991.

Phil Olekszyk,

Acting Associate Administrator for Safety.

[FR Doc. 91–747 Filed 1–11–91; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 8, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0990
Form Number: IRS Form 8610
Type of Review: Revision
Title: Annual Low-Income Housing Credit Agencies Report
Description: Form 8610 is used as a transmittal form for Form 8609, Low-Income Housing Credit Allocation Certification. Form 8610 is completed by State and local housing credit agencies.
Respondents: State or local governments
Estimated number of respondents: 100
Estimated burden hours per respondent:
Recordkeeping—3 hours, 7 mintues
Learning about the law or the form—35 miutes
Preparing and sending the form to IRS—41 minutes
Frequency of response: Annually
Estimated total reporting burden: 438 hours
Clearance officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–790 Filed 1–11–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 8, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0094
Form Number: IRS Form 1041–A
Type of Review: Extension
Title: U.S. Information Return—Trust Accumulation of Charitable Amounts
Description: Form 1041–A is used to report the information required in 26 U.S.C. 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify that amounts for which a charitable deduction was allowed are used for charitable purposes.
Respondents: Individuals or households, Businesses or other for-profit
Estimated number of respondents/recordkeepers: 17,339
Estimated burden hours per respondent/recordkeeper:
Recordkeeping—18 hours, 53 mintues
Learning about the law or the form—3 hours, 20 minutes
Preparing the form—8 hours, 26 minutes
Copying, assembling, and sending the form to IRS—1 hour, 20 minutes
Frequency of response: Annually
Estimated total reporting/recordkeeping burden: 554,848 hours
Clearance officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB reviewer: Milo Suderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–791 Filed 1–11–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 7, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545–0718
Form number: 941–M
Type of review: Revision
Title: Employer's Monthly Federal Tax Return
Description: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than

quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941–M monthly.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated number of respondents: 1,000

Estimated burden hours per response/recordkeeping:

Recordkeeping—14 hours, 21 minutes

Learning about the law or the form—12 minutes

Preparing, copying, assembling, and sending the form to IRS—26 minutes

Frequency of response: Monthly

Estimated total recordkeeping/reporting burden: 179,880 hours

Clearance officer: Carrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–792 Filed 1–11–91; 8:45 am]

BILLING CODE 4830–01–M

Office of the Secretary

[Department Circular—Public Debt Series—No. 1–91]

Treasury Notes of January 15, 1998, Series E–1998

Washington, January 3, 1991.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $6,500,000,000 of United States securities, designated Treasury Notes of January 15, 1998, Series E–1998 (CUSIP No. 912827 ZT 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The Notes will be dated January 15, 1991, and will accrue interest from that date, payable on a semiannual basis on July 15, 1991, and each subsequent 6 months on January 15 and July 15 through the date that the principal becomes payable. They will mature January 15, 1998, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by an State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3 The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4 The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive of in bearer form.

2.5 The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, January 9, 1991, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 8, 1991, and received no later than Tuesday, January 15, 1991.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3 A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A concompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers,as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at

the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price of the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, January 15, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, January 11, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91–777 Filed 1–9–91; 10:54 am]

BILLING CODE 4810–40–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

SUMMARY: The United States Information Agency hereby modifies a notice found at 55 FR 35754 (August 31, 1990) regarding immunity from judicial seizure for the art exhibit "Glories of the Past: Ancient Art from the Shelby White and Leon Levy Collection" to provide revised dates and venues of the temporary exhibition in the United States of the statuette of a silver Canaanite Calf from Ashkelon included in that exhibition.

EFFECTIVE DATE: This modification is effective January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Lorie J. Nierenberg, Office of the General Counsel, United States Information Agency, 301–4th Street, SW., Washington, DC 20547 (202/619–6975).

SUPPLEMENTARY INFORMATION: The United States Information Agency hereby modifies a notice published at 55 FR 35754 (August 31, 1990). The notice rendered immune from judicial process an item to be included in the exhibit entitled "Glories of the Past: Ancient Art from the Shelby White and Leon Levy Collection." This modification of notice indicates an additional location and date of exhibition of that item, the statuette of a silver Canaanite Calf from Ashkelon, which are as follows: the Semitic Museum of Harvard University, Cambridge, Massachusetts, beginning on or about February 4, 1991 to on or about March 15, 1991.

Dated: January 9, 1991.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 91–803 Filed 1–11–91; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Availability of Report of 38 U.S.C. 219 Program Evaluation

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the evaluation of the Department of Veterans Affairs Dietetic Service Program has been completed.

Single copies of the Dietetic Service Program Evaluation report are available.

Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries to William H. Barbee, Jr. (076A), Director, Program Evaluation Service, Office of Program Coordination and Evaluation, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 3, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Deputy Assistant Secretary for Program Coordination and Evaluation.

[FR Doc. 91-793 Filed 1-11-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 9
Monday, January 14, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, January 16, 1991, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Reloadable Tube Aerial Shell Fireworks

The Commission will consider a notice of proposed rulemaking concerning certain reloadable tube aerial shell fireworks devices.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Date: January 9, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-926 Filed 1-10-91; 1:14 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, January 17, 1991, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Art Materials Labeling

The staff will brief the Commission on proposed guidelines and criteria for assessing chronic hazards under the Federal Hazardous Substances Act as required by the Labeling of Hazardous Art Materials Act.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Date: January 9, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-920 Filed 1-10-91; 1:14 pm]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

(January 9, 1991)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: January 16, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, NE, Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note.—Items listed on the agenda may be deleted without further notice.**

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 929th Meeting—January 16, 1991, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 618-023, Alabama Power Company

CAH-2.
Project No. 10634-001, City of Manassas, Virginia
Project No. 10813-001, Town of Summersville, West Virginia

CAH-3.
Project No. 7941-003, Enviro Hydro, Inc.

CAH-4.
Docket No. UL88-23-004, City of Seattle, Washington

CAH-5.
Docket No. UL89-34-005, Consolidated Hydro, Inc.

CAH-6.
Docket No. UL89-32-011, Swans Falls Corporation

CAH-7.
Docket No. UL88-12-002, Central Vermont Public Service Corporation

CAH-8.
Project No. 10836-001, Friends of Keeseville, Inc.

CAH-9.
Project No. 6986-005, Tranquility Irrigation District

CAH-10.
Project No. 10899-001, Malta Irrigation District, Glasgow Irrigation District, Dodson Irrigation District, Zurich Irrigation District, Harlen Irrigation District, Fort Belknap Irrigation District, Paradise Valley Irrigation District and Alfalfa Valley Irrigation District

CAH-11.
Omitted

CAH-12.
Project No. 1981-002, Oconto Electric Cooperative

CAH-13.
Project No. 2149-002 and Docket No. E-9569-002, Public Utility District No. 1 of Douglas County, Washington.

CAH-14.
Project No. 7728-013, Robley Point Hydro Partners Limited Partnership.

Consent Agenda—Electric

CAE-1.
Omitted

CAE-2.
Docket Nos. ER88-630-006, ER88-631-006 and ER89-38-006, New England Power Company

CAE-3.
Docket No. QF90-185-001, Northeast Maryland Waste Disposal Authority

CAE-4.
Docket No. RM87-26-004, Revision of Rate Schedule Filings Under Sections 205 and 206 of the Federal Power Act

CAE-5.
Docket No. ER90-527-002, Northern States Power Company (Minnesota)

CAE-6.
Docket No. ER90-450-000, New England Hydro-Transmission Electric Company, Inc. and New England Hydro-Transmission Corporation

CAE-7.
Docket No. ER90-247-002, Montaup Electric Company

CAE-8.
Docket No. ER90-284-000, New England Power Company

CAE-9.
Docket No. QF91-6-000, Georgetown Cogeneration, L.P.

CAE-10.
Docket No. EL90-36-000, Public Utility Board of the City of Brownsville, Texas, South Texas Electric Cooperative, Inc., Medina Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Magic Valley Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., and the City of Robstown, Texas v. Central Power and Light Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-51-000, CNG Transmission Corporation

CAG-2.
Docket No. RP91-52-000, Panhandle Eastern Pipe Line Company

CAG–3.
Docket No. RP91–53–000, Panhandle Eastern Pipe Line Company
CAG–4.
Docket No. RP91–54–000, Trunkline Gas Company
CAG–5.
Docket No. RP91–55–000, K N Energy, Inc.
CAG–6.
Docket No. RP91–56–000, Williston Basin Interstate Pipeline Company
CAG–7.
Docket No. RP91–60–000, North Penn Gas Company
CAG–8.
Docket Nos. TA91–1–16–000, 001, 002 and TM91–3–16–000, National Fuel Gas Supply Corporation
CAG–9.
Docket Nos. TA91–1–1–000 and 001, Alabama-Tennessee Natural Gas Company
CAG–10.
Docket No. TQ91–2–34–000, Florida Gas Transmission Company
CAG–11.
Docket No. TQ91–2–11–000, United Gas Pipe Line Company
CAG–12.
Docket Nos. TA90–1–26–000 and 001, Natural Gas Pipeline Company of America
CAG–13.
Docket No. TA90–1–20–000, Algonquin Gas Transmission Company
CAG–14.
Docket Nos. TA91–1–45–002 and 003, Inter-City Minnesota Pipelines, Ltd., Inc.
CAG–15.
Docket Nos. RP88–27–024, 025 RP88–264–020, 021 RP89–138–009 and 010, United Gas Pipe Line Company
CAG–16.
Docket No. RP91–5–001, Natural Gas Pipeline Company of America
CAG–17.
Docket No. CP89–1281–006, Natural Gas Pipeline Company of America
CAG–18.
Docket No. RP89–183–024, Williams Natural Gas Company
CAG–19.
Docket No. RP89–183–025, Williams Natural Gas Company
CAG–20.
Docket Nos. CP89–1281–007 and TA90–1–26–002, Natural Gas Pipeline Company of America
CAG–21.
Docket Nos. RP90–192–001, RP90–104–003 and RP88–115–017, Texas Gas Transmission Corporation
CAG–22.
Docket Nos. TQ91–1–86–002, TM91–1–86–002, RP90–109–000 and RP87–62–000, Pacific Gas Transmission Company
CAG–23.
Docket No. TM91–2–29–001, Transcontinental Gas Pipe Line Corporation
CAG–24.
Docket Nos. TA85–3–29–033, TA86–1–29–011, TA85–1–29–018, TA86–5–29–012, RP83–137–031 and CP85–190–026, Transcontinental Gas Pipe Line Corporation
CAG–25.
Docket Nos. RP90–81–000 and 001, El Paso Natural Gas Company
CAG–26.
Docket Nos. RP88–197–000 and RP88–236–000, Williston Basin Interstate Pipeline Company
CAG–27.
Omitted
CAG–28.
Docket Nos. RP84–82–000, RP72–133–000, TA80–1–11–000, TA80–2–11–000, TA81–1–11–000, TA81–2–11–000, TA82–1–11–000, TA82–2–11–000, TA83–1–11–000, TA83–2–11–001, TA84–1–11–000, TA84–2–11–000 (Phase I), United Gas Pipe Line Company
CAG–29.
Docket No. PR90–5–000, Seagull Shoreline System
CAG–30.
Docket No. RP90–84–000, Texas Sea Rim Pipeline, Inc.
CAG–31.
Docket Nos. ST88–3008–000, ST88–4082–000, ST89–292–000, ST89–489–000, ST89–2645–000, ST90–881–000 and ST90–882–000, The Tekas Corporation
CAG–32.
Docket No. GP88–27–000, State of Louisiana, Department of Natural Resources, Office of Conservation, Docket No. NGPA 88–0121, Quintana Petroleum Corporation, Maryland Company No. 11 Well, FERC Control No. JD88–13465
CAG–33.
Docket No. GP89–3–000, Colorado Interstate Gas Company
CAG–34.
Docket No. CP88–180–014, Texas Eastern Transmission Corporation
CAG–35.
Docket No. CP90–1661–001, South Georgia Natural Gas Company
CAG–36.
Docket No. CP90–1014–001, Panhandle Eastern Pipe Line Company and Pan Gas Storage Company, d.b.a. Southwest Gas Storage Company
CAG–37.
Docket No. CP90–706–001, Wyoming Interstate Company, Ltd.
CAG–38.
Docket No. CP90–1281–001, El Paso Natural Gas Company
CAG–39.
Docket No. CP90–1269–001, El Paso Natural Gas Company
CAG–40.
Docket Nos. CP87–407–004 and RP86–136–006, National Fuel Gas Supply Corporation
CAG–41.
Docket Nos. CP87–389–005, CP88–225–003, CP88–759–004, CP89–1582–001, CP90–12–001, CP90–989–001 and CP90–1380–001, National Fuel Gas Supply Corporation
CAG–42.
Docket No. CP88–621–002, High Island Offshore System
CAG–43.
Docket No. CP89–2174–000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–44.
Omitted
CAG–45.
Docket Nos. CP89–637–000, 001, 002, 004 and 005, ANR Pipeline Company
Docket Nos. CP88–178–000, 001, and 002 Indiana Ohio Pipeline Company and Trunkline Gas Company
Docket No. CP90–1726–000, Great Lakes Gas Transmission Company
Docket Nos. CP89–638–000, 001 and 002 CNG Transmission Corporation
Docket Nos. CP90–687–000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP90–688–000 and 001, Texas Gas Transmission Corporation
CAG–46.
Docket Nos. CP90–1372–000, CP90–1373–000, CP90–1374–000 and CP90–1375–000, Altamont Gas Transmission Company
CAG–47.
Docket Nos. CP89–460–000, 001 and CP90–1–000, Pacific Gas Transmission Company
CAG–48.
Docket No. CP90–1363–000, Natural Gas Pipeline Company of America
CAG–49.
Docket No. CP90–2294–000, Transwestern Pipeline Company
CAG–50.
Docket No. CP91–792–000, Colorado Interstate Gas Company
CAG–51.
Docket No. CP91–643–000, Viking Gas Transmission Company
CAG–52.
Docket No. CP91–693–000, United Gas Pipe Line Company
CAG–53.
Docket No. CP91–696–000, Colorado Interstate Gas Company
CAG–54.
Docket No. CP91–50–000, Sumas Energy, Inc.
CAG–55.
Docket No. RP91–11–002, Arkla Energy Resources, a Division of Arkla, Inc.

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I.
Pipeline Rate Matters
PR–1.
Docket No. RM91–3–000, Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulation. Notice of Proposed Rulemaking.
PR–2.
Docket No. RM91–2–001, Mechanism for Passthrough of Pipeline Take-or-Pay Buyout or Buydown Costs
Docket Nos. RP88–80–014, RP88–223–006, RP88–251–007, RP89–150–004, RP89–153–003, RP89–154–002, RP89–184–002, RP90–73–002, RP90–96–002, TM89–3–17–002, TM89–4–17–002, TM89–7–17–001, TM89–8–17–001, TM89–10–17–001, TM89–11–17–001, TM89–12–17–001, TM90–3–17–001

and TM90–7–17–002, Texas Eastern Transmission Corporation
Docket Nos. RP86–119–016, TA84–2–9–016 and TA85–1–6–004, Tennessee Gas Pipeline Company
Docket No. RP88–205–008, Alabama-Tennessee Natural Gas Company. Order on rehearing

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 91–973 Filed 1–10–91; 3:56 pm]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, January 15, 1991, to consider a notice regarding Citibank (Delaware), New Castle, Delaware, d/b/a CitiDel Insurance, a division of Citibank (Delaware).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation at (202) 898–6757.

Dated: January 9, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–883 Filed 1–10–91; 9:21 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m., Tuesday, January 15, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

(1) Federal Home Loan Bank System Monthly Financial Report;
(2) Office of Finance Monthly Report;
(3) Federal Home Loan Bank System Fourth Quarter and 1990 Dividends Report;
(4) Federal Home Loan Bank System New Membership Report;
(5) Affordable Housing Program: 1990 Report; Community Support Advance Notice of Proposed Rulemaking.

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

(1) Federal Home Loan Bank System Operations and Management;
(2) Appointment of Federal Home Loan Bank Chairmen, Directors and Presidents;
(3) Federal Home Loan Bank Examination Policy;
(4) Board Management Issues.

The above matters are exempt under one or more of sections 552b(c) (2), (6) and (8) of title 5 of the United States Code. 5 U.S.C. § 552b(c) (2), (6) and (8).

CONTACT PERSON FOR MORE INFORMATION: Leonard H.O. Spearman, Jr., Executive Secretary to the Board, (202) 408–2574.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–969 Filed 1–10–91; 3:47 pm]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 8:30 a.m., Wednesday, January 16, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Closed Meeting.

MATTERS TO BE CONSIDERED: The Board will consider approval of the 1991 budgets for the Federal Home Loan Banks and the Office of Finance.

The above matter is exempt under section 552(c)(9)(B) of title 5 of the United States Code. 5 U.S.C. § 552b(c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Leonard H.O. Spearman, Jr., Executive Secretary to the Board, (202) 408–2574.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–969 Filed 1–10–91; 3:47 pm]

BILLING CODE 6725–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (30 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a special meeting at 9:00 a.m. on Tuesday, January 22, 1991, in the Benjamin Franklin Room, 11th floor, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The Board will consider the Postal Rate Commission's recommended decision in Docket No. R90–1. This meeting is closed to the public pursuant to section 552(c)(3) and (10) of title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3(c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 91–963 Filed 1–10–91; 3:04 pm]

BILLING CODE 7710–12–M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:08 a.m. on Tuesday, January 8, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to staff recommendations regarding certain contracting matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Chairman L. William Seidman, Director Robert L. Clarke (Comptroller of the Currency), and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), 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)(4), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, DC.

Dated: January 10, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–964 Filed 1–10–91; 3:04 pm]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open

session following the FDIC open session beginning at 2:00 p.m. on Tuesday, January 15, 1991 to consider the following matter:

Summary Agenda:

No Cases

Discussion Agenda:

A. *Memorandum re:* Revisions to the RTC's Standard Asset Management and Disposition Agreement (SAMDA).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: January 9, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–927 Filed 1–10–91; 1:15 pm]

BILLING CODE 6714–01–M

federal register

Monday
January 14, 1991

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Nationwide Requirement To Use Nontoxic Shot for the Taking of Waterfowl, Coots, and Certain Other Species Beginning in the 1991–1992 Hunting Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA93

Migratory Bird Hunting: Nationwide Requirement To Use Nontoxic Shot For The Taking of Waterfowl, Coots, and Certain Other Species Beginning In the 1991-92 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The use of lead shot in waterfowl hunting poses an unnecessary risk to certain migratory birds because when the spent shot is consumed it often produces lead poisoning and death. Accordingly, this rule proposes to conclude the implementation program that began in 1986 to phase-in nationwide the requirement to use nontoxic shot for all taking of waterfowl, coots and certain other species by the 1991–92 hunting season.

DATES: Comments on this proposal will be accepted until February 13, 1991.

ADDRESSES: Submit comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, 634 Arlington Square, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 Arlington Square, Washington, DC 20240 (703/358–1773).

SUPPLEMENTARY INFORMATION: This rule would implement the final year of the 5-year component of the strategy to phase in a nontoxic shot requirement for waterfowl hunting nationwide by the 1991–92 season, as set out by the preferred alternative of the Final Supplementary Environmental Impact Statement (SEIS) on the Use of Lead Shot For Hunting Migratory Birds in the United States. This SEIS was published in June of 1986 (FES 86–16). The SEIS and consequent rulemakings imposing nontoxic shot requirements result from the Secretary of Interior's responsibilities under the Migratory Bird Treaty Act, as amended (16 U.S.C. 701 *et seq.;* 40 Stat. 755), and the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), to decide whether, where and how migratory bird hunting will be allowed. A critical element in the Department of Interior's deliberations and decision to implement and enforce regulations establishing nontoxic shot zones nationwide has been the determination that lead poisoning resulting from waterfowl hunting is a significant annual mortality factor in certain migratory birds.

Information detailing the scientific basis for concluding that lead shot from waterfowling is causing lead poisoning in certain migratory birds and the development of the strategy to eliminate lead toxicity as a major mortality factor, including discussions of the issues for and against lead/steel shot, appears in the SEIS and the preamble to the proposed rule on the criteria and schedule for implementing nontoxic shot zones for 1987–88 and subsequent years published in the **Federal Register** on June 27, 1986 (51 FR 23444). The final rule for that proposed rule was published in the **Federal Register** on November 21, 1986 (51 FR 42103). Information on the justification for selecting this strategy has also been set out in the Final SEIS (Alternative VII_3), the June 27, 1986, proposed rule and in the Record of Decision confirming the preferred alternative published in the **Federal Register** on August 20, 1986 (51 FR 29673). Additional information relating to the imposition of nontoxic shot zones nationwide, according to the 5-year schedule, is contained in the final rules for the 1987-88, 1988-89, 1989-90 and 1990–91 waterfowl hunting seasons published in the *Federal Register* on Tuesday, July 21, 1987 (52 FR 27352), Tuesday, June 28, 1988 (53 FR 24284), Thursday, April 13, 1989 (54 FR 14814) and Thursday, August 16, 1990 (55 FR 33626), respectively.

The remaining counties scheduled to convert in their entireties to nontoxic shot use in the 1991–92 waterfowl season are those counties having had an average annual waterfowl harvest of 5 or less per square mile over the 10-year period 1971–80, as referenced by Carney *et al.* 1983 (Distribution of waterfowl species harvested in States and counties during 1971–80 hunting seasons. U.S. Fish and Wildlife Service, Spec. Sci. Rpt.-Wildl. No. 254, Washington, DC 20240.). Counties converting in the last year of implementation are not listed in appendix N of the SEIS, as they were for previous years.

In addition, the public is reminded in this document that 50 CFR sections: 20.101, (Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands); 20.102, (Seasons, limits and shooting hours for Alaska); and 20.105, (Seasons, limits and shooting hours for waterfowl, coots and gallinules), have provisions for nontoxic shot use that take effect in the 1991–92 waterfowl hunting season. Hunters in Puerto Rico and the Virgin Islands will be required to use nontoxic shot for hunting waterfowl, coots and certain other species (as applicable). The State of Alaska will convert statewide to nontoxic shot use for waterfowl hunting. Section 20.105 of 50 CFR provides that "* * * areas of the United States outside the State boundaries, i.e., the United States' territorial waters seaward of county boundaries, and including coastal waters claimed by the separate States, if not already included under the zones contained in § 20.108, are designated for the purposes of § 20.21(j) as nontoxic shot zones for waterfowl hunting beginning in the 1991–92 season." All of the waterfowl harvest nationwide will occur in nontoxic shot zones in the 1991–92 hunting season.

In summary, this rule proposes to amend § 20.108 of 50 CFR to expand the existing nontoxic shot requirement for the 1991–92 waterfowl hunting season nationwide.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which there could be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Fish and Wildlife Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the ESA, a "section 7" biological consultation was carried out on the potential impacts of the provisions of this rule on bald eagles. The "section 7" biological opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle. Also, a "section 7" biological opinion has concluded that the action being carried out is not likely to jeopardize the continued existence of the Aleutian Canada goose.

Authorship

The primary author of this proposed rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 50

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 would continue to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

2. Section 20.108 would be revised to read as follows:

§ 20.108 Nontoxic shot zones.

Beginning September 1, 1991, the contiguous 48 United States, and the States of Alaska and Hawaii, the Territories of Puerto Rico and the Virgin Islands, and the territorial waters of the United States, are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species. "Certain other species" refers to those species, other than waterfowl or coots, that are affected by reason of being included in aggregate bags and concurrent seasons.

Dated: December 11, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–810 Filed 1–11–91; 8:45 am]

BILLING CODE 4310–55–M

federal register

Monday
January 14, 1991

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Three Species of Remya, Isodendrion Hosakae (Aupaka), Florida Salt Marsh Vole; Threatened Status for the Yellow-blotched Map Turtle, and Endangered Status for the Indu River Dolphin; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Species of Remya, a Genus of Hawaiian Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the three species of the genus *Remya*, a genus of plants endemic to the islands of Kauai and Maui, Hawaiian Islands, to be endangered under the authority of the Endangered Species Act of 1973, as amended (Act). Predation by grazing and browsing feral and domesticated animals, degradation of habitat through trampling and rooting by these animals, and competition from naturalized exotic species of plants are the greatest immediate threats to the survival of these species. This rule implements the protection provided by the Act for the three species of this genus.

EFFECTIVE DATE: February 13, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest F. Kosaka, Field Office Supervisor, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Remya, a genus in the aster family (Asteraceae), comprises three species and is endemic to the Hawaiian Islands. The genus was described in 1876 by George Bentham in Bentham and Hooker's *Genera plantarum* (Bentham 1876), and was named in honor of Ezechiel Jules Remy, a French naturalist and ethnobotanist who visited Hawaii twice during an extended trip around the world from 1851 to 1863.

The members of this genus are small perennial shrubs, about 90 centimeters (cm) (3 feet) tall, with many slender, sprawling or scandent to weakly erect branches. The branches are glabrous in *R. montgomeryi*, but covered with a fine tan fuzz near their tips in the other two species. The leaves are narrow, up to about 15 cm (6 inches (in)) long, and are bunched at the ends of the branches. The leaves are coarsely toothed along the edges, and are green on the upper surface. The lower surface is greed in *R. montgomeryi*, while in the other two species it is covered with a dense mat of fine white hairs. The flowers are small, about 0.7 cm (0.3 in) in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* 1990).

Remya grows chiefly on steep, north or northeast-facing slopes between 850 to 1,250 meters (2,800 to 4,100 feet) in elevation. *Remya kauaiensis* and *R. mauiensis* are found primarily in mixed mesophytic forests, or the remnants of such forests. *Remya montgomeryi* and one known population of *R. kauaiensis* grow on the steep cliffs below the rim of Kalalau Valley, which although at the edge of a mesic forest, receives considerably more moisture than do the other populations of the genus (Herbst 1988).

Until 1985, there were two known species of *Remya, R. kauaiensis* and *R. mauiensis*, both described in 1888 (Hillebrand 1888). *Remya kauaiensis*, which is endemic to the island of Kauai, can be distinguished from the Maui Island species, *R. mauiensis*, by characters of the leaf: the leaf blade of *R. kauaiensis* is 2 to 3 times longer than wide, has a cuneate base, and a petiole (stem of leaf) 1.3 to 2.3 cm (0.5 to 0.9 in) long. The leaf blade of *Remya mauiensis* is 5 to 12 times longer than wide, has a long-attenuate base, and a petiole of less than 1 cm (0.4 in) long. Apparently neither species has been common during historical times, and they rarely have been collected.

Remya kauaiensis was first collected prior to 1871 by Valdemar Knudsen at "Waimea" on Kauai. Knudsen sent the specimen to William Hillebrand, a Honolulu physician, who described it as a new species. It was next collected more than 80 years later, in 1952, by Otto Degener in Kokee State Park, Kauai. The species was considered extinct until 1983 when it was rediscovered by Galen Kawakami, a forester on Kauai who discovered two small populations also in the Kokee area. Two addition small populations were discovered in the same general area in 1985, and a third just below the rim of Kalalau Valley in 1986 by Timothy Flynn of the National Tropical Botanical Garden. In 1988 a sixth population was found in the Kokee area by the Hawaii Heritage Program. A seventh population was discovered in the Kokee area in 1990 by Steven Perlman of the Hawaii Plant Conservation Center.

Remya mauiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It also was thought to be extinct until its rediscovery in 1971 by L.E. Bishop, W. Gagne, and S. Montgomery on the slopes of Manawainui Gulch, West Maui. More recently, a small population has been found in an adjacent gulch.

Remya montgomeryi was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai, and presently is known only from that population (Wagner *et al.* 1990). It was described as a new species in 1987 (Wagner and Herbst 1987), and can be distinguished from the other two species of the genus by its glabrous branch tips and undersides of its leaves. All known populations of the three species of this genus grow on State-owned land.

Because of the sprawling habit of the members of this genus, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however, estimates have been made. *Remya Kauaiensis* is known from seven populations in the Kokee area of Kauai. The populations range from fewer than 10 to fewer than 100 plants each, with an estimated total of fewer than 200 individuals, distributed within a total area of less than 1 hectare (ha) (2 acres (ac)) (Hawaii Plant Conservation Center (HPCC) 1990; T. Flynn, Assistant Botanist, National Tropical Botanical Garden, Lawai, Kauai, pers. comm., 1990; S. Perlman, Plant Collector, HPCC, Lawai, Kauai, pers. comm., 1990). *Remya mauiensis* is known from two small populations occupying less than one ha (two ac) on adjacent ridges on West Maui; there appear to be seven plants in one population and two in the other (Robert Hobdy, Forester, State Division of Forestry and Wildlife, Wailuku, Maui, pers. comm., 1990). *Remya montgomeryi* is known from a single population on the rim of Kalalau Valley, Kauai; its exact size is unknown, but it consists of fewer than 50 plants (S. Montgomery, Bishop Museum, pers. comm., 1990) within an area of 0.2 ha (0.5 ac) (T. Flynn, pers. comm., 1990).

Stochastic extinction by virtue of the extremely small size of the populations coupled with a limited distribution of the remaining populations threatens these species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the primary threat to the members of this genus is the loss and degradation of

their habitat due to the introduction of alien plants and animals.

Federal government action on members of this genus began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In this document, *R. kauaiensis* was included as extinct or probably extinct, and *R. mauiensis* was treated as endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *R. kauaiensis* and *R. mauiensis*, to be endangered pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479) including *R. mauiensis* as a category 1 candidate (taxa for which data in the Service's possession indicated a listing proposal is warranted), and *R. kauaiensis* as a category 1* candidate, meaning that a listing proposal was warranted but that the species possibly was extinct. In the September 27, 1985 (50 FR 39525) notice of review, both species were considered category 1 candidate species. *Remya montgomeryi* was not included in any of the notices of review because it was not published as a new species until 1987.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. The latter was the case for *R. mauiensis* and *R. kauaiensis* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, and 1988. The October 2, 1989, proposal of the three species of *Remya* to be endangered (54 FR 40447) constituted the final 12-month finding for these species.

Summary of Comments and Recommendations

In the October 2, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in "The Garden Island" on October 23, 1989, and in the "Maui News" on October 22, 1989.

Seven letters of comment were received, including one from another Federal agency, two from State agencies, and four from environmental groups. The Federal agency and one of the State letters acknowledged receipt of copies of the proposed rule, but had no comments, and the four environmental groups expressed support for the proposal. The State Department of Land and Natural Resources supported listing *R. mauiensis*, but did not state a position on the other two species. The Department suggested that there may be additional populations of one or both of the two Kauai species. The Service contacted two field botanists active on the island of Kauai; neither were aware of any *Remya* populations not included in this final rule. While all potential habitat has not been searched for these species, the results of botanical exploration of the region to date demonstrate that these species are quite uncommon. One environmental group cited several population estimates that differ from those in this final rule. The population estimates in this document are the most current and most reliable. Two of the environmental groups encouraged the Service to designate critical habitat for these species. Critical habitat is not being designated at this time as such a designation would result in no known benefit and may be detrimental to the species. Publishing a detailed description and map of these species' habitats would stimulate public interest and make the species more vulnerable to vandalism and taking by collectors of rare plants or by curiosity seekers. Also, as the plants grow mostly on steep slopes, visits to the area by individuals wishing to see or photograph a rare plant could result in severe erosion problems.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the three species of *Remya* should be classified as endangered species. Procedures found at section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Remya kauaiensis* Hillebr., *Remya mauiensis* Hillebr. (Maui remya), and *Remya montgomeryi* W.L. Wagner & Herbst are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The native plant communities and habitats of the Hawaiian ecosystem have steadily degraded since man's comparatively recent arrival in the islands, primarily as a result of the introduction of alien species of plants and animals. The widespread destruction of Hawaii's native flora by domestic and feral animal predation and trampling is well documented (Cuddihy and Stone 1990) and they specifically threaten the survival of these species as well. It is clear that habitat well suited for *Remya* and likely within its former range has been destroyed or degraded by cattle, goats, pigs, and, in the case of *R. kauaiensis*, deer, and that most of the extant populations of *Remya* are now found growing only in areas relatively inaccessible to these animals. Browsing and grazing by feral and domesticated animals have impacted the *Remya* species and their habitat through outright destruction of the plants and

secondarily from accidental erosion that results from the loss of vegetation through trampling and rooting. Predation on the plants and the concomitant habitat disturbance has favored the invasion and spread of numerous more aggressive, exotic species that may compete for space, light, water, or nutrients. Such exotic species have replaced *Remya* throughout its presumed former habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously impact the species. As most of the plants are growing on very steep slopes, disturbance of the soil or destruction of groundcover plants due to people visiting the area would increase the potential for severe erosion and open the area to invading exotic species.

C. *Disease or predation.* Predation is considered to be a major cause of the plants' demise and current precarious condition. Domestic and feral animals such as cattle, goats, pigs, and deer have caused much damage and destruction of the plants and their habitat both through direct predation on the plants and through habitat disturbance that favors the introduction and spread of exotic, competing species of non-native plants. The State Division of Forestry and Wildlife has fenced one population of *R. mauiensis* to protect it from cattle. Although the population of *Remya* within the exclosure has declined, the fence is bound to be beneficial to the species over the long term.

D. *The inadequacy of existing regulatory mechanisms.* All known individuals of the species grow on State-owned land and most are found within a State park, forest reserve, or plant sanctuary. Current State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, these regulations are difficult to enforce due to limited funding and personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states that "[a]ny species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * *." Therefore, any species listed by the Federal government automatically receives the additional protection provided by the State Endangered Species Act. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Sect. 195D–5(c)). Funds for these activities can be made available under section 6 of the Act (State Cooperative Agreements). Also, the Federal Act would offer additional protection to these species, as it is now a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Listing under the Act would initiate increased State protection and augment State and private conservation measures for these plants by providing for habitat protection through recovery planning.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small size of the extant populations, which range from 2 to less than 100 individuals each, and their restricted distributions, are considerable threat to these species. The limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could easily destroy a significant percentage of the known extant individuals. As many of the remnant populations, especially of *R. mauiensis* and *R. kauaiensis*, occur in fireprone areas which are dry much of the year, they are at risk of extinction by accidental or intentionally set brush fires.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the three species of the genus *Remya* as endangered. Only 10 populations with a total of less than about 250 individuals remain in the wild, and these face threats of browsing and grazing by feral and domestic animals, competition from exotic species of plants, and general habitat degradation. Because the three species (comprising the entire genus) are each in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to the species. The publication of descriptions and maps required in a proposal for critical habitat would increase the degree of threat to these plants from possible take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. Also, as the plants grow mostly on steep slopes, visits to the area by individuals wishing to see or photograph rare plants could result in severe erosion problems, posing an additional threat to the species. All involved parties and the major landowners have been notified of the general location and importance of protecting habitat of these species. Protection of these species' habitat will be addressed through the recovery process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The 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. Since the *Remya* species are known to occur on State land, cooperation between Federal and State agencies is necessary to provide for their conservation. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part

402. Section 7(a)(2) of the Act requires Federal agencies to 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. No Federal involvement is known or anticipated that would affect *Remya* species as all known sites for these plants are on State-owned land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to the species of *Remya*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered or threatened plant, for any person subject to the jurisdiction of the United States to import or export, transport in interstate of foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction, or remove, cut, dig up, or damage or destroy listed plants in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species are not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (phone 703/358–2104 or FTS 921–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to 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

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Wagner, W.L., and D.R. Herbst. 1987. A new species of *Remya* (Asteraceae: Astereae) on Kaua'i and a review of the genus. Systematic Botany 12(4):601–608.

Wagner, W.L., D.R. Herbst, and S.H. Sohmer. 1990. Manual of the flowering plants of Hawai'i. University of Hawaii Press and Bishop Museum Press, Honolulu. 1853 pp.

Author

The primary author of this final rule is Dr. Derral R. Herbst, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

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

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
* * * * * * *						
Remya kauaiensis	None	U.S.A. (HI)	E	413	NA	NA
Remya mauiensis	Maui remya	U.S.A. (HI)	E	413	NA	NA
Remya montgomeryi	None	U.S.A. (HI)	E	413	NA	NA
* * * * * * *						

Dated: December 7, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–784 Filed 1–11–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Isodendrion Hosakae (Aupaka), a Hawaiian Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines a Hawaiian plant, *Isodendrion hosakae* (aupaka), to be endangered under the authority of the Endangered Species Act of 1973, as amended (Act). This species grows on three privately-owned cinder cones in the Waikoloa area of the South Kohala District, Hawaii. The destruction of the plant or the degradation of its habitat by grazing domestic cattle, and the potential for fires during the dry season are the greatest immediate threats to the survival of this species. This rule implements the protection provided by the Act for this plant.

EFFECTIVE DATE: February 13, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Ernest F. Kosaka, Field Supervisor, at the above address (808/541–2749 or FTS 551–2749).

SUPPLEMENTARY INFORMATION:

Background

Isodendrion hosakae was first collected by Edward Y. Hosaka on November 4, 1948, near the summit of an unnamed cinder cone, Waikoloa, Hawaii. He made another collection from the same locality three months later. In 1952, Harold St. John published a revision of the genus in which he named the new species in honor of its discoverer (St. John 1952). The species was not seen again until 1980 when it was rediscovered on a cinder cone in the Waikoloa area. The species subsequently was found on two other cinder cones during surveys made in 1981 and 1982. Today the population is estimated at about 275 individuals growing on 3 privately-owned cinder cones in the Waikoloa area of Hawaii Island. The three known populations are situated within a radius of 1.5 miles (2.4 kilometers) and occupy a total area estimated to be less than 2 acres (0.8 hectares).

Isodendrion hosakae, a member of the violet family (Violaceae), is a small, erect shrub about 18 to 30 inches (46 to 76 centimeters [cm]) tall. It has narrow, lance-shaped leaves about an inch (2.5 cm) long; the upper portion of the stem is nearly concealed by the persistent leaf stipules. The flowers are about ½ inch (1.3 cm) long and are yellowish-green to whitish in color. The fruit is a capsule, elliptical in shape, about ⅜ inch (1 cm) long and ¼ inch (0.6 cm) wide (Nagata 1982). A combination of characters distinguish *I. hosakae* from the other species in the genus: the pubescent midrib of the sepals and stipules, the pilose greenish-yellow to whitish fragrant flowers whose lower petal is 1.4 to 1.8 cm long, and the narrowly elliptic glossy green terminally acute leaves. *Isodendrion hosakae* occurs on the summits or on the northeast-facing slopes of extinct cinder cones between 2800 and 3600 feet (850 and 1095 meters) (Nagata 1982). Generally, the sites are exposed to wind and fog. Fog may contribute substantially to the total amount of moisture available to the plants. Open grassland and scrub is the primary vegetation type for the area (Nagata 1982). Evidence suggests that this species has always been highly restricted in distribution and number. *Isodendrion,* a genus of four species in the violet family, is endemic to the Hawaiian Islands.

Probably the greatest immediate threat to the continued survival of this plant is predation and habitat disturbance by domestic cattle. The potential of destruction by range fires during the dry season also is a major threat. The low number of individuals is also considered a potential threat through a reduction in reproductive vigor. A cooperative effort between Federal and State agencies and the private landowner is needed to protect the remaining plants and to provide for the conservation of the species.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Act (petition acceptance provisions are now contained in section 4(b)(3)(A)), and giving notice of its intention to review the status of the plant taxa named therein, including *Isodendrion hosakae,* which at that time was considered extinct. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Isodendrion hosakae,* to be endangered pursuant to section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *Isodendrion hosakae* as a Category 1 candidate, meaning that the Service had substantial information indicating that preparation of a listing proposal is warranted.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *Isodendrion hosakae* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, a further finding was made that listing of *Isodendrion hosakae* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to Section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, and 1988. The October 10, 1989, proposal of *Isodendrion hosakae* to be endangered (54 FR 41470) constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the October 10, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development

of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Hawaii Tribune-Herald" on October 23, 1989.

Eight letters of comment were received, including one from the City and County of Honolulu, two from State agencies, and five from environmental groups. Two letters, one from a State agency and one from an environmental group, acknowledged receipt of copies of the proposed rule, but had no comments; the other six letters expressed support for the proposal. Two of the environmental groups encouraged the Service to designate critical habitat for this species. Critical habitat is not being designated at this time as such a determination would result in no known benefit and may be detrimental to the species. The number of individuals of *Isodendrion hosakae* is sufficiently small that vandalism could seriously affect the survival of the species. Publishing a detailed description and map of this species' habitat would stimulate public interest and make this species more vulnerable to vandalism and taking by collectors or curiosity seekers.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that *Isodendrion hosakae* should be classified as an endangered species. Procedures found at Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act have been followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Isodendrion hosakae* St. John (aupaka) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Cattle have been responsible for the modification or destruction of much of the native vegetation in Hawaii. The modification of the vegetation from dense native forest to pasture by cattle has been documented in the Waimea region less than ten miles north of Waikoloa (Anon. 1856). Because cattle have grazed throughout these regions continuously since their introduction in the late 1700's, it is reasonable to assume similar destruction of native vegetation has occurred in Waikoloa as well. Drought conditions exist throughout the region during much of the year, often forcing the cattle to graze on marginal, less palatable species. Because *I. hosakae* often grows in close proximity to these less palatable species, drought and subsequent modification of cattle feeding habits present another threat to the populations (Nagata 1982). Range fires during the dry season have threatened the species in the past, in one incidence destroying nearly all the plants in one of the populations. Recently, one of the cinder cones on which *Isodendrion hosakae* grows was fenced off in a cooperative effort between the State Division of Forestry and Wildlife and the landowner to protect the hill from grazing cattle. This cinder cone has the largest population of *Isodendrion* and its protection has greatly alleviated the impact of cattle on the species, but has not completely removed them as a threat. It is too soon to determine the long term effect of the fencing project on the protection of the species; fencing small areas and establishing sanctuaries of a few acres have had mixed results in Hawaii. Feral pigs have been observed in the area. While there is no documented evidence of outright destruction of *Isodendrion* by feral pigs, disturbance by their rooting would result in plants and seedlings being dug up and represents another potential threat. On several occasions in the past, the entire area was leased by the landowner to the U.S. military for ground troop training exercises. Disturbance by troop movement and other training activities and the associated risk of fires also are potential threats to the species. Several cinder cones in the area, including one supporting a small population of *Isodendrion*, are being quarried for their cinder; although the quarrying is not impacting the plant at present, it poses yet another threat to the species in the future.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Isodendrion hosakae* is not currently a component of the commercial trade in native plants. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific publicity.

C. *Disease or predation.* All known extant plants grow on three cinder cones located in a pasture. Although there is no documentation that the plants have been destroyed by grazing in the past, there also is no indication that they are considered unpalatable by cattle. In addition to habitat modification by cattle, as discussed in section A above, predation by grazing livestock is considered a threat to the species.

D. *The inadequacy of existing regulatory mechanisms.* There are no existing regulatory mechanisms to protect this plant. However, Federal listing will automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. Funds for activities required for the conservation, management, enhancement, or protection of the species can be made available under Section 6 of the Act (State Cooperative Agreements). Additional protection is extended to the species by a 1988 amendment to the Act which prohibits removing, cutting, digging up, damaging, or destruction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small extant populations (varying in size from 8 to 260 plants each in 3 populations, and occupying an area of less than 2 acres) make *Isodendrion hosakae* especially sensitive to any perturbation, natural or man-caused, that diminishes its habitat or numbers. Further reduction of the already depauperate gene pool and genetic variability in these small populations potentially could have catastrophic effects on the survival of the species. Although seedlings are present within the population, seed production appears to be very low. As the populations are composed of plants of varying ages, the species is reproducing successfully, but probably only marginally. However, evidence indicates that the taxon probably has always been highly restricted and small in numbers, so the low reproductive rate may not be due to reduced reproductive vigor.

The Service has carefully assessed the best scientific and commercial information available regarding 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 *Isodendrion hosakae* as endangered. Its limited numbers and remaining habitat in light of present vulnerability to natural and anthropogenic threats indicate that *Isodendrion hosakae* is in danger of extinction throughout all or significant portions of its range, and therefore fits the Act's definition of endangered.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent

prudent and determinable, the Secretary designate any habitat of a species that is considered to be 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 *Isodendrion hosakae* at this time. Such a determination would result in no known benefit and may be detrimental to the species.

Publishing a detailed description and map of this species' habitat would stimulate public interest and make this species more vulnerable to vandalism and taking by collectors or curiosity seekers. None of the remaining populations of this species occur on Federal lands. Publication of critical habitat descriptions and maps would make *Isodendrion hosakae* more vulnerable and increase enforcement problems. All involved parties and principal landowners have been notified of the general location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the consultation process under section 7 of the Act. Therefore, it would not be prudent to determine critical habitat for *Isodendrion hosakae* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Since *Isodendrion hosakae* occurs on privately owned land, cooperation between Federal and State agencies and the private landowner is necessary to ensure its continued existence and to provide for its recovery. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The area that includes the habitat of *Isodendrion hosakae* has been leased to the U.S. military in the past for temporary use for ground troop training exercises. If the Department of Defense leases the area again for troop training, it would be required to enter into consultation with the Service if the action may affect the species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Isodendrion hosakae*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant, for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certan circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species is not common in cultivation nor in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2232).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. 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

Anonymous. 1856. The influence of cattle on the climate of Waimea and Kawaihae, Hawaii. Hawaiian Planter's Record 30: 289–292.

Nagata, K. 1982. Unpublished status survey of *Isodendrion hosakae* St. John (*aupaka*). U.S. Fish and Wildlife Service. 31 pp.

St. John, H. 1952. Monograph of the genus *Isodendrion* (Violaceae). Hawaiian plant studies 21. Pac. Sci. 6:213–255.

Author

The primary author of this final rule is Dr. Derral R. Herbst, U.S. Fish and Wildlife Service, Pacific Islands Office, 3200 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

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

Regulation & Promulgation

PART 17—[AMENDED]

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

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Violaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules	
Violaceae—Violent family							
*	*	*	*	*	*	*	
Isodendrion hosakae	Aupaka	U.S.A. (HI)	E	414	NA	NA	

Dated: December 21, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–785 Filed 1–11–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants; Endangered Status for the Florida Salt Marsh Vole

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. The vole is known only from one site in Levy County, Florida. The population level is very low, and the species could be extirpated by storm events. This action implements the protection of the Act for the Florida salt marsh vole.

EFFECTIVE DATE: February 13, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (telephone 904/791–2580; FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*) was described in 1982 (Woods *et al.* 1982) based on specimens from near Cedar Key, Levy County, Florida. It is a small (178–198 mm in total length), short-tailed rodent with a blunt head and short ears. The fur is black-brown dorsally and dark gray ventrally. The Florida salt marsh vole is related to the widespread meadow vole (*Microtus p. pennsylvanicus*). It differs from that subspecies in its larger size, darker coloration, relatively smaller ears, and certain skull characteristics. Most of the known information on the Florida salt marsh vole comes from Woods *et al.* (1982), who discovered the vole during seaside sparrow (*Ammodramus maritimus*) studies in west coast Florida marshes. The following background information is based on those authors.

The vole is known from only one site, where it occurs in a salt marsh with vegetation consisting of smooth cordgrass (*Spartina alterniflora*), black rush (*Juncus roemerianus*), and saltgrass (*Distichlis spicata*). The nearest existing population of *Microtus pennsylvanicus* to the salt marsh vole is located approximately 500 kilometers to the north in Georgia. However, fossil *Microtus pennsylvanicus* have been found in late Pleistocene deposits at four sites in Alachua, Citrus, and Levy Counties in Florida, indicating a much more extensive distribution in Florida in the past. The ages of these fossils may be from 8,000–30,000 years before the present. Lower sea levels in the past exposed large areas of coastal lands along Florida's west coast that are now submerged. About 10,000 years ago, sea level may have been 25 meters lower than at present, exposing land as far as 100 kilometers west of the current shoreline. This coastal corridor is believed to have consisted of savanna and prairie vegetation that would have provided much more extensive meadow vole habitat than now exists. The Florida salt marsh vole is believed to represent a relictual population that has persisted at the Waccasassa Bay site after a long-term reduction in range. Woods *et al.* (1982) concluded that the salt marsh vole existed in low numbers under harsh ecological conditions and was vulnerable to natural storm events. This view is supported by the fact that, following a hurricane passing through the Waccasassa Bay area in 1985, only one salt marsh vole was taken during intensive trapping in 1987 and 1988 (Woods 1988).

Service involvement with the Florida salt marsh vole began with the inclusion of this species in category 2 of its vertebrate review notice published on September 18, 1985 (50 FR 37958); the vole was retained in the same category in the Service's animal review notice published on January 6, 1989 (54 FR 554). Category 2 species are those for which the Service believes that listing may be appropriate, but for which additional biological data are necessary to support a proposed listing regulation. Additional searches for this species were subsequently done under contract with the Service's Cooperative Fish and Wildlife Research Unit (Woods 1988) and by the Service's Jacksonville, Florida, Field Office (Bentzien 1989). The Service proposed to list the Florida salt marsh vole as an endangered species on April 11, 1990 (55 FR 13576).

Summary of Comments and Recommendations

In the April 11, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports of 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 *Levy County Journal* in Bronson, Florida, on April 26, 1990; and in the *Gainesville Sun* in Gainesville, Florida, on April 29, 1990. On June 8, 1990, the trustee of the land where the Florida salt marsh vole occurs requested that the comment period be extended because he had been out of town during the comment period. On August 17, 1990 (55 FR 33737), the Service reopened the comment period on the proposal.

Two comments were received. The Florida Game and Fresh Water Fish Commission supported the listing of the Florida salt marsh vole as an endangered species. An attorney representing the trustee of the land where the vole occurs commented in regard to the following issues: Since only a single male vole was trapped in the last survey of the property, there can be no reproduction occurring on the site. Since that individual vole is unlikely to survive at the present time, no colony can now exist at the site. The single specimen taken was in mixed habitat, suggesting integration (sic). If future research shows the species to exist on the property, the Service should provide

a map with a specific legal description and geographical limitations of habitat. The property should be removed from the protected file and from registration on the Federal Register. Service response: Small mammal trapping is a sampling method that is unlikely to ever capture all the individuals in a population. The fact that single male vole was trapped does not indicate that the population consisted of one animal, but does indicate that the population level was probably low. The animal was captured in smooth cordgrass (*Spartina alterniflora*)-saltgrass (*Distichlis spicata*) habitat, which is typical for this subspecies (Woods *et al.* 1982). There are no specific requirements on the type of maps the Service maintains pertaining to proposed or listed species, nor does the Service typically research and record legal descriptions of properties where such species occur. The proposal or listing of a species pursuant to the Act does not register properties or place them in a protected file. The potential effects of the listing are discussed in the "Available Conservation Measures" below. Critical habitat has not been designated for the Florida salt marsh vole (see "Critical Habitat" section below).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Florida salt marsh vole should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Florida salt marsh vole is restricted to a single known site in the salt marsh of Waccasassa Bay, Levy County, Florida. Woods *et al.* (1982) were able to trap only 31 individuals; subsequent trapping efforts at the site located only one individual (Woods 1988). Trapping efforts for small rodents elsewhere in the coastal salt marshes of Citrus and Levy Counties has not yielded voles (Bentzien 1989). The Levy County population appears to represent a small remnant of a formerly wide-ranging population (Woods *et al.* 1982). The decline of the species appears natural, due to climatic changes and an associated rise in sea level. Prairie habitats, widespread on the much larger Pleistocene Florida peninsula, have become woodland unsuited to meadow voles.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* The Florida salt marsh vole is considered a species of special concern by the Florida Game and Fresh Water Fish Commission (Chapter 39–27.05, Florida Administrative Code). This final rule adds the recovery and protection measures available under the Endangered Species Act.

E. *Other natural or manmade factors affecting its continued existence.* The principal threat to the Florida salt marsh vole is loss of the single known population from storm events or from population fluctuations. In August 1965, Hurricane Elena remained stationary off the coast of Waccasassa Bay for 24 hours, and may have accounted for the decline of the Florida salt marsh vole observed between the 1981 and 1987 surveys. A single such storm event could easily extirpate the single known population of the vole. The population may currently be at such a low level that little genetic diversity remains. Woods *et al.* (1982) found little genetic variability in 14 specimens of the Florida salt marsh vole examined for alloenzymes.

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 Florida salt marsh vole as an endangered species. The single known population is in danger of extinction in the foreseeable future, due to natural causes.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Florida salt marsh vole. This subspecies is know only from a single restricted site and currently exists in very small numbers. Publishing critical habitat maps in the Federal Register could increase the chance of illegal collecting or attract trespass on the private land where the vole occurs. All involved parties and the landowner have been notified of the location and importance of protecting this species' habitat. Habitat protection will be addressed through the section 7 jeopardy standard. There would be no net offsetting benefit in designating critical habitat for this species; therefore, it would not be prudent to do so.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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.

No Federal involvement is currently known with regard to the Florida salt marsh vole. The area where it occurs is within the jurisdiction of the U.S. Army Corps of Engineers (Corps) permitting program, pursuant to the Clean Water Act. Dredge and fill activities in this area would require a Corps permit. No development plans are know for the area, however.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part,

make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for prevention of undue economic hardship.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmenal 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

Bentzien, M.M. 1989. Florida saltmarsh vole survey. Unpub. rep., U.S. Fish and Wildlife Service, Jacksonville, Florida, 5 pp.

Woods, C.A. 1988. Status surveys of the Florida saltmarsh vole. Rep. to U.S. Fish and Wildlife Service under Cooperative Agreement No. 14-16-0009-1544. 6 pp.

Woods, C.A., Post, and C.W. Kilpatrick. 1982. *Microtus pennsylvanicus* (Rodentia: Muridae) in Florida: a Pleistocene relict in a coastal saltmarsh. Bull. Florida St. Mus., Biol. Sci. 28(2):25–52.

Author

The primary author of this rule is Dr. Michael M. Bentzien (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population were endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		
Vole, Florida salt marsh	*Microtus pennsylvanicus dukecampbelli*	U.S.A.(FL)	Entire	E	415	NA	NA
*	*	*	*	*	*		

Dated: December 7, 1990

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-786 Filed 1-11-91; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants: Threatened Status for the Yellow-Blotched Map Turtle, Graptemys flavimaculata

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the yellow-blotched map turtle, *Graptemys flavimaculata*, to be a threatened species under the Endangered Species Act (Act) of 1973, as amended. This basking turtle is only known from the Pascagoula River system in southeast Mississippi. It is threatended by habitat modification, wanton shooting, collecting, water quality degradation, and nest predation. This rule implements the full protection of the Act for the yellow-blotched map turtle.

EFFECTIVE DATE: February 13, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Ren Lohoefener at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The yellow-blotched map turtle (*Graptemys flavimaculata*) was described from the Pascagoula River in George County, Mississippi (Cagle 1954). It is restricted to the Pascagoula River system in Mississippi, including the Leaf, Chickasawhay, and Escatawpa Rivers and other tributaries (Cagle 1954, Cliburn 1971, and McCoy and Vogt 1980). A survey of herpetologists and museums by the Service did not find any records of this species outside the Pascagoula River system. The only other name applied to this species is the yellow-blotched sawback turtle.

The yellow-blotched map turtle is a member of the narrow-head complex of *Graptemys*. It is a medium-sized aquatic turtle with females attaining a carapace size of at least 8 centimeters (cm) (3 inches) and males occasionally exceeding 4.75 cm (1.9 inches). The carapace is olive to light brown. Each costal scute usually has an irregular bright yellow or orange blotch. Juveniles and adult males have a black spine on the first four vertebral scutes. These spines may be lost in adult females. The closely related ringed sawback, *Graptemys oculifera*, and black-knobbed map turtle, *Graptemys*

nigrinoda, lack the solid blotches, have different patterns on the head, and usually have a light-colored ring on each costal.

The yellow-blotched map turtle requires rivers that are large enough to have an open canopy allowing for several hours of sunshine daily. The preferred habitat is a moderate current, a sand or clay substrate, sand bars or beaches for nesting, and snags or other structure for basking. This species feeds largely on snails and insects (Ernst and Barbour 1972). Growth is rapid and males may mature in the second growing season.

Cagle (1954) was unable to determine the age of maturity in females. Lahanas (1982) inferred that female *G. nigrinoda* mature at 8 or 9 years of age. Webb (1961) found that female *G. ouachitensis*, another closely related species in Lake Texoma, Oklahoma, matured at 6 or 7 years of age. Little is known about the reproduction of the yellow-blotched map turtle. The most definitive work on a related species was by Lahanas (1982) on *G. nigrinoda*. He found that this species produced 3 or 4 clutches annually with an average clutch size of 5–6 eggs. Cagle (1953) collected a *G. oculifera* female that had 3 eggs in the oviduct and 4 enlarged follicles. This turtle would probably have produced 7 eggs during the breeding season. Jones and Hartfield (1989) found a complete clutch laid by *G. oculifera* that contained 6 eggs. It is likely that *G. flavimaculata* is similar to these closely related turtles in reproductive parameters.

The Pascagoula River Basin includes 9,700 square miles (U.S. Army Corps of Engineers (USACE) 1987) with a wide variety of land uses. Much of the area is in private ownership and agricultural production. The U.S. Forest Service (USFS) manages significant acreage in DeSoto National Forest. The Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) owns or manages several wildlife management areas in the basin.

Historic population status for this species is primarily limited to the work of Cliburn (1971), McCoy and Vogt (1980), and a 1989 survey conducted by biologists from the Service and the Mississippi Department of Wildlife, Fisheries, and Parks. Cliburn (1971) reported this species from Red, Black, and Tallahala Creeks of the Pascagoula River drainage. McCoy and Vogt (1980) did not find any yellow-blotched map turtles in their survey of these streams and reported the habitat to be marginal. McCoy and Vogt reported decreasing numbers of two stations on the Chickasawhay River over a three year period. In two basking surveys on the Chickasawhay River, Service biologists in 1989, observed 43 and 60 yellow-blotched map turtles in approximately 20 river miles. This survey area included one of the sites where this species was reported in decline by McCoy and Vogt (1980). The Service survey was more extensive than that of McCoy and Vogt and, as a result, observed more yellow-blotched map turtles over the survey area. However, the number of yellow-blotched map turtles per river mile in the Chickasawhay River was three or less, a figure comparable to that observed by McCoy and Vogt.

In the basking survey conducted by Service biologists along 54 river miles of the Leaf and Pascagoula Rivers and 20 river miles of the Chickasawhay River, there were less than four yellow-blotched map turtles observed per river mile. In the lower Pascagoula River, a mark and recapture study by Service and Mississippi Department of Wildife, Fisheries, and Parks biologists observed up to 70 yellow-blotched map turtles per river mile. The estimate for total numbers of this species, based upon the mark-recapture study, was as high as 336 per mile in the lower Pascagoula River. This figure is low when compared with estimates of 549 *G. oculifera* (listed as threatened) per mile in good habitat and 230 per mile in poor habitat.

The increase in population of the yellow-blotched map turtle seems to occur in the vicinity of Wade and proceeds downstream for a distance of about 18 river miles. In this stretch, there are several short tributaries where this species occurs. However, these populations are likely dependent upon the main river population for viability. Turtles less than four years old were seldom observed or trapped in the lower Pascagoula River. This could indicate a problem with reproduction and recruitment. If this problem exists, it may be due to limited nesting habitat or to high nest predation. The most abundant population of this species, based upon observations by Service biologists, occurs in the Pascagoula River between Wade and Vancleave, Mississippi.

The yellow-blotched map turtle was listed as a category 1 candidate in the notice of review published in the **Federal Register** on December 30, 1982 (47 FR 58454) and as a category 2 candidate in the notice of review published in the **Federal Register** on September 18, 1985 (50 FR 37958) and on January 6, 1989 (54 FR 554). A category 1 candidate is a taxon for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list. A category 2 candidate is a taxon for which information now in possession of the Service indicates that proposing to list the species is possibly appropriate, but for which substantial data are not currently available. Based on additional status information, a proposed rule to classify *Graptemys flavimaculata* as threatended was published on July 11, 1990, in the **Federal Register** (55 FR 28570).

Summary of Comments and Recommendations

In the July 11, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the "Mobile Press Register," Mobile, Alabama, on July 21, 1990 and in the "Clarion-Ledger," Jackson, Mississippi, on July 23, 1990. Two comments were received and neither provided additional biological data. A conservation organization endorsed the proposed rule. A Federal agency felt that the listing action could have a severe impact on Federal flood control projects and requested advice on effects of the listing action. The Service recognizes these concerns and notes that the Act requires a listing decision be made only on the best available biological information. The Service's project-specific advice to Federal agencies will be through the normal section 7 process.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the yellow-blotched map turtle should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the yellow-blotched map turtle, *Graptemys flavimaculata*, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The yellow-blotched map turtle must have

structures on which it can bask and be safe from predation, and have suitable nesting habitat. Basking structures are logs, snags, and other debris commonly occurring in streams. These structures also serve as habitat for food organisms. Nesting is believed to occur on sand beaches well above the water level and near the vegetation line. Navigation and flood control measures often require the removal of basking structures and nesting beaches to deepen the channel and to remove restrictions to water flow. Gravel dredging removes sand and affects potential nesting sites. Increased turbidity and sedimentation impact the snails and insects upon which this species feeds. There are several channel modification projects on or planned for tributary streams that have the potential to impact the habitat of this species (USACE 1987). A clearing and snagging project has impacted 2.37 miles of the Leaf River channel at Hattiesburg. Selective snagging of 7.25 miles of Tallahala Creek to provide flood control for Laurel was approved in 1987. Flood control projects have been conducted or planned for Sowashee Creek at Meridian, Gordon's Creek and Upper Gordon's Creek at Hattiesburg, and Green's Creek at Petal. Studies for flood control projects on Mixon's Creek, Lamar County, and Mill Creek at Sumrall are ongoing. Four existing reservoirs have modified portions of the drainage and affect water flows. There are authorized reservoirs on Tallahala Creek and Bowie River that have been determined not economically feasible, but have not been de-authorized. An active and extensive gravel mining operation in the Bowie River near its confluence with the Leaf River undoubtedly contributes to sedimentation in downstream reaches of the Lear River. Turbidity and sedimentation may occur from clear cutting timber and agricultural activities.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Wanton shooting (use of basking turtles for target practice) and collecting pose a threat to the yellow-blotched map turtle. This threat becomes more serious as the population declines. An increasing public awareness of the species' plight on the part of many scientists seems to be reducing the threat from scientific and educational collecting. Collecting for commercial purposes is a more serious threat. This very attractive turtle has been advertised for retail sale at $65 each. It is very vulnerable to knowledgeable commercial collectors, who can seriously damage a local population in a short period.

C. *Disease or predation.* There is no known threat from disease. This species is subject to natural predation. Lahanas (1982) found 82 percent mortality of eggs of *G. nigrinodo* from predation, primarily by fish crows. Other authors have found predation of turtle eggs ranging from 90 to 100 percent (Cagle 1950, Moll and Legler 1971, Shealy 1976, Vogt 1980). Lahanas attributed the lower predation rate he observed to his frequent presence on the nesting beaches. While conducting a mark and recapture study of the ringed sawback, Service biologists estimated, from casual observation, that 95 percent of nests were destroyed by predators. A serious threat to adult turtles is wanton shooting as discussed in Factor "B". The alteration and degradation of habitat as discussed in Factors "A" and "E" make predation, wanton shooting, and collecting more significant threats to the yellow-blotched map turtle then they would be otherwise.

D. *The inadequacy of existing regulatory mechanisms.* The yellow-blotched map turtle is listed as endangered under Mississippi Department of Wildlife, Fisheries, and Parks Public Notice 2779. Because of this State protection, the Lacey Act (16 U.S.C. 3401–3408) applies to the taking and transportation of this species from Mississippi. A State collecting permit is required for taking this species. Compliance with these regulations is extremely difficult to enforce due to other law enforcement priorities and the difficulty of proving a violation if the species has been removed from the river. The loss or alteration of habitat is the more serious threat to the yellow-blotched map turtle. No regulations requiring consideration of this species during project planning yet exist. Listing under the Endangered Species Act would provide much needed protection through sections 7 and 9 and the recovery process.

E. *Other natural or manmade factors affecting its continued existence.* Water quality degradation poses a serious threat to the yellow-blotched map turtle. This impact includes bioaccumulation of toxic materials and the loss of food organisms. The total effects of pollution and siltation upon map turtles have not been fully documented. However, the effects on insect larva and snails are well documented, and this group of organisms is the primary food source of all the narrow-headed map turtles (Cagle 1953, Ernst and Barbour 1972, Lahanas 1982). The reduced population of yellow-blotched map turtles in areas that have otherwise suitable habitat, but are polluted from some source, indicates impacts to the food source. Water quality problems exist on the Leaf River from municipal runoff at Hattiesburg and dioxin contamination at New Augusta; on the Tallahala River from municipal runoff at Laurel; and on the Chickasawhay River from brine water releases from oil fields (R. Ball, Mississippi Bureau of Pollution Control, pers. comm. 1989). Permitted effluent to the Pascagoula River Basin include ammonia, chlorine, sodium sulfate, toluene, cyclohexane, and acetone (EPA 1989).

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 yellow-blotched map turtle as threatened. The threatened status is chosen due to the restricted range, sparse populations above the Pascagoula River, and water quality problems. Endangered status is not chosen because the species exists over many river miles in the Pascagoula River system and the known threats do not place it in imminent danger of extinction. Critical habitat is not being determined as discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. All Federal and State agencies are aware of the existence of this species and the importance of protecting its habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Commercial collecting is a potentially significant threat (see Factor B) and specific identification of its habitat through designation of critical habitat could increase the threat to this species. Therefore, it would not now be prudent to determine critical habitat for the yellow-blotched map turtle.

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 acquisitions and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal involvement is expected to include the U.S. Army Corps of Engineers through its flood control projects and permits for water related activities, and the Environmental Protection Agency through the Clean Water Act provisions for pesticide registration, wastewater treatment, and permitted effluent discharge.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving 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, for incidental take in connection with otherwise lawful activities, and/or for prevention of undue economic hardship. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

National Environmental Policy Act

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

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Webb, R.G. 1961. Observations on the life histories of turtles (Genus *Pseudemys* and *Graptemys)* in Lake Texoma, Oklahoma. American Midland Naturalist 65(1):193–214.

Author

The primary author of this rule is Ren Lohoefener (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "REPTILES", to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*	*	
Turtle, yellow-blotched map (=sawback).	*Graptemys flavimaculata*	U.S.A. (MS)	Entire	T	416	NA	NA
*	*	*	*	*	*	*	

Dated: December 17, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–787 Filed 1–11–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants; Listing of the Indus River Dolphin as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is adding the Indus River dolphin (*Platanista minor*) to the List of Endangered and Threatened Wildlife. This measure, required by section 4(a)(b) of the Endangered Species Act of 1973 corresponds with the final determination of endangered status published in the **Federal Register** of December 11, 1990, by the National Marine Fisheries Service, which has jurisdiction for the Indus River dolphin.

EFFECTIVE DATE: January 11, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Larry Shannon, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240; telephone (703) 358–2171.

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act, the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the Indus River dolphin (*Platanista minor*). Under section 4(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (Act), NMFS must determine whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

On December 11, 1990, NMFS published (55 FR 50835–36) its determination of endangered status for the Indus River dolphin. Accordingly, the FWS is now adding the Indus River dolphin to the List of Endangered and Threatened Wildlife. Because this FWS action is nondiscretionary, the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b). The FWS also has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in regard to regulations adopted under section 4(a) of the Act. A notice outlining the reasons for this determination was published in the **Federal Register** on October 25, 1985 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Mammals, 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						
MAMMALS							
*	*	*	*	*	*	*	
Dolphin, Indus River	*Platanista minor*	Pakistan (Indus R. and tributaries).	Entire	E	417	NA	NA
*	*	*	*	*	*	*	

Dated: January 8, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–788 Filed 1–11–91; 8:45 am]

BILLING CODE 4310–55–M

federal register

Monday
January 14, 1991

Part IV

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1991; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1991; Solicitation of Applications

Notice is hereby given that under the authority in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) anticipates awarding standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The total amount of funds available for grants under the Rangeland Research Grants Program during Fiscal Year 1991 is approximately $454,000.

Under this program, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. Except in the case of Federal laboratories, each grant recipient must match the Federal funds expended o a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support.

Applicable Regulations

This program is subject to the provisions found in 7 CFR part 3401 (51 FR 16152, April 30, 1986), in which reference is made to 7 CFR part 3400; it should be noted, however, that amendments to 7 CFR part 3400 (53 FR 49640, December 8, 1988) do not apply to the Fiscal Year 1991 Rangeland Research Grants Program. The provisions in 7 CFR part 3401 set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching funds requirements. In addition, USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended, and Governmentwide Debarment and Suspension (Nonprocurement) and Governmenwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended, and New Restrictions on Lobbying, 7 CFR part 3018, apply to this program.

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions for this program (7 CFR part 3401) may be obtained by writing to the address or calling the telephone number which follows:

Proposal Services Branch
Awards Management Division
Office of Grants and Program Systems
Cooperative State Research Service
U.S. Department of Agriculture
Room 303, Aerospace Building
Washington, DC 20250–2200
Telephone: (202) 401–5048

What to Submit

An original and nine copies of each proposal submittted under this program are requested. This number of copies is necessary to permit thorough, objective merit evaluation of all proposals received before funding decisions are made. Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposals should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit).

Members of review committees and CSRS staff expect each project description to be complete in itself. Grant proposals must be limited to 10 pages (single-spaced) exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Attachment of appendices is discouraged and should be included only if pertinent to an understanding of the proposal.

All copies of each proposal must be mailed in one package. Please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the regulations contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR part 3401. If applicable, the research grant proposal must state that the 50 percent non-Federal funding requirement will be met.

Where and When to Submit Grant Applications

Each research grant application must be submitted to:

Proposal Services Branch
Awards Management Division
Office of Grants and Program Systems
Cooperative State Research Service
U.S. Department of Agriculture
Room 303, Aerospace Building
Washington, DC 20250–2200

To be considered for funding during fiscal year 1991, proposals must be received in the Proposal Services Unit by close of business on February 25, 1991.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Specific Areas of Research to be Supported in Fiscal Year 1991

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

If necessary, further information may be obtained by calling Dr. Wayne K. Murphey, CSRS–USDA; telephone: (202) 401–4089.

Supplementary Information

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 8th day of January 1991.

Clare I. Harris,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 91–825 Filed 1–11–91; 8:45 am]

BILLING CODE 3410–22–M

federal register

Monday
January 14, 1991

Part V

Environmental Protection Agency

Priority List of Substances Which May Require Regulation Under the Safe Drinking Water Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-3866-5]

Priority List of Substances Which May Require Regulation Under the Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Safe Drinking Water Act as amended in 1986 requires EPA to publish a triennial list of contaminants which are known or anticipated to occur in drinking water and which may require regulation under the Act. The Drinking Water Priority List (DWPL) serves as a list of candidate contaminants for regulation under the Act. EPA published the first DWPL containing 53 contaminants/contaminant groups on January 22, 1988. The present notice establishes a revised DWPL (1991 version) of "candidates" for future regulations. The list is comprised of 50 substances carried over from the 1988 DWPL and 27 new substances. The total number of contaminants/contaminant groups on the revised DWPL is 77.

DATES: This notice is effective immediately.

ADDRESSES: References and supporting documentation for new substances selected for the list are in the public docket. Supporting documents for the substances carried over from the 1988 list are not being made available again. The docket clerk's office is located in the Criteria and Standards Division, Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is open from 9 a.m. to 3:30 p.m., Monday through Friday, except legal holidays. Please call 202–382–3027 for an appointment to inspect the docket.

FOR FURTHER INFORMATION CONTACT: Jitendra Saxena, Ph.D., Criteria and Standards Division, Office of Drinking Water (WH–550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone 202–475–9579. General information may also be obtained from the EPA Drinking Water Hotline. The toll-free number is 800–426–4791; the local number is 202–382–5533.

EPA Regional Offices

I. JFK Federal Bldg., room 2203, Boston, MA 02203, Phone: (617) 853–3610, Jerome Healey.
II. 26 Federal Plaza, room 824, New York, NY 10278, Phone: (212) 264–1800, Walter Andrews.
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215) 597–8227, Jon Capacasa.
IV. 345 Courtland Street, NE., Atlanta, GA 30365, Phone: (404) 347–3866, James Kutzman.
V. 230 Dearborn Street, Chicago, IL 60604, Phone: (312) 353–2151, Edward P. Watters.
VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 255–7150, Oscar Cabra.
VII. 726 Minnesota Ave., Kansas City, KS 66101, Phone: (913) 551–7032, Ralph Langemeier.
VIII. One Denver Place, 999 18th Street, suite 500, Denver, CO 80202, Phone: (303) 294–7005, Patrick Crotty.
IX. 74 Hawthorne Street, San Francisco, CA 94105, Phone: (415) 774–2250, Steve Pardieck.
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206) 399–4092, Jan Hastings.

SUPPLEMENTARY INFORMATION:

Table of Contents

Abbreviations Used in this Notice

ATSDR: Agency for Toxic Substances and Disease Registry
CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)
DWPL: Drinking Water Priority List
FIFRA: Federal Insecticide, Fungicide and Rodenticide Act
FSTRAC: Federal-State Toxicology and Regulatory Alliance Committee
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
NPL: National Priority List (Superfund)
NPS: National Pesticides Survey
NTP: National Toxicology Program
NPDWR: National Primary Drinking Water Regulation (includes both Interim and Revised National Primary Drinking Water Regulations)
ODW: Office of Drinking Water
SARA: Superfund Amendments and Reauthorization Act
SDWA: Safe Drinking Water Act, also referred to as "the Act," as amended in 1986.
SMCL: Secondary Maximum Contaminant Level
TRI: Toxics Release Inventory
VOC: Volatile Organic Chemical

I. Background

The Safe Drinking Water Act (SDWA or "the Act"), as amended in 1986, requires the Environmental Protection Agency (EPA) to publish a triennial list of contaminants ("Drinking Water Priority List" or DWPL) which are known or anticipated to occur in drinking water and which may require regulation under the Act [section 1412(b)(3)(A)]. EPA must propose National Primary Drinking Water Regulations (NPDWRs) for at least 25 contaminants on the DWPL within 24 months after publication of each triennial list and promulgate 25 NPDWRs within 36 months of publication of each triennial list. Under section 1401 of the Act, the NPDWRs are to include maximum contaminant levels (MCLs) and "criteria and procedures to assure a supply of drinking water which dependably complies" with such MCLs. If it is not economically or technically feasible to ascertain the level of a contaminant in drinking water, EPA may require the use of a treatment technique instead of an MCL.

In selecting contaminants for the list, EPA must consider, at a minimum, substances referred to in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or "Superfund") and pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Act also requires EPA to form an advisory group to assist in developing the DWPL. This group must include, but not be limited to, participants from the National Toxicology Program and the EPA offices of Drinking Water, Pesticides and Toxic Substances, Ground Water, and Solid Waste and Emergency Response, and other offices deemed appropriate by the Administrator.

The first Drinking Water Priority List was published by EPA on January 22, 1988 (53 FR 1892). The list consisted of 53 contaminants/contaminant groups, and included the seven substances which were removed from the original statutory list of 83 contaminants. Other contaminants placed on the list included disinfectants and their by-products, priority contaminants developed under the Superfund Amendments and Reauthorization Act (SARA), design-analytes of the EPA National Pesticides Survey (NPS), unregulated contaminants

monitored under section 1445 of the SDWA, and certain substances reported frequently and at high concentrations in drinking water surveys.

EPA is complying with SDWA requirements for publication of a triennial list of contaminants by revising and updating the 1988 DWPL. EPA believes that the DWPL is simply a list of "candidates" for regulation. These "candidates" include substances which are known or anticipated to occur in drinking water and which may require regulation under the Act. Some substances are placed on the list because they clearly present a health risk; others will require further investigation before the need for regulation is clear. With this approach, the DWPL will be a flexible tool which is reviewed and revised every three years. Contaminants which no longer meet the EPA's DWPL criteria, or which have been regulated since being placed on the list, can be dropped, and new high-priority drinking water contaminants can be added to the list when it is revised.

This notice establishes a revised list of "candidate" contaminants for future regulation. EPA has not yet promulgated NPDWRs for any contaminants from the 1988 list. Fifty substances from the 1988 list which continue to meet the DWPL criteria have been carried forward to the 1991 list. Three substances from the 1988 list have been dropped (see discussion below). Twenty-seven new drinking water contaminants have been added.

This notice was developed with the assistance of the DWPL workgroup. The workgroup was chaired by the Criteria and Standards Division, Office of Drinking Water. The workgroup consisted of representatives from the EPA offices of Pesticides and Toxic Substances, Ground Water, Solid Waste and Emergency Response, and other programs within the Agency; the National Toxicology Program (NTP); the U.S. Geological Survey; and the Agency for Toxic Substances and Disease Registry (ATSDR).

II. Selection of Contaminants for the Revised Drinking Water Priority List

Drinking water contamination generally occurs from: (a) Contaminants that find their way into drinking water sources from industrial waste, agricultural runoff, and other pollution sources; (b) contaminants formed during treatment of water supplies (e.g., disinfection by-products); and (c) materials used for treatment, storage, and distribution of water (e.g., direct and indirect additives). EPA has considered all of these sources in selecting important, or potentially important, drinking water contaminants for the 1991 DWPL.

EPA used the following general criteria for contaminant selection for the 1988 DWPL, and has used the same criteria in revising the DWPL:

—Occurrence of the substance in public water systems; or physical/chemical/environmental characteristics and use patterns of the substance indicate its potential for occurrence in public water systems at levels of concern.
—Documented or suspected adverse health effects of the contaminant.
—Availability of sufficient information on the substance, including health effects data, analytical methods, and treatability studies, so that a regulation could be developed within the statutory time frame. Alternatively, there should be sufficient likelihood that needed information on the contaminant can be developed so that a regulation could be developed before the statutory deadline.

All contaminants on the 1991 DWPL meet these selection criteria.

A. 1988 Drinking Water Priority List

The 1988 DWPL contained 53 contaminants/contaminant groups (53 FR 1892, January 22, 1988). It included seven contaminants removed from the statutory list of 83 contaminants, and substances selected from the following groups: (1) Disinfectants and disinfection by-products, (2) the first 50 contaminants on the SARA section 110 priority list, (3) design-analytes of the EPA National Pesticides Survey, (4) unregulated volatile organic chemicals (VOCs) listed under monitoring requirements of section 1445 of the SDWA, and (5) other substances selected for specific reasons articulated in the January 22, 1988, **Federal Register** notice.

EPA was required to propose NPDWRs for at least 25 contaminants on the DWPL by January 1990 and to promulgate the NPDWRs by January 1991. EPA has not met this schedule and therefore is carrying forward to the 1991 list all the contaminants/contaminant groups on the 1988 DWPL except as discussed below. Those contaminants carried forward continue to meet DWPL selection criteria. EPA plans to propose NPDWRs for 25 contaminants in June 1993 that will be selected from the revised (1991) DWPL.

Three contaminants on the 1988 DWPL—ammonia, silver, and sodium—have been determined to be of low priority for regulation and, therefore, have been dropped from the 1991 list. For each of these three substances, there is either little or no potential for exposure via drinking water, or no adverse health effect associated with their presence in drinking water. Current data for ammonia indicate no adverse health effects on humans at levels found in drinking water. Long-term exposure to silver is known to cause argyria, a grayish discoloration of the skin. Since this is considered a cosmetic effect and not a health effect, a secondary maximum contaminant level (SMCL) was proposed for silver (54 FR 22062, May 22, 1989). SMCLs are not federally enforceable and are established for contaminants in drinking water which may affect the aesthetic qualities and the public's acceptance of drinking water. Sodium is low priority because drinking water contributes only a small fraction of total dietary intake. In addition association between sodium in drinking water and hypertension in the general population is based on inadequate data (50 FR 46980, November 13, 1985). Any of these three chemicals could be added to a subsequent DWPL should new data warrant such action.

B. Lists of Substances Considered for Revision of the Drinking Water Priority List

The following sources were reviewed by EPA to identify contaminants for the 1991 version of the DWPL.

1. SARA Priority List

The Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499 (SARA)) amended and extended CERCLA of 1980 (42 U.S.C. 9601 et seq.). SARA (section 110) requires the Agency for Toxic Substances and Disease Registry (ATSDR) of the Department of Health and Human Services and EPA to prepare a priority-ordered list of hazardous substances covered by CERCLA. The list must consist of those substances which are most commonly found at hazardous waste sites on the CERCLA National Priority List (NPL), and which the agencies determine pose the most significant potential threat to human health. The first list of 100 substances was published in the **Federal Register** on April 17, 1987 (52 FR 12866). The list was separated into four priority groups of 25 substances each. The first group of 25 is the highest priority group, the second is the next highest priority, and so on. The use of the SARA list in the development of the DWPL fulfills the SDWA requirement to consider CERCLA section 101(14) substances. This was discussed in detail in the 1988 DWPL Notice (53 FR 1892, January 22, 1988).

EPA considered substances in priority groups 1 and 2 of the first SARA list for the 1988 DWPL. During revision of the DWPL, EPA reexamined those substances taking into consideration new data which were generated since 1988. EPA also considered substances in priority groups 3 and 4. SARA priority list substances which were selected for the 1991 DWPL are listed in Table 1.

TABLE 1.—SARA SECTION 110 PRIORITY LIST SUBSTANCES WHICH HAVE BEEN SELECTED FOR THE 1991 DWPL

Acrylonitrile
1,3-Dichlorobenzene
Dichlorodifluoromethane
2,4-Dinitrophenol
2,6-Dinitrotoluene
1,2-Diphenylhydrazine
Fluorotrichloromethane
Hexachlorobutadiene
Hexachloroethane
Naphthalene
Nitrobenzene

Naphthalene is the only substance listed in Table 1 which was considered previously for the 1988 DWPL. Naphthalene was excluded from the 1988 list because of little or no potential for exposure through drinking water. Reevaluation of naphthalene has, however, revealed a strong potential for drinking water contamination. For example, naphthalene may leach into drinking water from coal tar based protective coatings used in water transmission lines and storage tanks. Also, a substantial increase in the amount of naphthalene released to the environment has been reported (U.S. EPA, "Toxics Release Inventory," National Report, 1988), suggesting the possibility of drinking water contamination. Therefore, naphthalene has been included in the 1991 DWPL.

Substances included in the second SARA list (54 FR, October 20, 1988) and the third SARA list (53 FR, October 26, 1989) will be considered for future DWPLs.

2. Pesticides Registered Under FIFRA

Pesticides are logical candidates for inclusion on the DWPL. Since pesticides are specifically developed for their toxicity to certain organisms, the potential exists for their toxicity to humans. Also, there is mounting evidence that pesticide use can, in some circumstances, lead to contamination of drinking water supplies. EPA used two mechanisms to select pesticides for the 1991 version of the DWPL:

a. *Pesticides Selected Based on the Results of the National Pesticides Survey.* The National Pesticides Survey (NPS) was a jointly sponsored project of EPA's Office of Drinking Water (ODW) and Office of Pesticide Programs (OPP). It was the first national survey of pesticides and pesticide degradation products in drinking water wells. The survey had two principal objectives: (1) To determine the frequency and concentration of pesticide contamination of drinking water wells nationally; and (2) to improve EPA's understanding of how contamination of drinking water wells is associated with patterns of pesticide use and the vulnerability of ground water to contamination. The survey involved analysis of 127 pesticides and pesticide degradation products in statistically representative samples taken from more than 1,300 wells, some in every State.

The pesticides listed in Table 2 have been selected for the revised DWPL because of their frequent reported detection in drinking water wells. Furthermore, these pesticides also meet the other DWPL criteria.

TABLE 2.—PESTICIDES SELECTED FOR THE 1991 DWPL BASED ON THE RESULTS OF THE NATIONAL PESTICIDES SURVEY

Bentazon
DCPA (and its acid metabolites)
Parathion degradation product (4-Nitrophenol)
Prometon

b. Pesticides Selected Based on Their Leaching Potential. Ground-water contamination by pesticides has been of considerable public concern over the last several years. The Agency, through its pesticide registration and reregistration process, has focused its attention on identifying and developing information on pesticides which have the greatest potential to leach into ground water. A complex set of factors influence the likelihood of pesticide contamination of ground water in a given location: The physical and chemical properties of the pesticide, natural hydrogeologic and man-made features at the site of application, and the agronomic and pesticide application practices employed. Pesticides that leach into ground water are also potential contaminants of surface waters. The NPDWRs apply to drinking water from both sources.

As part of the registration/reregistration process, EPA has required ground-water monitoring studies from the registrants on 36 pesticides. These pesticides are considered excellent candidates for the 1991 DWPL because (1) they have properties and characteristics associated with other pesticides previously detected in ground water, and (2) much of the information on these pesticides which may be needed for regulation has already been developed by the registrants. However, many of the pesticides on the list of 36 have already been considered for drinking water regulation via other mechanisms. For example, they appear on the statutory list of 83 or on the 1988 DWPL or are analytes of the National Pesticide Survey. For the revised DWPL, EPA has selected from the 36 pesticides only those which meet the DWPL criteria and are not already addressed elsewhere. These pesticides are listed in Table 3.

TABLE 3.—PESTICIDES SELECTED FOR THE 1991 DWPL BASED ON THEIR POTENTIAL TO LEACH IN GROUND WATER

Asulam
Bromacil
Cyromazine
Fomesafen
Lactofen/Acifluorfen
Metalaxyl
Methomyl
Thiodicarb

3. Substances Recommended by States and EPA Regions

With the assistance of the Federal-State Toxicology and Regulatory Alliance Committee (FSTRAC), EPA solicited recommendations from the States and EPA regions for high-priority drinking water contaminants which should be considered for inclusion in the 1991 DWPL. FSTRAC consists of representatives from State and Federal drinking water programs brought together to exchange ideas and information on the toxicology and risk assessment of drinking water contaminants. FSTRAC surveyed the drinking water programs in all 50 States and Puerto Rico for recommendations regarding chemicals for future standards development by EPA. FSTRAC identified the chemicals most frequently requested for regulation (i.e., requested by four or more States). The reasons for requested standards development for these chemicals included their widespread use, documented or suspected adverse human health effects, and/or prevalence in drinking water. Many States and EPA regions also submitted recommendations directly to the EPA. Based on the recommendations of the States and EPA regions, the chemicals listed in Table 4 have been selected for the 1991 DWPL:

TABLE 4.—SUBSTANCES SELECTED FOR THE 1991 DWPL BASED ON THE RECOMMENDATION OF STATES AND EPA REGIONS

Manganese
Methyl ethyl ketone
Methyl isobutyl ketone
Tetrahydrofuran

III. 1991 Version of the Drinking Water Priority List

Table 5 shows the final 1991 Drinking Water Priority List of contaminants/contaminant groups. The list is comprised of 50 contaminants/contaminant groups from the 1988 list (which continue to meet the DWPL criteria and have not been regulated thus far) and 27 new substances selected from the four groups discussed in this notice. The total number of contaminants/contaminant groups on the revised list is 77.

TABLE 5.—PRIORITY LIST (1991 VERSION) OF CONTAMINANTS WHICH MAY REQUIRE REGULATION UNDER THE SAFE DRINKING WATER ACT

Substance	CAS No.
Inorganics (Total number = 14)	
Aluminum	7429905
Boron	7440428
Chloramines	
Chlorate	14866683
Chlorine	7782505
Chlorine dioxide	10049044
Chlorite	14998277
Cyanogen chloride	506774
Hypochlorite ion	14380611
Manganese	7439965
Molybdenum	7439987
Strontium	7440246
Vanadium	7440622
Zinc	7440666
Pesticides (Total number = 19)	
Asulam	3337711
Bentazon	25057890
Bromacil	314409
Cyanazine	21725462
Cyromazine	66215278
DCPA (and its acid metabolites)	1861321
Dicamba	1918009
Ethylenethiourea	96457
Fomesafen	72178020
Lactofen/Acifluorfen	77501634/5094666
Metalaxyl	57837191
Methomyl	16752775
Metolachlor	51218452
Metribuzin	21807649
Parathion degradation product (4-Nitrophenol)	100027
Prometon	1610180
2,4,5-T	93765
Thiodicarb	59669260
Trifluralin	1582098
Synthetic Organic Chemicals (Total number = 43)	
Acrylonitrile	107131
Bromobenzene	108861
Bromochloroacetonitrile	83463621
Bromodichloromethane	75274
Bromoform	75252
Bromomethane	74839
Chlorination/Chloramination by-products (Misc.), e.g., Haloacetic acids, Haloketones, Chloral hydrate, MX-2 [3-chloro-4-(dichloromethyl)-5-hydroxy-2 (5H)-furanone], N-Organochloramines	
Chloroethane	75003
Chloroform	67663
Chloromethane	74873
Chloropicrin	76062
o-Chlorotoluene	95498
p-Chlorotoluene	106434
Dibromoacetonitrile	3252435
Dibromochloromethane	124481
Dibromomethane	74953
Dichloroacetonitrile	3018120
1,3-Dichlorobenzene	541731
Dichlorodifluoromethane	75718
1,1-Dichloroethane	75343
2,2-Dichloropropane	594207
1,3-Dichloropropane	142289
1,1-Dichloropropene	563586
1,3-Dichloropropene	542756
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
2,6-Dinitrotoluene	606202
1,2-Diphenylhydrazine	122667
Fluorotrichloromethane	75694
Hexachlorobutadiene	87683
Hexachloroethane	67721
Isophorone	78591
Methyl ethyl ketone	78933
Methyl isobutyl ketone	108101
Methyl-t-butyl ether	1634044
Naphthalene	91203
Nitrobenzene	98953
Ozone by-products, e.g., Aldehydes, Epoxides, Peroxides, Nitrosamines, Bromate, Iodate	
1,1,1,2-Tetrachloroethane	630206
1,1,2,2-Tetrachloroethane	79345
Tetrahydrofuran	109999
Trichloroacetonitrile	545062
1,2,3-Trichloropropane	96184
Microorganisms (Total number = 1)	
Cryptosporidum	

TABLE 5.—PRIORITY LIST (1991 VERSION) OF CONTAMINANTS WHICH MAY REQUIRE REGULATION UNDER THE SAFE DRINKING WATER ACT—Continued

IV. Future Revisions of the Drinking Water Priority List

In accordance with the requirements of the SDWA, EPA will revise the DWPL every three years. Revisions will drop those contaminants for which regulations have been promulgated, and add new contaminants which may be of concern. Revisions will also drop contaminants which no longer meet EPA's established criteria for contaminant selection. EPA welcomes public comments or any suggestions for future revisions of the list.

V. Other Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This notice is not a regulation and will not have a financial or economic impact on any party. Therefore, EPA has not prepared an Economic Impact Analysis (EIA). EPA will prepare an EIA, if appropriate, at the time of regulation of any contaminant on the DWPL.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires EPA to explicitly consider the effect of proposed regulations on small entities. This notice does not constitute a proposed rulemaking activity. Therefore, the Regulatory Flexibility Act requires no such analysis. As EPA prepares regulations for contaminants selected from the Drinking Water Priority List under section 1412 of the SDWA, EPA will consider the effect of the proposed regulations on small entities.

C. Paperwork Reduction Act

There are no information collection requirements in this notice (44 U.S.C. 3501 et seq.).

VI. References

References for the revised DWPL are included in the public docket for this notice. This docket is located at EPA Headquarters, at the address listed at the beginning of this notice. Individuals should contact the docket clerk (202–382–3027) for access to the public docket. Materials for the revised DWPL are as follows:

FSTRAC, "States' Needs for Chemicals for Regulation in Drinking Waters," Hutcheson to Hais, April 27, 1990.

State of California, "Chemicals for Inclusion on the Candidate List for Regulation Under the Safe Drinking Water Act," Fan to Cantilli, May 2, 1990.

State of Illinois, "List of Compounds Which Have Been Detected in Public Water Supplies and at Cleanup Sites," Virgin to Cantilli, April 30, 1990.

State of Maryland, "List of Drinking Water Contaminants Which Have Occurred in Private or Public Water Systems in Maryland," Paull to Saxena, April 19, 1990.

State of Rhode Island, "Candidate Substances for Safe Drinking Water Act List of Priority Drinking Water Contaminants," Lee to Cantilli, May 10, 1990.

State of Wisconsin, "Substances for Inclusion on the Drinking Water Priority List," Swailes to Saxena, April 16, 1990.

U.S. EPA, "National Primary Drinking Water Regulations: Synthetic Organic

Chemicals, Inorganic Chemicals and Microorganisms; Proposed Rule" (50 FR 46980, November 13, 1985).

U.S. EPA, "Notice of the First Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles and Guidelines for Development of Toxicological Profiles." (52 FR 12866, April 17, 1987).

U.S. EPA, "List of National Pesticide Survey Analytes" and "Preliminary Survey Results," National Pesticide Survey File 1987–1990.

U.S. EPA, "Drinking Water; Substitution of Contaminants and Drinking Water Priority List of Additional Substances Which May Require Regulation Under the Safe Drinking Water Act" (53 FR 1892, January 22, 1988).

U.S. EPA, "Hazardous Substances Priority List, Toxicological Profiles; Second List (53 FR 41280, October 20, 1988).

U.S. EPA, "Toxics Release Inventory (TRI)," National Report 1988, Draft.

U.S. EPA, "National Primary and Secondary Drinking Water Regulation; Proposed Rule" (54 FR 22062, May 22, 1989).

U.S. EPA, "The Third List of Hazardous Substances That Will Be the Subject of Toxicological Profiles (54 FR 43615, October 26, 1989).

U.S. EPA, Region 1, "Drinking Water Priority List (DWPL) for 1991—Listing of Candidates for Regulation," Chow to Cantilli, May 15, 1990.

Dated: December 31, 1990.

F. Henry Habicht,

Acting Administrator.

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January 14, 1991

Part VI

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 49, 75 and 77

Information Collection Requirements for Mine Rescue, Self-Rescuer, Fire Drill, and First-Aid Training for Supervisory Employees; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 49, 75 and 77

RIN 1219-AA67

Information Collection Requirements for Mine Rescue, Self-Rescuer, Fire Drill, and First-Aid Training for Supervisory Employees

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises certain information collection requirements for mine operators. It addresses test and inspection records for mine rescue breathing apparatus at all underground mines, records concerning fire drills and self-rescuer examination at underground coal mines and first-aid training for selected supervisory employees at all coal mines. In most cases it replaces paperwork requirements with certification provisions. It retains recordkeeping requirements that enhance miner safety.

EFFECTIVE DATE: February 13, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980, (44 U.S.C. 3501) instructs Federal agencies to minimize the Federal paperwork burden on individuals, small businesses and others on whom reporting and recordkeeping requirements are imposed.

On November 20, 1989, (54 FR 48062) MSHA published a proposed rule in the **Federal Register** to reduce the information collection burden imposed by MSHA on mine operators or other affected parties by revising certain reporting and recordkeeping requirements. The proposal addressed recordkeeping and reporting requirements related to mine rescue equipment, underground coal mine self-rescuers, first-aid training for selected supervisory employees, and fire drills. The comment period closed January 26, 1990. MSHA received written comments regarding its proposal from all segments of the mining community. The Agency developed this final rule after a full evaluation of the entire rulemaking record.

This final rule reduces the reporting and recordkeeping burden on the mining industry while preserving the effectiveness of the underlying regulatory requirements and without lessening the protection afforded to miners. In many instances recordkeeping and reporting for routine inspections and tests can be replaced with a certification that the inspection or test has been conducted. In such cases, records need only be maintained to document actual or potential hazardous conditions or other problems that require further questions. For purposes of clarification, the final rule indicates that certifications must be signed and dated.

II. Discussion and Summary of Final Rules

A. Mine Rescue Equipment Test and Inspection Records (OMB No. 1219-0093)

The ready availability of a mine rescue capability in the event of an accident is vital for protection of miners. Mine operators are required to maintain mine rescue equipment in a manner that will ensure this readiness. A person trained in the use and care of breathing apparatus is required to inspect and test the apparatus at intervals not exceeding 30 days. Under 30 CFR 49.6(b), records of the results of the inspections and tests have been required. There are approximately 800 underground coal and metal and nonmetal mines that maintain mine rescue stations. Each station is required to have 12 breathing apparatus. MSHA safety specialists estimate that it takes 12½ minutes to conduct the required test and inspection of each piece of equipment for a total of 2½ hours per month per rescue station. MSHA estimates the burden hours for this recordkeeping requirement to be 24,000 hours. MSHA is replacing the recordkeeping provision in this section with a requirement that the person performing the inspection and test certify by signature and date that the inspection and test were done. A record must be made of any corrective action taken.

The proposal would have required a record only when breathing apparatus was removed from service. Several commenters generally agreed with the approach taken in the proposal with respect to certifications but suggested that it is not necessary to keep records of equipment removed from service because the records would do nothing to enhance the safety and health of miners. These commenters suggested that an operator should certify that equipment is maintained according to the requirements. MSHA intends that records be maintained on all breathing apparatus in service that have undergone repair or corrective action. This requirement will provide important information with respect to maintenance history of breathing apparatus remaining in service. Therefore, the final rule has been revised to require a record of all corrective action taken. For purposes of clarification, this requirement includes any breathing apparatus that is removed from service to repair.

Another commenter suggested continuing to require records of all inspections and tests performed on mine rescue equipment. This commenter suggested that without a record it would be difficult, if not impossible, to determine whether the equipment is in good condition or when it was last tested and that such a practice could easily cause confusion and misinterpretation of the condition of the equipment. MSHA believes that the final rule will provide an adequate indication of when the equipment was last inspected since a certification is required in all cases after an inspection has taken place. The certification will include the date of the inspection and the signature of the person conducting the inspection. Furthermore, the final rule requires a record of all corrective action taken. This will ensure adequate identification of corrective action taken to all mine rescue equipment that remains in service. For purposes of clarification and to be consistent with other rulemaking, the final rule indicates that all records and certifications must be made available upon request to an authorized representative of the Secretary.

B. Records of Fire Drills (Underground Coal Mines) (OMB No. 1219-0054)

Under 30 CFR 75.1101-23, operators of underground coal mines must submit to MSHA for approval a specific firefighting and evacuation plan designed to acquaint miners on all shifts with procedures for: Evacuation of all miners not required for firefighting activities; rapid assembly and transportation of necessary persons, fire suppression equipment and rescue apparatus to the scene of the fire; operation of the fire suppression equipment available in the mine; and signals that will be given in the event of an emergency. The standard also requires the mine operator to conduct fire drills at intervals of not more than 90 days. It also requires mine operators to keep records of the fire drills which include the date on which the drill was held, the number of miners participating, the area of the mine involved in the drill, the procedures followed, and equipment used. The standard pertains to 1,569

underground coal mines. It is estimated that it would take 15 minutes to conduct the fire drill and 5 minutes to make the record. The average underground coal mine has 2 sections and 10 miners per section. MSHA estimates the burden hours for this recordkeeping requirement to be 27,175 hours. MSHA is replacing the recordkeeping provision with a requirement that the operator certify by signature and date that fire drills were conducted as required.

Several commenters were in complete agreement with the standard as proposed. However, one commenter opposed the proposal stating that a large percentage of operators fail to conduct or record fire drills now and the proposal would lessen the mine operator's accountability requirements. This commenter objected to the elimination of records addressing the numbers of miners participating, the area of the mine involved in the drill, and the procedures followed and the equipment used. Further, this commenter recommended that instead of recording the number of miners trained, as currently required, the final rule should require a record of the names of the miners participating. This would provide the necessary information to be able to determine who has been trained and who needs training. This commenter further stated that the recordkeeping provision is the only way of verifying that fire drills have been conducted and conducted properly.

MSHA believes that the requirements for properly conducting fire drills are adequately addressed by 30 CFR 75.1101–23. The final rule does not require a record of the number of persons participating, the area of the mine involved, the procedures and equipment used in a fire drill since these issues are addressed by the existing provisions which are unchanged by this rulemaking. For example, evacuation procedures and instructions in the location and use of firefighting equipment during fire drills must be included in the approved program of instructions that is required to be given to all miners under paragraph (a). In addition, §§ 75.1100–1 through 75.1100–3 set out requirements for the type and quality as well as the quantity and condition of this equipment. Furthermore under paragraph (c) all miners must participate in fire drills to be conducted at least every 90 days. Compliance with these requirements will assure that fire drills are properly conducted and involve all areas of the mine where miners are located. Therefore, as proposed the final rule requires a certification that fire drills are conducted. The certification will provide the date on which fire drills are conducted.

C. First-Aid Training; Supervisory Employees (OMB No. 1219–0085)

Under 30 CFR 75.1713–3 and 77.1703, each operator of an underground and surface coal mine is required to conduct first-aid training courses for selected supervisory employees. In addition, within 60 days after selection, the operator must submit a written report to the District Manager containing the names, job titles, and dates of training of all supervisory employees. The standard pertains to 3,808 mining operations. It is estimated that there would be one record per mine per year and that the recordkeeping would take 30 minutes to record. MSHA estimates the burden hours for this recordkeeping requirements to be 1,904 hours.

MSHA is replacing the recordkeeping requirement contained in these standards with a requirement that the mine operator certify by signature and date the name of the employee and date on which the employee satisfactorily completed the first-aid training course. This certification is required to be kept at the mine and made available on request to an authorized representative of the Secretary. All commenters were in complete agreement with this standard as proposed.

D. Records of Results of Examinations of Self-Rescuers (Underground Coal Mines) (OMB No. 1219–0044)

The potential for self-rescuer devices to become inoperative is high because of the rugged underground environment to which they are subjected. In the event of a mine fire, mine explosion, or mine inundation, the use of self-rescuers can be the difference between life and death. Therefore, it is essential that these devices are examined regularly to ensure that they are maintained in a condition ready for use. Mine operators are required by 30 CFR 75.1714–3 to test self-rescue devices at 90-day intervals and to keep a record of the results of the tests. The estimated number of respondents per year is 1,569 underground coal mine operators with four reports annually by each respondent for a total of 6,276 responses. The estimated time per response for recordkeeping is 26 minutes and 38 minutes for examination for a total of 6,653 hours each year.

MSHA is replacing the recordkeeping provision in this section with a requirement that the person making the test certify by signature and date that the required tests were done. Records are required on all corrective action taken. For purposes of clarification, this requirement includes any self-rescue device that is removed from service for repair.

The proposal would have required a record only when self-rescue devices were removed for repair. Several commenters generally agreed with the approach taken in the proposal with respect to certifications but suggested that it is not necessary to keep records of equipment removed from service because the records would do nothing to enhance the safety and health of miners. These commenters suggested that an operator should certify that equipment is maintained according to the applicable requirements. MSHA intends that records be maintained on all devices in service that have undergone repair or corrective action. This requirement will provide important information with respect to maintenance history of self-rescue devices that remain in service. Therefore, the final rule has been revised to require a record of all corrective action taken. For proposes of clarification, this requirement includes any self-rescue devices that are removed from service for repair.

Another commenter suggested that the existing recordkeeping requirements be retained. This commenter stated that self-rescuers could be replaced or changed out between inspections and there would be no record to determine their condition. There also would be no record identifying each unit and when it was last tested which could cause uncertainty for a new person assigned to conduct the testing. This commenter further asserted that the only way to ascertain that self-rescuers are being properly maintained is through recordkeeping.

In response to this commenter, the Agency has revised the final rule to require that all corrective actions made as a result of testing be recorded. This approach will not only require a record when a self-rescue device is removed from service but also when any other corrective action is taken. The final rule also clarifies that the person conducting the test is to certify by signature and date that the testing was done and to record any corrective action taken. The Agency believes that this approach will provide an equally safe method for ensuring an adequate record of when testing is conducted and what actions are taken when problems are discovered.

III. Executive Order 12291 and the Regulatory Flexibility Act

This rule will not result in major cost increases nor have an effect of $100

million or more on the economy. Therefore, this rule does not fall within the criteria of a major rule and a regulatory impact analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize adverse impact on small businesses when developing regulatory proposals. These final rules will reduce paperwork burdens on all affected operations, including small mines. Accordingly, the Agency has not conducted an initial regulatory flexibility analysis and, in accordance with section 605(b) of the Regulatory Flexibility Act, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. List of Subjects in 30 CFR Parts 49, 75, and 77

Mine safety and health, Reporting and recordkeeping requirements.

Dated: January 8, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, subchapters G and O, chapter I, title 30 of the Code of Federal Regulations, are amended under 30 U.S.C. 811 as follows:

PART 49—MINE RESCUE TEAMS

1. The authority citation for part 49 is revised to read as follows:

Authority: 30 U.S.C. 811, 825(e) and 957.

2. Section 49.6 is amended by revising paragraph (b) to read as follows:

§ 49.6 Equipment and maintenance requirements.

* * * * *

(b) Mine rescue apparatus and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatus shall inspect and test the apparatus at intervals not exceeding 30 days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and the person shall record the corrective action taken. The certification and the record of corrective action shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the Secretary.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.1101–23 is amended by revising paragraph (c)(1) to read as follows:

§ 75.1101–23 Program of instruction; location and use of fire-fighting equipment; location of escapeways, exists and routes of travel; evacuation procedures; fire drills.

* * * * *

(c) * * *

(1) The operator shall certify by signature and date that the fire drills were held in accordance with the requirements of this section. Certifications shall be kept at the mine and made available on request to an authorized representative of the Secretary.

* * * * *

3. Section 75.1713–3 is revised to read as follows:

§ 75.1713–3 First-Aid training; supervisory employees.

The mine operator shall conduct first-aid training courses for selected supervisory employees at the mine. Within 60 days after the selection of a new supervisory employee to be so trained, the mine operator shall certify by signature and date the name of the employee and date on which the employee satisfactorily completed the first-aid training course. The certification shall be kept at the mine and made available on request to an authorized representative of the Secretary.

4. Section 75.1714–3 is amended by revising paragraph (e) to read as follows:

§ 75.1714–3 Self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping.

* * * * *

(e) At the completion of each test required by paragraphs (c) and (d) of this section the person making the tests shall certify by signature and date that the tests were done. This person shall make a record of all corrective action taken. Certifications and records shall be kept at the mine and made available on request to an authorized representative of the Secretary.

* * * * *

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation for part 77 is revised to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 77.1703 is revised to read as follows:

§ 77.1703 First-Aid training; supervisory employees.

The mine operator shall conduct first-aid training courses for selected supervisory employees at the mine. Within 60 days after the selection of a new supervisory employee to be so trained, the mine operator shall certify by signature and date the name of the employee and date on which the employee satisfactorily completed the first-aid training course. The certification shall be kept at the mine and made available on request to an authorized representative of the Secretary.

[FR Doc. 91–801 Filed 1–11–91; 8:45 am]

BILLING CODE 4510–43–M

federal register

Monday
January 14, 1991

Part VII

The President

Memorandum of January 10, 1991—H.R. 5835; Certification of Printed Enrollment

Federal Register
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Monday, January 14, 1991

Presidential Documents

Title 3—

The President

Memorandum of January 10, 1991

Memorandum for the Archivist of the United States

By the authority vested in me as President by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I hereby authorize you to ascertain whether the printed enrollment of H.R. 5835, the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), approved on November 5, 1990, is a correct printing of the hand enrollment and if so to make on my behalf the certification specified in Section 2(c) of H.J. Res. 682 (Public Law 101–466).

Attached is the printed enrollment that was received at the White House on January 7, 1991.

This memorandum shall be published in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 10, 1991.

[FR Doc. 91–1038
Filed 1–11–91; 11:25 am]
Billing code 3195–01–M

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Note: The list of Public Laws for the second session of the 101st Congress has been completed and will resume when bills are enacted into law during the first session of the 102d Congress, which convenes on January 3, 1991.

A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.

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.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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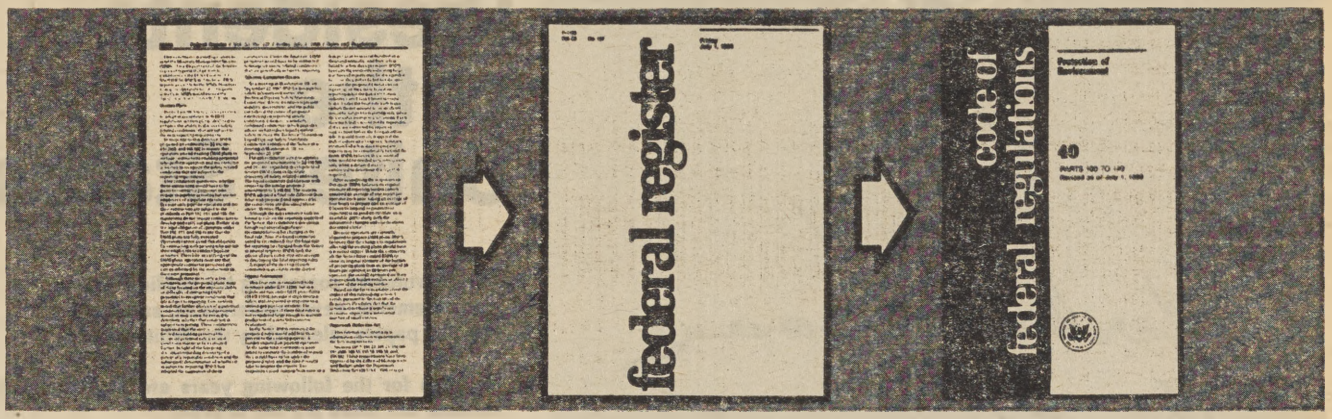

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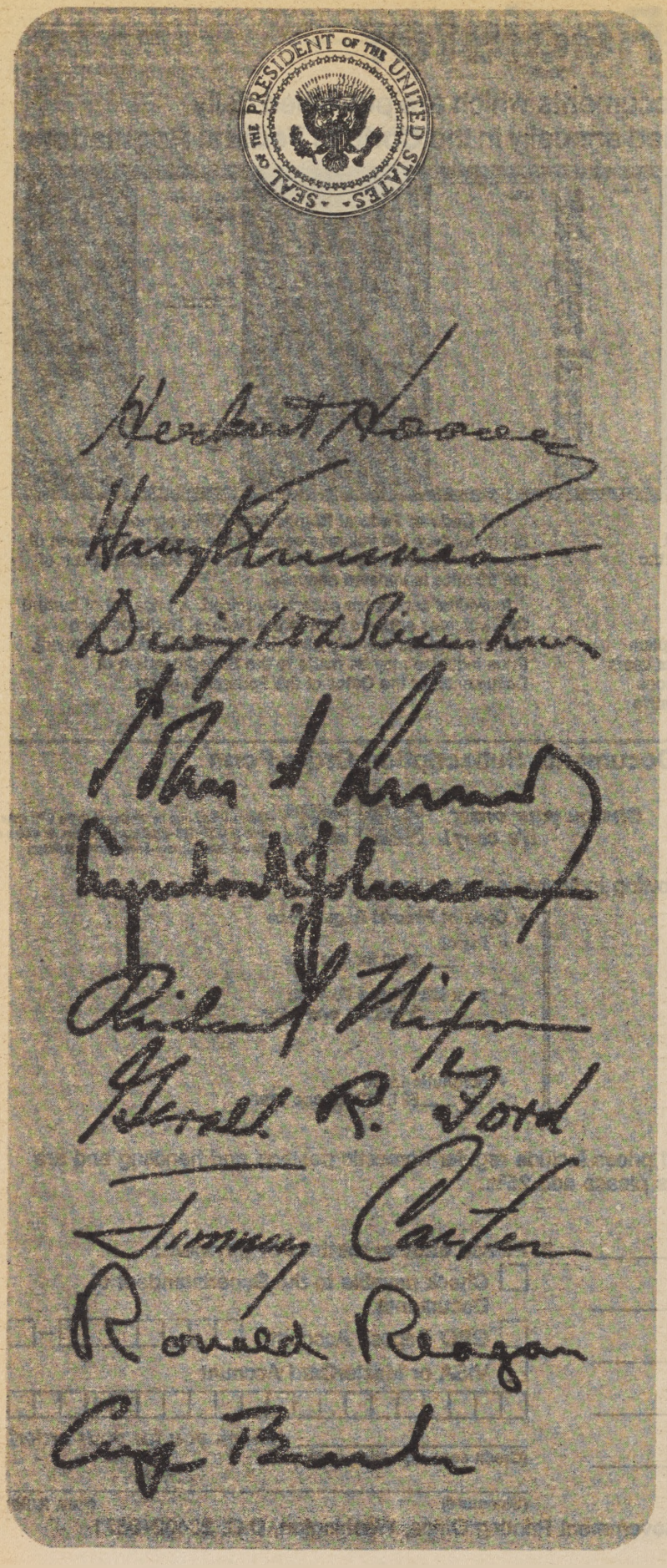

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