7-13-89
Vol. 54 No. 133
Pages 29529-29700

federal register

Thursday
July 13, 1989

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

Agriculture Department
See also Animal and Plant Health Inspection Service; Farmers Home Administration; Food and Nutrition Service
NOTICES
Agency information collection activities under OMB review, 29590

Air Force Department
NOTICES
Environmental statements; availability, etc..
Advanced Launch System, 29600

Animal and Plant Health Inspection Service
PROPOSED RULES
Livestock and poultry disease control:
Scrapie, 29576
Plant-related quarantine, foreign:
Apricots, nectarines, peaches, and plums from Chile, 29566

Antitrust Division
NOTICES
National cooperative research notifications:
Southwest Research Institute, 29622

Army Department
NOTICES
Conflict of interests; postemployment restriction waivers, 29601
Federally funded research and development centers:
Armament research, development, and engineering center; electromechanics and hypervelocity testing, 29601
Meetings:
Military/industry mobile home symposium, 29601
Science Board, 29601
(2 documents)

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Regattas and marine parades:
Great Lakes marine events, 29547
NOTICES
Chesapeake Bay, VA, approaches; port access route study; results availability, 29627

Commerce Department
See also Export Administration Bureau; International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration; Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 29594

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Romania, 29599

Customs Service
RULES
Country of origin marking:
Fruit juice concentrate, imported, 29540

Defense Department
See also Air Force Department; Army Department
NOTICES
Meetings:
Defense Acquisition Regulatory Council, 29600

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Conflict of interests:
Divestiture requirements; supervisory employee waivers, 29602

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
South Dakota, 29554
Wisconsin, 29555
Hazardous waste program authorizations:
Indiana, 29557
NOTICES
Agency information collection activities under OMB review, 29614, 29615
(2 documents)

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Meetings:
President's Export Council, 29594

Farmers Home Administration
PROPOSED RULES
Program regulations:
Debt settlement, 29569

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Chicago, IL, terminal control area; transponder with altitude encoding equipment requirement, temporary suspension (SFAR No. 56), 29698
Airworthiness directives:
Boeing, 29529, 29530, 29534
(3 documents)
British Aerospace, 29537
Lockheed, 29535
McDonnell Douglas, 29538
Transition areas, 29539, 29540
(2 documents)
PROPOSED RULES
Airworthiness directives:
Airbus Industrie, 29577
Boeing, 29579, 29580
(2 documents)

Teledyne Continental Motors, 29582
NOTICES
Organization, functions, and authority delegations:
Rochester, MN, 29628
San Jose, CA, 29628

Federal Communications Commission
RULES
Radio stations; table of assignments:
Alabama, 29560
Maine, 29559
New York, 29561
South Dakota, 29559
Texas, 29560
Wyoming, 29560
PROPOSED RULES
Radio stations; table of assignments:
Nebraska, 29587
North Carolina, 29587
Pennsylvania, 29588
Television stations; table of assignments:
New York, 29588
(2 documents)

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 29635

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Kentucky, 29615
Flood insurance program:
Mandatory purchase; guidelines, 29666

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc..
Linweave, Inc., 29604
Meetings; Sunshine Act, 29635
Natural gas certificate filings:
Chattanooga Gas Co. et al., 29604
Applications, hearings, determinations, etc..
Columbia Gas Transmission Corp. et al., 29602

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc..
North Europe-U.S. Atlantic Conference et al., 29615

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 29619
Meetings; Sunshine Act, 29635
Applications, hearings, determinations, etc..
Ace Gas, Inc., 29619
First Midwest Bancorp, Inc., 29619
Tate, James M. et al., 29620
Withee Bank Shares et al., 29620

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Privacy Act:
Systems of records, 29632
Surety companies acceptable on Federal bonds:
American Mutual Liability Insurance Co., 29633

Fish and Wildlife Service
RULES
Endangered and threatened species:
American burying beetle, 29652
Osterhout milk-vetch, etc., 29658
Shale barren rock cress, 29655
PROPOSED RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 29640

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Lasalocid, 29544
Lenperone hydrochloride tablets and injection, 29543
Nitrofurazone ointment, 29543
NOTICES
Animal drugs, feeds, and related products:
A.H. Robins Co., approval withdrawn, 29620

Food and Nutrition Service
NOTICES
Child nutrition programs:
Child care food program—
National average payment rates; day care home food service payment rates, etc., 29590
School lunch, breakfast, and special milk programs—
National average payments/maximum reimbursement rates, 29591

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Health education assistance loan (HEAL) program:
Insurance premium rate and interest rates, 29621

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Fresh cut flowers from—
Ecuador, 29595
Mexico, 29595
Mechanical transfer presses from Japan, 29597

International Trade Commission
NOTICES
Import investigations:
Wire electrical discharge machining apparatus and components, 29622

Justice Department
See Antitrust Division; Parole Commission

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
National Public Lands Advisory Council, 29621

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 29635

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Museum Advisory Panel, 29622

National Highway Traffic Safety Administration
NOTICES
School bus safety measures, 29629

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Government Open Systems Interconnection Profile (GOSIP), 29597

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 29561
NOTICES
Permits:
Marine mammals, 29599

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc..
Duke Power Co. et al., 29623
Applications, hearings, determinations, etc..
Advanced Medical Systems, Inc., 29622
Detroit Edison Co. et al., 29622

Occupational Safety and Health Administration
RULES
Safety and health standards, etc..
Asbestos, tremolite, anthophyllite, and actinolite; occupational exposure—
Reporting and recordkeeping requirements, 29546
Formaldehyde; occupational exposure—
Correction, 29545

Office of United States Trade Representative
See Trade Representative, Office of United States

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 29635

Panama Canal Commission
PROPOSED RULES
Transiting vessels and measurement requirements, 29584

Parole Commission
NOTICES
Meetings; Sunshine Act, 29635
(2 documents)

Patent and Trademark Office
RULES
Patent and trademark cases:
Judicial review of Board of Patent Appeals and Interferences and Trademark Trial and Appeal Board decisions, 29548

Public Health Service
See Food and Drug Administration; Health Resources and Services Administration

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 29624

Research and Special Programs Administration
NOTICES
Meetings:
International standards on transport of dangerous goods, 29632

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 29635
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 29625, 29626
(2 documents)
Applications, hearings, determinations, etc..
Shogun Oil, Ltd., 29627

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Oklahoma, 29583

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Japan:
Telecommunications trade restrictions; resolution of proceeding, 29633

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

Treasury Department
See Customs Service; Fiscal Service

Separate Parts In This Issue

Part II
Department of the Interior, Fish and Wildlife Service, 29640

Part III
Department of the Interior, Fish and Wildlife Service, 29652

Part IV
Federal Emergency Management Agency, 29666

Part V
Department of Transportation, Federal Aviation Administration, 29698

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

319 29566
1864 29569
1956 29569
1965 29569

9 CFR

Proposed Rules:

54 29576

14 CFR

39 (6 documents) 29529, 29530, 29534, 29535, 29537 29538
71 (2 documents) 29539, 29540
91 29698

Proposed Rules:

39 (4 documents) 29577 29579, 29580, 29582

19 CFR

134 29540

21 CFR

520 29543
522 29543
524 29543
558 29544

29 CFR

1910 (2 documents) 29545, 29546
1926 29546

30 CFR

Proposed Rules:

936 29583

33 CFR

100 29547

35 CFR

Proposed Rules:

103 29584
133 29584

37 CFR

1 29548
2 29548

40 CFR

52 (2 documents) 29554, 29555
271 29557

47 CFR

73 (6 documents) 29559–29561

Proposed Rules:

73 (5 documents) 29587 29588

50 CFR

17 (3 documents) 29652, 29655, 29658
642 29561

Proposed Rules:

20 29640

Rules and Regulations

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-119-AD; Amdt. 39-6264]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires ultrasonic inspection for delamination and cracking of the window belt skin doubler from the fuselage skin, and repair, if necessary. This amendment is prompted by reports of fatigue cracking in the skin in the window belt area. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: July 31, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-1927 Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Recently, one operator reported finding extensive fatigue cracking in the window belt skin panel on a Model 737 airplane which had accumulated 43,000 flight cycles. Fatigue cracking is attributed to delamination of the doubler, which results in knife-edged holes. Failure to detect and repair cracks could lead to rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 737-53-1078, Revision 1, dated September 25, 1986, which describes procedures for ultrasonic inspection for delamination and cracking of the fuselage window belt skin panel, and repair procedures.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires ultrasonic inspection for cracking and delamination of the fuselage window belt skin panel, and repair, if necessary, in accordance with the service bulletin previously described.

Since it is not known how widespread this condition is, reporting requirements are included in this amendment. Based on the reports received, the FAA will determine if additional inspections are required.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 610, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Except as provided in paragraph B., below, within the next 60 days after the effective date of this AD, accomplish an ultrasonic inspection for delamination of the window belt skin doubler from the fuselage skin, in accordance with Boeing Service Bulletin 737-53-1078, Revision 1, dated September 25, 1986.

B. For aircraft on which the delamination inspection has been accomplished in accordance with Boeing Service Bulletin 737-53-1078, initial release, dated August 19, 1983, or Revision 1, dated September 25, 1986, within the last 6 years prior to the effective date of this AD, the inspections required by paragraph A., above, are not required. Report findings of those previous inspections in accordance with paragraph D., below. If delamination was detected in the previous inspection and not repaired, within 3,000

cycles after the inspection or within 60 days after the effective date of this AD, whichever occurs later, reinspect for delamination in the affected skin panel in accordance with paragraph A., above.

C. If delamination is found as a result of the inspections required by paragraph A. or B., above, prior to further flight, conduct a high frequency eddy current (HFEC) inspection for cracks of the skin around the countersunk fasteners in the area of delamination, in accordance with Boeing Model 737 NDT Manual Document D6-37239, Part 6, Subject 53-30-05. If cracks are detected, prior to further flight, repair cracking and delamination in accordance with an FAA-approved method. If no cracks are detected, prior to the accumulation of 3,000 additional landings, reinspect for delamination in the affected skin panel in accordance with paragraph A., above, and repeat the HFEC inspection for cracks. Prior to further flight, repair all delamination and any cracks detected at that time in accordance with an FAA-approved method.

D. Within 10 days after completion of any inspection required by this AD, submit a report of findings, positive or negative, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. The report must include the line number of the airplane inspected, the number of cycles, and the inspection method used, in addition to the findings.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 31, 1989.

Issued in Seattle, Washington, on July 3, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16443 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-179-AD; Amdt. 39-6262]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires inspection of the fuselage lap joints for cracks, corrosion, and/or delamination, and repair, if necessary; and modifications. This amendment is prompted by reports of cracking along the upper fastener row of certain longitudinal lap joints that incorporate a cold metal bonding process. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: August 21, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 727 airplanes, which requires inspection of the fuselage lap joints for cracks, corrosion, and/or delamination; repair, if necessary; and certain modifications; was published in the **Federal Register** on January 13, 1989 (54 FR 1383). The comment period for the proposal closed on March 15, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Since issuance of the NPRM the manufacturer issued Revision 5, dated June 1, 1989, to Boeing Service Bulletin 727-53-72. This revision clarifies low frequency eddy current (LFEC) and high frequency eddy current (HFEC) procedures, defines skin thickness location, and revises and clarifies the lap joint modification. The final rule has been revised to reference Revision 5 as the appropriate service document. This change does not increase the burden on any operator, revise the aircraft affected by this, or expand the scope of the rule.

As a result of extensive investigation following an accident in Hawaii in April 1988, which involved a Model 737 series airplane, the FAA has determined that widespread, multi-site cracking was not being discovered to the degree of assurance necessary to maintain safety of the aging transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on restoration of structure. Thus, as aircraft begin to show the signs of multi-site damage and other indications of structural aging, the FAA has decided, whenever practicable, to require airplane modifications necessary to remove the source of the particular aging phenomenon. This is in lieu of the previous position of continual inspection and repair/modification on condition if cracks are found. This final rule is in consonance with that policy decision.

One commenter requested that the HFEC inspection threshold be increased from 28,000 landings to 35,000 landings. The commenter stated that, since there have been few lap joint cracks on airplanes with less than 35,000 landings, this was justification for the increase of the threshold to 35,000 landings for the HFEC inspection. The FAA disagrees. The FAA has received reports of cases of fatigue cracks on airplanes with less than 35,000 landings; therefore, the proposed threshold is appropriate.

Another commenter requested that the reference to the external visual inspection for delamination be deleted and that repair of delamination prior to further flight not be required. Further, the commenter suggested that delamination should be reinspected like minor corrosion. This comment was based upon the inability to accurately detect delamination in the lap joints of the Model 727 airplane. The disbond of the lap joint does not, by itself, result in an unsafe condition, but leads to fatigue cracking and/or corrosion. The FAA has determined that when delamination has been detected, an acceptable level of safety can be maintained either by repairing the delamination immediately, as proposed, or by monitoring for future cracking or corrosion. Therefore, the

FAA concurs with the commenter and the final rule has been revised to incorporate these comments.

Another commenter suggested that paint removal should be required only if the fastener head is not clearly visible, and that the requirement to remove the paint, if the paint is more than two layers thick, should be deleted. The FAA concurs with this comment and has deleted the reference to the number of coats of paint.

Another commenter suggested that the HFEC inspection be performed prior to oversizing holes and not after the fasteners have been installed. The FAA concurs with this comment and it has been incorporated into the final rule.

Another commenter suggested that the replacement of blind fasteners with solid protruding head fasteners within 3,000 landings should be changed to "whenever the solid countersink head fasteners are changed to solid protruding head fasteners." The commenter stated that fleet experience has not indicated that blind fasteners inspected at 2,500 landing intervals will be a problem. The commenter also stated that test data shows the NAS 1398 blind fastener installation has a life improvement of greater than 15,000 landings. The commenter submitted data that substantiated the fact that certain blind fasteners had a life-limit of 10,000 landings. The FAA concurs with the commenter's suggestion. The final rule has been changed to allow a life-limit of 10,000 landings for certain blind fasteners.

Another commenter suggested that a specific statement for an alternate means of compliance should be added to the AD for those operators who have incorporated the protruding head fastener installation in accordance with Boeing Service Bulletin 727-53-72, with no HFEC inspection of the hole. Furthermore, this commenter stated this alternate means of compliance should be satisfied by requiring a detailed external visual inspection in accordance with paragraph B. of the NPRM. The FAA concurs that requirements should be specified concerning holes that have not been eddy current inspected prior to fastener installation. The final rule has been revised to add provisions for airplanes that had protruding head rivets previously installed, without having had the rivets holes HFEC inspected prior to fastener installation; those airplanes remain subject to repetitive close visual inspections in accordance with paragraph B.1. of the final rule.

Another commenter stated that the rule should require a detailed internal visual inspection of the tear straps at 4-year/12,000-hour intervals, similar to the requirements of AD 88-22-11, Amendment 39-6059 (53 FR 44156; November 1, 1988), for the Boeing Model 737 Furthermore, the commenter believes that the Model 727 airplane did not have the phosphoric acid pre-treatment for bonding. The bonded tearstraps on the Model 727 airplanes are currently required to be ultrasonically inspected in accordance with AD 81-17-07 Amendment 39-4194. The FAA does not concur with the commenter's request. There has not been any service history to warrant this inspection on the Model 727 airplanes that did not have the phosphoric acid pre-treatment prior to bonding. Additionally, the FAA is assessing the need to mandate internal inspections and may consider further rulemaking action on this subject.

One commenter suggested that a detailed internal visual inspection of the lap joint be required at 4-year/12,000-hour intervals. The commenter stated that if cracks occur in the lower rivet row in the hidden inner sheet, they will not turn and allow a safe decompression because the outer sheet provides support against local bulging. Recent adverse service experience involving cracking along the hidden inner skin at certain locations has prompted the FAA to address this area in a separate rulemaking action.

Another commenter requested that consideration be given to requiring replacement of the lower row of rivets. The FAA is assessing the fatigue life of the reworked lap joints and may consider further rulemaking action based upon this assessment.

Another commenter suggested that a skin replacement program should be implemented if the inspection program is inadequate. The FAA does not concur that a skin replacement program is warranted. The FAA has determined that the current program of requiring reworking lap splices S-4 and S-10, in addition to frequent inspections for corrosion and cracks at the other lap splices, will assure continued airworthiness of the affected Model 727 series airplanes.

Several commenters requested that the proposed initial HFEC inspection at 1 year or 2,500 landings, be increased to 18 months or 3,000 landings. The rationale for the increased time before the initial inspection is to permit accomplishment during a scheduled "C" check. This would reduce scheduling problems. The FAA does not concur with an increase in the time prior to the HFEC inspection. The FAA has determined that the HFEC inspections should be conducted as soon as possible in order to detect cracking in a timely manner, and has received no data to justify an initial inspection later than that proposed in the NPRM.

Another commenter suggested that the HFEC inspection for cracks required by proposed paragraph A. be required only in areas where the skin is less than .056 inch thick, and that the service bulletin should be revised to identify locations of .056 inch or greater skin thickness, which are not subject to the fatigue problem associated with the knife edge condition at countersunk fasteners. The manufacturer has revised Service Bulletin 727-53-72 to identify areas of .056 inch and greater skin thickness. The FAA concurs with this comment. The final rule has been changed to require inspection for cracks of the lap splices with skin thicknesses less than .056 inch, and inspections for corrosion and delamination on all lap splices.

Another commenter requested that the initial visual inspection be required within 1 year or 2,500 landings, instead of the proposed 6 months. Since no justification was given for such an extension, the FAA does not agree with this comment.

Another commenter stated that the proposed rule requires both HFEC and LFEC inspections if corrosion is found. The commenter requested that this be clarified. The HFEC procedures are used to detect cracks and LFEC procedures are used to determine amount of material loss in areas of corrosion. The FAA considers the rule to be clear in this regard, and finds no discrepancy in the wording of the requirements relating to HFEC and LFEC inspections.

Several comments were received concerning the discussion that future rulemaking may require additional rework of the lap splices. Commenters proposed that the requirement for replacement of the upper row of countersunk rivets with oversize protruding head rivets should be delayed until the additional rework has been defined. At this time the FAA has no definite planned future action concerning replacement of the lower rows of countersunk rivets, and it is, therefore, considered inappropriate to delay the rework of the S-4 and S-10 lap joints.

Another commenter requested that the compliance time for rework of the S-4 and S-10 lap joints be staggered to require incorporation of the rework sooner on high-time airplanes, but allow more time on lower-time airplanes. The FAA concurs with this comment; however, reducing the compliance time for the high-time airplanes to less than that proposed in the NPRM would

require additional rulemaking and could not be accomplished without further opportunity for public comment. The FAA has determined that the 4-year compliance time proposed in the NPRM for high-time airplanes provides an adequate level of safety. The compliance time for airplanes with less than 45,000 cycles as of the effective date of this AD has been increased to 6 years based on the lower incidence of cracking.

Another commenter suggested that the lap splices behind the wing-to-body fairings should not have to be inspected until the airplane has accumulated 3,000 landings or 18 months after the effective date, whichever occurs first. The justification for this suggestion is that the fasteners under the fairings are protruding head rivets and the skin is not countersunk, which eliminates the fatigue problem. Also, the area under the fairing has not experienced corrosion problems. The FAA concurs in part with this comment, and has revised the final rule to permit additional time between visual inspections for the lap joints with protruding head fasteners under the fairings. The initial inspection has not been changed, however.

Comments were received concerning the use of a sliding probe instead of a pencil probe for the HFEC inspection. The commenters stated that the sliding probe is faster, thus reducing operator fatigue and permitting more reliable inspection results. Further, Boeing has revised Service Bulletin 727-53-72 and the inspection manual to describe use of the sliding probe. The FAA concurs that the use of the sliding probe is faster than the pencil probe. The final rule, by referencing the latest revision to the applicable Boeing service bulletin, permits use of the sliding probe.

Another commenter stated that requiring the LFEC inspection of the entire panel length, if visible corrosion is detected, will result in detecting very minor corrosion or false indications that will require corrective action. Furthermore, the commenter stated that its policy of opening up the joint until no more visible corrosion is detected and repairing the visible corrosion has proven to be an effective method for controlling corrosion.

The FAA agrees that the commenter's procedure may be effective in dealing with corrosion in the lap joints. However, the FAA finds that if the corrosion is not repaired immediately, it is necessary to determine severity and extent of corrosion and, if necessary, repair prior to further flight. Therefore, the proposed requirements, in this regard, are appropriate.

Another commenter requested the rule be revised so that if corrosion is detected and found not to exceed 10% of the skin thickness, it could be visually inspected at 1 year intervals. The FAA does not concur and has determined that this procedure would not provide adequate monitoring of previously detected corrosion.

One commenter requested that a terminating modification be available to eliminate the requirement of visual inspection for corrosion. The FAA concurs with this comment. The manufacturer has developed a modification to terminate the visual inspections for corrosion, and has incorporated it into Revision 5 of the applicable service bulletin. This modification consists of opening the lap splices, cleaning up any corrosion, and applying fay surface sealant, then installing appropriate fasteners. The final rule has been revised to specify this modification as terminating action for the inspections contained in the final rule for the area modified.

One commenter stated that Boeing Service Bulletin 727-53-72, Revision 4, did not specify the amount of hole oversizing permitted to remove cracks. Further, another commenter stated that the service bulletin does not contain instructions for repairing a delaminated joint. The FAA notes that Revision 5 to the service bulletin, which is now reflected in the final rule, specifies the oversizing limits and contains instructions for repair of the delaminated joints.

One commenter suggested that the detailed visual inspection proposed in the NPRM should be based upon landings instead of calendar time, since the fatigue cracking is related to pressurization cycles. The FAA does not concur. The close visual inspection is intended to detect corrosion, which is time-related, and/or fatigue cracking, which is cycle-related; therefore, the inspection was based upon the more restrictive of the two times, which is the calendar time.

One commenter suggested that if an eddy current inspection has been accomplished within the last 2 years, it should not be necessary to accomplish the close visual within the next 6 months. The FAA does not concur. The visual inspection is for the detection of corrosion and/or cracking. Therefore, the FAA finds that the commenter's recommended interval of greater than 2½ years for visual inspection allows too much time for corrosion to grow. The rule does give credit, however, for visual inspections that were conducted within the last 9 months.

One commenter asked if the area of the HFEC inspection could be reduced, based upon service history. The commenter noted that the fatigue cracking associated with the lap joints has been predominately at S-4 and S-10, where the skin thickness is less than .056 inch. The FAA concurs with this comment. The final rule has been revised to require the eddy current inspection be conducted at S-4 and S-10 only, unless corrosion or cracking is detected.

Two comments were received regarding the replacement of all upper row fasteners in a panel which contains blind fasteners. The commenters felt that they should be required to replace only the blind fasteners. The FAA concurs that only the blind fasteners need to be replaced, except in those areas where replacement is required under paragraph E. The final rule incorporates this change.

Another commenter stated that the S-14 lap joint is composed of heavy skins which are not bonded on certain Model 727 airplanes and, therefore, should not be referenced in paragraph B. of the NPRM. The FAA concurs with this comment and the final rule has been revised accordingly. Recent service problems at certain locations along the S-14 lap joint are the subject of a separate rulemaking action.

One commenter stated that Boeing Service Bulletin 727-53-72, Revision 4, which was referenced in the NPRM, states that the repair in the service bulletin may be used as a preventive modification and is optional to those detailed in the structural repair manual (SRM). Therefore, the commenter is uncertain whether the SRM repair is an acceptable preventive modification. The FAA has determined that the repairs in the SRM that deviate from the terminating action in the service bulletin are not considered to be an acceptable preventive modification. This note has been deleted from Revision 5 of the service bulletin to clarify this point.

One commenter stated that the HFEC inspection was not detailed as to what type of eddy current inspection is required. The FAA notes that Revision 5 of the applicable service bulletin clarifies this subject by defining which fastener holes are to be inspected and referencing three different HFEC inspection procedures.

Another commenter stated that there are no details on how to conduct the LFEC inspection for corrosion. Also, the commenter believed that the LFEC inspection could be used to detect corrosion on both the outer and inner skins of the lap joint. Revision 5 to the

applicable service bulletin, now reflected in the final rule, has incorporated procedures for accomplishing the LFEC inspection. The LFEC inspection is used to detect corrosion on the outer skin, but not on the inner skin.

One commenter stated that future action concerning the cold bonded circumferential butt joint, doublers, and tearstrap should be combined into this rule, which affects the lap joints. The FAA does not concur with this comment. AD 81-17-07 Amendment 39-4194, was issued to require inspection of the cold bonded tearstraps. The FAA is considering additional rulemaking action to address the cold bonded circumferential butt joint and doublers; however, the FAA has determined that this action regarding the lap splices is urgent and appropriate to address an identified unsafe condition.

One commenter stated that certain panels that have a major interruption, such as a cargo door or entry door, should not have to be inspected along its entire length when a small crack or corrosion is detected. The FAA concurs that the panel ends at the cutout. The final rule has been revised to clarify this.

Another commenter stated that, according to the proposal, if an apparent crack was detected visually, but an HFEC inspection determined that there is no crack, it would be necessary to HFEC-inspect the entire panel. The commenter believes that, if the HFEC confirms there is no crack at the location of the visual indication, it should not be necessary to HFEC-inspect the rest of the panel. The FAA concurs. It is obvious that additional HFEC inspections are not required if the visual inspection is determined to be erroneous. The AD has not been revised because of this comment.

Another commenter stated that the proposed rule is unclear whether it is necessary to conduct a HFEC inspection of the three rivet rows. The FAA notes that the HFEC inspection is required for the upper rivet row only. (This is also clarified in Revision 5 to Boeing Service Bulletin 727-53-72.)

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted. These changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 813 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,432 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $35,700,000.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Within the next 2,500 landings or 1 year after the effective date of this AD, whichever occurs first, or prior to the accumulation of 28,000 landings, whichever occurs later, unless previously accomplished within the last 2,000 landings or 2 years; and thereafter at intervals not to exceed 4,500 landings or 3 years, whichever occurs sooner; perform a high frequency eddy current (HFEC) inspection for cracks of the skin at fuselage lap joints S-4 and S-10 where the upper skin is less than 0.056 inch thick, from body station (BS) 259 to BS 1183, in accordance with Paragraph A. of Part I of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. If any cracks are detected, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions of the service bulletin.

B. 1. Within the next 6 months after the effective date of this AD, unless accomplished within the last 9 months, or prior to the accumulation of 28,000 landings, whichever occurs later; and thereafter at intervals not to exceed 15 months; perform a detailed external visual inspection for cracks and for corrosion of fuselage lap joints (including S-4 and S-10) between BS 259 and BS 1183, except for S-14 (between BS 360 and BS 1183) on those airplanes identified in the service bulletin as Group I airplanes, in accordance with Paragraphs B.1. and B.2. in Part I of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. Adequate lighting must be used for this inspection, and, if necessary, inspection aids such as a mirror and 10X glass. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, loose fasteners, and delamination. Repair cracks, corrosion, and delamination in accordance with paragraph C., below.

2. The repetitive inspections required in paragraph B.1., above, may be conducted at intervals not to exceed 30 months in lieu of the 15 month interval for lap splices that have protruding head fasteners and are located under airplane fairings. Fasteners under the edge of the fairing also may be visually inspected at 30 month intervals provided there is no evidence of cracking or corrosion of the lap joint from the edge of the fairing forward two frame stations for the leading edge of the fairing and aft two frame stations for the trailing edge of the fairing.

C. 1. If cracks, delamination, or corrosion are detected at lap splices, prior to further flight, perform a HFEC inspection for cracks in the affected lap joint along the complete panel length in accordance with paragraph A., above, except for areas under fairings as described in paragraph B.2., above. Repair cracks prior to further flight, in accordance with Part III of Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. If

corrosion or delamination is found at any lap joint, repeat the HFEC inspection at intervals not to exceed 15 months or 3,000 landings, whichever occurs first; or repair the delamination prior to further flight, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. Repair the corrosion in accordance with paragraph C.2., below. Where a panel is interrupted by a major cutout, such as an entry door or cargo door, the panel is considered to end at the cutout.

2. If corrosion or delamination is found, prior to further flight, conduct a low frequency eddy current (LFEC) inspection, in accordance with Part II of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989, of the lap joint along the complete panel length, except for areas under fairings as described in paragraph B.2., above, to determine corrosion depth. If corrosion does not exceed 10% of the skin thickness, repeat the LFEC inspection at intervals not to exceed 2,000 landings or 6 months, whichever occurs first, until repaired in accordance with Part II, Paragraph B.2. of the Accomplishment Instructions in Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989. If corrosion exceeds 10% of skin thickness, prior to further flight, repair in accordance with Part II, paragraph C.1. of the Accomplishment Instructions of Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989.

D. To conduct the inspections required by this AD:

1. Remove the paint, using an approved chemical stripper; or

2. Ensure that the fastener head is clearly visible.

E. Modify fuselage skin lap joints at S-4 and S-10 by replacing the upper row of fasteners with protruding head fasteners, in accordance with Part IV of the Accomplishment Instructions, of Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989, in accordance with the following times:

Number of landings on effective date of this AD	Modify within the next
45,000 or more	4 years.
Less than 45,000	6 years or prior to the accumulation of 28,000 landings, whichever occurs later.

Before oversizing holes, perform a HFEC inspection of the hole to assure it is crack-free. If cracking is detected, repair in accordance with the service bulletin. If the hole was not HFEC inspected prior to fastener installation, the skin must be visually inspected in accordance with paragraph B.1., above, within 1 year after the effective date of this AD, or 4 years after fastener installation, whichever occurs later, and reinspected thereafter at intervals not to exceed 15 months.

This constitutes terminating action for the repetitive HFEC inspections required by paragraphs A., above, at S-4 and S-10. The inspections in paragraph B.1. are to continue.

F. Modification in accordance with Figure 4 of the Boeing Service Bulletin 727-53-72, Revision 5, dated June 1, 1989, terminates the inspections required in paragraphs A. and B., above, for the modified area.

G. Blind fasteners installed in the lap joints are to be used as an interim repair only. The blind fasteners specified in the service bulletin have a life of 10,000 landings and all other blind fasteners have a life of 3,000 landings before they must be replaced with protruding head solid fasteners. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or 1,000 landings after the effective date of the AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Blind fasteners installed prior to the effective date of this AD must be replaced prior to the threshold, mentioned above or within 3,000 landings after the effective date of this AD, whichever occurs later.

H. Within 10 days after the completion of any inspection for cracks required by this AD, report a complete description of the location and size of all cracks found, along with aircraft serial number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, ANM-100S, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

I. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

J. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 21, 1989.

Issued in Seattle, Washington, on July 3, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16444 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-96-AD; Amdt. 39-6250]

Airworthiness Directives; Boeing Model 757-200 Series Airplanes Equipped With Pratt and Whitney PW2000 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain Boeing Model 757-200 series airplanes, which requires replacing five tube assemblies in the oil pressure indicating system of each engine with flexible hose assemblies. This amendment is prompted by reports of preload in tube assemblies causing tube or component cracking, with resulting loss of engine oil. This condition, if not corrected, could lead to in-flight engine shutdowns and may result in damage to the engine.

EFFECTIVE DATE: July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael K. McRae, Propulsion Branch, ANM-140S, telephone (206) 431-1972. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757-200 series airplanes equipped with Pratt and Whitney PW2000 engines, which requires replacing five tube assemblies in the oil pressure indicating system of each engine with flexible hose assemblies, was published in the **Federal Register** on October 20, 1988 (53 FR 41187).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The Air Transport Association (ATA) of America commenting in behalf of its operators expressed no objection to the proposed AD.

The engine manufacturer recommended that the compliance time be reduced from one year to six months in order to minimize the likelihood of additional in-flight shutdowns. After consideration of all the available information, the FAA cannot conclude that a reduction of the proposed compliance time, without prior notice and opportunity for public comment, is warranted. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modifications. Further, the proposed compliance time of one year was arrived at with operator, manufacturer, and FAA concurrence. To reduce the compliance time of the proposal would necessitate (under the provisions of the Administrative Procedure Act) reissuing the Notice, reopening the period for public comment, considering additional comments received, and eventual issuing of a final rule; the time required for that procedure may be as long as four additional months. In comparing the actual compliance date of the final rule after completing such a procedure, to the compliance date of this final rule as issued, the increment in time is minimal. In light of this, and in consideration of the amount of time that has already elapsed since the issuance of the original Notice, the FAA has determined that further delay of this final rule action is not appropriate. However, if additional data is presented that would justify a shorter compliance time, the FAA may consider further rulemaking on this issue.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 66 Boeing Model 757-200 series airplanes of the affected design in the worldwide fleet. It is estimated that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be furnished to operators by the manufacturer at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $34,220.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

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

Boeing: Applies to Model 757-200 series airplanes through line number 164, equipped with Pratt and Whitney PW2000 engines, certificated in any category. Compliance is required within one year after the effective date of this AD, unless previously accomplished.

To prevent engine in-flight shutdown and engine damage, due to loss of engine oil resulting from cracked oil pressure indicator tube assemblies, accomplish the following:

A. Remove five oil pressure indication system tube assemblies and replace them with flexible hose assemblies, in accordance with Boeing Service Bulletin 757-79-0005, dated May 26, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16468 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-112-AD; Amdt. 39-6265]

Airworthiness Directives; Lockheed Aeronautical Systems Company-Georgia Model 382 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model 382 series airplanes, which requires a revision to the Limitations Section of the Airplane Flight Manual (AFM), a temporary reduction of fuselage operating pressure, initial and repetitive inspections for cracks, and repair, if necessary, of the pressurized fairing support structure. This amendment is prompted by a report of an explosive decompression on an airplane of similar design due to the failure of the fuselage pressurized fairing support structure. Undetected fatigue cracks could lead to structural failure and subsequent decompression of the airplane.

EFFECTIVE DATE: July 31, 1989.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company-Georgia, Attn: Commercial and Customer Support, Dept. 72-05, Zone 80, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be

examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bentley, Airframe Branch, ACE-120A; telephone (404) 991-2910. Mailing address: Atlanta Aircraft Certification Office, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: A USAF Model C-130 airplane recently experienced an explosive decompression due to the failure of the fuselage pressurized fairing support structure. The failure was the result of fatigue cracks in the frame at fuselage station (FS) 477 between buttock lines (BL) 20 to 61. The Lockheed Model 382 series airplanes and the USAF C-130 are similar in design with respect to this area. Undetected fatigue cracks could lead to structural failure and subsequent decompression of the airplane.

The FAA has reviewed and approved Lockheed Alert Service Bulletin A382-53-49/A82-635, Revision 1, dated May 19, 1989, which describes procedures for inspection of the pressurized fairing support structure between FS 477 to FS 517 and BL 61L to BL 61R for cracks, and repair, if necessary. This service bulletin references Lockheed-Georgia Company Outgoing Wire Message, dated April 28, 1989, which recommends temporarily reducing the cabin operating pressure until accomplishment of the initial inspection for cracks. Operating at the reduced cabin operating pressure will reduce the growth rate of any cracks which may be present.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires a revision to the AFM requiring a temporary reduction of fuselage operating pressure; initial and repetitive inspections of the pressurized fairing support structure between FS 477 and FS 517 and BL 61L to BL 61R for cracks; and repair, if necessary.

Additionally, the manufacturer is currently in the process of developing a permanent modification. This modification is expected to be available later this year. When the modification is developed and available, the FAA may consider further rulemaking action to address this subject.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Lockheed Aeronautical Systems Company-Georgia: Applies to all Model 382 series airplanes with 6300 hours or more time-in-service, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent fatigue cracking and subsequent decompression of the airplane, accomplish the following:

A. Within the next 10 hours time-in-service after the effective date of this AD:

1. Incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"Aircraft cabin operating pressure is limited to 10 inches of mercury.

2. Temporarily reduce cabin operating pressure in accordance paragraph A.1. of this AD.

B. Within 45 days after the effective date of this AD, and thereafter at intervals not to exceed 3,000 hours time-in-service, inspect the pressurized fuselage fairing support structure between fuselage stations 477 and 517 and buttock lines 61L to 61R, in accordance with Lockheed Aeronautical Systems Company-Georgia Alert Service Bulletin A382-53-49/A82-635, Revision 1, dated May 19, 1989.

C. If cracks are found, prior to further flight, repair in a manner approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Atlanta, Georgia. Operators must continue to comply with the inspection requirements of paragraph B. of this AD.

D. The requirements of paragraph A., above, may be terminated following completion of the initial inspection and/or repair required by paragraphs B. and C. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Atlanta, Georgia.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company-Georgia, Attn: Commercial and Customer Support, Dept. 72-05, Zone 80, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective July 31, 1989.

Issued in Seattle, Washington, on July 3, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16446 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-05-AD; Amdt. 39-6263]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC, Jetstream Model 3101 airplanes, which installs electrical circuit breakers in the 26 volt a.c. inverter output cables. The inverters are capable of fault currents in excess of the wire cable rating. Such currents will destroy the electrical cable insulation resulting in possible fire and possible loss of the airplane.

EFFECTIVE DATE: August 14, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, applicable to this AD may be obtained from British Aerospace (BAe) PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9/2RW, Scotland, Telephone (44-292) 79888; or British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. John P Dow Sr., Project Support Section-Foreign, ACE-109, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring installation of electrical circuit breakers in the 26 volt a.c. inverter output cables on certain BAe Jetstream Model 3101 airplanes was published in the **Federal Register** on March 22, 1989 (54 FR 11739). The proposal resulted when British Aerospace became aware that the main and essential 26 volt a.c. inverters on Model 3101 airplanes are not provided with internal fuses for the protection of the output cables from excessive currents due to a ground fault. Since each inverter can deliver a ground fault current in excess of 18 amperes, an external circuit breaker is required for the protection of the output cable and adjacent airplane wiring. Consequently, BAe issued ASB Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, which requires installation of an electrical circuit breaker in the 26 volt a.c. inverter output cables.

The Civil Aviation Authority (CAA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with the FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe ASB Jetstream 24-A-JA7672A, dated November 2, 1988, and Erratum No. 1, dated December 2, 1988, and the mandatory classification of this ASB by the CAA-UK, and concluded that the condition addressed by BAe Alert Service Bulletin (ASB) Jetstream 24-A-JA7672A, dated November 2, 1988, and ASB Erratum No. 1, dated December 2, 1988, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 96 airplanes at an approximate one-time cost of $520 for each airplane, total one-time fleet cost of $49,920.

Therefore, the cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative; on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace PLC: Applies to Jetstream Model 3101 (Serial numbers 696 through 794, 796 through 799, 801 through 804, 806 through 809, 811 through 813, 815 through 817 and 820) airplanes certificated in any category. Compliance: Required within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent fire or damage to the airplane electrical system, accomplish the following:

(a) Install a 7.5 ampere circuit breaker in accordance with British Aerospace (BAe) Mandatory Alert Service Bulletin (ASB) Jetstream 24-A-JA7672A, dated November 2, 1988, and BAe ASB Erratum No. 1, dated December 2, 1988, in the electrical power output line of:

(1) The main 26 volt a.c. inverter; and

(2) The essential 26 volt a.c. inverter.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU-100, Europe, Africa, Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 14, 1989.

Issued in Kansas City, Missouri, on July 3, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16445 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-211-AD; Amdt. 39-6261]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -30, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises and existing airworthiness directive (AD), applicable to Model DC-10-10 and -30 series airplanes, which currently requires the inspection and modification of the Passenger Service Units (PSU) and the removal, inspection, and replacement of the PSU oxygen canisters, if necessary. That amendment was prompted by reports that the chemical oxygen generator canisters have been punctured by existing standoff brackets within the PSU. This condition, if not corrected, could lead to loss of the use of the emergency oxygen system during rapid depressurization of the airplane. This amendment revises the existing rule by expanding the applicability to include additional airplanes. This action is prompted by reports that the subject PSU's may also be installed on Model DC-10-40 and KC-10A (Military) series airplanes.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The applicable service information may be obtained from the Jepson-Burns Corporation, 1455 Fairchild Road, Winston-Salem, North Carolina 27105-4588. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5335.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 88-24-11, Amendment 39-6065 (53 FR 46444; November 17 1988), applicable to Model DC-10-10 and -30 series airplanes, to expand the applicability of the existing AD to include Model DC-10-40 and KC-10A (Military) series airplanes, was published in the **Federal Register** on March 30, 1989 (54 FR 13070).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 100 Model DC-10-40 and KC-10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 80 (additional) airplanes of U.S. registry will be affected by this AD. There are approximately 88 PSU's on each airplane. It will take approximately .5 manhour per PSU to accomplish the required actions, at an average labor cost of $40 per manhour. The cost of modification parts is estimated to be $192 per PSU. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,656 per airplane, or $1,492,480 for the additional affected airplanes in the U.S. fleet.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6065 (53 FR 46444; November 17 1988), AD 88-24-11, as follows:

McDonnell Douglas: Applies to Model DC-10-10, -30, -40, and KC-10A (Military) series airplanes, equipped with Jepson-Burns Corporation seat model FBC-20000UHDE-( ), certificated in any category. Compliance required as indicated, unless previously accomplished.

To assure proper operation of the passenger emergency oxygen system, accomplish the following:

A. For Model DC-10-10 and -30 series airplanes, within 90 days after December 22, 1988 (the effective date of Amendment 39-6055), accomplish the following:

1. Remove and inspect all 3-man oxygen generators, Scott Aviation Part Number 801386-06, within the Passenger Service Unit (PSU) of the seat. Replace, prior to further flight, any generator showing evidence of

food tray latch and cotter pin contact and wear on the canister.

2. Remove existing brackets and install new bracket assemblies, Jepson-Burns Part Number 42703001, in accordance with the Implementation Instructions of Jepson-Burns Service Bulletin Number 25-20-618, dated June 10, 1987

B. For Model DC-10-40 and KC-10A (Military) series airplanes, within 90 days after the effective date of this amendment, accomplish the following:

1. Remove and inspect all 3-man oxygen generators, Scott Aviation Part Number 801386-06, within the Passenger Service Unit (PSU) of the seat. Replace, prior to further flight, any generator showing evidence of food tray latch and cotter pin contact and wear on the canister.

2. Remove existing brackets and install new bracket assemblies, Jepson-Burns Part Number 42703001, in accordance with the Implementation Instructions of Jepson-Burns Service Bulletin Number 25-20-618, dated June 10, 1987

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Jepson-Burns Corporation, 14555 Fairchild Road, Winston-Salem, North Carolina 27105-4588. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment amends Amendment 39-6065, AD 88-24-11.

This amendment becomes effective August 14, 1989.

Issued in Seattle, Washington, on June 30, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16447 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 89-ACE-02]

Designation of Transition Area—Minden, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Minden, Nebraska, to provide controlled airspace for aircraft executing a new approach procedure to the Pioneer Village Field, Minden, Nebraska, utilizing the Kearney Very High Frequency Omnidirectional Range Station (VOR). This action changes the airport status from VFR to IFR.

EFFECTIVE DATE: 0901 U.T.C., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (861) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Minden, Nebraska (54 FR 15778). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Except for editorial changes, this amendment is the same as that proposed in the Notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a transition area at Minden, Nebraska. To enhance airport usage, a new instrument approach procedure is being developed for the Pioneer Village Field, Minden, Nebraska, utilizing the Kearney VOR as a navigational aid. This navigational aid will offer new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Minden, Nebraska, at and above 700 feet ground level, within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR). This action changes the airport status from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Minden, NE [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Pioneer Village Field (Lat. 40°30'47" N., Long. 98°56'42" W.) and within 3.75 miles each side of the 166° bearing from the Pioneer Village Field extending from the 5-mile radius to 11 miles southeast of the airport.

This amendment becomes effective at 0901 U.T.C., November 16, 1989.

Issued in Kansas City, Missouri, on June 29, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-16466 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ACE-20]

Revocation of Transition Area—Waukon, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to revoke the 700-foot transition area at Waukon, Iowa. The instrument approach procedure based on a navigational aid at the Waukon, Iowa, Municipal Airport has been canceled. Accordingly, there is no longer any need for a transition area at Waukon to protect this approach.

EFFECTIVE DATE: 0901 U.T.C. November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to revoke the transition area at Waukon, Iowa (54 FR 15775). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes the Waukon, Iowa, transition area. The instrument approach procedure for the Waukon, Iowa, Municipal Airport based on a navigational aid at this airport has been canceled. Therefore, the Waukon transition area designed to protect this approach is no longer required and is being revoked.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Waukon, IA [Removed]

Revoke the Waukon, Iowa, transition area.

This amendment becomes effective at 0901 U.T.C. November 16, 1989.

Issued in Kansas City, Missouri, on June 29, 1989.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 89-16467 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 89-66]

Country of Origin Marking of Imported Fruit Juice Concentrate

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final country of origin marking guidance for containers of imported fruit juice concentrate.

SUMMARY: This document informs the public that Customs is modifying its interpretation of the application of country of origin marking law to imported fruit juice concentrate. Customs has previously published guidance on application of the marking law to imported orange juice concentrate. In recognition of the fact that accounting for all minor foreign sources on the label may make compliance with the marking law prohibitively expensive, orange juice processors have been permitted to comply with marking requirements by "major supplier marking" *i.e.*, if a processor obtained 75 percent or more of imported concentrate from a single source country, it was sufficient to disclose only that one source. Otherwise, all foreign sources were required to be disclosed. Further, processors were permitted to use statistics from a representative past importing period to determine their major supplier.

When Customs announced the effective date for extending the orange juice marking guidance to all imported fruit juice concentrates, it also proposed to eliminate major supplier marking as an acceptable compliance method and replace it with all sources marking. After careful consideration of the many public comments received in response to that proposal, Customs has concluded that all sources marking may be prohibitively expensive, and that foreign juice could be exempt from the marking requirement altogether if all sources marking is required. Therefore, Customs will continue to permit major supplier marking as an acceptable method of compliance but will now permit processors to list up to ten countries if they account for at least 75 percent of foreign concentrate used. Additionally, the sources listed on a juice container must now indicate the sources actually used in that lot, not the sources used in a representative past importing period.

EFFECTIVE DATE: This decision will be effective as to fruit juice concentrate entered, or withdrawn from warehouse for consumption, on or after November 30, 1989, if packaged in other than composite cans. If packaged in composite cans, foreign juice concentrate will be subject to this decision on March 1, 1990.

FOR FURTHER INFORMATION CONTACT: John Doyle, Office of Regulations and Rulings (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 U.S.C. 1304, and 19 CFR Part 134, Customs ensures that imported fruit juice concentrate entering the U.S. in large containers, *e.g.*, tanker cars and multi-gallon drums, is properly marked to show country of origin. However, the country of origin marking requirements set forth in this document are those pertaining to labeling that must appear on packages of concentrated or reconstituted fruit juice containing imported concentrate that reach ultimate purchases.

Orange Juice Ruling

In a ruling dated September 4, 1985 (C.S.D. 85–47), Customs held that containers of orange juice in frozen concentrated or reconstituted forms which contain foreign concentrate must be labeled to comply with the country of origin marking requirements of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). The ruling was based on the determination that the foreign concentrate which is imported into the U.S. and used in the production of frozen concentrated or reconstituted orange juice is not substantially transformed after undergoing further processing in the U.S. including blending with other batches of orange concentrate, addition of water, oils and essences, pasteurization of freezing, and repacking. In *National Juice Products Association* v. *United States*, 10 CFR 48, 628 F.Supp. 978 (CIT 1986), the Court of International Trade held that C.S.D. 85–47 was substantively correct. The ruling has been in effect since February 1, 1987 and containers of orange juice made with imported concentrate must now indicate the foreign sources of the concentrate.

Extension to Juices Other Than Orange Juice

By a notice published in the **Federal Register** on July 30, 1986 (51 FR 27196), Customs announced that the orange juice ruling would be extended to include all other imported fruit juice concentrate which undergoes processing in the U.S. similar to that performed on orange juice concentrate. Therefore, all frozen concentrated or reconstituted fruit juices made with foreign concentrate processed in a manner similar to that described in C.S.D. 85–47 must be marked to indicate the country of origin of the foreign concentrate. However, before announcing the effective date for extending the orange juice rule to other juices, public comments were invited for consideration.

Effective Date of Extension Announced

On June 7 1988, Customs published two **Federal Register** notices concerning country of origin marking of fruit juice containers. The first notice (53 FR 20836) announced June 7 1989, as the effective date for extending the orange juice ruling to other juices, *i.e.*, for requiring that containers of frozen concentrated or reconstituted fruit juice which contain imported concentrate be marked to show the country of origin of the concentrate. Major supplier marking, a method of complying with marking requirements available to orange juice processors, was made available to processors of other juices. Major supplier marking permits a processor that obtains 75 percent or more of its imported concentrate from one source country to reveal only that one foreign source. If no one foreign source accounts for at least 75 percent of imported concentrate then all source countries must be disclosed.

Proposal to Eliminate "Major Supplier Marking"

The second document published on June 7 1988, (53 FR 20869) announced the proposed elimination of major supplier marking as a method of complying with marking requirements for all fruit juice containers, including orange juice. This proposal was prompted by concerns that major supplier marking does not provide the level of information to consumers that was contemplated by 19 U.S.C. 1304, *i.e.*, full disclosure of country of origin. Also, claims were made that pesticides banned in the U.S. are used on foreign fruit that is the source of imported concentrate. If major supplier marking for fruit juice concentrate were not allowed and all countries of origin had to be marked on juice containers, it was claimed that the Food and Drug Administration could better trace imported concentrate and consumers could better protect themselves from potential health threats. Before making any decision on this issue, public comments were invited for consideration.

June 7 1989, Effective Date Suspended

By notice published in the **Federal Register** on June 6, 1989 (54 FR 24168), the effective date of extending marking requirements to other imported juice concentrates in addition to orange was suspended from June 7 1989. Customs thought it was in the best interests of the public to delay providing marking guidance which might soon thereafter be modified. The public was advised that final guidance would be published in the immediate future. This document is that final guidance.

Analysis of Comments

Over 100 comments were received in response to the June 7 1988 proposal, approximately 60% of which favored retention of major supplier marking with the remaining 40% believing that fruit juice containers should list all sources.

Major Supplier Marking

Of those favoring major supplier marking, the largest subgroup was domestic processors that use foreign concentrate. They outlined the burden that would result from doing away with major supplier marking. They contend that:

(1) All sources marking would be expensive. It would require a large initial outlay for labeling equipment and a continuing cost for everchanging labels.

(2) Inventory systems for labels and for keeping concentrates separate during storage would be unnecessary except for this rule. The physical space required for storage tanks would be enormous.

(3) Elimination of major supplier marking would effectively end use of the spot market for purchases of low-cost concentrate because the processors would not have labels ready bearing names of the spot purchase countries. The spot market, it is claimed, is beneficial to consumers because the processors make purchases at a good price and pass on the savings to consumers.

(4) Showing one or two major foreign sources fulfills the requirement of letting ultimate purchasers know they are buying a foreign product; listing all sources would simply provide a "geography lesson.

(5) All sources marking is a non-tariff trade barrier.

(6) Foreign apple juice concentrate is not a health threat.

All Sources Marking

Those favoring all sources marking were of two principle subgroups; state agricultural associations such as farm bureaus, and individuals often writing on the letterhead of a small farm or orchard. The recurring arguments raised in support of all sources marking were:

(1) Major supplier marking does not adequately serve the needs of consumers who deserve to know exact sources of the products they buy.

(2) All sources marking is necessary to protect the health of consumers.

(3) All sources marking is necessary to fully comply with the letter and spirit of 19 U.S.C. 1304.

These groups favor flexibility in complying with all sources marking such as allowing various locations on a container to be used and they claim the technology exists to do the printing necessary.

Recommendations

Compliance Method

In considering what method of compliance may be used by those processors who will now be subject to country of origin marking for juice containers, we have examined a variety of compliance levels. On the one hand, requiring 100 percent disclosure of all sources of concentrate contained in every individual container was discussed. On the other hand, the possibility was raised by some processors that marking of fruit juice containers will be so expensive as to rise to the level of being economically prohibitive and thereby exempt the containers from marking entirely. Those articles which cannot be marked after importation except at an expense that would be economically prohibitive, unless the importer, producer, seller or shipper failed to mark the article before importation to avoid meeting the requirements of 19 U.S.C. 1304, could possibly be excepted from marking by 19 U.S.C. 1304(a)(3)(K); § 134.32(o), Customs Regulations (19 CFR 134.32(o)).

All Sources Marking v. *Major Supplier Marking*

Customs has determined not to require all sources marking on containers of juice made with imported concentrate. Juice processors, primarily those processing imported apple juice concentrate, presented arguments that requiring all sources marking would necessitate elaborate new inventory systems be developed and maintained and, in some instances, would require a large inventory of labels be kept in stock to accommodate possible blends of concentrate from various countries.

In response to arguments that all sources marking would not aid the Food and Drug Administration in its efforts to monitor for pesticides, the FDA advised Customs that their pesticide monitoring efforts are based on port of entry inspection of concentrate, not point of sale labeling.

In view of the expense created by all sources marking using current marking technology, Customs has decided to retain major supplier marking as an acceptable method of compliance for marking of imported juice concentrate. However, the definition of major supplier is being modified to permit processors to list up to ten foreign sources to account for 75 percent or more of imported concentrate. We believe from consultations with those in the juice industry that in the majority of circumstances, five or fewer sources will account for at least 75 percent of foreign concentrate present in a lot, and that in virtually all cases, ten or fewer sources will account for 75 percent of the foreign concentrate. If ten sources do not amount to 75 percent of foreign concentrate, then all foreign sources must be listed. For purposes of complying with this requirement, "lot" is defined as it is in Food and Drug Administration regulations, 21 CFR 146.3(h)(1)(i), *i.e.*, A collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade." "Manufactured or packed under similar conditions" is defined, for purposes of compliance with 19 U.S.C. 1304, as all the containers or units containing the same blend of foreign concentrates.

The listing of foreign sources must consist of the countries contributing the greatest percentages adding up to at least 75 percent. For example, processors may not skip over an "undesireable" source contributing 10 percent in order to list the next two "unobjectionable" sources contributing five percent each. However, the order within the list need not change based on ranking. For example, if a processor is blending foreign concentrates from two countries contributing 60 and 15 percent respectively, and the two countries reversed proportions, the same label could be used on both lots.

Past Importing Period v. *Present Sources*

Concerning the distinction between allowing processors to use labels that are correct based on a past importing period or requiring labels that accurately reflect the current sources of supply, we believe requiring labels to reflect the actual sources of foreign concentrate in a particular container is the only logical alternative in a marking program aimed at providing accurate information to ultimate purchasers.

Orange juice processors were permitted to use statistics from past importing periods to determine the countries to list on their current labels. Customs approved this since the supply of foreign orange juice concentrate is very steady. In regard to other juices, apple juice in particular, there is one major source of supply and sources change more frequently as compared to orange juice. Therefore, the practice of using representative past importing periods does not apply in this situation. Customs cannot approve a marking method with the potential of allowing, for extended periods of time, labeling that would reveal none of the actual sources of foreign juice in a particular container. For example, a processor's sources of supply could completely change because of drought or political unrest making a label based on past sources of supply completely inaccurate.

Processors have stated that this requirement may greatly alter their foreign concentrate-sourcing patterns. However, this is not sufficient reason to be excepted from compliance with marking laws. Processors may have to keep a more limited supply of labels on hand, or switch to adhesive labels that can be affixed prior to distribution. Customs primary concern must be to ensure compliance with the marking laws, and we believe that no further deviation from adherence to that law should be allowed.

Summary

Imported fruit juice concentrate which is imported into the U.S. and used in the production of concentrated or reconstituted fruit juice is not substantially transformed after undergoing further processing in the U.S. including blending with other batches of concentrate of the same fruit; addition of water oils, and essences; pasteurization or freezing; and repacking. Accordingly, all such imported concentrate is subject to the country of origin marking requirements of 19 U.S.C. 1304, and 19 CFR Part 134.

Processors may use "major supplier marking" in preparing labels for containers of juice made with imported concentrate. If a processor obtains 75 percent or more of the imported concentrate used in a particular lot from ten or fewer countries, only those ten or fewer countries need be revealed.

Customs believes that the means exist for processors to comply with these marking requirements. In many cases, a blank space is left on juice containers for the imprinting or affixing of everchanging information such as lot numbers and expiration dates. The metal caps used to seal either end of metal and composite cans are suitable areas for imprinting country of origin information. In this instance, Customs will not consider it a violation of § 134.46, Customs Regulations (19 CFR 134.46), for country of origin information to appear on the top or bottom of a metal or composite can that contains a U.S. address, or some other reference to

a place not the origin of the concentrates, on the can itself. Customs also believes stickers are a viable alternative. We received comments that there is no room for sticker placement on small cans, and if such small cans are frozen, the stickers would drop off anyway. Assuming *arguendo* that stickers may not be ideal for some containers, Customs believes many types of containers will easily accommodate stickers. The argument presented against stickers did not convince us they are impractical; *e.g.*, they will easily fit on many glass containers and remain on through all normal handling.

There may be isolated situations where the marking of juice containers will be economically prohibitive. Customs will consider requests for such exemptions on a case by case basis. We will not, as has been requested, grant any sort of industry-wide exemption based on "worst case" scenarios.

Delay of Effective Date

In trying to balance the needs of consumers, domestic fruit growers and the importers and processors of fruit juice concentrate, it has been determined to delay slightly the effective date of the marking requirement outlined above.

By delaying the effective date until November 30, 1989, for containers other than composite cans, and to March 1, 1990, for composite cans, juice processors will be given adequate time to obtain properly labeled new containers.

Those processors that had taken steps to comply with the prior major supplier marking rule will have no difficulty complying with the modified version; any labels they had prepared to satisfy the original definition will satisfy the modified definition. While processors may not have known precisely what marking would be required, they have known since July 30, 1986, that marking would in fact be extended to all other imported juice concentrates in addition to orange. Since Customs has eased the major supplier rule and made it more likley that processors will be eligible to use major supplier instead of having to mark all foreign sources, we believe it proper to implement the modified marking requirements as expeditiously as possible. The effective dates established by this notice will permit processors to order proper labels.

Drafting Information

The principal author of this document was John E. Doyle, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: July 7, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-16364 Filed 7-12-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Lenperone Hydrochloride Tablets and Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's) held by A.H. Robins Co. The NADA's provide for the use of Elanone-V (lenperone hydrochloride) Tablets and Elanone-V (lenperone hydrochloride) Injection. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's at the request of the sponsor.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA's 96-508 and 97-901 held by A.H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261. NADA 96-508 provides for the use of Elanone-V (lenperone hydrochloride) Injection in cats and dogs as a tranquilizer and as an antiemetic, and for pre- and postoperative medication. NADA 97-901 provides for use of Elanone-V (lenperone hydrochloride) Tablets for the same indications, but only in dogs. This final rule removes §§ 520.1236 and 522.1235 (21 CFR 520.1236 and 522.1235) that reflect the approvals.

List of Subjects in 21 CFR

Part 520.

Animal drugs.

Part 522.

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Veterinary Medicine, Parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)), 21 CFR 5.10 and 5.83.

§ 520.1236 [Removed]

2. Section 520.1236 *Lenperone tablets* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.1235 [Removed]

4. Section 522.1235 *Lenperone hydrochloride injection* is removed.

Dated: July 7 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-16422 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hess & Clark, Inc., providing for the use of a nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections on dogs, cats, and horses.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-443-3420.

SUPPLEMENTARY INFORMATION: Hess & Clark, Inc., 7th and Orange Sts., Ashland, OH 44805, is sponsor of NADA 140-851 for use of a 0.2-percent nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections of wounds, burns, and cutaneous ulcers of dogs, cats, and horses. The application is approved, and 21 CFR 524.1580b(b) is revised to reflect the approval. The basis of this approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857 from 9 a.m. to 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 524.1580b is amended by revising paragraph (b) to read as follows:

§ 524.1580b Nitrofurazone ointment.

(b) *Sponsor.* For use on dogs, cats, and horses see Nos. 011519, 000864, 053617 023851, 015579, 054016, and 011801 in § 510.600(c) of this chapter. For use on dogs and horses see No. 017135 in § 510.600(c) of this chapter. For use on horses see No. 017153 in § 510.600(c) of this chapter.

Dated: July 6, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-16424 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc., providing for the use of a 20-percent lasalocid liquid Type A medicated article in making Type B and Type C medicated feeds for cattle and sheep.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-443-2871.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, is the sponsor of NADA 96-298, which currently provides for the use of dry Type A medicated articles containing 15, 20, 33.1, or 50 percent of lasalocid sodium activity in making Type B and Type C medicated cattle and sheep feeds. The firm has filed a supplemental NADA that provides for a different physical form (liquid product) of the 20-percent lasalocid Type A medicated article. The resulting medicated feeds are indicated for (1) improved feed efficiency in cattle fed in confinement for slaughter; (2) improved feed efficiency and increased rate of weight gain in cattle fed in confinement for slaughter; (3) increased rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers); and (4) prevention of coccidiosis in sheep kept in confinement. These indications and other conditions of use are currently provided for in the existing regulation and are unaffected by the supplemental NADA. The supplement is approved, and 21 CFR 558.311 is amended to reflect the approval by adding new paragraph (b)(6) to solely provide for use of an additional Type A medicated article containing 20 percent lasalocid sodium in a new liquid formulation.

Approval of this supplement, a new liquid formulation of a Type A medicated article containing 20 percent lasalocid sodium activity, is an administrative action. This approval does not affect the safety or effectiveness data supporting the original approval, and therefore, does not require a revision of the freedom of information summary.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.311 is amended by adding new paragraph (b)(6) to read as follows:

§ 58.311 Lasalocid.

(b)

(6) 20 percent activity as a liquid Type A medicated article to No. 000004 for use in cattle feeds as in paragraphs (e)(1) (vi), (vii), and (ix) of this section, and for use in sheep feeds as in paragraph (e)(1)(viii) of this section.

Dated: July 3, 1989.

Robert C. Livingston,

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

[FR Doc. 89-16358 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket Nos. H-225, 225A, 225B, 225C]

RIN 1218-0145

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; corrections and technical amendments.

SUMMARY: This document amends the final rule on Occupational Exposure to Formaldehyde (29 CFR 1910.1048) which was published on December 4, 1987 [52 FR 46168]. This action is necessary to correct typographical errors, include some information inadvertently omitted, and to correct some inconsistencies in the preamble and regulatory text.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Background

The revised Occupational Exposure to Formaldehyde standard, which was promulgated on December 4, 1987 lowers the permissible exposure limit for formaldehyde to 1 part per million (ppm), measured as an 8-hour time-weighted average (TWA), with a short term exposure limit (STEL) of 2 ppm measured over a 15-minute period. The standard also contains provisions for employee exposure monitoring, medical surveillance, recordkeeping, regulated areas, emergency procedures, preferred methods of compliance, maintenance and selection of personal protective equipment, and hazard communication. This notice amends the standard to correct errors or inconsistencies found in the provisions for respirator selection and recordkeeping and to correct some typographical errors found in the text of the standard.

Corrections and Technical Amendments

1. *Paragraph (g), Respiratory protection:* A few typographical errors and omissions in Table 1—Minimum Requirements for Respiratory Protection Against Formaldehyde (52 FR at 46293) require a technical amendment of the final rule.

The Table 1 entry for Type C respirators must be modified. The preamble to the final rule indicates that employers must select respirators from those certified as acceptable for protection against formaldehyde by the National Institute for Occupational Safety and Health (NIOSH) (see 52 FR at 46266). As the NIOSH Certified Equipment List clearly indicates, Type C supplied air respirators approved for use in formaldehyde atmospheres must be operated in a positive pressure mode. OSHA inadvertently dropped the word "pressure" from the phrase "demand type" in describing Type C respirators in Table 1 in the final rule, thus appearing to approve the use of a negative pressure respirator operated in the demand mode. OSHA also failed to indicate that Type C supplied air respirators operated in the continuous flow mode are approved for use in formaldehyde atmospheres. The correct entry in Table 1 should read as follows: Type C supplied air respirator, pressure demand or continuous flow type, with full facepiece, hood, or helmet.

Paragraph (g)(2)(ii) of the final rule (52 FR at 46293) requires employers to make powered air purifying respirators meeting the specifications of Table 1 available to any employee who experiences difficulty wearing a negative pressure respirator to reduce exposure to formaldehyde. Table 1, however, does not list any powered air purifying respirators. To avoid confusion on this issue, OSHA is deleting the words "meeting the specifications in Table 1" from paragraph (g)(2)(ii) of the standard and substituting a requirement that any powered air purifying respirator used must provide adequate protection. This clarification is intended to remind employers substituting powered air purifying respirators for negative pressure respirators that they must consider whether the protection factor that the powered air purifying respirator supplies is adequate to protect a worker under the conditions of the exposure.

It was brought to OSHA's attention that the final rule for formaldehyde inadvertently omitted reference to chin style gas masks approved by NIOSH for use in formaldehyde atmospheres. Since this respirator will adequately protect workers exposed to formaldehyde, it should also be available for consideration in selecting a comfortable and adequately fitting respirator. Consequently, OSHA is amending Table 1 in the final rule to permit use of chin style respirators for protection against formaldehyde in atmospheres up to 100 ppm and for emergency escape.

The above described amendments are minor and not controversial. There is no need to subject these technical amendments to rulemaking or other public procedures (see 29 CFR 1911.5) and good cause is hereby found to dispense with such procedures in this instance.

2. *Paragraph (o), Recordkeeping.* In the preamble to the final rule OSHA indicated its intent to add a specific reference to 29 CFR 1910.20, the access to medical records standard, to the paragraph allowing employee access to medical records (see 52 FR at 46289). This was inadvertently omitted, and OSHA is correcting the standard to include this language in paragraph (o)(6)(iii).

3. This document also corrects several typographical errors in the final rule on Occupational Exposure to Formaldehyde that appeared in the **Federal Register** on December 4, 1987 [52 FR 46168] which has now been published in the Code of Federal Regulations as 29 CFR 1910.1048.

Authority and Signature

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597 1599, 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR Part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals.

Signed at Washington, DC this 7th day of July 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Subpart Z of the Part 1910 continues to read in part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657· Secretary of Labor's Orders 12-71 [36 FR 8754], 8-76 [41 FR 25059], or 9-83 [48 FR 35736] as applicable; and 29 CFR Part 1911. Sec. 1910.1000 Tables Z-1, Z-2, Z-3 also issued under 5 U.S.C. 553.

Sec. 1910.1048 also issued under 29 U.S.C. 653.

2. By revising paragraph (g)(2)(ii), Table 1 following paragraph (g)(3)(ii), and paragraph (o)(6)(iii) of § 1910.1048 to read as follows:

§ 1910.1048 Formaldehyde.

(g)

(2)

(ii) The employer shall make available a powered air-purifying respirator adequate to protect against formaldehyde exposure to any employee who experiences difficulty wearing a negative pressure respirator to reduce exposure to formaldehyde.

TABLE 1.—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION AGAINST FORMALDEHYDE

Condition of use of formaldehyde concentration (ppm)	Minimum respirator required [1]
Up to 10 ppm	Full facepiece with cartridges or canisters specifically approved for protection against formaldehyde.[2]
Up to 100 ppm	Full-face mask with chin style or chest or back mounted type industrial size canister specifically approved for protection against formaldehyde.
	Type C supplied air respirator, pressure demand or continuous flow type, with full facepiece, hood, or helmet.
Above 100 ppm or unknown (emergencies).	Self-contained breathing apparatus (SCBA) with positive pressure full facepiece.
	Combination supplied-air, full facepiece positive pressure respirator with auxiliary self-contained air supply.
Firefighting	SCBA with positive pressure in full facepiece.
Escape	SCBA in demand or pressure demand mode.
	Full-face mask with chin style or front or back mounted type industrial size canister specifically approved for protection against formaldehyde.

[1] Respirators specified for use at higher concentrations may be used at lower concentrations.

[2] A half-mask respirator with cartridges specifically approved for protection against formaldehyde can be substituted for the full face piece respirator providing that effective gas-proof goggles are provided and used in combination with the half-mask respirator.

(o)

(6)

(iii) Employee medical records required by this standard shall be provided upon request for examination and copying, to the subject employee or former employee or to anyone having the specific written consent of the subject employee or former employee in accordance with 29 CFR 1910.20 (a)–(e) and (g)–(i).

3. In Appendix B to § 1910.1048—Sampling Strategy and Analytical Methods for Formaldehyde, instruction 2.6.2. "The recommended sampling rate is 01. L/min. is corrected to read "The recommended sampling rate is 0.1 L/min.

4. In Appendix B to § 1910.1048—Sampling Strategy and Analytical Methods for Formaldehyde, the part of instruction 3.7.4 which reads, "24.25 = molar volume" is corrected to read "24.45 = molar volume"

5. In Appendix E to § 1910.1048—Qualitative and Quantitative Fit Testing Procedures, instruction B(2)(a)(8) (fourth sentence). "Be sure the covered *" is corrected to read "Be sure the covers *"

[FR Doc. 89-16439 Filed 7-12-89; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Parts 1910 and 1926

Occupational Exposure to Asbestos; Approval of Collection of Information Requirements

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule; approval of collection of information requirements.

SUMMARY: On June 20, 1986, OSHA published revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite in general industry and construction. In these standards, OSHA reduced the 8-hour time weighted average (TWA) permissible exposure limit (PEL) to 0.2 f/cc, and established other protective provisions. This standard was legally challenged, and as a result, the Court of Appeals for the District of Columbia upheld the standard except that the court held that OSHA must reconsider several of the standard's provisions to determine if more protective regulatory provisions are available to reduce risk.

One of the issues to be reconsidered was the need for an excursion limit. In response, OSHA promulgated an excursion limit for occupational exposure to asbestos as 1 f/cc averaged over a 30-minute sampling period. A legal notification of this amendment was published on September 14, 1988, at 53 FR 35610.

The Office of Management and Budget (OMB) reviewed the collection of information requirements in the expanded asbestos standard in accordance with the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, and 5 CFR Part 1320. All information requirements contained in § 1910.1001 in paragraphs (d)(2), (d)(3), (d)(5), (d)(7), (f)(2), (f)(3)(i), (j)(5), (l), and (m), and 29 CFR 1926.58 (f)(2), (f)(3), (f)(6), (h)(3)(i), (k)(3), (k)(4), (m), and (n), as they apply to the excursion limit, have now received OMB paperwork clearance under OMB clearance numbers 1218-0133 and 1218-0134. The OMB clearance expires on February 29, 1992.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3637 Washington, DC 20210; telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On September 14, 1988, OSHA published an amendment to the asbestos standard to include an excursion limit. On December 23, 1988, OSHA requested clearance from OMB on the asbestos, tremolite, anthophyllite and actinolite excursion limit amendment (general industry and construction standards).

On February 14, 1989, OMB approved the collection information provisions for three years, the maximum period authorized by the Paperwork Reduction Act (PRA). OMB also conditioned the clearance with the requirement that when the medical surveillance and monitoring requirements are resubmitted for OMB review, that the agency also submit evidence that these provisions have been evaluated in the workplace and that such evaluation has shown, pursuant to 5 CFR 1320.4(b), that they have practical utility and are the least burdensome necessary for the proper performance of the agency's functions.

Authority and Signature

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 4 of the Administrative Procedures Act, 9 U.S.C. 553(d)(3), Secretary of Labor's Order No. 9-83 (48 FR 3576) and 29 CFR Part 1911.

Signed at Washington, DC, this 7th day of July of 1989.

Alan C. McMillan,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. 89-16438 Filed 7-12-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-88-01]

Special Local Regulations; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes permanent special local regulations for marine events within the Ninth Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is taken to insure the safety of life during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event.

EFFECTIVE DATES: These regulations become effective on August 14, 1989.

FOR FURTHER INFORMATION CONTACT: MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On 7 April 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (54 FR 14100). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C. V Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

The comment received was from the Lake Carrier's Association. It addressed the lack of specific closure times of marine events listed in Table 1. The Coast Guard sees no need to publish specific times for the same reason specific dates are not published. Exact times and dates will be published in the Local Notice to Mariners instead of being published in this final rule. Otherwise, additional rulemaking would be required for even insigificant changes to specific times and dates were they to be included in this final rule. The annual marine events covered by this rulemaking are well established, and as the rule makes clear, the event sponsor must still obtain the approval of the cognizant Group Commander every year. Group Commanders have consulted and will continue to consult with parties potentially affected by any significant changes to the nature, date, time, and location proposed by an event sponsor for any of the events covered in this rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. First, the regulated areas will be in effect for only a short period of time. Second, events will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

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

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

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

2. Section 100.901 is added to read as follows:

§ 100.901 Great Lakes annual marine events.

Permanent special local regulations are hereby established for the marine events listed in Table 1. These regulations will be effective annually, for the duration of each event, on or about the dates indicated in Table 1. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in local notices to mariners. To be placed on the mailing list for such notices, contact: Commander(oan), Ninth Coast Guard District, 1240 E. Ninth St., Cleveland, OH 44199-2060. *Sponsors of events listed in Table 1 must still submit an application each year in accordance with 33 CFR 100.15.*

(a) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(b) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

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

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

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

Table 1

Cleveland National Air Show

Sponsor: Cleveland National Air Show
Date: Labor Day Weekend
Location: Lake Erie and Cleveland Harbor, near Cleveland, OH

International Freedom Festival Tug of War

Sponsor: Detroit Renaissance Foundation
Date: Late June
Location: Detroit River, Hart Plaza to Windsor Riverfront, near Detroit, MI

Budweiser Thunderboat Championship

Sponsor: Spirit of Detroit Association
Date: Early June
Location: Detroit River, between Belle Isle and the U.S. shoreline, near Detroit, MI

Chicago Air and Water Show

Sponsor: Chicago Park District
Date: Mid July
Location: Lake Michigan, off North Avenue Beach, near Chicago, IL

Toledo International Grand Prix

Sponsor: City of Toledo, Toledo International Grand Prix and Greater Toledo Marketing Group
Date: Late May
Location: Maumee River, between the Cherry Street Bridge and the Anthony Wayne Bridge, near Toledo, OH

Niagara River Grand Prix

Sponsor: Niagara Inboard Boat Club
Date: Late July
Location: Niagara River, off Two Mile Creek, near Tonawanda NY

Spirit of America Offshore Grand Prix

Sponsor: Grand Isle Marina
Date: Mid August
Location: Lake Michigan, off Grand Haven, MI

Sohio Riverfest

Sponsor: Flats Riverfest Corporation
Date: Late July
Location: Cuyahoga River, Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge, near Cleveland, OH

Sandusky Bay Challenge

Sponsor: Great Lakes Offshore Powerboat Racing Association
Date: Late May
Location: Lake Erie, Sandusky Bay, near Sandusky, OH

Bay Harbor Charity Classic (formerly the National Offshore Races)

Sponsor: Harbor Yacht Sales
Date: Late August
Location: Saginaw Bay, mouth of the Saginaw River, near Saginaw, MI

Huron Water Festival

Sponsor: Huron Festivals, Inc.
Date: Mid July
Location: Huron River, Huron Inner Light and the Huron Inner East Light to the U.S. Highway 6 bridge, near Huron, OH

East River Classic

Sponsor: WNY Offshore Powerboat Association
Date: Mid August
Location: Niagara River, from the South Grand Island Bridge to the south entrance of the Niagara River Yacht Club, near Tonawanda, NY

International Freedom Festival Fireworks

Sponsor: Detroit Renaissance Foundation
Date: Late June
Location: Detroit River, between Hart Plaza and Cobo Arena, near Detroit, MI

Toledo 4th of July Fireworks

Sponsor: City of Toledo
Date: Early July
Location: Maumee River, between the Cherry and Anthony Wayne bridges, near Toledo, OH

Festival USA Fireworks

Sponsor: Superior Area Chamber of Commerce
Date: Early July
Location: Duluth Superior Harbor, off Barker's Island, near Superior, WI

Duluth Fourth Fest Fireworks

Sponsor: Office of the Mayor, Duluth, MN
Date: Early July
Location: Duluth Harbor Basin Northern Section, near Duluth, MN

Toledo Labor Day Fireworks

Sponsor: Reams Broadcasting Corporation
Date: Early September
Location: Maumee River, between the Cherry and Anthony Wayne bridges, near Toledo, OH

Grand Island Offshore Challenge

Sponsor: Champion Offshore Boat Racing Association
Date: Early September
Location: Niagara River, Tonawanda Channel, near Tonawanda, NY

Dated: June 9, 1989.

D. H. Ramsden,

Capt., U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-16394 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90143-9144]

RIN 0651-AA35

Amendment of Patent and Trademark Rules Concerning Judicial Review of Decisions of the Board of Patent Appeals and Interferences and the Trademark Trial and Appeal Board and Other Miscellaneous Matters

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent and trademark cases, Parts 1 and 2 of Title 37 Code of Federal Regulations, relating to (1) decisions of the Board of Patent Appeals and Interferences (BPAI), (2) requests for reconsideration of decisions of the BPAI and the Trademark Trial and Appeal Board (TTAB), (3) extensions of time in proceedings after a decision by the BPAI under §§ 1.196 and 1.197 (4) practices concerning judicial review of final decisions of the BPAI and TTAB, (5) extensions of time for seeking judicial review of BPAI and TTAB decisions, and (6) miscellaneous changes in the practice before the BPAI and housekeeping amendments.

Two recent decisions of the U.S. Court of Appeals for the Federal Circuit have held that even though the BPAI includes a new ground for rejection in its decision under 37 CFR 1.196(b)(3), appellants may appeal directly to the Federal Circuit without first seeking reconsideration at the BPAI. Where judicial review is sought without requesting reconsideration, the arguments against the new ground of rejection are developed for the first time during court proceedings. The amendments require that appellants seek reconsideration of the new ground of rejection prior to appeal or commencement of a civil action.

Experience under the previous rules relating to judicial review of final board decisions indicated that the rules may have been confusing in certain respects

relating to the time in which judicial review must be sought and the manner in which extensions of time for seeking judicial review may be obtained. The rules eliminate any confusion as to when judicial review must be sought and standardize the manner of obtaining extensions of time to seek judicial review.

The rules also make clarifying and housekeeping amendments with respect to practice before the BPAI.

EFFECTIVE DATE: August 20, 1989.

FOR FURTHER INFORMATION CONTACT: Richard E. Schafer by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking was published in the **Federal Register** at 54 FR 11009 (March 16, 1989) and at 1101 *Official Gazette* 6 (April 4, 1989). No oral hearing was held and no written comments were received.

Discussion of Specific Rules

(1) Decisions of the BPAI and Requests for Reconsideration of BPAI and TTAB Decisions

Only final decisions of the BPAI and TTAB are subject to judicial review. 35 U.S.C. 141, 145; 15 U.S.C. 1071; 28 U.S.C. 1295(a)(4) (A) and (B).

Section 1.196(b) provides that if the BPAI has knowledge of any grounds, not involved in the appeal, for rejecting any appealed claim, it may include in its decision a statement to that effect. The statement then constitutes a new rejection of the claims. The previous rules permitted appellants to treat the decision as a final decision in the case and thus immediately appealable. 37 CFR 1.196(b)(3) (1988). Therefore, when an appellant proceeded under this option, arguments against the new rejection were presented for the first time to the reviewing court.

A recent decision by the U.S. Court of Appeals for the Federal Circuit rejected the Commissioner's argument that an appellant should not be permitted to contest the BPAI's new ground for rejection because it had not requested reconsideration of that ground by the BPAI. *In re Evanega*, 829 F.2d 1110, 1113, 4 USPQ 2d 1249, 1252 (Fed. Cir. 1987). *See also In re Nielson*, 816 F.2d 1567 1570, 2 USPQ 2d 1525, 1527 (Fed. Cir. 1987). In *Evanega*, the Commissioner urged that requiring appellants to request reconsideration, where the BPAI adopts a new ground for rejection, would provide the BPAI with an opportunity to consider appellant's arguments and correct any errors while the case was still in the PTO. This conserves judicial resources, and in any event, obtains the benefit of the BPAI's view should judicial review ultimately be sought. The court held, however, that in view of PTO regulations (37 CFR 1.196(b)(3)) which "expressly provide that the board's decision, even if based on a new ground, is a final determination and thus may be appealed without seeking reconsideration, appellant could not be required to request reconsideration by the BPAI. *Id.*

The new rule changes eliminate 37 CFR 1.196(b)(3). By removing § 1.196(b)(3), appellants no longer have the option of treating a new ground of rejection as final and immediately appealable. Appellants' options are limited to requesting remand to the examiner or requesting reconsideration by the BPAI as set forth in §§ 1.196(b)(1) and 1.196(b)(2). The preamble of § 1.196(b) has been amended to specifically recite that a new ground of rejection shall not be considered a final decision for judicial review.

Appellants still may elect further prosecution before the examiner under 37 CFR 1.196(b)(1) or request reconsideration under § 1.196(b)(2). The option of § 1.196(b)(2) requires that any request for reconsideration address the new ground of rejection and specifically state the reasons why the new ground was in error. Section 1.196(b)(2) also provides that the BPAI will reconsider the new rejection and, if necessary, render a new decision. The decision on reconsideration will be deemed to incorporate the earlier decision except for any portions of the earlier decision specifically withdrawn.

Reconsideration or remand need not be requested if appellant does not contest the new ground. Appellants may seek judicial review as to claims not subject to the new ground.

Section 1.196(a) expressly provides for remands to the examiner for further consideration. The BPAI has inherent authority, as part of its role in reviewing standards of patentability applied in the PTO, to remand applications to the examiner for further consideration. *Cf.* Manual of Patent Examining Procedure (MPEP) sections 1211 and 1212. The change merely makes express that which is inherent.

The amendments also delete the portion of former § 1.196(d) which provides (1) that any decision which includes a remand shall not be a final decision for the purposes of judicial review, and (2) that upon conclusion of the proceedings on remand the BPAI may enter an order making its decision final. Those provisions have been included as new § 1.196(e). Under this paragraph, decisions pursuant to § 1.196(b) would not be final as to the claims subject to a new rejection.

The last sentence of former § 1.196(b)(1) has been deleted and placed in new § 1.196(e).

(2) Requests for Reconsideration of BPAI and TTAB Decisions

Section 1.197(b) provides that any request for reconsideration must specifically state the points believed to have been misapprehended or overlooked in the BPAI's decision. Experience has shown that many requests for reconsideration are nothing more than reargument of appellant's position on appeal. The provision, as adopted, limits requests to the points of law or fact which appellant feels were overlooked or misapprehended by the BPAI.

The amendments also clarify the exception found in the first sentence of § 1.197(b) by including specific references to the "original decision" and the "decision on reconsideration. Some confusion had been noted with respect to the meaning of the current language.

In order to simplify calculation of times for requesting reconsideration of the decisions of the boards, §§ 1.658(b), 2.129(c), and 2.144 specify a period of one month rather than the periods expressed in days. Section 1.197(a) already specified a one-month period.

(3) Extensions of Time after a Decision by the BPAI to Take Action Under Sections 1.196 and 1.197

Appellants in patent cases may no longer use fee extensions under § 1.136(a) to extend the time for making an election under § 1.196(b) or seeking reconsideration under § 1.197 Under previous rules appellants could request reconsideration of a BPAI decision up to five months after a decision or file a response to a new ground of rejection up to six months after the decision. This inordinately delayed final disposition of appeals. Section 1.136(a) provides that fee extensions are not available to file responses to a BPAI decision pursuant to §§ 1.196, 1.197 or § 1.304. One month is deemed to be ample time to submit a request for reconsideration. Note that Fed. R. Civ. P 59 provides 10 days and Fed. R. App. P 40 provides 14 days for similar requests. Extensions under § 1.136(b) will be available to extend the time to file a response under §§ 1.196 and 1.197 Section 1.304(a) exclusively governs extensions of time to file a notice of appeal to the U.S Court of

Appeals for the Federal Circuit or to commence a civil action. See further discussion below.

Section 1.136(a) specifically refers to § 1.136(b) for extensions of time to file responses under §§ 1.196 and 1.197 and refers to § 1.304 for extensions of time to initiate judicial review. Sections 1.196(f) and 1.197(b) correlatively reference § 1.136(b) for extensions of time.

Fee extensions are not available to extend the time for electing further prosecution before the examiner under § 1.196(b)(1). Where an appellant elects further prosecution before the examiner, fee extensions under § 1.136(a) remain available to respond to the primary examiner's Office actions.

(4) Time for Seeking Judicial Review of Decisions of the BPAI and TTAB

Under previous rules, judicial review of final decisions of the BPAI or TTAB had to be sought within sixty days of the decision or thirty days after a decision on reconsideration. However, where a decision on reconsideration was, in effect, a new decision, it was not always clear whether the time for appeal was thirty or sixty days. Sections 1.304(a) and 2.146(d)(1) provide a two-month period to appeal from either the date of the decision or the decision on a timely filed request for reconsideration.

Some problems have been noted with respect to the time for seeking judicial review in days. Miscalculations of the statutory sixty-day time period have resulted in filing untimely requests for judicial review. In order to simplify calculation of the time for seeking judicial review, §§ 1.304(a) and 2.145(d)(1) specify two months. The two-month period meets the sixty-day requirement of 35 U.S.C. 142, 145 and 146 and 15 U.S.C 1071(a)(2) and (b)(1) except for time periods which include February 28. In order to comply with the sixty-day requirement, §§ 1.304(b) and 2.145(d)(2) provide that an additional day shall be added to any two-month period for initiating judicial review which includes February 28. Appeals will always be timely if the judicial review is initiated within two months of the final decision.

Previously, the rules did not specify a time period for filing a cross-appeal or cross-action in *inter partes* cases. The absence of such a time period made it difficult for parties and their attorneys to make appropriate plans for judicial review. For example, in an interference where there has been a split judgment, one of the parties may be satisfied with the judgment but may desire to appeal the adverse judgment only if an appeal is noted by the other party. Where the appeal is filed on the last possible day, a cross-appeal is precluded. Sections 1.304(a) and 2.145(d)(1) specify that the time for filing a cross-appeal or commencing a cross-action expires (1) fourteen days after service of the notice of appeal or the summons and complaint or (2) two months after the decision to be reviewed, whichever is later.

Similarly, no provision for filing a cross-action was provided where an appellee elects to have further proceedings conducted in the district court pursuant to 35 U.S.C. 146 or 15 U.S.C. 1071(a)(1). Section 1.304(c) and 2.145(d)(3) provide that the time for filing a cross-action expires 14 days after service of the summons and complaint. The district court will determine whether any cross-action was timely filed since neither the complaint nor cross-action is filed in the PTO.

(5) Extensions of Time to Seek Judicial Review

In the past, standards for granting requests for extensions of time to take an appeal or commence a civil action varied depending upon which board was involved and upon the particular type proceeding before the board. For example, extensions relating to patent applications could be obtained by paying the appropriate fee under § 1.136(a). However, in reexamination proceedings or when judicial review was sought from a decision of the TTAB, the requester must demonstrate sufficient cause under § 1.550(c) or § 2.145(d)(1). The rules standardize the manner in which an extension of time to initiate judicial review may be obtained. The PTO has adopted a standard which is similar to the standard used in the Federal courts for granting extensions. Under the rules the Commissioner may extend the time (1) for good cause if requested before the expiration of the time provided for initiating judicial review or (2) upon a showing of excusable neglect in failing to initiate judicial review if requested after the expiration of the time period. This standard will be applicable in both trademark and patent proceedings (§§ 1.304(a) and 2.145(e)) once the "last" decision, i.e., either the decision (in circumstances where no timely reconsideration is sought) or the decision on reconsideration, of either board has been entered. In patent cases, extensions of time under §§ 1.136(b) and 1.550(c) and fee extensions under 37 CFR 1.136(a) are no longer available to extend the time for the purpose of judicial review once a decision or a decision on reconsideration has been entered. Section 1.304(a) states that the provisions of §§ 1.136 and 1.550(c) are not available to extend the time to initiate judicial review. Sections 1.136(a), 1.136(b), 1.191(d), 1.550(c), 1.645(a) and (b) refer to § 1.304 for extensions of time for seeking judicial review after a decision has been entered. Section 1.645(a) has been amended by (1) adding the introductory phrase "Except to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action," to the first sentence and (2) deleting the references to filing a notice of appeal or commencing a civil action in the second sentence.

In view of the amendments to §§ 1.197 and 1.304, relating to extensions of time to seek reconsideration or initiate judicial review, § 1.191(d) does not refer to §§ 1.196 and 1.197

(6) Miscellaneous Amendments

In the past, appellants could use fee extensions to delay the time for requesting an oral hearing at the BPAI. This delayed final disposition of the appeal and causes administrative problems and duplication of effort due to the transfer of the appeal to the hearing docket. Section 1.191(d) no longer refers to § 1.194. Fee extensions are no longer available to extend the time for requesting an oral hearing. Extensions under § 1.136(b) are available to extend the time to request an oral hearing.

Section 1.191(b) has been rewritten as one sentence without any change in substance.

Some confusion has resulted as to who has jurisdiction over a patent application after a notice of appeal to the BPAI has been filed. Problems arose, for example, as to the appropriate PTO official to decide certain petitions and other matters after an appeal has been filed. MPEP section 1210 indicates that jurisdiction over the application normally passes at one of five possible times listed therein. Section 1.191 includes a new section (e) which provides that jurisdiction transfer to the BPAI when the application or reexamination file including all briefs and examiner's answers is transmitted to the BPAI. Thus, jurisdiction transfers to the BPAI when all written submissions by the applicant and the examiner have been entered and the application papers have been forwarded to the BPAI.

New § 1.191(e) also includes a provision that the Commissioner, prior to the time the BPAI renders its decision, may *sua sponte* order that an application be remanded to the examiner for further consideration. This provision merely makes explicit the inherent authority of the Commissioner

to direct and supervise the examination of patent applications.

Under previous rules there was some confusion as to when "termination of proceedings" occurs. Section 1.197(c) provides that proceedings are "terminated" when the Federal Circuit's mandate is received by the PTO or after the time for appeal from the judgment of the district court in a civil action under 35 U.S.C. 145 has expired. The language "In such cases, in the second sentence of former § 1.197(c) has been eliminated since it was superfluous and may have been confusing.

The rules delete the phrase "that he or she elects" and substitutes "electing" therefor in §§ 1.304(c) and 2.145(c)(3), as amended. The amendment merely changes wording without any change in substance.

Section 1.196(b) changes the verb "make" to "makes" to conform the verb to the singular subject of the sentence.

Sections 1.301, 1.303, 2.145(a)(2) and 2.145(c)(3) no longer refer to transmittal of the certified list and certified copies of the notice of election to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141 or 15 U.S.C. 1071(a)(1). These procedures are required by applicable statutes or Court Rules and are unnecessary in the PTO's regulations.

Sections 1.304(a), 1.304(c), 2.145(c)(3) and 2.145(d)(1) include a statement that the certificate of mailing provisions of § 1.8 are *not* applicable. No substantive change is involved since the inapplicability of § 1.8 is already stated in § 1.8(a)(2)(viii) and (ix).

Sections 1.304(b) and 2.145(d)(2) recite "Federal holiday in the District of Columbia" rather than "legal holiday." These changes merely conform the language of these sections with the language of 35 U.S.C. 21(b) and 37 CFR 1.7

Section 2.145(c)(2) and (3) include changes in wording without any change in substance.

Other Considerations

These rules will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 350 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The rule change requiring appellants to request reconsideration under the specific circumstances set forth is not expected to result in an increase of fees charged by attorneys and agents to entities, including small entities, since the rule change is intended to eliminate erroneous grounds for rejection prior to appeal and in some instances is expected to eliminate the need for appeal.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no 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 PTO has also determined that this notice has no Federalism implications affecting the relationship between the national government and the states as outlined in Executive Order 12612.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons given in the preamble and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Parts 1 and 2 of Title 37 of the Code of Federal Regulations are amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.136 is revised to read as follows:

§ 1.136 Filing of timely responses with petition and fee for extension of time and extensions of time for cause.

(a) If an applicant is required to respond within a nonstatutory or shortened statutory time period, applicant may respond up to four months after the time period set if a petition for an extension of time and the fee set in § 1.17 are filed prior to or with the response, unless (1) applicant is notified otherwise in an Office action, (2) the application is involved in an interference declared pursuant to § 1.611 or (3) the response is to a decision by the Board of Patent Appeals and Interferences pursuant to §§ 1.196, 1.197 or 1.304. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. In no case may an applicant respond later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to § 1.196 or § 1.197 § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action, § 1.645 for extension of time in interference proceedings and § 1.550(c) for extension of time in reexamination proceedings.

(b) When a response with petition and fee for extension of time cannot be filed pursuant to paragraph (a) of this section, the time for response will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request affect any extension. In no case can any extension carry the date on which response to an Office action is due beyond the maximum time period set by statute or be granted when the provisions of paragraph (a) of this section are available. See § 1.304 for extension of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action, § 1.645 for extension of time in interference proceedings and § 1.550(c) for extension of time in reexamination proceedings.

3. Section 1.191 is amended by revising paragraphs (b) and (d) and adding paragraph (e) to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(b) The appeal in an application or reexamination proceeding must identify the rejected claim or claims appealed, and must be signed by the applicant, patent owner or duly authorized attorney or agent.

(d) The time periods set forth in §§ 1.191 through 1.193 are subject to the provisions of § 1.136 for patent applications or § 1.550(c) for reexamination proceedings. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

(e) Jurisdiction over the application or patent under reexamination passes to the Board of Patent Appeals and Interferences upon transmittal of the file, including all briefs and examiner's answers, to the Board. Prior to the entry of a decision on the appeal, the Commissioner may sua sponte order the application remanded to the examiner.

4. Section 1.196 is amended by revising paragraphs (a), (b) and (d) and adding new paragraphs (e) and (f) to read as follows:

§ 1.196 Decision by the Board of Patent Appeals and Interferences.

(a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner or remand the application to the examiner for further consideration. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds not involved in the appeal for rejecting any appealed claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a new rejection of the claims. A new rejection shall not be considered final for the purpose of judicial review. When the Board of Patent Appeals and Interferences makes a new rejection of an appealed claim, the appellant may exercise either of the following two options with respect to the new ground:

(1) The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the examiner in which event the application will be remanded to the examiner. The statement shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground for rejection stated in the decision. Should the examiner again reject the application the applicant may again appeal to the Board of Patent Appeals and Interferences.

(2) The appellant may have the case reconsidered under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. The request for reconsideration shall address the new ground for rejection and state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. Where request for such reconsideration is made the Board of Patent Appeals and Interferences shall reconsider the new ground for rejection and, if necessary, render a new decision which shall include all grounds upon which a patent is refused. The decision on reconsideration is deemed to incorporate the earlier decision, except for those portions specifically withdrawn on reconsideration, and is final for the purpose of judicial review.

(d) Although the Board of Patent Appeals and Interferences normally will confine its decision to a review of rejections made by the examiner, should it have knowledge of any grounds for rejecting any allowed claim it may include in its decision a recommended rejection of the claim and remand the case to the examiner. In such event, the Board shall set a period, not less than one month, within which the appellant may submit to the examiner an appropriate amendment, a showing of facts or reasons, or both, in order to avoid the grounds set forth in the recommendation of the Board of Patent Appeals and Interferences. The examiner shall be bound by the recommendation and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection. Should the examiner make the recommended rejection final the applicant may again appeal to the Board of Patent Appeals and Interferences.

(e) Whenever a decision of the Board of Patent Appeals and Interferences includes or allows a remand, that decision shall not be considered a final decision. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Patent Appeals and Interferences may enter an order otherwise making its decision final.

(f) See § 1.136(b) for extensions of time to take action under this section.

5. Section 1.197 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.197 Action following decision.

(b) A single request for reconsideration or modification of the decision may be made if filed within one month from the date of the original decision, unless the original decision is so modified by the decision on reconsideration as to become, in effect, a new decision, and the Board of Patent Appeals and Interferences so states. The request for reconsideration shall state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which reconsideration is sought. See 37 CFR 1.136(b) for extensions of time for seeking reconsideration.

(c) Termination of proceedings. Proceedings are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except: (1) Where claims stand allowed in an application or (2) where the nature of the decision requires further action by the examiner. The date of termination of proceedings is the date on which the appeal is dismissed or the date on which the time for appeal to the court or review by civil action (§ 1.304) expires. If an appeal to the court or a civil action has been filed, proceedings are considered terminated when the appeal or civil action is terminated. An appeal to the U.S. Court of Appeals for the Federal Circuit is terminated when the mandate is received by the Office. A civil action is terminated when the time to appeal the judgment expires.

6. Section 1.301 is revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant or any owner of a patent involved in a reexamination proceeding dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal

Circuit. The appellant must take the following steps in such an appeal: (a) In the Patent and Trademark Office file a written notice of appeal directed to the Commissioner (see §§ 1.302 and 1.304); and (b) in the Court, file a copy of the notice of appeal and pay the fee for appeal, as provided by the rules of the Court.

7 Section 1.303 is amended by revising paragraph (c) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(c) If any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an interference proceeding files notice with the Commissioner within twenty days after the filing of the defeated party's notice of appeal to the court (§ 1.302), that he or she elects to have all further proceedings conducted as provided in 35 U.S.C. 146. The notice of election must be served as provided in § 1.646.

8. Section 1.304 is revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for reconsideration or modification of the decision is filed within the time provided under § 1.197(b) or § 1.658, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences, the time for filing a cross-appeal or cross-action expires (1) 14 days after service of the notice of appeal or the summons and complaint or (2) two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later. The time periods set forth in this section are not subject to the provisions of §§ 1.136, 1.550(c) or § 1.645 (a) or (b). The Commissioner may extend the time for filing an appeal or commencing a civil action (3) for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or (4) upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect. The certificate of mailing practice of § 1.8 is not available for filing a notice of appeal or cross-appeal. See § 1.8(a)(2)(ix).

(b) The times specified in this section in days are calendar days. The times specified herein in months are calendar months except that one day shall be added to any two-month period which includes February 28. If the last day of the time specified for appeal or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.

(c) If a defeated party to an interference has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under 35 U.S.C. 141 electing to have all further proceedings conducted under 35 U.S.C. 146 (§ 1.303(c)), the time for filing a civil action thereafter is specified in 35 U.S.C. 141. The time for filing a cross-action expires 14 days after service of the summons and complaint. The certificate of mailing practice of § 1.8 is not available for filing a notice of appeal or cross-appeal. See § 1.8(a)(2)(viii).

9. Section 1.550 is amended by revising paragraph (c) to read as follows:

§ 1.550 Conduct of reexamination proceedings.

(c) The time for taking any action by a patent owner in a reexamination proceeding will be extended only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of the request effect any extension. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

*

10. Section 1.645 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.645 Extension of time, late papers, stay of proceedings.

(a) Except to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action, a party may file a motion (§ 1.635) seeking an extension of time to take action in an interference. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action. The motion shall be filed within sufficient time to actually reach the examiner-in-chief before expiration of the time for taking action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an examiner-in-chief sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall set forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proven through the witness.

(b) Any paper belatedly filed, will not be considered except upon motion (§ 1.635) which shows sufficient cause why the paper was not timely filed. See § 1.304(a) for exclusive procedures relating to belated filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or belated commencement of a civil action.

11. Section 1.658 is amended by revising paragraph (b) to read as follows:

§ 1.658 Final decision.

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within one month after the date of the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. Any reply to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. Where reasonably possible, service of the request for reconsideration shall be such that delivery is accomplished by hand or "Express Mail. The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of this section, the Board may designate the decision on the request for reconsideration as a new decision.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

12. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

13. Section 2.129 is amended by revising paragraph (c) to read as follows:

§ 2.129 Oral argument; reconsideration.

(c) Any request for rehearing or reconsideration or modification of a decision issued after final hearing must be filed within one month from the date of the decision. A brief in response must be filed within fifteen days from the date of service of the request. The times specified may be extended by order of the Trademark Trial and Appeal Board on motion for good cause.

14. Section 2.144 is revised to read as follows:

§ 2.144 Reconsideration of decision on ex parte appeal.

Any request for rehearing or reconsideration, or modification of the decision, must be filed within one month from the date of the decision. Such time may be extended by the Trademark Trial and Appeal Board upon a showing of sufficient cause.

15. Section 2.145 is amended by revising paragraphs (a), (c)(2), (c)(3), (d)(1), (d)(2), and (d)(3) and adding new paragraph (e) to read as follows:

§ 2.145 Appeal to court and civil action.

(a) Appeal to U.S. Court of Appeals for the Federal Circuit. An applicant for registration, or any party to an interference, opposition, or cancellation proceeding or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board and any registrant who has filed an affidavit or declaration under section 8 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Commissioner (§§ 2.165, 2.184), may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal:

(1) In the Patent and Trademark Office give written notice of appeal to the Commissioner (see paragraphs (b) and (d) of this section);

(2) In the court, file a copy of the notice of appeal and pay the fee for appeal, as provided by the rules of the Court.

(c)

(2) Any applicant or registrant in an ex parte case who takes an appeal to the U.S. Court of Appeals for the Federal Circuit waives any right to proceed under section 21(b) of the Act.

(3) Any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice with the Commissioner within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in § 2.119. The certificate of mailing practice of § 1.8 is not available for filing a notice of election. See § 1.8(a)(2)(viii).

(d) Time for appeal or civil action. (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (paragraph (b) of this section), or for commencing a civil action (paragraph (c) of this section), is two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, as the case may be. If a request for rehearing or reconsideration or modification of the decision is filed within the time specified in §§ 2.127(b), 2.129(c) or § 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In inter partes cases, the time for filing a cross-action or a notice of a cross-appeal expires (i) 14 days after service of the notice of appeal or the summons and complaint or (ii) two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, whichever is later. The certificate of mailing practice of § 1.8 is not available for filing a notice of appeal or cross-appeal. See § 1.8(a)(2)(ix).

(2) The times specified in this section in days are calendar days. The times specified herein in months are calendar months except that one day shall be added to any two-month period which includes February 28. If the last day of time specified for an appeal, or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under section 21(a)(1) of the Act electing to have all further proceedings conducted under section 21(b) of the Act, the time for filing a civil action thereafter is specified in section 21(a)(1) of the Act. The time for filing a cross-action expires 14 days after service of the summons and complaint.

(e) Extensions of time to commence judicial review. The Commissioner may extend the time for filing an appeal or commencing a civil action (1) for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or (2) upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect.

Date: June 21, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-16390 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3613-7]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: The EPA gives notice that the direct final rule approving the Committal State Implementation Plan (SIP) for the Rapid City, South Dakota area, submitted by the State on July 12, 1988, has been withdrawn. The notice approving the Committal SIP was published on May 15, 1989 (54 FR 20845). This approval is being withdrawn because notice was received by EPA that a party wished to submit adverse or critical comments. EPA will propose approval of the Committal SIP in another **Federal Register** notice.

Therefore, the amendment to 40 CFR Part 52 (adding a new § 52.2181) which appeared at 54 FR 20845, May 15, 1989, which was to become effective on July 14, 1989, is withdrawn.

EFFECTIVE DATE: This action will be effective on July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Jeff Houk, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202-2405, (303) 293-1759, (FTS) 564-1759.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642.

Date: June 30, 1989.

Kerrigan G. Clough,

Acting Regional Administrator.

[FR Doc. 89-16410 Filed 7-12-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL-3614-1]

Approval and Promulgation of Implementation Plans; Wisconsin

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

ACTION: Final rulemaking.

SUMMARY: In a May 31, 1988, (53 FR 19806), notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision would constitute a permanent relaxation from Wisconsin's reasonably available control technology (RACT) requirements for volatile organic compound (VOC) emissions from a miscellaneous metal parts and products dip coating line at the Gehl Company (Gehl). This facility is located in West Bend, Washington County, Wisconsin.

In today's Final Rulemaking, USEPA is disapproving this SIP revision because the State has not demonstrated that the revision will not jeopardize attainment or maintenance of the ozone standard in Washington County and in nonattainment areas in Southeastern Wisconsin.

EFFECTIVE DATE: This final rulemaking becomes effective August 14, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (Please telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1986, the Wisconsin Department of Natural Resources (WDNR) submitted as a proposed revision to the State's ozone SIP a site-specific RACT determination for a miscellaneous metal parts and products dip coating line. This line is located at the Gehl facility in Washington County, Wisconsin.

Washington County, Wisconsin, is designated attainment for ozone under section 107 of the Act, 42 U.S.C. 7407 See 40 CFR 81.350. However, recent air quality data for this County show exceedances and a violation of the ozone standard. Further, Wisconsin took credit for the RACT-level VOC emission limitations that it now seeks to relax in its demonstration of attainment for the SIP for the designated ozone nonattainment areas in Southeastern Wisconsin that the State submitted to satisfy Part D of the Act, 42 U.S.C. 7501 *et seq.* USEPA relied on that demonstration in approving the State's Part D plan for those areas. In a May 26, 1988, letter USEPA notified the Governor of Wisconsin that the SIP for Washington County, inter alia, was substantially inadequate to achieve the ozone standard.

Under the existing federally approved SIP for Wisconsin, Gehl's metal parts and products dip coating line is subject to the requirements contained in Natural Resources (NR) section 154.13(4)(m)3, Wisconsin Administrative Code, which limits the VOC content of the coating used to not more than 4.8 pounds per gallon of coating, excluding water, by December 31, 1982, and 3.5 pounds per gallon of coating, excluding water, by December 31, 1985. USEPA approved these rules on January 11, 1980 (45 FR 2319), and June 21, 1982 (47 FR 26622).

WDNR reported that Gehl's spray booths are meeting the 3.5 pounds of VOC per gallon of coating, excluding water, limit. An air-dried coating is applied in the dip tank which presently meets the interim limitation of 4.8 pounds of VOC per gallon of coating, excluding water, but does not meet the final limitation of 3.5 pounds of VOC per gallon of coating, excluding water. Gehl has maintained that it is not technically and economically feasible to meet the final limitation for the dip tank. It has requested an alternative limitation for the dip tank coating of 4.8 pounds of VOC per gallon of coating, excluding water.

WDNR's submittal discusses the technical and economic feasibility of six types of compliant coating, the economic feasibility of add-on control, and the effect of the relaxation on attainment and maintenance of the ozone national ambient air quality standards (NAAQS). WDNR's analysis is discussed in USEPA's technical support document dated March 30, 1987. This document is available in the Region V Office noted above.

In a May 31, 1988, Federal Register (53 FR 19806) notice, USEPA proposed to disapprove this revision to Wisconsin's ozone SIP primarily because the State has not demonstrated that the revision will not jeopardize attainment or maintenance of the ozone standard in Washington County and in the non-attainment areas in Southeastern Wisconsin.

Comments on this notice of proposed rulemaking were received from Gehl and from the WDNR. These comments and USEPA s response are provided below.

Gehl's June 27 1988, Comments

Comment 1. The Increase In VOC Emissions Above RACT Is Negligible. If USEPA approved the variance, the "additional emissions" resulting from the variance would be 4.32 tons of VOC per year (TPY). (See, WDNR Memo of August 14, 1987.) This amount is negligible by any measure.

The WDNR's most recent Reasonable Further Progress (RFP) Report for the year 1986, issued January 1988, indicates that 61,147 TPY of VOCs were emitted in the Southeast Wisconsin Ozone nonattainment area in the year 1986. The 4.32 TPY excess above RACT (if transfer efficiency of Gehl's dip tank is not considered) proposed by Gehl would be 0.007 percent of the total VOCs emitted. Similarly, for 1987 non-RACT stationary sources reported 3,947 tons.

USEPA's Response. USEPA does not consider any increase in VOC emissions to be "negligible" The same argument could be made for the majority of individual sources in the 61,147 TPY inventory; and, thus, if relaxations were approved on this basis, significant reductions in the Southeastern Wisconsin ozone levels would not occur.

Comment 2. Granting the Revision Results in Fewer, Not Greater, VOC Emissions. The only alternative to using 4.8 paint (pounds of VOC per gallon of coating, excluding water) in the dip tank, which would allow Gehl to continue operations in West Bend, is to increase its spray booth operations, because lower VOC paint cannot be used in dip tank operations. Tests at the Gehl Company, witnessed by the WDNR, showed that the spraying process has a transfer efficiency of 21.6 percent when using 3.5 paint (pounds of VOC per gallon of coating, excluding water). The transfer efficiency for the dip tank, however, is 87.6 percent with 4.8 paint.

The result of the lower transfer efficiency for spraying is that increasing spraying with 3.5 paints would actually

result in increased VOC emissions of 11.0 TPY. Since increased spraying with 3.5 paint is allowable, denying the variance would be counterproductive.

USEPA's Response. Because USEPA generally does not place restrictions on production in approving VOC RACT limitations, an increase in the allowable emission rate (from 3.5 pounds of VOC per gallon of coating, excluding water to 4.8 pounds of VOC per gallon coating, excluding water) represents an increase in allowable emissions. Obviously, in such a situation it is possible for actual emissions to increase, based on the actual amount of coating used. Although the commentor states that granting the revision will result in fewer emissions, this has not been demonstrated to be the case. First, Gehl has provided no support for its claim that the transfer efficiency of its dip tank is 87.6 percent. In addition, it has not been demonstrated that switching to spray painting is the only feasible alternative to using paint in the dip tank with a VOC content of 4.8 pounds of VOC per gallon of coating, excluding water.

Comment 3. USEPA's Concern that Granting the Variance May Impact Upon the Timely Attainment of the SIP is Totally Unfounded.

The stated basis for denying the SIP revision was that the State had failed to show that the SIP for Washington County and nonattainment areas will still assure timely attainment and maintenance, despite the relaxation requested. In the USEPA's technical support document of March 30, 1987 the USEPA noted:

> For this reason, the State must demonstrate that any SIP relaxation in Washington County, along with the ozone precursor emissions from the other counties in the demonstration areas, does not contribute significantly to the downwind ozone standard violation in Southeastern Wisconsin. WDNR could do this by updating the growth margin contained in the 1982 ozone SIP and showing that the emissions from the dip tank above the SIP-allowable, can be offset using the updated growth margin.

As noted above, the "excess emission" resulting from the variance is a mere 4.32 TPY. Yet, at the same time, the RFP report for 1986 demonstrates that Wisconsin is substantially ahead of its ozone plan. In fact, the report indicates that Wisconsin is 2,668 tons ahead of its target levels for 1986 (the last year for which data is available). It is totally inconceivable that, given the progress made to date, the additional 4.32 TPY will have any impact upon the State's ability to remain on or ahead of its SIP target for ozone.

USEPA's Response. The March 30, 1987 technical support document provided an evaluation of one possible means of demonstrating that the revision will not jeopardize attainment or maintenance of the ozone standard. On May 26, 1988, USEPA Notified the Governor of Wisconsin that the SIP for this area was substantially inadequate to achieve the ozone standard. Therefore, a demonstration based on the growth margin contained in Wisconsin's 1982 plan is no longer adequate.

Comment 4. Gehl has Demonstrated Compliance with the Terms of the Proposed Variance to date. Under the terms of the proposed variance, Gehl would be only allowed to utilize the dip tank, provided that VOC emissions not exceed 4.8 pounds per gallon; and the total emissions from the facility were limited to 12.88 TPY. Thus far, Gehl has remained in compliance with this requirement.

USEPA's Response. The fact that Gehl is in compliance with the terms of the variance has no bearing on whether the revision can be approved.

Comment 5. Other Alternatives Remain Technically and Economically Unfeasible. In its March 30, 1987 technical support document, the USEPA questioned the technical and economic feasibility of alternatives. The WDNR and Gehl responded with additional information, copies of which were forwarded to USEPA on October 15, 1987 Given the statements made in USEPA's May 31, 1988, proposed decision, we understand the disapproval was not based upon a failure to show technical and economic infeasibility. Nevertheless, Gehl Company wishes to assure the USEPA that in fact, other options remain technically and economically infeasible.

USEPA's Response. USEPA does not agree that other alternatives are technically or economically infeasible (as discussed in the March 30, 1987 technical support document). However, the proposed disapproval was not based on failure to make such a demonstration, because RACT regulations were not required by USEPA in Washington County as a part of Wisconsin's 1979/1982 Milwaukee ozone SIP Therefore, the only demonstration required is that the revision will not jeopardize attainment or maintenance of the ozone standard.

II. WDNR's June 28, 1988, Comments

Comment 1. Emissions from painting operations at the Gehl Company were included in the 1980 base year for Wisconsin's 1982 SIP revision. The SIP projected that at RACT in 1987 (assuming 1980 annual throughput), the dip tank emissions would be reduced to 9.3 tons; and the paint reducer solvent would be reduced to 2.99 tons. The SIP also included a 10 percent growth accommodation between 1980 and 1987 Thus, if allocated on a per source basis, the Gehl 1987 dip tank and reducer solvent emissions would be $(9.3+2.99\times1.1)$ or 13.52 TPY. Since the variance limits these emissions to 12.8 tons, the variance limits are, in fact, less than the SIP incorporated demonstration of attainment limit.

USEPA's Response. Wisconsin's comment that the variance emission limit, 12.8 tons of VOC per year from the dip tank and reducer solvent emissions, is below the SIP's projected with-growth emission rate, 13.52 tons of VOC per year, is misleading. Wisconsin has been using the assumed 10 percent source growth to accommodate other new source growth. If the assumed growth is allocated to Gehl Company, then double growth (Gehl Company and unspecified new sources) may be allowed.

Comment 2. The FY 1986 RFP report which Wisconsin submitted to USEPA on December 23, 1987 showed that Wisconsin is ahead of the schedule predicted in the 1982 plan in reducing ozone precursor emissions.

USEPA's Response. Although Wisconsin is technically "ahead" of the projected emission reduction on the RFP curve, monitored 1987 and 1988 ozone concentrations indicate that adequate progress towards ozone attainment is not being made. USEPA has issued a post-1987 SIP call. On May 26, 1988, Valdas V Adamkus of the USEPA notified Governor Tommy G. Thompson that the Wisconsin SIP is substantially inadequate to achieve the NAAQS for ozone in Kenosha County, Kewaunee County, Manitowoc County, Ozaukee County, Racine County, Sheboygan County, Walworth County, Washington County, and Waukesha County.

Comment 3. WDNR fails to see how USEPA can conclude that excess VOC emissions of 4.32 TPY might jeopardize attainment or maintenance of the ozone standard.

USEPA s Response. In light of 1987 and 1988 monitored ozone concentrations in this area, USEPA will not accept any de minimis impact arguments, particularly when new source growth and other SIP variances have been allowed under Wisconsin's SIP

Comment 4. Sources of this size are not even required to apply RACT controls in many areas of the Nation.

USEPA's Response. Wisconsin chose to require RACT for sources of this size in Washington County as one element in

its demonstration of attainment of the ozone standard in Southeastern Wisconsin.

Comment 5. The Gehl Company is located in West Bend. For this facility to influence the Slinger, Horicon and Fond du Lac monitors, the winds must be from 50 degrees northeast, 95 degrees east, and 150 degrees southeast, respectively. A summary of the ozone data measured at these three stations and concurrent wind observations show that only the Fond du Lac monitor would appear to be potentially influenced by VOC emissions from the Gehl Company.

USEPA's Response. The State of Wisconsin is incorrectly concentrating on impacts at the Slinger, Horicon and Fond du Lac monitoring sites, while ignoring other monitoring sites, as well as other nonmonitored locations. As noted in Wisconsin's 1982 ozone SIP submission, Gehl Company and other Washington County emissions (as well as those from the rest of the Milwaukee demonstration area) can affect air quality in areas with currently monitored ozone standard violations, such as Ozaukee County. The State's conclusions in its comments would not be the same if the air quality from Ozaukee, Milwaukee, Manitowoc, Sheboygan, Kewaunee and other downwind Counties were considered.

USEPA is disapproving this SIP revision because the State has not demonstrated that the VOC emissions from Gehl will not jeopardize attainment or maintenance of the ozone standard in Washington County or other nonattainment areas in Wisconsin.

Miscellaneous

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 11, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbon, Ozone, Carbon monoxide, Intergovernmental offices.

Authority: 42 U.S.C. 7401–7642.

Date: June 28, 1989.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

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

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2585 is added to read as follows:

§ 52.2585 Control strategy: Ozone.

(a) Disapproval—On November 6, 1986, the Wisconsin Department of Natural Resources submitted as a proposed revision to the State's ozone State Implementation Plan a site-specific reasonably available control technology determination for a miscellaneous metal parts and products dip coating line. This line is located at the Gehl facility in Washington County, Wisconsin. In a May 31, 1988 (53 FR 19806), notice of proposed rulemaking, United States Environmental Protection Agency proposed to disapprove this site-specific revision to the Wisconsin State Implementation Plan for ozone.

[FR Doc. 89-16406 Filed 7-12-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3615-1]

Indiana: Final Authorization of State; Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA or the ACT"). The Environmental Protection Agency (EPA) has reviewed Indiana's application and has reached a decision, subject to public review and comment, that Indiana's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Indiana to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA").

DATES: Final authorization for Indiana's application shall be effective September 11, 1989, unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on Indiana's Final authorization must be received by 4:30 p.m. on August 14, 1989.

ADDRESSES: Copies of Indiana's program revision application are available from 8:30 a.m., to 4:30 p.m., at the following addresses for inspection and copying: Indiana Department of Environmental Management, Hazardous Waste Management Branch, 105 South Meridian Street, Indianapolis, Indiana 46206. Contact: Michael Dalton, (317) 232-8884; U.S. EPA Headquarters Library, PM211A, 401 M Street, SW Washington, DC 20460, Phone: (202) 382-5926; U.S. EPA Region V Waste Management Division, Office of RCRA, 230 South Dearborn Street, Chicago, Illinois 60604, Contact: George Woods (312) 886-6134. Written comments should be sent to George Woods, Indiana Regulatory Specialist, U.S. EPA Region V Waste Management Division, Office of RCRA, 230 South Dearborn Street, 5HR-JCK-13, Chicago, Illinois 60604, (312) 886-6134 [FTS 8-886-6134].

FOR FURTHER INFORMATION CONTACT: George Woods, Indiana Regulatory Specialist, U.S. Environmental Protection Agency, Region V Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR-JCK-13, 230 South Dearborn, Chicago, Illinois 60604, (312) 886-6134 [FTS 886-6134].

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is at least equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this latter option receives "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260–266 and 270.

B. Indiana

Indiana initially received final authorization for its base RCRA program on January 31, 1986, (51 FR 3953–3954, January 31, 1986). Indiana received authorization for revisions to its program on December 31, 1986, (51 FR 39752–39754, October 31, 1986), and on January 19, 1988, (53 FR 128–129, January 5, 1988). On January 12, 1988, Indiana submitted a revision application seeking authorization for a revision to its program for the Closure, post closure, and financial responsibility: Settlement Agreement Requirements promulgated May 2, 1986.

EPA has reviewed Indiana's application and has made a final decision, subject to public review and comment, that Indiana's hazardous waste management program revision does reflect the State's equivalency with the Federal program and satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization to Indiana for its additional program revisions. The public may submit written comments on EPA's immediate final decision up until August 14, 1989. Copies of Indiana's application for this program revision are available for inspection at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Indiana's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Indiana will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	State regulations
Closure, Post closure, and Financial Responsibility Settlement Agreement, May 2, 1986, 51 FR 16443–16459.	320 IAC 4.1-1-6; 320 IAC 4.1-1-1-7· 320 IAC 4.1-21-1 through 320 IAC 4.1-21-10; 320 IAC 4.1-22-1 through 320 IAC 4.1-22-3; 320 IAC 4.1-22-5 through 320 IAC 4.1-22-9; 320 IAC 4.1-22-12 through 320 IAC 4.1-22-19; 320 IAC 4.1-22-22; 320 IAC 4.1-22-24; 320 IAC 4.1-22-27; 320 IAC 4.1-22-31 through 320 IAC 4.1-22-32; 320 IAC 4.1-24-6; 320 IAC 4.1-34-5; 320 IAC 4.1-36-3; 320 IAC 4.1-38-3; 320 IAC 4.1-46-1 through 320 IAC 4.1-46-10; 320 IAC 4.1-47-2 through 320 IAC 4.1-47-6; 320 IAC 4.1-47-8; and 320 IAC 4.1-49-6

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of Indiana's authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on January 31, 1986, and on January 19, 1988, the effective dates of Indiana's final authorizations for the RCRA base program and for the RCRA Cluster I revision.

Indiana is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Indiana's Authorization

Prior to the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, at one point, adopt HSWA-related provisions as State law to retain final authorization. In the interim, the HSWA provisions apply in authorized States.

As a result of the HSWA, there is a dual State/Federal regulatory program in Indiana. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Indiana until the State is authorized for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized, in addition to the State permits. Any State requirement that EPA has reviewed, approved, and determined to be more stringent than a HSWA provision also remains in effect; thus the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Indiana.

Indiana is not being authorized now for any requirement implementing HSWA. Once EPA authorizes Indiana to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its affect on authorized States (50 FR 28702–28755, July 15, 1985).

D. Decision

I conclude that Indiana's application for this program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana final authorization to operate its hazardous waste program as revised. Indiana now has responsibility

for permitting treatment, storage, and disposal facilities within its borders and carrying out the other aspects of the RCRA program. This responsibility is subject to the limitations of this program revision application and previously approved authorities. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification

EPA codifies authorized State programs in Part 272 of 40 CFR. The purpose of codification is to provide notice to the public of the scope of the authorized program in each State. Codification of the Indiana program will be completed at a later date.

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

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act: Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: May 9, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-16420 Filed 7-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-611; RM-6494]

Radio Broadcasting Services; Rockland, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 277B to Rockland, Maine, and modifies the license for Station WMCM-FM, Channel 277B1, to specify operation on Channel 277B. This action is taken in response to a petition filed by Passamaquoddy Broadcasting, Inc., licensee of Station WMCM-FM. Canadian concurrence has been obtained for the allotment of Channel 277B at Rockland. The coordinates for Channel 277B are 44-07-34 and 69-08-19. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 21, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-611, adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine is amended by removing Channel 277B1 and adding Channel 277B at Rockland.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-16371 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-506; RM-6446]

Radio Broadcasting Services; Martin, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the South Dakota State Board of Directors for Educational Television, allots Channel 273C1 to Martin, South Dakota, as the community's first local FM service. Channel 273C1 can be allotted to Martin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 43-10-30 and West Longitude 101-44-12. With this action, this proceeding is terminated.

DATES: Effective August 21, 1989. The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-506, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended for South Dakota, by adding the following entry, Martin, Channel 273C1.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16373 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-196; RM-6212, RM-6451, RM-6452]

Radio Broadcasting Services; Haltom City, Greenville and Weatherford, TX

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document allots Channel 227C2 to Haltom City, Texas, as that community's first local FM service, at the request of Bluebonnet Radio Broadcasters, Inc., A site restriction of 8.8 kilometers (5.5 miles) north of the community is required. The coordinates are 32-52-38 and 97-14-05. This action also denies counterproposals filed by First Greenville Corp., for Greenville and Weatherford, Texas (RM-6451) and Crest Communications Company for Weatherford, Texas (RM-6452). With this action, this proceeding is terminated.

DATES: Effective August 21, 1989; The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-196, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas, by adding Haltom City, Channel 227C2.

Karl A. Kensinger,

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

[FR Doc. 89-16374 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-324; RM-6368]

Radio Broadcasting Services; Fort Bridger, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 257A to Fort Bridger, Wyoming, as that community's first local FM service, at the request of Jim Dunker. *See* 53 FR 27182, July 19, 1988. The channel allotment can be made in compliance with the Commission's minimum distance separation requirements, at coordinates 41-19-06 and 110-22-54. With this action, this proceeding is terminated.

DATES: Effective August 21, 1989; The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-324, adopted June 15, 1989, and released July 6, 1989. The full text of this Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wyoming, by adding Fort Bridger, Channel 257A.

Karl A. Kensinger,

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

[FR Doc. 89-16375 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-319; RM-6247]

Radio Broadcasting Services; Opelika, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 244A to Opelika, Alabama, as that community's first local FM service, in response to a petition filed by Ronald H. Livengood. See 53 FR 26612, July 14, 1988. Coordinates used for Channel 244A at Opelika are 32-38-11 and 85-20-44. With this action, the proceeding is terminated.

EFFECTIVE DATES: Effective August 21, 1989. The window period for filing applications on Channel 244A at Opelika, Alabama, will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division; FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-319, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Alabama, by adding Opelika, Channel 244A.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16369 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-495; RM-6421]

Radio Broadcasting Services; Montauk, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Nanette Markunas, allots Channel 235A to Montauk, New York, as the community's second local FM service. Channel 235A can be allotted to Montauk in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.1 miles) southwest to avoid a short-spacing to Station WOCB(FM), Channel 235B, West Yarmouth, Massachusetts. The coordinates for this allotment are North Latitude 41-01-00 and West Longitude 72-00-00. Canadian concurrence has been received since Montauk is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATES: Effective August 21, 1989. The window period for filing applications will open on August 22, 1989, and close on September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-495, adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended for Montauk, New York, by adding Channel 235A.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16372 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 90493-9141]

RIN 0648-AC15

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement a partial approval of Amendment 3 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and to remove inconsistencies that have developed in implementing Amendment 2. This rule (1) prohibits the use of drift gill nets for Gulf migratory group king and Spanish mackerel and for Atlantic migratory group Spanish mackerel, (2) states more clearly the scope of each management measure, (3) clearly differentiates between commercial and recreational fisheries, (4) makes minor changes that are necessary to reflect the previous implementation of Amendment 2 to the FMP and (5) clarifies or corrects minor ambiguities, inconsistencies, and errors in the regulations. The intended effects of this rule are to prevent the adverse impacts on the users of traditional gill net and hook-and-line gear where, under necessary quota restrictions on overfished stocks, the use of drift gill nets would contribute to early closures of the commercial fisheries, such closures being the likely result of allowing the introduction of drift gill nets into the commercial fisheries for overfished stocks of king and Spanish mackerel; and to clarify the regulations.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mark F Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 3 to the FMP as submitted by the Councils, proposed to: (1) Prohibit the use of purse seines for the Atlantic migratory group of king mackerel; (2) prohibit the use of drift gill nets for all coastal migratory pelagic species; (3) prohibit the use of run-around gill nets for the Atlantic migratory group of king mackerel; (4) add an objective to minimize waste and bycatch in the fishery; (5) update the habitat section of the FMP and (6) evaluate the effects of the FMP on vessel and crew safety. Background and analysis of these measures were included in the proposed rule (54 FR 14256, April 10, 1989) and are not repeated here.

Based upon the most recent assessment of the mackerel stocks and comments received during Secretarial review of the amendment and the proposed rule, Amendment 3 has been partially approved. Specifically, NOAA has approved a prohibition on the use of drift gill nets in fisheries for Gulf group king mackerel and Gulf and Atlantic groups of Spanish mackerel. These three groups are overfished, necessitating restrictive quotas to protect and rebuild these stocks. Resulting commercial quotas have been so low that existing users with traditional gears (hook-and-line and run-around gill nets) already take the entire quota. Under these circumstances, NOAA agrees with the Councils that it would be unfair to allow the introduction of drift gill nets (a gear presently not used in commercial fisheries for these three groups) in an already stressed industry. Further, the fishing potential of drift gill nets is such that quota overruns could occur before closures could be effected, thus conservation purposes would not be served. This prohibition is approved with the proviso that the Councils will reconsider the use of this gear when the stocks recover and the other gear types

cannot take the entire quota. NOAA has also approved the updated habitat section of the FMP as well as the vessel safety considerations.

Disapproved measures are those that would prohibit the use of nets for harvesting Atlantic group king mackerel and other coastal pelagic species and the addition of a new objective. Disapproval was based upon insufficient justification for the proposed actions, and non-compliance with the Magnuson Act and other applicable law as discussed below. The disapproved measures are severable and do not disrupt the continuity of the approved portions of the amendment.

Comments and Responses

Seventy-one submissions were received reflecting the comments of 201 people. Sixty submissions supporting the proposed rule were received from constituents, primarily of the recreational sector, including 35 form letters and two petitions bearing 119 and seven signatures, respectively. A state marine resource department and a state fisheries commission also provided supporting comments. Eleven submissions opposing the proposed rule were received, primarily from the commercial sector. Non-supportive comments were also contained in a letter from a federal agency and in a minority report signed by four members of the South Atlantic and three members of the Gulf of Mexico Fishery Management Councils. Comments are addressed in three categories that follow:

Prohibition of Nets

Comments. Opposition to the net prohibitions outlined in the proposed rule focused on the appropriateness of eliminating net gears from the commercial fishery for Atlantic group king mackerel. Collectively, opponents contended that removal of net gears from this fishery (1) is inconsistent with the best scientific information available (national standard 2) because the 1989 Stock Assessment Report concluded that the Atlantic group of king mackerel is not overfished; (2) is unjustified where the commercial quota proposed for the 1989/90 fishing year is sufficiently high to forestall an early closure; (3) is inconsistent with national standard 1 because historical landings show the hook-and-line sector alone cannot take the commercial quota proposed, thereby preventing optimum yield (OY) from the resource; (4) unfairly removes net fishermen from competition for an available resource, contrary to national standard 4; (5) amounts to a reallocation of the available resource among commercial fishermen, which is unrelated to conservation objectives, also contrary to national standard 4; (6) amounts to an unwarranted regulation against efficiency, thereby depriving the public of less expensive fishery products, in opposition to national standard 5; (7) ignores reasonable regulatory alternatives that would allow efficient net gears to continue to operate in the fishery consistent with the objectives of the current management regime; and (8) eliminates variation in methods of harvesting Atlantic group king mackerel and selectively inflicts an inordinate economic burden on affected net fishermen, fish houses, and coastal communities reliant on the resource, contrary to national standards 6 and 7 With respect to the drift gill net prohibition in general, commentors suggested it was inappropriate to extend that prohibition to other coastal migratory species that are not overfished and to prevent the retention of such species in other drift net fisheries in implementing a drift net prohibition, a provision which they regarded as wasteful.

Response. NOAA agrees with the comments received in opposition to the net prohibitions proposed for the Atlantic group king mackerel commercial fishery. The prohibition of net gears (drift and run-around gill nets, and purse seines) from the Atlantic group king mackerel fishery is not justified. As reflected in Amendment 3, the prohibition on the use of drift gill nets, purse seines, and run-around gill nets in the Atlantic group king mackerel fishery was proposed primarily because it appeared that the group was overfished and, under necessary quota reductions, the continued use of these net gears would negatively impact traditional hook-and-line participants by contributing to early closure of the commercial fishery. Subsequent to the formal submission of Amendment 3, the 1989 Stock Assessment Panel determined that the Atlantic migratory group of king mackerel is not overfished. Therefore, this part of the supporting rationale is no longer supported by the best and most recent scientific information available. With respect to the remaining part of the rationale, the Councils' proposed increase in TAC for the 1989/90 fishing year supports a commercial quota that appears sufficient to allow harvest by both hook-and-line and net fishermen without an early closure. Last year's estimated total commercial harvest is well below the proposed allocation for 1989/90 fishing year. Absent the unusual environmental conditions that contributed to last year's heavy commercial catch early in the season, catch returned to normal levels this past April. Thus, continued use of net gear would not negatively impact traditional hook-and-line participants this year. Further, dedicating the commercial quota to the hook-and-line sector almost assures that the total commercial quota will not be harvested, since landings show the hook-and-line fishery has historically been unable to take the amount of fish allotted to the commercial sector. Under the FMP the TAC from which allocations and quotas are derived represents the annual specification of OY. Therefore, this is inconsistent with national standard 1 and the FMP in that it would prevent achievement of OY. Prohibiting net fishermen from taking what would otherwise be surplus fish is also unfair and inequitable as measured against national standard 4. Therefore, NOAA has determined that approval of this ban on net fishing would not comply with the provisions of the Magnuson Act. Selective restrictions, instead of an outright prohibition on the entire net fishery appear feasible and would be justifiable on the record developed by the Councils. Such an action would allow the hook-and-line and net fishermen to coexist. Such measures, if timely submitted, could very well be implemented prior to the commencement of the 1990/91 fishing year. Therefore, NOAA suggests that the Councils consider this course of action. A prohibition against all types of net fishing for Atlantic king mackerel is not supported by the current record.

As noted above, NOAA approves the prohibition of drift gill nets from the fisheries for Gulf migratory group king mackerel and Gulf and Atlantic groups of Spanish mackerel. Rationale for the prohibitions is essentially the same as that supporting the prohibition of purse seines from these same overfished resources as approved in Amendment 2 (54 FR 23836, June 25, 1987). The approved net prohibitions will not lead to any substantive losses necessitating action under E.O. 12630 because drift gill nets are not known to operate in the three overfished mackerel fisheries. In this regard, it is significant that the public comment on the proposed rule included no criticism by any affected persons of the elimination of this gear in these three fisheries. In implementing the drift net prohibition for these groups, NOAA has maintained the provision that prevents other drift net fisheries from retaining incidentally caught king and Spanish mackerel because that provision is necessary for the enforceability of the approved measure.

New FMP Objective

Comment. The opposition recommended rejection of the newly proposed FMP objective because of its inconsistency with national standard 5. They believed that this new objective to minimize waste would unfairly elevate market value of landed fish while removing efficient gears from the fishery.

Response. NOAA disapproved the addition of the new objective, not because of disagreement with the concept of eliminating waste and bycatch in the fishery, but because of the Councils' characterization of economic waste in the objective. The amendment describes the differences between ex-vessel values of catches by hook-and-line and net gears as economic waste, implying that the price differential is related solely to quality differences. However, the price differential also may be related to short-term supply fluctuations. In that regard, the implicit assumption that lower ex-vessel prices translate into economic losses is incorrect. Such notion disregards the concept of consumer surplus and the difference between total revenue and producer surplus. In other words, the way the objective deals with economic waste could lead toward inefficient methods of production, which would be inconsistent with national standard 5 of the Magnuson Act.

Other Concerns

Comments. Proponents of the broad prohibition of drift gill nets proposed in the amendment cited numerous other concerns with this gear as generally supportive of the measure, including localized overfishing; negative impacts on endangered and threatened sea turtles; waste of incidental catch; bycatch of recreational fishes; disruption of migration, schooling, and spawning behavior; ghost fishing; habitat damage; displacement of traditional fishermen and gear; navigation hazard; gear conflict; impact on ex-vessel price; and lower quality of net caught fish.

Response. As acknowledged in Amendment 3, many of these concerns over the use of drift gill nets are the subject of data which are either limited, nonexistent, or conflicting. NOAA concurs with the Councils' interpretation and therefore concludes that the prohibition of net gear based solely on these concerns, singularly or collectively, is not justified, particularly when alternatives for the reasonable regulation of the gear could resolve many of these concerns.

Changes From the Proposed Rule

For the reasons indicated above, (1) prohibitions on the use of purse seines (§§ 642.7(e) and 642.24(b)) and on the use of run-around gill nets (§§ 642.7(y) and 642.24(a)(4)) to fish for Atlantic migratory group king mackerel are not included in this final rule, (2) the allowance of 0.4 million pounds of Atlantic migratory group king mackerel that may be harvested by purse seines (§ 642.21(a)(2)) is retained, and (3) the prohibition on the use of drift gill nets (§ 642.24(a)(3)) is revised so that it applies only to Gulf migratory group king mackerel and to the Gulf and Atlantic migratory groups of Spanish mackerel.

Classification

The Secretary of Commerce determined that the approved portion of Amendment 3 is necessary for the conservation and management of the coastal migratory pelagic resources and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect 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.

The Councils prepared a regulatory impact review for Amendment 3. A summary of the economic effects was included in the proposed rule. Those effects are significantly mitigated by partial disapproval of Amendment 3.

An initial regulatory flexibility analysis—part of the Councils' regulatory impact review—concluded that the proposed rule, if adopted, would have significant effects on small entities. However, in disapproving parts of Amendment 3, those effects have been substantially reduced. Indeed, because drift gill nets have not been used in the fishery for Gulf migratory group of king mackerel and are not known to be used in the Spanish mackerel fisheries, the General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule implementing the partial approval will not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not prepared.

The Councils determined that the proposed rule for implementing Amendment 3 would be implemented in a manner that was consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana (Georgia and Texas do not have approved coastal zone management programs) and submitted their determination for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. North Carolina, South Carolina, Florida, and Louisiana agreed with their determination. Alabama and Mississippi did not comment within the statutory time period and, therefore, consistency is automatically implied. All measures implemented by this final rule were encompassed within Amendment 3 as submitted. Therefore, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) finds the determination of consistency remains applicable.

The Councils prepared an environmental assessment (EA) for Amendment 3 and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: July 7 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. In § 642.1, paragraph (b) is revised to read as follows:

§ 642.1 Purpose and scope.

(b) This part governs conservation and management of coastal migratory pelagic fish off the Atlantic coastal States south of the Virginia/North Carolina border and off the Gulf of Mexico coastal States.

3. In § 642.2, the definition for *Commercial fisherman* is removed; in the definition for *Charter vessel crew*, the word "captain" is revised to read "operator"; in the definition for *Regional Director*, the semicolon after the ZIP code is removed and a comma is added in its place; in the definition for *Species*, the words "refers to" are removed and the word "means" is added in their place; the definition for *Charter vessel* is revised; and new definitions for *Commercial fishery, Drift gill net, Gill net, Recreational fishery*, and *Run-around gill net* are added in alphabetical order to read as follows:

§ 642.2 Definitions.

Charter vessel (includes a headboat) means a vessel whose operator is licensed by the U.S. Coast Guard to carry paying passengers and whose passengers fish for a fee. A charter vessel with a permit to fish on a commercial allocation for king or Spanish mackerel is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

Commercial fishery means the harvesting of king or Spanish mackerel by a person fishing under the annual vessel permit specified in § 642.4(a)(1).

Drift gill net means a gill net having a float line that is more than 1,000 yards in length; or any gill net having a float line that is 1,000 yards or less in length, other than a run-around gill net, that, when used, drifts in the water, that is, is not anchored at both ends, whether or not it is attached to a vessel.

*

Gill net means a wall of netting, suspended vertically in the water by floats along the top and weights along the bottom, that entangles the head, gills, or other body parts of fish that attempt to pass through the meshes.

Recreational fishery means the harvesting of king or Spanish mackerel by a person fishing under a bag limit.

Run-around gill net means a gill net with a float line 1,000 yards or less in length that, when used, encloses an area of water.

4. In § 642.4, in paragraph (a)(1), the word "which" before "fishes" is revised to read "that" and the phrase "in the EEZ" is added after the word "mackerel"; in paragraph (a)(3) the word "which" before fishes is revised to read "that" and the phrase "in the EEZ" is added after the word "fish"; in paragraphs (b)(3) and (c), the words "or his designee" after "Regional Director" are removed; and in paragraph (a)(2), the second sentence is revised to read as follows:

§ 642.4 Permits and fees.

(a)

(2) A charter vessel in the EEZ must adhere to the applicable bag limit while under charter.

5. In § 642.5, in paragraph (a)(2), a comma is added after the word "fish" and the words "as defined" are removed; and paragraphs (a) introductory text, (b) introductory text, (c) introductory text, and (e) are revised to read as follows:

§ 642.5 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* An owner or operator of a fishing vessel that fishes for or lands coastal migratory pelagic fish for sale, trade, or barter in or from the EEZ or adjoining State waters, or whose vessel is issued a permit under § 642.4(a)(1), and who is selected to report, must provide the following information regarding any fishing trip to the Science and Research Director:

(b) *Charter vessel owners and operators.* An owner or operator of a charter vessel that fishes for or lands coastal migratory pelagic fish in or from the EEZ or adjoining State waters, or whose vessel is issued a permit under § 642.4(a)(3), and who is selected to report, must maintain a daily fishing record on forms provided by the Science and Research Director. These forms must be submitted to the Science and Research Director weekly and must provide the following information:

(c) *Dealers and processors.* A person who receives coastal migratory pelagic fish, or parts thereof, by way of purchase, barter, trade, or sale from a fishing vessel or person that fishes for or lands such fish, or parts thereof, in or from the EEZ or adjoining State waters, and who is selected to report, must provide the following information to the Science and Research Director at monthly intervals, or more frequently if requested, and on forms provided by the Science and Research Director:

(e) *Availability of fish for inspection.* An owner or operator of a commercial, charter, or recreational vessel or a dealer or processor shall make any coastal migratory pelagic fish, or parts thereof, available, upon request, for inspection by the Science and Research Director for the collection of additional information or by an authorized officer.

6. In § 642.6, paragraph (a) is revised to read as follows:

§ 642.6 Vessel identification.

(a) *Official number.* A vessel engaged in fishing for king or Spanish mackerel under a commercial allocation and the permit specified in § 642.4(a)(1) must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

7 In § 642.7 in paragraph (k), a comma is added after the phrase "under a commercial allocation" and the reference and word "§ 642.24(c) and" are added between the word "in" and the reference "§ 642.28(c)(2)"; in paragraph (m), a comma is added after the phrase "under a commercial allocation"; in paragraph (n), after the reference to "§ 642.28" the comma and the phrase "except as provided for under § 642.21 (a) and (c)" are removed; in paragraph (v), the word "which" is revised to read "that"; paragraphs (g), (j), (q), and (r) are revised; and new paragraph (x) is added to read as follows:

§ 642.7 Prohibitions.

(g) Falsify or fail to report information, as specified in §§ 642.4 and 642.5.

(j) Purchase, sell, barter, trade, or accept in trade king or Spanish mackerel harvested in the EEZ from a specific migratory group or zone for the remainder of the appropriate fishing year, specified in § 642.20, after the allocation or quota for that migratory group or zone, as specified in § 642.21 (a) or (c), has been reached and closure has been invoked, as specified in

§ 642.22(a). (This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by dealers and processors.)

(q) Possess or land Spanish mackerel or cobia without the head and fins intact, as specified in § 642.23(c).

(r) Land, consume at sea, sell or possess, in or from the EEZ, king or Spanish mackerel harvested under a recreational allocation set forth in § 642.21 (b) or (d) after the bag limit for that recreational allocation has been reduced to zero under § 642.22(b).

(x) Fish with a drift gill net for king mackerel from the Gulf migratory group or for Spanish mackerel from the Gulf or Atlantic migratory group or possess any king or Spanish mackerel aboard a vessel with a drift gill net aboard, as specified in § 642.24(a)(3).

8. In § 642.21, a new paragraph (c)(3) is added to read as follows:

§ 642.21 Allocations and quotas.

(c)

(3) A fish is counted against the commercial allocation when it is first sold.

9. In § 642.22, the heading, the second sentence of paragraph (a), and paragraph (b) are revised to read as follows:

§ 642.22 Closures and bag limit reductions.

(a) The notice of closure for an allocation or quota specified under § 642.21 (a) or (c) will also provide that the purchase, barter, trade, and sale of king or Spanish mackerel taken in the EEZ from the closed area after the closure is prohibited for the remainder of that fishing year.

(b) The Secretary, after consulting with the Councils and by publication of a notice in the **Federal Register**, will reduce to zero the bag limit for the king or Spanish mackerel recreational fishery in the EEZ for a particular migratory group when the allocation under § 642.21 (b) or (d) for that migratory group has been reached or is projected to be reached and when that group is overfished. After such reduction, a king or Spanish mackerel caught in the EEZ from that group must be returned immediately to the sea, and possession of king or Spanish mackerel of that group in or from the EEZ on board a vessel in the recreational fishery is prohibited.

10. In § 642.23, in paragraph (a)(1), the word "or" between the words "recreational" and "commercial" is revised to read "and"; in paragraph (a)(2), the phrase "in the commercial fishery" is added between the words "allowed" and "equal"; and paragraph (c) is revised to read as follows:

§ 642.23 Size restrictions.

(c) *Head and fins intact.* A Spanish mackerel or cobia possessed in the EEZ must have its head and fins intact and a Spanish mackerel or cobia taken from the EEZ must have its head and fins intact through landing.

11. In § 642.24, in the first sentence of paragraphs (a) (1) and (2) the word "allowable" is added after the word "minimum" and the phrase "in the EEZ" is added after the word "fish"; new paragraph (a)(3) is added; and paragraph (d) is revised to read as follows:

§ 642.24 Vessel, gear equipment limitations.

(a)

(3) *Drift gill nets.* The use of a drift gill net to fish in the EEZ for king mackerel from the Gulf migratory group or for Spanish mackerel from the Gulf or Atlantic migratory group is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gill net aboard may not possess any Spanish mackerel. A vessel in the EEZ within the boundaries specified in § 642.29(a) or having fished in the EEZ within such boundaries may not possess any king mackerel.

(d) *Purse seine incidental catch allowance.* A vessel with a purse seine aboard will not be considered as fishing for king mackerel or Spanish mackerel in violation of the prohibition of purse seines under paragraph (b) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 642.22(a), provided the catch of king mackerel does not exceed one percent or the catch of Spanish mackerel does not exceed ten percent of the catch of all fish aboard the vessel. Incidental catch shall be calculated by both number and weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the allocations and quotas provided for under § 642.21 (a) or (c) and are subject to the prohibition of sale under § 642.22(a).

12. In § 642.28, in paragraph (a) introductory text, the word "incidental" is added between the words "seine" and "catch"

[FR Doc. 89-16368 Filed 7-7-89; 3:40 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-176]

Apricots, Nectarines, Peaches, and Plums From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations to relieve restrictions on the importation of stonefruit (apricots, nectarines, peaches, and plums) from Chile. Our proposed rule would allow these fruits to be imported under multiple safeguards, including inspection in Chile, but without mandatory treatment. These safeguards would ensure that the fruits could be imported without significant risk of introducing insect pests into the United States.

EFFECTIVE DATES: Consideration will be given only to comments received on or before September 11, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-176. Comments received may be inspected at USDA, 14th and Independence Avenue, SW, Room 1141-South Building, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 (the regulations) prohibit or restrict the importation of fruits and vegetables into the United States because of the risk that the fruits or vegetables could introduce insect pests that could damage domestic plants.

Apricots, nectarines, peaches, and plums (referred to below as stonefruit) from Chile present a risk of introducing various insect pests, including *Proeulia* spp., *Leptoglossus chilensis*, *Megalometis chilensis*, *Naupactus xanthographus*, *Listroderes subcinctus*, and *Conoderus rufangulus*. These pests do not normally feed on stonefruit, but may be present in shipments of stonefruit as "hitchhiking" pests.

Under § 319.56-2m, these fruits may be imported from Chile only after they have undergone an approved methyl bromide treatment to destroy insects known to attack them or to be associated with them as hitchhikers.

Section 319.56(c) allows the Deputy Administrator for Plant Protection and Quarantine Programs to publish administrative instructions making the restrictions in § 319.56 *et seq.* less stringent, whenever he finds that pest risk conditions make it safe to make the restrictions less stringent.

We are proposing administrative instructions modifying the regulations concerning the importation of stonefruit from Chile. The administrative instructions prescribe multiple safeguards, including inspections in Chile. We believe that stonefruit imported under the conditions prescribed in the proposed administrative instructions would not present a significant risk of introducing insect pests into the United States. The specific requirements contained in the proposed administrative instructions are discussed below.

Preclearance in Chile

We are proposing to require that stonefruit imported from Chile must generally be cleared in Chile prior to export to the United States, with certain exceptions discussed below. Clearance for export to the United States would involve inspection, safeguards, treatments, or other procedures required by the regulations. Clearance activities would be performed under the direction of Animal and Plant Health Inspection Service (APHIS) inspectors in Chile, and would include inspections by APHIS inspectors, or by inspectors of the national plant protection service of Chile in the presence of APHIS inspectors. These activities, to determine the eligibility of the fruit for shipment to the United States, would be called preclearance to distinguish them from similar inspections, treatments, and other procedures performed by APHIS inspectors at ports of arrival in the United States. We are proposing preclearance to minimize the risk that the fruit will arrive in the United States contaminated with pests that could harm domestic plants. The proposed details of how the preclearance program would be conducted are discussed later in this supplementary information.

Inspection in the United States

With few exceptions, we anticipate the fruit imported under this proposed rule would be "precleared" in Chile prior to shipment into the United States. However, we propose to allow inspection of the fruit at a port of arrival in the United States, in lieu of preclearance, if the Administrator determines that such port of arrival inspection is appropriate and can be accomplished without increasing the risk of introducing insect pests into the United States. The following conditions would apply to inspections performed at the port of arrival:

(1) The Administrator must determine that an emergency situation exists, and that mutual benefit will be derived from allowing an exception to normal procedures;

(2) The Administrator must determine that inspection can be accomplished at the port of arrival without increasing the risk of introducing insect pests into the United States;

(3) The entire shipment of apricots, nectarines, peaches, or plums must be offloaded and moved, under the supervision of an APHIS inspector, to an enclosed warehouse, where inspection and treatment facilities are available;

(4) The Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required; and

(5) The method of sampling and inspection would be the same as in preclearance inspections.

These conditions would ensure that inspections could be conducted at the port of arrival in a manner that would

prevent the escape of insects, prevent pilferage of the fruit, and ensure that insect pests that may be present on or with the fruit are discovered.

Trust Fund Agreement

Except as explained above for inspections in the United States, we are proposing that the plant protection service of Chile (Servicio Agricola Y Ganadero, referred to below as SAG) enter into a trust fund agreement with APHIS before stonefruit from Chile could be precleared for import into the United States.

The trust fund agreement would require SAG to pay in advance all estimated costs to be incurred by APHIS in providing preclearance services during a shipping season. These costs would include administrative expenses incurred in conducting preclearance, as well as all salaries (including overtime and the federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in providing these services. SAG would be required to deposit a certified or cashier's check to APHIS for the amount of these costs for the entire shipping season, as estimated by APHIS based on projected shipment volumes and cost figures from previous inspections. The agreement would further require that, if the deposit does not meet the actual costs incurred by APHIS, SAG would deposit with APHIS a certified or cashier's check for the amount of the known remaining costs, as determined by APHIS, before completion of the inspections. The agreement would also specify that unanticipated end-of-season costs must be paid upon demand, and that further service will be withheld until payment is made. If the amount SAG pays during a shipping season exceeds the total costs incurred by APHIS in providing preclearance services, the difference would be refunded to SAG by APHIS at the end of the shipping season.

Requiring payment of costs in advance is necessary to help defray the costs to APHIS of providing inspection services in Chile.

Responsibilities of Servicio Agricola Y Ganadero

SAG would be responsible for ensuring that certain conditions for importation of the fruit are met before the fruit is presented for inspection prior to being shipped to the United States. These conditions, which are discussed below, are intended to ensure that fruit presented to APHIS for preclearance inspection has a very low rate of rejection because of insect pests.

SAG would be responsible for ensuring that:

(1) Stonefruit are presented to APHIS inspectors in their shipping containers at the inspection site for preclearance inspection. This requirement is necessary to ensure that the fruit qualifies for shipment to the United States.

(2) Stonefruit presented for inspection are identified in the shipping documents accompanying each lot of fruit with the packing shed where they were processed and the orchard where they were grown, and this identity is maintained until the fruit arrives in the United States. This requirement would enable us to identify the sources of any pests discovered during inspection.

(3) Facilities for preclearance inspections are provided in Chile at an inspection site acceptable to APHIS. This requirement is necessary to ensure that APHIS inspectors have adequate inspection facilities in which to perform the required services.

Preclearance Inspection

We propose to allow fruit in any inspection unit to be shipped to the United States only if that inspection unit passes an inspection in which inspectors examine, fruit by fruit, an established statistical sample drawn from the inspection unit. An inspection unit would consist of a minimum of 5,000 cartons for maritime shipments, or 350 cartons for air shipments, and may represent multiple grower lots from different packing sheds. The sample size for each inspection unit would be calculated to identify units infested at a level of 3 percent or more with a confidence level of 95 percent. This sampling method would ensure a high degree of probability that any insect pests in the inspection unit would be discovered by APHIS inspectors.

If the inspectors find evidence of any insect pest referred to in proposed paragraph (f) of § 319.56–2s, and an authorized treatment is available, we propose to allow the fruit to be shipped to the United States only after all the fruit in the infested inspection unit is treated in Chile for that pest with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no authorized treatment is available, the inspectors would reject the entire inspection unit for shipment to the United States.

Stonefruit precleared for shipment to the United States would not be inspected again in the United States, except as necessary to ensure that the fruit has been precleared, or for occasional monitoring purposes.

Termination of Preclearance Programs

If this proposal is adopted, the Administrator would terminate preclearance inspections for a fruit and require fumigation as an entry condition for that fruit if the rates of rejection of inspection units for that kind of fruit exceed 20 percent, as specified in proposed paragraph (e) of § 319.56–2s. Inspections would be terminated if more than 20 percent of inspection units of a fruit were rejected in any 14 consecutive days of inspections. A 20 percent rejection rate would indicate that conditions for shipment of apricots, nectarines, peaches, or plums are not being met. The rejection rate would be calculated over 14 days of inspections because enough inspection units would be inspected during this period to constitute a reliable statistical sample. Apricots, nectarines, peaches, and plums would each be separately evaluated regarding their infestation rates, and termination of preclearance inspections for one of these articles would not terminate preclearance inspections for the other articles. Terminating preclearance inspections for an article would allow that article to enter the United States only after fumigation, for the remainder of that shipping season. This action would ensure that fruits with an unacceptable risk of introducing insect pests are not allowed into the United States unless properly treated to destroy pests.

If preclearance inspection is terminated for an article, precleared fruit of that type in transit from Chile to the United States at the time of termination would be spot-checked by APHIS inspectors upon arrival in the United States for evidence of insect pests.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule. Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect 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.

Based on interest expressed in importing stonefruit from Chile, we anticipate that the annual average of approximately 60,000 metric tons of stonefruit imported from Chile would increase by a small percentage if this rule is adopted. The average import figure of 60,000 metric tons was derived by averaging the weight of stonefruit from Chile imported over the past several years, because the total weight of stonefruit imported from Chile varies greatly from year to year (often by 20 percent or more) due to harvest conditions, market prices, and other factors. By comparison, stonefruit production in the United States was approximately 1,411,000 metric tons in 1986, the most recent year for which complete statistics are available.

Although there are many small business entities in the United States that grow, pack, or sell stonefruit, we do not believe this proposed rule would have a significant economic impact on them because the volume of Chilean fruit expected to be imported is relatively low and the Chilean fruit would compete equally in the market place with U.S.-produced stonefruit. Importers of Chilean stonefruit would probably realizes a small savings for each unit of stonefruit imported, because the cost of importing unfumigated stonefruit under the preclearance program is expected to be slightly less than the cost of importing fumigated stonefruit. This may result in a slight decrease in the price of imported Chilean stonefruit, which would be beneficial to the U.S. consumer. Importers of Chilean stonefruit also import a variety of other fruits and vegetables, and importations of the Chilean stonefruit would constitute a small portion of their total importations.

This rule would cause some loss of income to U.S. fumigation companies that fumigate imported Chilean stonefruit. Currently, fumigation of imported Chilean stonefruit is performed by a few large companies with many other sources of business, such as fumigation of other articles and fumigation of homes and buildings. The loss of income due to reduction in the amount of Chilean stonefruit fumigated each year would be a very small percentage of the total income of each of these companies.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR Part 319 as follows:

1. The authority citation for Part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2m [Amended]

2. In § 319.56–2m, paragraph (a)(2) would be removed, and paragraph (a)(1) would be redesignated as (a).

3. Also, in § 319.56–2m, in the heading, introductory text, and paragraphs (c) and (e), the term "apricots, grapes, nectarines, peaches, and plums" would be revised to read "grapes" each time it appears.

4. In "Subpart-Fruits and Vegetables" a new section, § 319.56–2s, would be added to read as follows:

§ 319.56–2s Administrative instructions governing the entry of apricots, nectarines, peaches, and plums from Chile.

(a) *Importations allowed.* Pursuant to § 319.56(c), the Administrator has determined that apricots, nectarines, peaches, and plums may be imported into the United States from Chile in accordance with this section and other applicable provisions of this subpart.

(b) *Trust fund agreement.* Except as provided in paragraph (g) of this section, apricots, nectarines, peaches, and plums may be imported only if the plant protection service of Chile (Servicio Agricola Y Ganadero, referred to in this section as SAG) has entered into a trust fund agreement with the Animal and Plant Health Inspection Service (APHIS) for that shipping season. This agreement requires SAG to pay in advance all estimated costs incurred by APHIS in providing the preclearance prescribed in paragraph (d) of this section for that shipping season. These costs will include administrative expenses incurred in conducting the preclearance services; and all salaries (including overtime and the federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in providing these services. The agreement requires SAG to deposit a certified or cashier's check with APHIS for the amount of these costs for the entire shipping season, as estimated by APHIS based on projected shipment volumes and cost figures from previous inspections. The agreement further requires that, if the deposit is not sufficient to meet all costs incurred by APHIS, SAG must deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the inspections will be completed. The agreement also requires that, in the event of unexpected end-of-season costs, SAG must deposit with APHIS a certified cashier's check sufficient to meet such costs as estimated by APHIS, before any further preclearance services will be provided. If the amount SAG deposits during a shipping season exceeds the total cost incurred by APHIS in providing preclearance services, the difference will be returned to SAG by APHIS at the end of the shipping season.

(c) *Responsibilities of Servicio Agricola Y Ganadero.* SAG will ensure that:

(1) Apricots, nectarines, peaches, or plums are presented to APHIS inspectors for preclearance in their shipping containers at the shipping site as prescribed in paragraph (d) of this section.

(2) Apricots, nectarines, peaches, and plums presented for inspection are identified in the shipping documents accompanying each load of fruit with the packing shed where they were processed and with the orchards where they were produced; and this identity is maintained until the apricots, nectarines, peaches, or plums arrive in the United States.

(3) Facilities for the inspections prescribed in paragraph (d) of this section are provided in Chile at an inspection site acceptable to APHIS.

(d) *Preclearance inspection.* Preclearance inspection will be conducted in Chile under the direction of APHIS inspectors. An inspection unit will consist of a lot or shipment from which a statistical sample is drawn and examined. An inspection unit must consist of a minimum of 5,000 cartons

for maritime shipments, or 350 cartons for air shipments, and may represent multiple grower lots from different packing sheds. Apricots, nectarines, peaches, or plums in any inspection unit may be shipped to the United States only if the inspection unit passes inspection as follows:

(1) Inspectors will examine, fruit by fruit, the contents of the cartons selected for a biometrically designed statistical sample established for each inspection unit. The sample will be selected using a computer program provided by APHIS that will designate which cartons to inspect in each inspection unit to ensure that units infested at level of 3 percent or more will be identified with a confidence level of 95 percent.

(i) If the inspectors find evidence of any plant pest for which a treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, fruit in the inspection unit will remain eligible for shipment to the United States if the entire inspection unit is treated for the pest in Chile. However, if the entire inspection unit is not treated in this manner, or if a plant pest is found for which no treatment authorized in the Plant Protection and Quarantine Treatment Manual is available, the entire inspection unit will not be eligible for shipment to the United States.

(ii) Apricots, nectarines, peaches, and plums precleared for shipment to the United States as prescribed in this paragraph will not be inspected again in the United States except as necessary to ensure that the fruit has been precleared and for occasional monitoring purposes.

(e) *Terminaltion of preclearance programs.* Shipments of apricots, nectarines, peaches, and plums will be individually evaluated regarding the rates of infestation of inspection units of these articles presented for preclearance. The inspection program for an article will be terminated when inspections determine that the rate of infestation of inspection units of the articles by pests listed in paragraph (f) of this section exceeds 20 percent calculated on any consecutive 14 days of actual inspections (not counting days on which inspections are not conducted). Termination of the inspection program for an article will require mandatory treatment of shipments of the article from Chile for the remainder of that shipping season. If a preclearance inspection program is terminated with Chile, precleared fruit in transit to the United States at the time of termination will be spot-checked by APHIS inspectors upon arrival in the United States for evidence of plant pests referred to in paragraph (f) of this section.

(f) *Plant pests; authorized treatments.* (1) Apricots, nectarines, peaches, or plums from Chile may be imported into the United States only if they are found free of the following pests or, if an authorized treatment is available, they are treated for the pest under the supervision of an APHIS inspector: *Proeulia spp., Leptoglossus chilensis, Megalometis chilensis, Naupactus xanthographus, Listroderes subcinctus,* and *Conoderus rufangulus,* and other insect pests that the Administration has determined do not exist, or are not widespread, in the United States.

(2) Authorized treatments are listed in the Plant Protection and Quarantine Treatment Manual. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference.

(g) *Inspection in the United States.* Notwithstanding provisions to the contrary in paragraph (c) and (d) of this section, the Administrator may, in emergency or extraordinary situations, allow apricots, nectarines, peaches, or plums imported under this section to be inspected at a port of arrival in the United States, in lieu of a preclearance inspection, under the following conditions:

(1) The Administrator is satisified that a unique situation exists which justifies a limited exception to mandatory preclearance;

(2) The Administrator has determined that inspection and/or treatment can be accomplished at the intended port of arrival without increasing the risk of introducing insect pests into the United States;

(3) The entire shipment of apricots, nectarines, peaches, or plums must be offloaded and moved, under the supervision of APHIS inspectors, to an enclosed warehouse, where inspection and treatment facilities are available.

(4) The Administrator must determine that a sufficient number of inspectors are available at the port of arrival to perform the services required.

(5) The method of sampling and inspection will be the same as prescribed in paragraph (d) of this section for preclearance inspections.

Done in Washington, DC, this 7th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-16434 Filed 7-12-89; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Parts 1864, 1956, and 1965

Debt Settlement

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its debt settlement regulations. This action is taken to include debt settlement of all Housing Loans and to limit adjustment offers to 5 years except for Rural Housing (RH) loans. This action is intended to reduce the volume of settlements submitted to the Administrator and further implement the intent of the Food Security Act of 1985 and the Agricultural Credit Act of 1987

EFFECTIVE DATE: Comments must be submitted on or before September 11, 1989.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agricultural Building, 14th and Independence Avenue SW Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 22053.

FOR FURTHER INFORMATION CONTACT: Thomas Baden, Senior Loan Officer, Farm Real Estate and Production Division, FmHA, Room 5437 South Building, Washington, DC 20250, Telephone (202) 475-4008.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse action on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

The major changes are: (1) All security property must be disposed of prior to debt settlement; (2) If a borrower wishes to offer FmHA the present market value of security, the value must be included in the initial amount, these funds will not be included as part of a compromise or adjustment offer; (3) Deletes the requirement that debts be due and payable prior to debt settlement for Farmer Programs loans; (4) How to process cancellation of loan accounts discharged or partially discharged in bankruptcy.

These changes will remove Part 1864 of Chapter XVIII, Title 7 of the CFR and incorporate all provisions of debt settlement of Housing loans into Subpart B of Part 1956. This incorporation will necessitate amendments to several Parts of Chapter XVIII, Title 7 Code of Federal Regulations. These amendments will consist of conforming changes and cross references in numerous FmHA loan making and loan servicing regulations. These changes will be addressed in the final rule publication, but are not included in this proposed rule since these changes are only administrative in nature.

FmHA Instruction 1965-A has been amended to provide that the payment of income tax resulting from a capital gain from a cash sale is not authorized.

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), Mr. Neal Sox Johnson, Acting Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial numbered of small entities.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and locan officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance under numbers:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low and Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Rural Housing Site Loans (10.411) and Soil and Water Loans (10.416) are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The other programs are excluded from intergovernmental consultation.

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not needed.

List of Subjects

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agricultural, Rural areas.

Therefore, as proposed, Chapter XVIII, Title 7 Code of Federal Regulations is amended as follows:

PART 1864—DEBT SETTLEMENT

1. The authority citation for Part 1864 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

2. Part 1864 is removed and reserved.

PART 1956—DEBT SETTLEMENT

3. The authority citation for Part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

4. Subpart B of Part 1956 is revised to read as follows:

PART 1956—DEBT SETTLEMENT

Subpart B—Debt Settlement—Farmer Programs and Housing

Sec.
1956.51 Purpose.
1956.52–1956.53 [Reserved]
1956.54 Definitions.
1956.55–1956.56 [Reserved]
1956.57 General provisions.
1956.58 Approval or rejection.
1956.59–1956.65 [Reserved]
1956.66 Compromise and adjustment of nonjudgment debts owed FmHA which the debtor is unable to pay.
1956.67 Debts which the debtor is able to pay in full but refuses to do so.
1956.68 Compromise or adjustment without debtor's signature.
1956.69 [Reserved]
1956.70 Cancellation.
1956.71–1956.74 [Reserved]
1956.75 Chargeoff.
1956.76–1956.84 [Reserved]
1956.85 Payments and receipts.
1956.86–1956.95 [Reserved]
1956.96 Delinquent adjustment agreements.
1956.97 [Reserved]
1956.98 Disposition of promissory notes.
1956.99 Exception authority.
1956.100 OMB control number.

Subpart B—Debt Settlement—Farmer Programs and Housing

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for settlement of debts owed the United States for Farmers Home Administration (FmHA) Farmer Programs and Housing programs. Settlement of claims against third party converters and settlement of Non-Program (NP) loans, Economic Opportunity (EO) loans, and housing loans, is authorized under the Federal Claims Collection Standards, 4 CFR Parts 101-105.

§ 1956.52-1956.53 [Reserved]

§ 1956.54 Definitions.

(a) *Adjustment.* The reduction of a debt or claim conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement(s) have been made.

(b) *Cancellation.* The final discharge of a debt without any payment on it.

(c) *Chargeoff.* The writing off of a debt and termination of collection activity without release of personal liability.

(d) *Compromise.* The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the date or claim.

(e) *Debtor.* The borrower of funds under any of the FmHA programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan.

(f) *Farmer Program loans.* Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing Loans for farm services buildings (RHF).

(g) *Amount of debt.* The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, made by the Government on behalf of the borrower.

(h) *Servicing office.* The FmHA office that is responsible for the account.

(i) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(j) *Housing programs.* All programs and claims arising under programs administered by FmHA under Title V of the Housing Act of 1949.

(k) *United States Attorney.* An attorney for the United States Department of Justice.

§§ 1956.55–1956.56 [Reserved]

§ 1956.57 General provisions.

(a) *Application of policies.* All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

(b) *Collection efforts.* When debtors are contacted in an effort to collect, the employee in charge of the account will obtain from them essential information concerning their financial condition. This should include where applicable, but not limited to, obtaining Form FmHA 1910–5, "Request for Verification of Employment, debtors providing expense verification, verify farm program benefits (ASCS payments), and examining county records to determine what other assets the debtor has or recently disposed of. Also, where a spouse is not a co-debtor the spouse's income will be considered in determining family living expenses. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid unnecessary litigation to enforce collection. If the debt is eligible for settlement, the debt settlement authorities of FmHA should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on Form FmHA 1956–1, Application for Settlement of Indebtedness."

Settlement of claims against recipients of grant funds for reasons such as the use of funds for improper purposes may also be considered under this subpart.

(c) *Negotiating a settlement.* District Directors and County Supervisors cannot approve debt settlement actions; therefore, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment ability of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed five years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Settlement offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

(d) *Disposition of property.* Security may be retained by the debtor only under the conditions specified in § 1956.66 of this subpart.

(e) *Proceeds from the disposal of security prior to approval of a debt settlement offer.* A borrower is not required to have disposed of the security prior to application for debt settlement for a loan to be settled. However, if a borrower has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied on the debtors account, irrespective of an application for debt settlement unless the conditions specified in § 1956.66 of this subpart are met.

(f) *County Committee review.* The County Committee will review all debt settlement actions for Farmer Programs debtors and recommend for approval or rejection, except for the cancellation of those debts discharged in bankruptcy where there is no remaining security. The proposed debt settlement will be reviewed for approval or rejection and no settlement shall be approved if it is more favorable to the debtor than recommended by the County Committee, except as provided for in § 1956.58(e) of this subpart. The County Committee will not review proposed debt settlement action for Housing loans.

(g) *Settlement when legal or investigative action has been taken recommended, or is contemplated.*

(1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of the Inspector General (OIG) under § 1962.49(a) of Part 1962, Subpart A of this chapter or to OGC because of suspected criminal violation, or criminal prosecution is pending because of an illegal acts(s) committed by the debtor in connection with the debt or the security for that debt, the procedure outlined in paragraph (g)(3) of this section will be followed, unless, the OIG has declined to investigate the matter or, OGC has advised otherwise, or, the case is in the hands of the United States Attorney.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by FmHA.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by, the United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that FmHA has no authority to agree to a settlement offer when the United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, it will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) *Advice from the OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) *Settlement of claims against estates.* Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking

into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) *Joint debtors.* Settlements may not be approved for one joint debtor unless approved for all debtors. "Joint debtors" includes all parties (individuals, partnerships, joint operators, cooperatives, corporations estates) who are legally liable for payment of the debt.

(1) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form FmHA 19056–1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form FmHA1956–1 or Form FmHA 1956–2 (for housing loans) "Cancellation or Charge off of FmHA Indebtedness" will be prepared by showing at the top of the form the name of the debtor requesting settlement, followed by the name of the other debtor.

For example, "John Doe, joint debtor with Bill Doe, deceased, "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature, as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA 1956–1 or 1956–2 for (housing loans).

(k) *Adjustment of debts when debtors are in bankruptcy.* FmHA personnel do not have the authority to accept or reject a reorganization plan on behalf of the United States for debtors filing under Chapter 11, Chapter 12, or Chapter 13 when the plan calls for part of the FmHA debt to be forgiven.

(1) Plans submitted by debtors under Chapters 11, 12, and 13 must be sent by the County Supervisor to the State Director who will refer them to the United States Attorney through the Regional Attorney. When the plan calls for the adjustment of a debt to FmHA, the State Director will provide the Regional Attorney with a recommendation on acceptance or rejection of the plan.

(2) The U.S. Attorney will advise the FmHA State Director through the Regional Attorney as to approval or rejection of the debtor's reorganization plan. Upon notification of an approval, the State Director will notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan including any adjustment of the debtor's debt. Adjustment will be processed in accordance with Subpart A of 1951 of this chapter.

(l) *Settlement where debtor owes more than one type of FmHA Loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another FmHA loan and who will continue as an active borrower, except Single Family Housing (SFH) in cases in which unusual circumstances exist such as where the borrower is unable to pay in full because he/she has ceased farming but still needs the dwelling, or because his/her income is limited due to age or a permanent health problem. In such cases, the facts will be fully documented in Part VIII of Form FmHA 1956–1.

§ 1956.58 Approval or rejection.

All debt settlement cases will be submitted for review in accordance with Exhibit A of this subpart (available in any FmHA office).

(a) *Approval authority.* Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(1) Except as provided in paragraph (a)(2) of this section, by the State Director when the outstanding balance of the indebtedness involved in the settlement less the amount of a compromise or adjustment offer is less than $250,000 (including principal, interest, and other charges).

(2) The State Director may approve the cancellation of debts discharged in a Chapter 7 bankruptcy in accordance with § 1956.70(b)(3) of this subpart regardless of the amount of the outstanding indebtedness.

(3) By the Administrator or designee when the outstanding balance of the indebtedness involved in the settlement less the amount of a compromise or adjustment offer is $250,000 or more (including principal, interest, and other charges).

(b) *Approval processing.* The State Director will:

(1) Execute and send the original approved Form FmHA 1956–1 or Form FmHA 1956–2 for housing to the Finance Office.

(2) Notify debtors in writing of approval of the settlement of their indebtedness in the following cases:

(i) All compromise and adjustment offers. The following will also be done:

(A) The specific amount and terms of the offer will be stated.

(B) The accounts settled will be identified by reference to the accounts shown on Form FmHA 1956–1.

(ii) Cancellations under § 1956.70(a) or § 1956.70(c) of this subpart.

(3) Not be required to notify debtors of approval of the settlement of their indebtedness when debts are charged off under § 1956.75 or canceled under § 1956.70(b).

(c) *Requesting additional information.* When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the State Director may request the employee in charge of the account to obtain the additional information or make an effort to obtain an acceptable offer, as the circumstances justify. Notice of rejection of an offer will be withheld in such cases until sufficient time, normally not to exceed 30 days, has elapsed to enable the debtor to present further information or new offer. All settlement offers will be handled promptly.

(d) *Rejection processing.* The State Director will:

(1) Insert the reasons for rejection on the form.

(2) Execute and retain the original form in the State Office.

(3) Return case files and copies of the form to the employee in charge of the account.

(4) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the employee in charge of the account.

(5) Return any adjustment or compromise payment held by the State Office to the borrower, in care of the employee in charge of the account.

(6) Notify the debtor in writing of the reasons for the rejection in the following cases:

(i) All compromise and adjustment offers.

(ii) Cancellations under § 1956.70(a) of this subpart.

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected may appeal the rejection under Subpart B of Part 1900 of this chapter. In cases where the adverse decision maker is the County Committee, the County Supervisor will advise the debtor of appeal rights. If the debtor exercises his/her right to a meeting, the County Committee must meet with the debtor. If the meeting does not result in a resolution, the debtor may exercise his/her right to a hearing. If the National Appeals Staff reverses the adverse County Committee decision, the case will be forwarded to the appropriate debt settlement approval official for consideration of approval.

§§ 1956.59–1956.65 [Reserved]

§ 1956.66 Compromise and adjustment of nonjudgment debts which the debor is unable to pay.

Nonjudgment debts which the debtor is unable to pay may be compromised or adjusted in accordance with applicable provisions of this section, and the debtor may retain the security property. Application will be made on Form FmHA 1956–1 by the debtor; or if the debtor is unable to act, by the guardian, executor, or other party having legal authority to do so. The debtor will be released from liability upon successful completion of the terms of the approved compromise or adjustment offer by delivering the note(s) to the debtor stamped "Satisfied by compromise or adjustment.

(a) *Farmer programs debts.* The debt or any extension thereof on which compromise or adjustment is requested *does not* have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Offers may be considered and approved subject to payment of the lump sum upon notice of approval to the debtor. Nonjudgment farmer programs debts may be compromised or adjusted in accordance with the following conditions:

(1) Compromise offers must be at least equal to the value of the security for the debt (including any crop security) less any prior lien amounts; plus any additional amount the debtor is able to immediately pay.

(2) Where the debtor is able to pay an amount in excess of the lump sum compromise offer, an adjustment offer must call for a lump sum payment as set out in paragraph (a)(1) of this section; plus any additional amount the Agency determines the borrower is able to pay over a period of time not to exceed 5 years.

(3) The acceptability of a compromise or adjustment offer will be arrived at by determining and evaluating:

(i) Statement of indebtedness owed on any prior liens. Statements will be reatined in the debtor's file.

(ii) Value of existing security as determined by a current appraisal made or obtained by the Agency. The appraisal will be retained in the debtor's file.

(iii) Debtor's total present income and probable sources, amount and stability of income over the next 5 years. Old age pensions, other public assistance, and veteran's disability pensions will not be considered as sourcss of funds or making compromise and adjustment offers.

(iv) Amount of debtor's debts and the priority of debt repayment from income.

(v) Amount of debtor's farm or business operation and living expenses necessary to continue the operation, if applicable.

(vi) Age and health when the debtor is largely depending on income from an occupation where manual labor is required.

(vii) Size of debtor's family, their ages and health.

(viii) Value of debtor's assets in relation to debts and liens of third parties. Reasonable equity in a modest nonsecurity homestead occupoed by the debtor will not be considered as available for settlement. Nonsecurity property in excess of minimum family living needs which is not exempt from levy and execution should be considered in determining the debtor's ability to pay.

(b) *Housing debts (both single-family and multi-family).* Offers may be considered and approved subject to payment of lump sum upon notice of approval of offer of the debtor. Nonjudgment housing debts may be compromised or adjusted when all of the following conditions are met:

(1) The entire debt is due and payable under the terms of the note or other instrument or because of acceleration by written notice prior to the date of the application for settlement.

(2) Compromise offers must be at least equal to the value of the security as determined by the Agency, less any prior liens, plus any additional amount the Agency determines the debtor is able to immediately pay based on information provided on Form FmHA 1956–1.

(3) Where the debtor is able to pay an amount in excess of the lump sum payment as set out in paragraph (b)(2) of this section; plus any additional amount the Agency determines the borrower is able to pay from financial resources over a period of time not to exceed 5 years.

§ 1956.67 Debts which the debtor is able to pay in full but refuses to do so.

Debts which the debtor may have the ability to pay in full has refused to do so may be compromised or adjusted in the following situations on Form FmHA 1956–1:

(a) When the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within 2 years by enforced collection proceedings, the debt may be compromised. In determining inability to collect, the following factors will be considered:

(1) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(2) Inheritance prospects within 5 years.

(3) Likelihood of debtor obtaining nonexempt property or income within 5 years, out of which there could be collected a substantially larger sum than the amount of the present offer.

(4) Uncertainty as to price the security or other property will bring at forced sale.

(b) The debt may be compromised or adjusted when the OGC has advised in writing that:

(1) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(2) The amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues invovled.

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors.

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation.

(c) When the cost of collecting the debt does ot justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigation costs of collection. Such discount wil not exceed $2,000 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§ 1956.68 Compromise or adjustment without debtor's signature.

Debts of a living debtor may be compromised or adjusted if it is impossible or impracticable to obtain a signed application and all other requirements of this section applicable to compromise or adjustment with a signed application have been met Form FmHA 1956-1 will show:

(a) The sources from which the information was obtained.

(b) That a current effort was made to obtain the debtor's signature and the date(s) of such effort.

(c) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§ 1956.69 [Reserved]

§ 1956.70 Cancellation.

Nonjudgment debts may be canceled in the following instances:

(a) *With application.* The debt or any extension thereof on Farmer Programs debts *do not* have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Debts due the FmHA may be canceled upon application of the debtor, or if a debtor is unable to act, upon application of a guardian, executor, or administrator, subject to the following conditions:

(1) The FmHA employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected.

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

(b) *Without application.* Debts due the FmHA may be canceled upon a report and the favorable recommendation of the employee in charge of the account in the following instances;

(1) *Deceased debtors.* The following conditions must exist:

(i) There is no known security; and

(ii) An administrator or executor has not been appointed to settle the debtor's estate and the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery; or

(iii) An administrator or executor has been appointed to settle the estate of the debtor; and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude any reasonable prospect of recovery by the Government.

(2) *Disappeared debtors.* The debt may be canceled without application where the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt. Reasonable efforts will be made to locate the debtor. These efforts will generally include contacts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor. The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documentad in the appropriate space on Form FmHA 1956-1 or Form FmHA 1956-2 for housing loans.

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be canceled by the use of Form FmHA 1956-1, or Form FmHA 1956-2 for housing loans, with attachments as below. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(i) Chapter 7 Bankruptcy cases will be documented with a copy of the "Discharge of Debtor" order(s) by the court for all obligors.

(ii) For debts indentified as being part of an unsecured claim under Chapter 11, the cancellation will be documented with a copy of the organization plan, copy of the order by the court confirming the plan, and an opinion by OGC that the confirming order has discharged the obligor(s) of liability to that part of the debt.

(iii) For debts identified as being part of an unsecured claim under Chapters 12 or 13, the cancellation will be documented with a copy of the reorganization plan and confirmation order, as above, a copy of the order completing the plan and closing the case, and an opinion by the OGC that the completion order has discharged the obligor(s) of liability to that portion of the debt.

(c) *Signature of debtor cannot be obtained.* Debts of a living debtor may be canceled if it is impossible or impracticable to obtain a signed application and the requirements in subsection (a) of this section concerning cancellation with application have been met or if the debt has been discharged in bankruptcy and there is no security. Form FmHA 1956-1 will state:

(1) The sources of information obtained.

(2) That a current effort was made to obtain the debtor's application and the date of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§§ 1956.71-1956.74 [Reserved]

§ 1956.75 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form FmHA 1956-1 or Form FmHA 1956-2 for housing upon a report and favorable recommendation of the employee in charge of the account provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.70(b)(2) have been met, *or* two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off using Form FmHA 1956-1 or Form FmHA 1956-2 for housing loans without the debtor's signature subject to the following provisions:

(1) When the principal balance is $2,000 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit,

(3) Even though FmHA considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in FmHA's official files or from other informed reliable sources:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in § 1956.66(a); or

(B) Able to pay part or all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

§§ 1956.76–1956.84 [Reserved]

§ 1956.85 Payments and receipts.

(a) *Servicing office handling.*

(1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) Except as provided in paragraph (a)(3) of this section, payments offered by debtors in settlement of debts will be deposited and transmitted as required in Subpart B, C and K of Part 1951 of this chapter.

(3) Checks or check transmittal letter containing restrictive notations such as "Settlement in full" or "Payment in full, or in those exceptional instances when the debtor refuses to sign the Form FmHA 1956–1 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(b) *Finance Office handling.*

(1) All payments evidenced by Form FmHA 451–2, "Schedule of Remittances, on Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal, bearing the legend "Compromise Offer—FmHA or Adjustment Offer—FmHA, will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving funds. Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer. The original Form FmHA 1956–1 in approved cases will be retained in the Finance Office.

§§ 1956.86–1956.95 [Reserved]

§ 1956.96 Delinquent adjustment agreements.

(a) *Servicing office handling.* The employee in charge of the account should notify debtors in advance of the due dates of payments on debt settlement agreements. The employee in charge of the account should promptly contact debtors who are delinquent on debt settlement payments and find out their reasons for not making payments when due, and their plans for completing their agreements. Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the employee in charge of the account regarding the further handling of the case.

(b) *State Office handling.*

(1) In those instances in which the debtor is delinquent under the terms of the debt settlement agreement and is likely to be financially unable to meet the terms of the debt settlement agreement, consideration should be given by the State Director to voiding the existing agreement and processing a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. This settlement will be processed in accordance with procedure for a new agreement.

(2) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee (for Farmer Programs loans) and the employee in charge of the account. A decision not to extend the time for making payments is not appealable.

(3) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the employee in charge of the account. Upon receipt, the Finance Office will return the original Form FmHA 1956–1 to the State Office. The voiding of an adjustment offer is not appealable.

(c) *Disposition of payments.* If an agreement is voided, any payments received shall be retained as payments on the debt owed at the time of the compromise or adjustment offer.

§ 1956.97 [Reserved]

§ 1956.98 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, completed compromise with or without signature, or canceled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of the notes will be stamped "Satisfied by Approved Compromise" "Satisfied by Approved Cancellation" or "Satisfied by Completed Adjustment Offer" In such cases, the security instrument(s) will be released of record in the usual manner.

(b) Notes evidencing debts canceled without application will be placed in the debtor's case folder and disposed of pursuant to FmHA Instruction 2033–A (available in any FmHA office). However, if the debtor requests the notes, they may be stamped "Satisfied By Approved Cancellation" and returned.

(c) Notes evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after charged off pursuant to Exhibit C, Page 2 of FmHA Instruction 2033–A (available in any FmHA office).

§ 1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant

Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA 1956-1 and returned to the State Office for submission to the Finance Office.

§ 1956.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0118.

PART 1965—REAL PROPERTY

5. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70

Subpart A—Servicing of Real Estate Security for Farmer Programs Loans and Certain Note—Only Cases

6. § 1965.13(f)(2) is revised to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

(f)

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay from personal funds or cannot have the purchaser pay. The costs may, for example include real estate taxes which must be paid to consummate the transaction; cost of title examination, surveys, abstracts, title insurance, reasonable attorney's fees, real estate broker's commissions and judgment liens. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the cost. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual cost furnished by the payee.

Dated: May 9, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-16398 Filed 7-12-89; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 89-079]

Animals Destroyed Because of Scrapie

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; response to comments.

SUMMARY: We are responding to comments received on whether to discontinue the Scrapie Eradication Program (the Program) and remove the regulations for animals destroyed because of scrapie. After reviewing the comments, we have decided to continue the current program until revisions of the program or alternate programs have been considered. We are publishing this notice to inform the public that we are not discontinuing the program at this time.

FOR FURTHER INFORMATION CONTACT: Chester A. Gipson, Senior Staff Veterinarian, Sheep, Goat, Equine, Poultry, and Miscellaneous Diseases Staff, VS, APHIS, USDA, Room 770, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7679.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 2, 1988 (Docket No. 88-131, 53 FR 44200-44202), we solicited comments on whether to remove the regulations in 9 CFR Part 54, which provide for payment of indemnities for animals destroyed because of scrapie, and to discontinue the existing Scrapie Eradication Program (the program), due to its ineffectiveness in eliminating the disease. We took this action based upon the recommendations of an expert panel made at the Scrapie Research Review Meeting, May 10-11, 1988.

We solicited comments for 60 days. At the request of interested persons, in a notice published in the **Federal Register** on December 22, 1988 (Docket No. 88-199, 53 FR 51563), we extended the comment period for an additional 60-day period so that industry associations and interested members of the public would have an opportunity to address the issues and formulate recommendations. Comments that were postmarked or received on or before March 6, 1989, were considered.

We received many thoughtful and informed comments from interested members of the public. The comments were submitted by State and Federal government officials, industry associations, sheep producers, breeders, farmers, veterinarians, and other individuals who raise sheep. All comments have been carefully considered. In light of these comments, we have reviewed the regulatory options available to us, and have determined not to discontinue the present program until development of a revised and improved scrapie program has been fully explored.

Of the 145 comments we received, 134 stated that the program should either be continued as is or enhanced, or that it should be continued pending development of a revised program. Eleven favored discontinuing the program, as recommended to us by the panel, because of its ineffectiveness in eliminating or controlling scrapie at considerable expense.

Many of the commenters opposed to discontinuing the program supported strengthening the existing program, and stated that total flock depopulation is necessary to eradicate the disease and that increased indemnities should be paid.

Other commenters stated that a more effective program must be developed with eradication of scrapie as its goal. These commenters urged that we continue the current program until a new program is developed and implemented.

In reviewing the comments, we found that many commenters, regardless of their affiliation, shared common concerns about the disease. Among the concerns expressed was the significance of the economic loss from scrapie due to the limited availability of foreign markets and due to indemnity ceilings that are less than the market value of destroyed animals. Other concerns expressed were the disease risk to cattle and other animals, implied by a suggested relationship of the disease to bovine spongiform encephalopathy, and a suggested human health risk through consumption of meat from diseased sheep and goats, due to a theorized relationship between scrapie and human central nervous system diseases.

Many commenters raised some or all of the following points as issues that should be addressed in developing an effective scrapie program:

1. The Need for Research in the Areas of Disease Transmission, Diagnosis, Detection, and Prevention

Scrapie is known to be infectious; however, one of the problems in controlling the spread of scrapie is the lack of sufficient scientific data on how the disease is transmitted. It has been known to pass laterally through ingestion of contaminated placental tissues, and some believe its spread is related to flock management procedures.

There is some evidence to indicate that certain breeds of sheep and goats do not commonly become infected with scrapie. Some commenters urged that the genetic implications of these findings be explored.

Scrapie can only be tentatively diagnosed clinically, based upon observation of signs in live sheep. Detection requires careful observation of animals by flock owners and veterinarians. However, because of the long incubation period of the disease (lasting several years), early detection is not likely and many other animals may be exposed to the disease before the signs become evident. Positive diagnosis and confirmation of the disease can only be done by laboratory examination of brain tissue after death of the animal. At present there is no known treatment or preventive vaccination for the disease.

2. The Need for Education and Information

Related to the need for research cited by the commenters is the need for education. Many commenters stated that they were not aware of the disease until it affected their animals or animals belonging to someone they knew, and that they were uninformed about the clinical signs of the disease. Industry members need to be informed about the disease and have current information regarding means of controlling its spread. They should also be kept apprised of proper methods of disposing of diseased animals. Current information and recordkeeping on the disease status of flocks could contribute to controlling spread of the disease by limiting the movement of the animals.

3. The Need for Uniformity

Under the present program, there are variations in the way each state implements its regulations concerning scrapie. As a result, states use different control mechanisms, quarantine and surveillance procedures, and animal identification and reporting requirements.

4. The Need for Permanent Animal Identification

Some commenters expressed concern regarding the possibility for fraud and abuse of the indemnity program through the failure to permanently identify animals believed to have the disease or to identify the animals to a scrapie-exposed flock. Currently, animals may be sold from a flock in which scrapie exists but its presence has not been confirmed or detected, and introduce the disease into another flock. Without current flock records and a means of permanently identifying individual animals to the flock, Federal and State officials often have difficulty establishing flocks of origin or sources of infection. A purchaser has no means of determining whether the animal he or she is buying presents a scrapie risk.

5. Need for Fair Indemnity

Many commenters suggested that the current indemnity ceiling of $300 per animal is often less then fair market value and does not promote the goal of eradication.

6. Need for Industry Support and Program Monitoring

A number of commenters suggested that any scrapie control or eradication program that APHIS may develop would require the support of breed associations, producers, and Federal and State officials to be successful. Uniform support would promote a cooperative effort to achieve program goals.

7 Need for Continuing Dialogue Among the Various Factions of the Sheep Industry and Federal and State Regulatory Officials

As our understanding of this problematic disease improves, there is a need to share information and to work cooperatively toward achieving program goals.

We are considering the regulatory option of conducting a negotiated rulemaking in order to develop a program which meets animal health needs, industry needs, and State and Federal governmental needs. Negotiated rulemaking is a process involving participation by industry representatives and other interested persons in the development of a rule. Its objective is to achieve consensus among contending segments of the affected public through the expression and resolution of competing interests and needs. If it is determined to proceed with the negotiated rulemaking, we will publish a document in the **Federal Register** announcing our intent to conduct negotiated rulemaking. We are not requesting additional comments at this time concerning the Scrapie Eradication Program.

Done in Washington, DC, this 7th day of July 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-16433 Filed 7-12-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-94-AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Airbus Industrie Model A300, A310, and A300-600 series airplanes, which would require repetitive inspections of the nose landing gear (NLG) barrel for cracks, and repair, if necessary; and would require eventual modification of the NLG barrel, which terminates the need for the repetitive inspections. This proposal is prompted by results of the manufacturer's fatigue testing, which revealed cracks in the lower area of the NLG barrel. This condition, if not corrected, could lead to collapse of the nose landing gear.

EFFECTIVE DATES: Comments must be received no later than August 28, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-94-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue, Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on wich the following statement is made: "Comments to Docket Number 89-NM-94-AD. The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Models A300, A310, and A300-600 series airplanes. Results of the manufacturer's fatigue testing have revealed cracks in the lower area of the nose landing gear (NLG) barrel. The test results also revealed that some parts are life-limited to 26,000 landings. This condition, if not corrected, could lead to collapse of the NLG.

Airbus Industrie has issued the following service bulletins which describe procedures for repetitive inspections of the nose landing gear for cracks, and repair, if necessary.

Model	Service bulletin numbers and issue dates
A300	A300-32-388, Revision 1, dated January 24, 1989
A310	A310-32-2040, dated July 15, 1988
A300-600	A300-32-6023, dated July 15, 1988

Note: The above-listed service bulletins reference Messier-Hispano-Bugatti (MHB) Service Bulletin No. 470-32-641 for additional inspection instructions.

The DGAC has classified the above service bulletins as mandatory, and has issued French AD 88-143-088(B) addressing this subject.

Airbus Industrie has also issued the following service bulletins which describe procedures for modification of the NLG barrel. Accomplishment of the modifications described in these service bulletins terminates the need for the repetitive inspections called for in the above service bulletins.

Model	Service bulletin number
A300	A300-32-389, dated October 15, 1988
A310	A310-32-2041, dated October 15, 1988
A300-600	A300-32-6024, dated October 15, 1988

Note: The above-referenced service bulletins reference MHB Service Bulletin 470-32-642 for specific modification procedures.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections of the nose landing gear barrel, and repair, if necessary, in accordance with the service bulletins previously mentioned.

Additionally, this action proposes to require modification of the NLG within 18 months after the initial inspection. The degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position of continual inspection, the FAA has decided to require, whenever practicable, airplane modifications necessary remove the source of the problem addressed. The proposed modification requirements of this action are in consonance with that policy decision.

It is estimated that 90 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per manhour. It would require approximately 11 manhours to accomplish the modification at an average labor charge of $40 per manhour and $2,500 parts cost per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $282,600.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Airbus Model A300, A310, and A300-600 series airplanes are operated by small entities. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

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

Airbus Industrie: Applies to Model A300, A310, and A300-600 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Perform an ultrasonic inspection of the nose landing gear barrel, in accordance with Airbus Industrie (AI) Service Bulletins A300-32-388, Revision 1, dated January 24, 1989 (for Model A300 series airplanes), A310-32-2040, dated July 15, 1988 (for Model A310 series airplanes), or A300-32-6023, dated July 15, 1988 (for Model A300-600 series airplanes), as follows:

1. For airplanes with nose landing gears having less than 11,500 cycles accumulated as of the effective date of this AD, perform the inspection prior to the accumulation of 12,000 cycles.

2. For airplanes with nose landing gears having 11,500 or more cylces accumulated as of the effective date of this AD, perform the inspection within 500 cycles or 3 months after the effective date of this AD, whichever occurs first.

B. If no ultrasonic echo is observed, or the echo amplitude is lower than or equal to ten percent (10%) of ultrasonic generator screen height, repeat the inspection required by paragraph A., above, at intervals not to exceed 1,250 cycles.

C. If an echo amplitude higher than ten percent (10%) and below eighty percent (80%) of ultrasonic generator screen height is observed during the inspections required by paragraphs A. and B., above, prior to further flight, perform a visual inspection to determine if the crack is visible, in accordance with Airbus Industrie Service Bulletin A300-32-388, A310-32-2040, or A300-32-6023, as appropriate,

Note: The above-listed Airbus service bulletins reference Messier-Hispano-Bugatti (MHB) Service Bulletin No. 470-32-641 for additional inspection instructions.

1. If no crack is visible from the outside of the barrel, repeat the visual inspection prior to each flight. Replace the nose landing gear barrel within 100 cycles after discovery of the first echo, in accordance with Airbus Industrie Service Bulletin A300-32-389 (for Model A300 series airplanes), A310-32-2041 (for Model A310 series airplanes), or A300-32-6024 (for Model A300-600 series aiplanes), each dated October 15, 1988, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

2. If a crack is visible from the outside of the barrel, replace the nose landing gear barrel prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-32-389, A310-32-2041, or A300-32-6024, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

3. After replacement is accomplished, the repetitive inspections required by paragraph A. and B., above, may be discontinued.

D. If an echo amplitude equal to or higher than eighty percent (80%) of ultrasonic generator screen height is observed during the inspections required by paragraphs A. and B., above, prior to further flight, perform a visual inspection to determine if the crack is visible, in accordance with Airbus Industrie Service Bulletin A300-32-388, A310-32-2040, or A300-32-6023, as appropriate. (Reference: MHB Service Bulletin 470-32-641).

1. If no crack is visible from the outside of the barrel, one ferry flight for return to the main base is allowed before the barrel must be replaced.

2. If a crack is visible from the outside of the barrel, the barrel must be replaced prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-32-389, A310-32-2041, or A300-32-6024, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

3. After replacement is accomplished, the repetitive inspections required by paragraph A. and B., above, may be discontinued.

E. Within 18 months after the initial inspection for cracks, modify the nose landing gear barrel in accordance with Airbus Industrie Bulletin A300-32-389, A310-32-2041, or A300-32-6024, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

F The inspections required by paragraphs A. and B., above may be terminated following modification of the nose landing gear barrel in accordance with Airbus Industrie Bulletin A300-32-389, A310-32-2041, or A300-32-6024, as appropriate. (Reference: MHB Service Bulletin 470-32-642.)

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manger, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

H. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16449 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-102-AD]

Airworthiness Directives; Boeing Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which would require replacement of both spoiler wheel command units. This proposal is prompted by reports that a potential failure mode exists, which could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

DATE: Comments must be received no later than August 29, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-102-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947 Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on

the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-102-AD. The post card will be date/time stamped and returned to the commenter.

Discussion

The FAA has been advised by Boeing Commercial Airplanes, the manufacturer of Model 767 series airplanes, that a potential failure mode has been identified in the spoiler wheel command unit, which would occur as a result of separation of the input gear from the input shaft. Although no occurrences of this problem in service have been reported, this failure could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

The FAA has reviewed and approved Boeing Service Bulletin 767-27-0085, dated October 20, 1988, which describes replacement of both spoiler wheel command units with improved units, and test and adjustment of the units after replacement.

Since this condition may exist or develop on other airplanes of the same type design, an AD is proposed which would require replacement of the spoiler wheel command units in accordance with the service bulletin previously described.

There are approximately 243 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 101 airplanes of U.S. registry would be affected by this AD, that it would take approximately five manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,200. The parts required by the proposed AD may be furnished or fabricated from operator's existing stock or purchased directly from industry sources. Therefore, parts cost is estimated to be negligible.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

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

Boeing: Applies to Model 767 series airplanes, line numbers 1 through 243, certificated in any category. Compliance is required within the next 24 months after the effective date of this AD, unless already accomplished.

To prevent uncommanded extension of three flight spoilers on one wing, due to failure of a spoiler wheel command unit, accomplish the following:

A. Replace both spoiler wheel command units, in accordance with Boeing Service Bulletin 767-27-0085, dated October 20, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may by used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received copies of the service bulletin cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707 Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 30, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16450 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-103-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney engines, which would require removal of two unused engine throttle control cable fairleads. This action is prompted by an FAA certification cable inspection test in which it was discovered that, under simulated elevator cable system proof load, there was enough cable slack for the elevator cable to hang up on the throttle fairlead at left buttock line (LBL) 14 and body station (BS) 310. This condition, if not corrected, could lead to the elevator control cables binding on the engine throttle control cable fairleads, which could result in the inability of the pilot to safely control the airplane.

DATES: Comments must be received no later than September 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-103-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-103-AD. The post card will be date/time stamped and returned to the commenter.

Discussion

During an FAA certification cable inspection test of a Boeing Model 757 series airplane equipped with Pratt and Whitney engines, it was discovered that, under simulated elevator cable system proof load, enough cable slack developed to hang-up the elevator cable on the throttle fairlead at left buttock line (LBL) 14 and body station (BS) 310. This condition, if not corrected could result in the inability of the pilot to safely control the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 757-76-0006, dated March 16, 1989, which describes procedures for removal of the two unused engine throttle control cable fairleads. Removal of the fairleads will effectively eliminate the possibility of either elevator control cable binding on these fairleads.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require removal of the two unused engine throttle control cable fairleads in accordance with the service bulletin previously described.

There are approximately 85 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 78 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,240.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to Model 757 series airplanes equipped with Pratt and Whitney engines, listed in Boeing Service Bulletin 757-76-0006, dated March 16, 1989, certificated in any category. Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent the elevator control cables binding on the engine throttle control cable fairleads, accomplish the following:

A. Remove two engine throttle control cable fairleads in accordance with Boeing Service Bulletin 757-76-0006, dated March 16, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may by used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707 Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 3, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-16451 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-19]

Airworthiness Directives; Teledyne Continental Motors (TCM) Model TSIO-520-UB Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an Airworthiness Directive (AD) that would require repetitive inspections of the turbocharger inlet assembly on certain TCM Model TSIO-520-UB engines. The proposed AD is needed to detect possible cracking of the turbocharger inlet assembly which could result in the introduction of hot exhaust gases into the engine compartment with the possibility of engine compartment fire.

DATES: Comments must be received on or before September 1, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89-ANE-19, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 of the Regional Rules Docket at the above address. Comments must be marked: Docket No. 89-ANE-19.

Comments may be inspected at the above location in Room 311 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the agency before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ANE-19. The postcard will be date/time stamped and returned to the commenter.

There have been service difficulty reports (SDR) of cracking of the turbocharger inlet assembly on certain TCM Model TSIO-520-UB engines which could introduce hot exhaust gases into the engine compartment. This problem was addressed in Beechcraft Service Communique No. 70, dated October 28, 1983, in which 100 hour inspection intervals are recommended. TCM introduced a replacement (cast) part in 1985 to replace the original (welded) part. SDR's since that time indicate that the original part is still in service and the rate of cracking may be increasing due to repairs, aging, and installation errors. There were 7 SDR's from 1981 thru 1984 with an additional 12 reports from 1985 thru 1988. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require repetitive inspections of the turbocharger inlet assembly and replacement when necessary on certain TCM Model TSIO-520-UB engines.

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

The FAA has determined that this proposed regulation involves 452 engines and the approximate cost would be $160.00 (4 hours) per engine per inspection. If replacement is necessary, the list price of the replacement part (P/N 646795) is $3138.00 and there would be an additional $240.00 labor (6 hours) to complete the installation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Teledyne Continental Motors (TCM): Applies to TCM Model TSIO-520-UB engines, serial numbers 515000 thru 515999 and 527000 thru 527070, and to all remanufactured and overhauled engines of this model, regardless of serial number, which are equipped with part number (P/N) 642668 turbocharger inlet assembly.

Compliance is required at the next 100 hour inspection or annual inspection, or within 100 flight hours, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 100 flight hours.

To prevent possible cracking of the turbocharger inlet assembly which could result in engine compartment fire, accomplish the following:

(a) Visually inspect turbocharger inlet assembly P/N 642668 for cracks especially in the weld joints just above the turbine inlet temperature boss. If a crack is found, replace P/N 642668 with P/N 646795 turbocharger inlet assembly, prior to further flight.

(b) Make appropriate log book entry showing compliance with this AD.

Notes: (1) Beechcraft Aircraft Corporation Service Communique No. 70, dated October 28, 1983, refers to this subject.

(2) When determining the P/N assembly installed in order to comply with this AD, a distinguishing feature of the P/N 642668 turbocharger inlet assembly is 4 ribs (approximately 0.25 inches in height, 0.1 inches in width, and 2.1 inches in length) on the top of the turbocharger mating flange.

(3) If P/N 642668 is not installed, no action is required.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Atlanta Aircraft Certification Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, may approve an equivalent means of compliance or an adjustment of the compliance schedule specified in this AD which provides an equivalent level of safety.

Issued in Burlington, Massachusetts, on June 28, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-16452 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSMRE is announcing receipt of revisions pertaining to two previously proposed amendments to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). To facilitate the processing of the amendments, OSMRE combined the two amendments into a single amendment. In the amendment, Oklahoma proposes revisions to its regulations pertaining to the general provisions; permanent regulatory program; restriction on financial interests of State employees; exemption for coal extraction incident to government financed highway or other construction; areas designated unsuitable for mining; requirements for coal exploration; requirements for permits, permit processing, revisions, renewals, or sale of permit rights; administrative and judicial review; permit applications; small operator assistance; bond and insurance requirements; permanent program performance standards; inspections and enforcement; civil penalties; and training, examination, and certification of blasters. Oklahoma also proposes to add a new section to its regulations pertaining to individual civil penalties. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Oklahoma program and the proposed amendment to the program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., c.d.t., August 14, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430

Oklahoma Department of Mines, 4040 North Lincoln, Oklahoma City, OK 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, telephone (918) 581-6430, at the address listed in "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program, can be found in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions concerning the Oklahoma program and program amendments can be found at 30 CFR 936.15.

II. Proposed Amendment

By letter dated May 18, 1988, (administrative record No. OK-843), Oklahoma submitted a proposed amendment to its program under SMCRA. Oklahoma submitted the proposed amendment in response to a July 15, 1985, letter (administrative record No. OK-681) and a June 9, 1987 letter (administrative Record No. OK-811) that OSMRE sent in accordance with 30 CFR 732.17 (d) through (f). The regulations that Oklahoma proposes to amend are: Parts 700, General; 701, Permanent Regulatory Program; 705, Restriction on Financial Interest of State Employees; 707 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction; 761, Areas Designated Unsuitable by the Act; 762, Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations; 764, Processes for Designating Areas Unsuitable for Surface Coal Mining Operations; 772, Requirements for Coal Exploration; 773, Requirements for Permits and Permit Processing; 774, Revision, Renewal, and Transfer, Assignment, or Sale of Permit Rights; 775, Administrative and Judicial Review; 777 General Content Requirements for Permit Applications; 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information; 779, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 784, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 785, Requirements for Permits for Special Categories of Mining; 795, Small Operator Assistance; 800, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; 810, Permanent Program Performance Standards—General Provisions; 815, Permanent Performance Standards—Coal Exploration; 816, Permanent Program Performance Standards—Surface Mining; 817 Permanent Program Performance Standards—Underground Mining Activities; 819, Special Permanent Program Performance Standards—Auger Mining; 823, Special Permanent Program Performance Standards—Operations on

Prime Farmland; 824, Special Permanent Program Performance Standards—Mountaintop Removal; 827 Special Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine; 828, Special Permanent Program Performance Standards—In Situ Processing; 842, State Inspections; 843, State Enforcement; 845, Civil Penalties; and 850, Training, Examination, and Certification of Blasters.

OSMRE published a notice in the June 28, 1988, **Federal Register** (53 FR 24321) announcing receipt of the May 18, 1988 amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended July 28, 1988.

In a letter dated October 6, 1988, (administrative record No. OK-873), OSMRE notified Oklahoma, pursuant to 30 CFR 732.17(f)(1), of additional changes necessary to make the Oklahoma program no less effective than the Federal regulations. By letter dated November 14, 1988, (administrative record No. OK-866) Oklahoma responded by asking OSMRE to formally consider a previously submitted informal amendment package dated September 16, 1988 (administrative record No. OK-862). The amendment package submitted by the November 14, 1988, letter contains proposed regulation changes to Parts 773, Requirements for Permits and Permit Processing; 706, Restriction on Financial Interests of State Employees; 730, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 800, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations. This amendment also adds Part 846, Individual Civil Penalties. OSMRE published a notice in the January 9, 1989, **Federal Register** (54 FR 634) announcing receipt of the November 14, 1988 amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended February 8, 1989. To facilitate the processing of the May 18 and November 14, 1988 amendments, OSMRE combined the two amendments into a single amendment.

During its review of the proposed amendment, OSMRE identified concerns relating to: jurisdiction, definitions, mining plans, Federal lands, lands unsuitable, exploration, permit requirements, permit revisions, applicant ownership and control, reclamation and operations plans, special categories of mining, self-bonding; performance standards for surface mining, performance standards for underground mining, prime farmland, preparation plants, inspections, civil penalties, and AMLR fees. OSMRE notified ODM of the concerns during a March 3, 1989, meeting (administrative record No. OK-887). In a letter dated June 22, 1989 (administrative record No. OK-888), Oklahoma responded to these concerns by submitting a revised proposed amendment package.

Public Comment Procedures

OSMRE is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted on June 22, 1989. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: June 28, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-16382 Filed 7-12-89; 8:45 am]

BILLING CODE 4310-05-M

PANAMA CANAL COMMISSION

35 CFR Parts 103 and 133

Requirements of Transiting Vessels and Their Measurement

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Panama Canal Commission proposes to amend its regulations set out in Title 35, Parts 103 and 133: (1) To more accurately reflect treaty-mandated changes concerning authority over transiting vessels; (2) to require new pilot shelter platforms, and (3) to clearly identify those officials who are authorized to measure and certify the tonnage of vessels. These latter two changes are being made respectively to provide shelter from weather for pilots aboard transiting vessels and for clarification.

DATE: Comments must be received by August 14, 1989.

ADDRESS: Comments should be sent to Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036-4996, or Panama Canal Commission, Office of General Counsel, APO Miami, FL 34011-5000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036-4996, Telephone: (202) 643-6441, or John L. Haines, Jr., General Counsel, Panama Canal Commission, telephone in Balboa Heights, Republic of Panama, (011)-507-52-7511.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission proposes a change which would revise § 103.7 concerning the temporary holding of vessels for the purpose of investigation into a marine accident. Inasmuch as the agency's legal authority to hold vessels was abolished by the Panama Canal Treaty of 1977 and its related agreements, reference to holding a vessel is being removed; however, a vessel may still be denied transit until its tenderness, trim, list, draft, cargo, hull, machinery and equipment have been put into such condition as to make the vessel safe for its transit through the Panama Canal.

Secondly, the Commission is proposing to change § 103.19, by revising paragraphs (a) and (d) and adding two new paragraphs with the aim of requiring vessels whose extreme beam is 24.40 meters (80 feet) or more to provide shelter platforms for pilots on the bridge wings of these medium-size and large vessels. The purpose of the proposed platforms is to provide pilots shelter from the elements and enhance safety. The shelters shall be in place and ready for use no later than six months from the effective date of publication of the final rule in the **Federal Register**.

The last of the proposed changes corrects section 133.32 to specify that measurements of Canal tonnage may be taken and associated certificates may be issued by the United States Coast Guard, as well as Canal admeasurers and certain properly designated officials abroad.

These proposed rules are not major rules for the purposes of Executive Order 12291 of February 17 1981. In accordance with the Regulatory Flexibility Act (5 U.S.C. 650(b)), it is

hereby certified that these proposed rules will not have a significant impact on small business entities.

Lists of Subjects

35 CFR Part 103

Vessels, General provisions.

35 CFR Part 133

Tolls for use of Canal.

For the reasons set forth in the preamble, the Panama Canal Commission proposes to amend 35 CFR Parts 103 and 133 as follows:

PART 103—GENERAL PROVISIONS GOVERNING VESSELS

1. The authority citation for Part 103 continues to read as follows:

Authority: 22 U.S.C. 3811, E.O. 12215, 45 F.R. 36043, and 44 U.S.C. 3501.

2. Section 103.7 is revised to read as follows:

§ 103.7 Authority to deny transit.

A vessel's transit may be denied until, in the opinion of the Canal authorities, its tenderness, trim, list, draft, cargo, hull, machinery, and equipment have been put into such condition as will make the vessel safe for her passage through the Canal. No claim shall be allowed or considered because of any such delay.

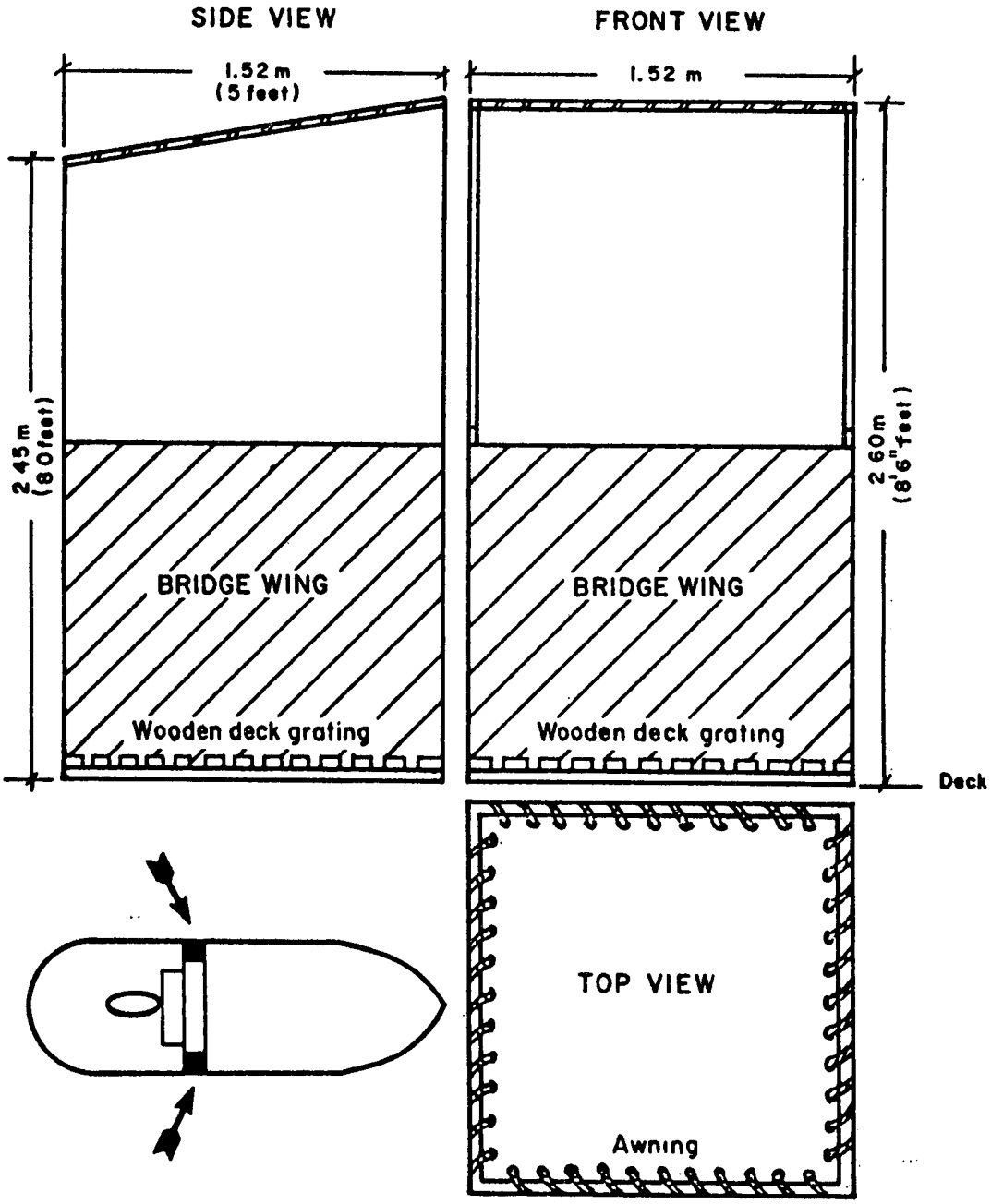
3. Section 103.19 is amended by revising the heading and paragraphs (a) and (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 103.19 Requirement for pilot shelter platforms.

(a) Any vessel that, in accordance with Panama Canal operation standards, is required to have three or more pilots aboard, shall provide suitable pilot shelter platforms for the assisting pilots. The purpose for the pilot platforms is to provide shelters from sun and rain for pilots working near the bow or the stern of a vessel and to provide adequate visibility around the locks in order to reduce the danger of damage. In general, this bow/stern pilot shelter platform is required of all ships of 190.5 meters (625 feet) or more in length and a beam of 30.5 meters (100 feet) or greater, but may also be required of certain smaller ships that the Marine Director or his designated representative determine require three or more pilots. Those vessels requiring shelters shall provide them for use no later than six months from the effective date of the final rule.

(d) In addition to the pilot shelter platforms required by paragraph (a) of this section for assisting pilots, all vessels whose extreme beam is 24.4 meters (80 feet) or more, are required to provide bridge wing shelter platforms for the protection of control pilots. The following is a sketch of a bridge wing shelter platform that is acceptable to the Panama Canal Commission.

BILLING CODE 3640-04-M



BILLING CODE 3640-04-C

(e) The purpose of the bridge wing platform is to provide shelter for pilots from sun and rain, while allowing maximum visibility around the locks. On vessels that have a raised conning station at the edge of the bridge wing more than 30 centimeters (1 foot) above the deck level, the height of the awning should be raised accordingly. Awnings are to extend at least 1.52 meters (5 feet) inboard from the outboard edge of the bridge wing. Similarly, their fore-and-aft dimension is to be at least 1.52 meters (5 feet), extending aft from the forward part of the bridge wing. If ship control equipment (engine, rudder or thruster controls, etc.) are located on the bridge wings, these shelter platforms must also extend at least one foot beyond such equipment but must not extend beyond the outboard edge of the bridge wing.

(f) The awning indicated in the sketches in paragraphs (b) and (d) of this section are to be made of suitable material to provide shelter from sun and rain. The decks of the pilot shelter platforms are to be made of wood or other material with a non-skid surface.

PART 133—TOLLS FOR USE OF CANAL

4. The authority citation for Part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

5. Section 133.32 is revised to read as follows:

§ 133.32 Measurement of vessels; making and correction of measurement; plans and copies.

Measurement may be made and the required certificate issued by the admeasurers of the Canal, by the United States Coast Guard, and by certain other officials worldwide as designated by the Director of Admeasurement of the Panama Canal Commission. Each transiting vessel should be provided with a full set of plans and a copy of the measurements which were made at the time of issue of its national tonnage certificate, as well as the tonnage certificate itself. The Canal authorities shall have the right to check and correct any measurement made or certificate issued elsewhere.

Dated: July 16, 1989.

D.P McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 89-16464 Filed 7-12-89; 8:45 am]

BILLING CODE 3640-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-502; RM-6449]

Radio Broadcasting Services; Winnebago, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; withdrawal.

SUMMARY: The Commission dismisses the request of Gary L. Violet to substitute Channel 289C2 for Channel 289A at Winnebago, Nebraska, and modify his construction permit for Station WSUX to specify the higher powered channel. Petitioner failed to restate his intention to apply for Channel 289C2, if allotted to Winnebago. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-502, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW Suite 140, Washington, DC 20037

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16377 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-297; RM-6698]

Radio Broadcasting Services; Hatteras, NC

AGENCY: Federal Communications Commssion.

ACTION: Proposed Rule

SUMMARY: The Commission requests comments on a petition by Pamlico Sound Company, Inc. seeking the substitution of Channel 246C1 for Channel 248C2 at Hatteras, North Carolina, and the modification of its construction permit for a new station on Channel 248C2 accordingly. Channel 246C1 can be allotted to Hatteras in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in its outstanding construction permit. The coordinates for this allotment are North Latitude 35-15-42 and West Longitude 75-33-20. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of the channel at Hatteras will not be accepted and we will not require the petitioner to demonstrate the availability of an additional equivalent class of channel for use by such parties.

DATES: Comments must be filed on or before August 28, 1989, and reply comments on or before September 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-297 adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16379 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-302, RM-6664]

Radio Broadcasting Services; Beaver Springs, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Susan A. Bernstein seeking the allotment of Channel 291A to Beaver Springs, Pennsylvania, as its first local FM service. Petitioner is requested to furnish additional information to determine whether Beaver Springs is a "community" for allotment purposes. Channel 291A can be allotted to Beaver Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) south to avoid a short-spacing to Station WZKZ, Corning, New York, and to Station WHLM, Bloomsburg, Pennsylvania. The coordinates for this allotment are North Latitude 40-42-04 and West Longitude 77-13-34. Canadian concurrence is required since Beaver Springs is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 28, 1989, and reply comments on or before September 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Susan A. Bernstein, 14 Spruce Street, Selingsgrove, Pennsylvania 17870 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-302, adopted June 15, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16380 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-303, RM-6661]

Television Broadcasting Services; Arcade, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert Bennett seeking the allotment of UHF TV Channel 62 to Arcade, New York, as the community's first local television service. Channel 62- can be allotted to Arcade in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.2 kilometers (9.5 miles) east to avoid a short-spacing to a construction permit for Channel 48+ at Corning, New York, and to unused Channel 55 at Niagara Falls, Ontario, Canada. Canadian concurrence is required since Arcade is located within 400 kilometers (250 miles) of the U.S. Canadian border.

DATES: Comments must be filed on or before August 28, 1989, and reply comments on or before September 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert Bennett, P.O. Box 525, Buffalo, New York 14215 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-303, adopted June 15, 1989, and released July 6, 1989. The full text of the 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 contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to the 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.

Karl A. Kensinger,

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

[FR Doc. 89-16378 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-296, RM-6635]

Television Broadcasting Services; Springville, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Michael A. Williams proposing the allotment of Channel 67+ to Springville, New York, as the community's first local television service. Channel 67+ can be allotted to Springville in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 kilometers (5.5 miles)

south to avoid a short-spacing to Channel 60, St. Catherines, Ontario, Canada, and to the proposed allotment of Channel 62 to Arcade, NY. The coordinates for this allotment are North Latitude 42-26-02 and West Longitude 78-38-06. Canadian concurrence is required since Springville is located within 250 miles of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 28, 1989, and reply comments on or before September 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael A. Williams, 65 Monroe Street, Buffalo, New York 14206 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-296, adopted June 15, 1989, and released July 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-16381 Filed 7-12-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 7 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

Agricultural Stabilization and Conservation Service

7 CFR 1425, 770, 1421, and 1427-Cooperative Marketing Association CCC-846, 846-1, 847 847 (Amd 1), Cotton G4, 719, 846-2 Cotton G, CCC-848, 847A.

Recordkeeping; On occasion; Annually.

Farms; Non-profit institutions; 3,576 responses; 18,338 hours; not applicable under 3504(h).

James L. Goff (202) 447-5396.

Agricultural Marketing Service

Almonds Grown in California: Marketing Order 981.

None.

Annually.

Businesses or other for-profit; 13,277 responses; 6,235 hours; not applicable under 3504(h).

Virginia Olson (202) 475-3930.

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 89-16397 Filed 7-12-89; 8:45 am]
BILLING CODE 3410-01-M

Food and Nutrition Service

Child Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1989-June 30, 1990

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child Care Food Program (CCFP).

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. The action announced in the notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innnovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CCFP (7 CFR Part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CCFP (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1989-June 30, 1990.

As provided for under the National School Lunch Act and the Child Nutrition Act of 1966, all rates in the CCFP must be prescribed annually on

July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 6, 1988 (for the period July 1, 1988–June 30, 1989).

The Department wishes to point out that the national average payment rates for centers also apply to those adult day care centers made eligible for CCFP cash and commodity assistance by section 401 of the Older Americans Act Amendments of 1987 (Pub. L. 100–175) which amended section 17 of the National School Lunch Act (42 U.S.C. 1766).

The Department also reminds the public that Pub. L. 99–661 amended section 4(b) of the Child Nutrition Act of 1966 to require 3 cents per meal in supplementary funding to be added each year to the annually adjusted reimbursement rates for each breakfast served under the program, effective October 1, 1986. Subsequently, Pub. L. 100–345 amended section 4(b) to increase by an additional 3 cents, to a total of 6 cents per meal, the supplementary funding for each program breakfast, effective July 1, 1989. Thus, this year and in future years, after computation of the annual rate adjustment, a total of 6 cents will be added to the rounded per meal rates of reimbursement. The increases in breakfast reimbursement are intended to assist states in improving the nutritional quality of breakfasts served.

All States Except Alaska and Hawaii

Meals Served in Centers—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts:	
Paid	.1750
Free	.8600
Reduced	.5600
Lunches and Suppers:	
Paid	.1475
Free	[1]1.5325
Reduced	1.1325
Supplements:	
Paid	.0375
Free	.4200
Reduced	.2100

Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts	.7275
Lunches and Suppers	1.3125
Supplements	.3900

Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 50 day care homes	$58
Next 150 day care homes	44
Next 800 day care homes	34
Additional day care homes	30

These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska—Meals Served in Centers—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts:	
Paid	.2475
Free	1.3550
Reduced	1.0550
Lunches and Suppers:	
Paid	.2375
Free	[1] 2.4800
Reduced	2.0800
Supplements:	
Paid	.0625
Free	.6800
Reduced	.3400

Alaska—Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts	1.1425
Lunches and Suppers	2.1250
Supplements	.6325

Alaska—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 50 day care homes	94
Next 150 day care homes	71
Next 800 day care homes	56
Additional day care homes	49

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The new payment rates for Hawaii are as follows:

Hawaii—Meals Served in Centers—Per Meal Rates in Dollars or Fractions Thereof

Breakfasts:	
Paid	.1950
Free	.9950
Reduced	.6950
Lunches and Suppers:	
Paid	.1725
Free	1.7925
Reduced	1.3925
Supplements:	
Paid	.0450
Free	.4925
Reduced	.2450

Hawaii—Meals Served in Day Care Homes—Per Meal Rates in Dollars and Fractions Thereof

Breakfast	.8425
Lunches and Suppers	1.5350
Supplements	.4575

Hawaii—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 50 day care homes	68
Next 150 day care homes	52
Next 800 day care homes	40
Additional day care homes	35

These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 4.71 percent increase during the 12-month period May 1988 to May 1989 (from 121.0 in May 1988 to 126.7 in May 1989) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statitics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 5.4 percent increase during the 12-month period May 1988 to May 1989 (from 117.5 in May 1988 to 123.8 in May 1989) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1759(a), and 1766) and section 4(b)(1)(B) of the Child Nutrition Act of 1966 as amended, (42 U.S.C.1773b).

George A. Braley,

Acting Administrator.

Date: July 7, 1989.

[FR Doc. 89–16425 Filed 7–12–89; 8:45 am]

BILLING CODE 3410-30-M

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments, the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates, the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1989 through June 30, 1990.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V and final rule related notice published at 48 FR 29114, June 24, 1983.)

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this Notice shall have the meanings ascribed to them in the regulations governing the National School Milk Program (7 CFR Part 210), the regulations for the Special Milk Program (7 CFR Part 215), the regulations for School Breakfast Program (7 CFR Part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy childen in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1989 to June 30, 1990, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 10.25 cents. This reflects an increase of 5.7 percent in the Producer Price Index for Fresh Processed Milk from May 1988 to May 1989.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a) and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors, and to the maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors (NAPFs) for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced-price.

To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced-price lunches. The section 11 NAPF for each reduced-price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under section 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966, as amended, establishes National Average Payment Factors for free, reduced-price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children. The Department reminds the public that Pub. L. 99-661 amended section 4(b) of the Child Nutrition Act of 1966 to require three cents per meal in supplementary funding to be added each year to the annually adjusted reimbursement rates for each breakfast served under the program, effective October 1, 1986. Subsequently, Pub. L. 100-435 amended section 4(b) to increase by an additional three cents, to a total of six cents per meal, the supplementary funding for each program breakfast, effective July 1, 1989. Thus, this year and in future years, after computation of the annual rate adjustment, a total of 6 cents will be added to the rounded per meal rates of reimbursement. The increases in breakfast reimbursement are intended

to assist states in improving the nutritional quality of breakfast served.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1990. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced-price lunches in School Year 1987–88, the payments are: Contiguous States—14.75 cents, maximum rate 22.75 cents; Alaska—23.75 cents, maximum rate 35.50 cents; Hawaii—17.25 cents, maximum rate 26.25 cents.

In school food authorities which served 60 percent or more free and reduced-price lunches in School Year 1987–88, payments are: Contiguous States—16.75 cents, maximum rate 22.75 cents; Alaska—25.75 cents, maximum rate 35.50 cents; Hawaii—19.25 cents, maximum rate 26.25 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch 138.50 cents, reduced-price lunch 98.50 cents; Alaska—free lunch 224.25 cents, reduced-price lunch 184.25 cents; Hawaii—free lunch 162.00 cents, reduced-price lunch 122.00 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: Contiguous States—free breakfast 86.00 cents, reduced-price breakfast 56.00 cents, paid breakfast 17.50 cents; Alaska—free breakfast 135.50 cents, reduced-price breakfast 105.50 cents, paid breakfast 24.75 cents; Hawaii—free breakfast 99.50 cents, reduced-price breakfast 69.50 cents, paid breakfast 19.50 cents.

For schools in "severe need" the payments are: Contiguous States—free breakfast 102.00 cents, reduced-price breakfast 72.00 cents, paid breakfast 17.50 cents; Alaska—free breakfast 161.50 cents, reduced-price breakfast 131.50 cents, paid breakfast 24.75 cents; Hawaii—free breakfast 118.25 cents, reduced-price breakfast 88.25 cents, paid breakfast 19.50 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous states.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES; EFFECTIVE FROM JULY 1, 1989–JUNE 30, 1990

National School Lunch Program*	Less than 60 percent	60 percent or more	Maximum rate
Contiguous states			
Paid	$.1475	$.1675	$.2275
Reduced-Price	1.1325	1.1525	1.3025
Free	1.5325	1.5525	1.7025
Alaska			
Paid	.2375	.2575	.3550
Reduced-Price	2.0800	2.1000	2.3450
Free	2.4800	2.5000	2.7450
Hawaii			
Paid	.1725	.1925	.2625
Reduced-Price	1.3925	1.4125	1.5875
Free	1.7925	1.8125	1.9875

School Breakfast Program	Non-severe need	Severe need
Contiguous states		
Paid	.1750	.1750
Reduced-Price	.5600	.7200
Free	.8600	1.0200
Alaska		
Paid	.2475	.2475
Reduced-Price	1.0550	1.3150
Free	1.3550	1.6150
Hawaii		
Paid	.1950	.1950
Reduced-Price	.6950	.8825
Free	.9950	1.1825

Special Milk Program	All milk	Paid milk	Free milk
Pricing programs without free option	10.25	N/A	N/A
Pricing programs with free option	N/A	10.25	Average cost ½ pint milk
Nonpricing programs	10.25	N/A	N/A

*Payments listed for Free & Reduced-Price Lunches include both section 4.

Authority: Sec. 4, 8, and 11 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773).

George A. Braley,

Acting Administrator.

Date: July 7, 1989.

[FR Doc. 89-16426 Filed 7-12-89; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

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

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

Agency: International Trade Administration

Title: Phase III—Research Prototype Reaction (US&FCS Promotional Materials)

Form Numbers: Agency—ITA-4105P OMB —0625-

Type of Request: New collection—expedited review requested

Burden: 45 respondents; 15 reporting hours

Average Hours per Response: 20 minutes

Needs and Uses: This collection supports the International Trade Administration's (ITA's) export awareness promotion campaign to rectify General Accounting Office (GAO) criticisms of Commerce programs. It will determine the relative strengths and weaknesses of previous U.S. and Foreign Commercial Service (US&FCS) promotional material. The campaign will focus on increasing participation of small and medium-sized U.S. firms in trade missions, trade fairs, catalog and video catalog exhibitions, "Matchmaker, trade delegations, *Commercial News USA* magazine, seminars, and special events. Companies participating in the market research campaign will review promotional materials developed by an advertising agency and evaluate if the final products motivate exporting among small to medium-sized firms

Affected Public: Businesses or other for profit; small businesses or organizations

Frequency: Other: one-time only

Respondent's Obligation: Voluntary

OMB Desk Officer: Donald Arbuckle, 395-7340.

The interview questions are printed below. A copy of the complete clearance package can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Rom 6622, 14th and Constitution Avenue NW Washington, DC 20230.

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

Dated: July 7, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

Phase III—Research Prototype Reaction

This report is authorized by law (15 U.S.C. 1512 *et seq.*). While you are not required to respond, your cooperation is needed to enable us to assess reactions to newly developed prototype promotional packages.

Public reporting burden for this collection of information is estimated to average 20 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 Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625-), Washington, DC 20503.

You have recently been part of discussions regarding the promotion of the U.S. Department of Commerce Export Services. You also should have received an envelope from them asking you to leave it unopened until you received a call from us. Please open that envelope now.

Please look at all the material.

1. What is your overall reaction?
2. Now, please look at the individual pieces and give me your reaction.
3. How do these pieces compare with previous pieces you've received?
4. How would you rate each piece; excellent; very good; poor; why?
5. What if anything do you like/dislike about each piece?
6. What is particularly appealing; unappealing; why?
7. Does anything in the pieces entice you to: export more; find out more; sign up for an event?
8. Based on the discussion you had previously, how does this material measure up to your expectations?
9. Any other comments/ suggestions you might like to make?

[FR Doc. 89-16462 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A (partially closed) meeting of the President's Export Council Subcommittee on Export Administration will be held Friday, August 18, 1989, 9:00 a.m. to 3:00 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue NW Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Open Session: 9:00-11:45 a.m. Briefings by Commerce officials on matter relating to export control. Selected reports by Committee chairpersons.

Executive Sessions: 1:30-3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 27 1987 pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Subcommittee, 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 thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Betty Ferrell, (202) 377-2583.

Date: July 10, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-16463 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-331-602]

Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand: Certain Fresh Cut Flowers From Ecuador

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On December 27 1988, the United States Court of International Trade (the Court) ordered the Department of Commerce (Commerce) to correct certain computational errors in its final antidumping duty determination on certain fresh cut flowers from Ecuador. *Floral Trade Council of Davis, California* v. *United States,* Slip. Op. 88-170. Commerce filed the required remand results with the Court on February 3, 1989. On March 22, 1989, the Court entered a final judgment affirming Commerce's remand results.

In accordance with the Court's order, Commerce will direct the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise produced by Eden Flowers, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, but to now require a cash deposit for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3965 or 377-1756.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987 Commerce published its final antidumping determination of certain fresh cut flowers from Ecuador (52 FR 2128). On April 17 1987 petitioners filed a lawsuit challenging various portions of the final determination. Petitioners alleged that Commerce's determination was unlawful, in part, because it contained certain computational errors that created an artificially low dumping margin of 19.00 percent for Eden Flowers.

On December 27 1988, the Court remanded the final determination to Commerce for correction of these errors and for a redetermination of the dumping margin, if necessary. *Floral Trade Council of Davis, California,* v. *United States,* Slip. Op. 88-170. On February 3, 1989, Commerce issued remand results that amended the final determination on certain fresh cut flowers from Ecuador. Based on its recalculation of Eden Flower's constructed value, Commerce determined Eden Flower's dumping margin to be 23.50 percent. On March 22, 1989, the Court entered a final judgment affirming Commerce's remand results.

Suspension of Liquidation

In accordance with the Court's order of March 22, 1989, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain fresh cut flowers from Ecuador produced by Eden Flowers, which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** However, U.S. Customs Service shall now require a cash deposit equal to the estimated weighted-average margin calculated in our redetermination. This suspension of liquidation for Eden Flowers will remain in effect until further notice. The current suspension of liquidation for other manufacturers, sellers or exporters of certain fresh cut flowers from Ecuador shall continue to remain in effect until further notice. As stated in our original final determination and antidumping duty order, Flores Equinocciales will continue to be excluded from this determination of sales at less than fair value.

The increased weighted-average margin for Eden Flowers and the current weighted-average margins for other manufacturers, sellers and exporters are as follows:

Manufacturers/sellers/exporters	Weighted average margin percentage
Florisol	9.37
Flores Equinocciales	0.45 (*de minimis*)
Inverflora	2.56
Terraflora	2.56
Eden Flowers	23.50
All others	5.89

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o producer shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization. This provision is implemented by section 772(d)(1)(D) of the Tariff Act of 1930, as amended. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. Accordingly, we will subtract the 1.01 *ad valorem* percentage export subsidy rate from the dumping margin for duty deposit purposes (as determined in the January 13, 1987 *Final Affirmative Countervailing Duty Determination on Certain Fresh Cut Flowers from Ecuador,* 52 FR 1361).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 29, 1989.

[FR Doc. 89-16359 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-601]

Certain Fresh Cut Flowers From Mexico; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by the petitioner and eight respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers eight producers and/or exporters of this merchandise during the period November 3, 1986 through March 31, 1988. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987 the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 13491) the antidumping duty order on certain fresh cut flowers from Mexico. The Floral Trade Council ("the Petitioner") and eight respondents requested that we conduct an administrative review in accordance with § 353.53a(a) of the Commerce Regulations (1988). We published a notice of initiation on May 23, 1988 (53 FR 18324). The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988.

All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain fresh cut flowers from Mexico. During the review period such merchandise was classifiable under item 192.2110 (pompom chrysanthemums), item 192.2120 (standard chrysanthemums) and item 192.2130 (standard carnations) of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 0603.10.7010 (pompom chrysanthemums), item 0603.10.7020 (standard chrysanthemums) and item 0603.10.7030 (standard carnations). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive. The review covers eight producers and/or exporters of certain fresh cut flowers from Mexico to the United States and the period November 3, 1986 through March 31, 1988.

United States Price

For purposes of our preliminary determination, we used purchase price when sales were made to unrelated purchasers in the United States prior to date of importation, as provided in section 772(b) of the Act, and exporter's sales price when sales were made to unrelated purchasers in the United States after the date of importation, as provided in section 772(c).

Purchase price was calculated based on the f.o.b., Mexico City, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and foreign brokerage and handling. Exporter's sale price was calculated based on the price to the first unrelated customer in the United States. Deductions were made, where appropriate, for foreign inland freight, brokerage and handling, U.S. inland freight, commissions, indirect selling expenses and credit expenses.

All United States prices were weight-averaged on a monthly basis in order to account for the perishability of the product. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a desired price. Rather, they either accept whatever return they can obtain on certain sales or destroy the merchandise. We believe that averaging United States prices over a relatively short period of time contributes to a fairer and more representative measure of fair value. Accordingly, we have continued to calculate a monthly United States price, as was done in the fair value investigation leading to the antidumping duty order.

Foreign Market Value

For six out of the eight companies reviewed, the foreign market value for the review period of November 3, 1986 to March 31, 1988, was calculated based on monthly weighted-average home market prices. Since the Mexican economy was determined to be hyperinflationary during the review period, foreign market values were adjusted for inflation for the remaining two companies which did not have sufficient home market or third country sales. The adjustment was based on a weighted-average of monthly constructed values which were discounted for inflation back to the beginning of the review period. This "base" constructed value was then "inflated" up to the month during which the U.S. sale was made.

In accordance with section 773(a) of the Act, we calculated foreign market value based, where applicable, on packed prices to unrelated purchasers in the home market. We made deductions, where appropriate, for inland freight. For U.S. purchase price comparisons, we made an adjustment for differences in credit expenses incurred on United States and home market sales pursuant to § 353.56 of the new antidumping regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.56). When comparing foreign market value to exporter's sales price we made deductions, where appropriate, for indirect selling expenses as an offset to such expenses incurred on U.S. sales, and for commissions and credit expenses.

Constructed Value

For Rancho Alisitos and Las Flores de Mexico foreign market value was based on constructed value because there were insufficient home market and no third country sales. The constructed values were based on information provided by respondents.

The constructed values for these companies were calculated as described in the Foreign Market Value section. Where general, selling and administrative expenses ("GS&A") were less than 10 percent, we used the statutory minimum of 10 percent of the cost of manufacture ("COM"). In all cases, we used the statutory minimum of eight percent of COM plus GSA for profit.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period November 3, 1986 through March 31, 1988:

Manufacturer/exporter	Margin (percent)
Florex	14.78
Las Flores de Mexico	25.41
Rancho Alisitos	9.99
Rancho Daisy	0.00
Rancho Mision el Descanso	1.93
Rancho del Pacifico	0.00
Tzitzic Tareta	9.95
Visaflor	1.39

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication.

Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate

entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided by Section 751(a)(1) of the Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of certain fresh cut flowers from Mexico by the companies under review.

For any future entries of this merchandise from a new producer and/or exporter, not covered in this review or in the original investigation, whose first shipments occurred after March 31, 1988, and who is unrelated to the reviewed firms or any firm which was subject to the original investigation, a cash deposit of 25.41 percent shall be required.

These deposit requirements are effective for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the new antidumping regulations.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Date: July 6, 1989.

[FR Doc. 89-16360 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-05-M

[A-588-810]

Postponement of Preliminary Antidumping Duty Determination: Mechanical Transfer Presses From Japan

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

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)). Based on this request, we are postponing our preliminary determination as to whether sales of mechanical transfer presses from Japan have occurred at less than fair value until not later than August 10, 1989.

EFFECTIVE DATE: July 13,1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, James P Maeder, Jr. or V Irene Darzenta at (202) 377-3965, 377-4929 or 377-0186, respectively, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230.

SUPPLEMENTAL INFORMATION: On June 12, 1989, we published a notice of postponement (54 FR 24927) of the preliminary determination in the antidumping duty investigation to determine whether mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by July 21, 1989.

On July 3, 1989, counsel for the petitioners requested that the Department postpone the preliminary determination an additional 20 days, i.e., until not later than 210 days after the date of receipt of the petition, in accordance with section 733(c)(1)(A) of the Act. Accordingly, we are postponing the date of the preliminary determination until not later than August 10, 1989. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

July 6, 1989.

[FR Doc. 89-16361 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 90528-9128]

RIN 0693-AA69

Proposed Revision of Federal Information Processing Standard (FIPS) 146, GOSIP

AGENCY: National Institute of Standards and Technolgy (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: A revision to Federal Information Processing Standard (FIPS) 146 adopting the Government Open Systems Interconnection Profile (GOSIP) is proposed for Federal agency use. Version 1 of GOSIP adopted as FIPS 146, provided Open Systems Interconnection protocols for electronic mail and file transfer functions. The proposed revision incorporates Version 2 of GOSIP which provides protocols for the following additional functions:

a. The Virtual Terminal Service (TELNET and Forms profiles);

b. The Office Document Architecture;

c. The Integrated Services Digital Network;

d. The End System-Intermediate System protocol; and, as user options,

e. The Connectionless Transport Service; and

f. The Connection Oriented Network Service.

Version 2 of GOSIP is based on agreements reached by vendors and user of computer networks participating in this National Institute of Standards and Technology (NIST) Workshop for Implementors of Open Systems Interconnection.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, GOSIP which references protocols for the open systems environment. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of GOSIP from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B-64, Gaithersburg, MD 20899, telephone (301) 975-2816.

DATE: Comments on this proposed revision may be received on or before October 11, 1989.

ADDRESS: Written comments concerning the revision should be sent to: Director, National Computer Systems Laboratory, ATTN: Revision of FIPS 146, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Gerard F Mulvenna, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3631.

Raymond G. Kammer,

Acting Director.

Date: July 6, 1989.

Federal Information Processing Standards Publication 146-1

Announcing the Standard for Government Open Systems Interconnection Profile (GOSIP)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987 Pub. L. 100-235.

Name of Standard. Government Open Systems Interconnection Profile (GOSIP).

Category of Standard. Hardware and Software Standards, Computer Network Protocols.

Explanation. This Federal Information Processing Standard adopts the Government Open Systems Interconnection Profile (GOSIP). GOSIP defines a common set of data communication protocols which enable systems developed by different vendors to interoperate and enable the users of different applications on these systems to exchange information. These Open Systems Interconnection (OSI) protocols were developed by international standards organizations, primarily the International Organization for Standardization (ISO) and the Consultative Committee on International Telephone and Telegraph (CCITT). GOSIP is based on agreements reached by vendors and users of computer networks participating in the National Institute of Standards and Technology (NIST) Workshop for Implementors of Open Systems Interconnection.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology, National Computer Systems Laboratory.

Cross Index

a. NBS Special Publication 500-162, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 2, Edition 1, NIST Workshop for Implementors of Open Systems Interconnection, December 1988.

Related Documents. Related documents are listed in the Reference Section of the GOSIP document.

Objectives. The primary objectives of this standard are:

—To achieve interconnection and interoperability of computers and systems that are acquired from different manufacturers in an open systems environment;

—To reduce the costs of computer network systems by increasing alternative sources of supply;

—To facilitate the use of advanced technology by the Federal Government;

—To stimulate the development of commercial products compatible with Open Systems Interconnection (OSI) standards.

Specifications. GOSIP (affixed).

Applicability. GOSIP shall be used by Federal Government agencies when acquiring computer network products and services and communications systems or services that provide equivalent functionality to the protocols defined in the GOSIP documents. Version 1 of GOSIP supports the Message Handling Systems and File Transfer, Access and Management applications. Version 1 of GOSIP also supports interconnection of the following network technologies: CCITT Recommendation X.25; Carrier Sense Multiple Access with Collision Detection (IEEE 802.3); Token Bus (IEEE 802.4); and Token Ring (IEEE 802.5). Version 2 of GOSIP contains the following functionality not included in Version 1.

a. The Virtual Terminal Service (TELNET and Forms profiles);

b. The Office Document Architecture;

c. The Integrated Services Digital Network;

d. The End System-Intermediate System protocol; and, as user options,

e. The Connectionless Transport Service; and

f. The Connection Oriented Network Service.

Additional applications and network technologies will be added to later versions of the GOSIP document.

Implementation. Version 1 of GOSIP was effective February 15, 1989. For a period of 18 months after that date, agencies are permitted to acquire alternative protocols which provide equivalent functionality to the protocols defined in Version 1. After August 15, 1990, Version 1 of GOSIP must be cited in solicitations and contracts for the acquisition of new network products and services providing the functionality defined in Version 1.

Version 2 of GOSIP will be effective on the day that it is announced in the **Federal Register** following approval by the Secretary, and does not change the implementation schedule established for the protocols defined in Version 1. For a period of 18 months following the effective date for Version 2, agencies are permitted to acquire alternative protocols which provide equivalent functionality to the protocols defined in Version 2. Eighteen (18) months after the effective date of Version 2 of GOSIP the protocols in Version 2 must be cited in solicitations and contracts when the systems to be acquired provide equivalent functionality to the protocols defined in the GOSIP document. Because the Connectionless Transport Service and the Connection Oriented Network Service in Version 2 of GOSIP are optional services for use under restricted conditions, the mandatory compliance date does not apply to those protocols.

OSI protocols providing additional functionality will be added to new versions of GOSIP as implementation specifications for these protocols are developed by the NIST Workshop for Implementors of OSI.

For the indefinite future, agencies will be permitted to buy network products in addition to those specified in GOSIP and its successor documents. Such products may include other nonproprietary protocols, proprietary protocols, and features and options of OSI protocols which are not included in GOSIP

The National Institute of Standards and Technology is developing a program to accredit testing organizations for specific tests or types of tests for computer products and services. Information on these tests and test procedures will be made available in the future. Until the tests and test procedures are available, government agencies acquiring networks and services in accordance with this standard may wish to require testing for conformance, interoperation, and performance. The tests to be administered and the testing organization are at the discretion of the agency Acquisition Authority. Guidance on testing for GOSIP specifications is contained in Section 2 of the GOSIP document.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waiver only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each decision, with procurement sensitive or classified portions clearly indentified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

Special Information. The appendices to the GOSIP specification describe advanced requirements for which adequate profiles have not yet been developed. Federal government priorities for meeting these requirements and the expected dates that work on these priorities will be completed are also provided. As these work items are addressed and completed by the NIST Workshop for Implementors of OSI, addenda will be inserted into the GOSIP document.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 146-1 (FIPSPUB146-1), and title. Specify microfiche if desired. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 89-16417 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration Marine Mammals; Permit Modification: Dr. Thomas F Albert (P282A)

Modification No. 2 to Permit No. 519

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and § 220.24 of the regulations on endangered species (50 CFR Parts 217-222), Scientific Research Permit No. 519 issued to the Dr. Thomas F Albert, Department of Conservation and Environmental Protection, North Slope Borough, P.O. Box 69, Barrow, Alaska 99723, on August 23, 1985 (59 FR 35286) and as modified on January 11, 1989 (54 FR 1758), is further modified in the following manner:

Section A.1.a is deleted and replaced by:

"1. Specimen materials may be collected from the following number of dead beached/stranded or subsistence-harvested animals:

a. 171 bowhead whales (*Balaena mysticetus*)

Special Condition B. 3 is Changed and B.6 is Added:

B.3 The Holder shall submit an annual report by December 31 each year the Permit is valid summarizing activities conducted thereunder. The report should include the numbers and types of specimens collected and the analyses done; and to whom they were distributed.

B.6 The Holder shall report any stranded cetacean sampled under this permit which was not taken and accounted for as part of the Alaska Native subsistence harvest to the Coordinator, Alaska Marine Mammal Stranding Network, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802 (tel 907/586-7510). The report should indicate the date of discovery, species, sex, length, condition, apparent cause of death, and geographic location of each stranded animal.

This modification becomes effective upon publication in the **Federal Register.**

Documents pertaining to the Permit and all modifications are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: July 6, 1989.

[FR Doc. 89-16460 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Socialist Republic of Romania

July 7 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 7 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agriculture Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Socialist Republic of Romania agreed to increase the current limit for Category 315.

A description of the textile and apparel Categories in terms of HTS numbers is available in the Correlation: Textile and Apparel categories with the Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937 published on November 7 1988). Also see 53 FR 49344, published on December 7 1988.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

July 7 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988, by the

Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on July 7 1989, the directive of December 2, 1988 is being amended to increase to 1,442,283 square meters the limit for cotton textile products in Category 315.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-16461 Filed 7-12-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Defense Acquisition Regulatory Council; Meetings

AGENCY: Department of Defense (DoD), National Aeronautics and Space Administration (NASA).

ACTION: Notice of meetings.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council will travel to St. Louis, Missouri, and Boston, Massachusetts, during the week of November 6, 1989. The Council will conduct joint Government/Industry meetings at both locations and will discuss significant Federal Acquisition Regulation and DoD Federal Acquisition Regulation Supplement issues of mutual interest. The Council tentatively plans presentations on the following topics: Cost Principles, Current Legislation, and Consultant Conflict of Interest. Panel discussions will also be conducted on issues involving Small and Small Disadvantaged Business, Payment/Pricing/Finance, and Integrity/Ethics/Drugs. The Council will be available for questions on these issues or other DAR cases.

DATE: November 6, 1989 and November 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W Lloyd, Executive Secretary, DAR Council (202) 697-7266.

SUPPLEMENTARY INFORMATION: The Defense Contract Administration Services Region, (DCASR) St. Louis will host the DAR Council's meeting on Monday, November 6, 1989, from 8:00 am to 4:00 pm, at the St. Louis Airport Marriott Hotel, I-70 at Lambert International Airport, St. Louis, Missouri 63134 (Telephone (314) 423-9700). Telephone number for reservations is 1-800-228-9290. Registration is $25 and registration deadline is October 4, 1989. Checks should be made payable to DAR COUNCIL SEMINAR and mailed to DCASR ST. LOUIS, ATTN: DCASR STL-A, 1222 SPRUCE STREET, ST. LOUIS, MO 63103-2811. Point of contact is Mr. Lucki Latimer. His telephone number is (314) 331-5083 (AUTOVON: 8-555-5083).

The Defense Contract Administration Services Region, Boston will host the DAR Council's meeting on Wednesday, November 8, 1989, from 8:00 am until 4:00 pm, at the Boston Park Plaza and Towers Hotel, 50 Park Plaza at Arlington Street, Boston, Massachusetts 02117 (Telephone: (617) 426-2000). Telephone number for reservations is 1-800-225-2008. Registration fee is $30 and registration deadline is October 4, 1989. Checks should be made payable to DCASR BOSTON SPECIAL ACCOUNT and mailed to DCASR BOSTON, BARNES BUILDING, ATTN: DCASR BOS-LR/DAVID HORTON, 495 SUMMER STREET, BOSTON, MA 02210-2184. Point of contact is Mr. David Horton. His telephone number is (617) 451-4230 (AUTOVON: 8-955-4230).

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-16388 Filed 7-12-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent (NOI) To Prepare a Programmatic Environmental Impact Statement for Development of the Proposed Advanced Launch System

The United States Air Force plans to prepare a Programmatic Environmental Impact Statement (EIS) for development of the proposed Advanced Launch System (ALS). ALS is a space launch system proposed jointly by the Air Force and NASA to fill the expected need for less expensive, expendable launch vehicles (rockets) in the late 1990s through 2025. It is proposed that ALS would attain a launch rate of 6 to 10 per year at one launch site in 1998. This would increase to a maximum of up to 25 launches per year per launch site by 2010. Two launch sites are expected to be required to fulfill the proposed future launch requirements. Two existing and potential launch sites are being evaluated to determine their ability to support ALS: Cape Canaveral Air Force Station/Kennedy Space Center, Florida and Vandenberg Air Force Base, California.

ALS is proposed to be the primary means of placing large satellites (60,000 to 190,000 pounds) into equatorial and polar orbits in the future. The expected launch requirements for ALS include the capacity to lift from 100,000 to 150,000 pounds to equatorial orbit and approximately 80,000 pounds to near polar orbit. Future modification of the launch vehicle configuration under evaluation could provide a payload lift capacity of approximately 220,000 pounds to low earth orbit.

The Programmatic EIS will analyze the environmental consequences of development of the ALS, including those of proceeding with the proposed preliminary demonstration and evaluation of the system. The decision as to whether or not to proceed with ALS into a demonstration/validation phase is currently scheduled to occur in April 1990. The focus of the Programmatic EIS will be to evaluate the relevant environmental issues associated with all government plans and actions regarding development of ALS. This phase of the ALS program is proposed to occur at three separate test sites; NASA Stennis Space Flight Center in Mississippi, NASA Marshall Space Flight Center in Alabama, and Edwards Air Force Base in California. It is proposed that the use and/or upgrading of existing facilities there would be required. Analysis of the site-specific impacts of ALS testing at these locations will be included in the Programmatic EIS. The deployment of the ALS in a test mode would require the construction or renovation of approximately four launch pads, industrial facilities, and additional infrastructure. This EIS will evaluate cumulative effects of demonstration/validation, full-scale development and deployment of ALS insofar as the effects can be identified at this time. The Programmatic EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the President's Council on Environmental Quality (CEQ) Regulations, and Air Force Regulation (AFR) 19-2.

NASA is a cooperating agency on this Programmatic EIS. Site-specific environmental analysis associated with full-scale development and deployment of ALS would be addressed by separate environmental documentation under NEPA and the foregoing regulations.

The Air Force will hold a public scoping meeting to solicit inputs on significant environmental issues associated with the development of ALS concepts. Because of the national scope of this program, the meeting will be

The limit has not been adjusted to account for any imports exported after December 31, 1988.

conducted in Washington, D.C. Time, date and exact location of this meeting will be announced in the local media at a later date. In addition to the scoping meeting, written inputs to the scoping process are solicited. Comments in response to this NOI or as part of the scoping process are requested in writing within 30 calendar days from publication of this notice in the Federal Register.

Questions concerning the proposed action or the NEPA process for the action, comments on this NOI, or written inputs to the scoping meeting or scoping process should be mailed to: Captain Hector Malave, Department of the Air Force, HQ Space Systems Division/DEV P.O. Box 92960, Los Angeles, CA 90009-2960.

Telephone inquiries should be directed to Captain Malave at (213) 643-0935.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-16457 Filed 7-12-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

United States Army, Armament, Munitions and Chemical Command; Armament Research, Development and Engineering Center

SUMMARY: Notice is hereby given that, in accordance with OFPP Policy Letter 84-1, Appendix III, 4 April 1984, the U.S. Army intends to establish a Federally Funded Research and Development Center (FFRDC) for a long term research program to advance the state-of-the-art in areas of electromechanics and hypervelocity testing and applicable to future weapon systems.

(Program Requirements:) This program will include basic research, analysis, design, fabrication, experimentation and training in these and related areas. The electromechanics area will include but not be limited to compact pulse power supplies, advanced electric launchers and related materials research. Hypervelocity testing research will include but not be limited to compatible launch package design and interface, impact characterization, test planning, instrumentation, impact testing, data reduction/analysis and related materials research. An FFRDC is an activity that is operated, managed and/or administered by either a university or consortium of universities, other nonprofit organization or industrial firm as an autonomous organization or as an identifiable separate operating unit of a parent organization.

ADDRESS: Send inquiries to Commander, U.S. Army AMCCOM, ATTN: AMSMC-POW-D(D), Robert Wisser, Picatinny Arsenal, New Jersey 07806-5000.

FOR FURTHER INFORMATION CONTACT: Robert Wiser, Contract Specialist, Research, Development and Engineering Center on (201) 724-4674.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer with the Federal Register.

[FR Doc. 89-16401 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 3-4 August 1989.

Time of Meeting: 0830-1630 hours.

Place: Washington, DC.

Agenda: The Army Science Board's Effectiveness Review of the Harry Diamond Laboratories will meet for the purpose of gathering data, and the drafting of a report for the conduct of the effectiveness review. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at 202-695-3039 or 695-7046.

Thomas E. Stalzer,

LTC(P), GS, Executive Secretary.

[FR Doc. 89-16427 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 10-11 August 1989.

Time of Meeting: 0900-1700 hours.

Place: Fort Sheridan, Illinois.

Agenda: The Army Science Board Subgroup on Toxic and Hazardous Waste Management will conduct its next meeting with emphasis on evaluation of the Army's program for environmental restoration and hazardous waste minimization. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-18428 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Military/Industrial Mobile Homes Symposium; Open Meeting

Announcement is made of meeting of the Military/Industry Mobile Homes Symposium. This meeting will be held on 13 July 1989 at Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1600 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 3 July 1989.

Dated: June 26, 1989.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer, With the Federal Register.

[FR Doc. 89-16559 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

Conduct of Employees; Waiver

AGENCY: Office of the Secretary, Dept. of the Army, DOD.

ACTION: Conduct of employees; Waiver.

Section 207(f), Title 18, United States Code authorizes the Secretary of the Army to waive the post-employment prohibitions of subsections (a) and (b)(i) of section 207 Title 18, United States Code to permit a former employee with outstanding scientific or technological qualifications to make appearances before, or communications to, the Army in connection with a particular matter which requires such qualifications, where it has been demonstrated that such a waiver would serve the national interest:

It has been established to my satisfaction that Dr. John W Holaday, former Chief of the Neuropharmacology Branch, Department of Medical Neurosciences at the Walter Reed Army Institute of Research (WRAIR), has an outstanding and unique combination of scientific and technological qualifications with respect to neuropharmacology. Dr. Holaday is now the Scientific Director of Medicis, a Washington based pharmaceutical company. I am satisfied that it will serve the national interest to allow Dr. Holaday to collaborate with his former scientific colleagues at WRAIR on projects concerning neuropharmacology, while he is employed by Medicis. I am further satisfied that the neuropharmacological collaboration is in a scientific field and requires the qualifications stated.

While employed by WRAIR, Dr. Holaday was personally and substantially involved in the setting up of a cooperative research and development agreement (CRDA) between WRAIR and Medicis. As an employee of Medicis, Dr. Holaday does not have direct duties in representing Medicis to WRAIR or in implementing or modifying the CRDA. However, it has been established to my satisfaction that a waiver is necessary because Dr. Holaday's collaboration would be on so continuous and comprehensive a basis that procedures to completely isolate Dr. Holaday from matters concerning Medicis would be burdensome and impractical.

While collaborating with his former colleagues at WRAIR, Dr. Holaday will not act as an employee of WRAIR or have the authority to direct research or commit Army resources.

I have, therefore, waived the post-employment prohibitions of subsections (a) and (b)(i) of section 207 Title 18, United States Code (in consultation with the Director of the Office of Government Ethics) with respect to contact by Dr. Holaday with officials of WRAIR concerning the CRDA, on behalf of Medicis.

John O. Marsh, Jr.,

Secretary of the Army.

[FR Doc. 89-16400 Filed 7-12-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act

Section 602(a) of the Department of Energy (DOE) Organization Act (Pub. L. 95-91, hereinafter referred to as the Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Leo P Duffy has been appointed to the position of Special Assistant for Coordination of DOE Defense Waste Management in the Office of the Secretary. As a result of his past employment by Westinghouse Electric Corporation, Mr. Duffy has vested interests in the Westinghouse Pension Plan, the Westinghouse Executive Pension Plan, the Westinghouse Executive Pre-retirement Income Plan, the Westinghouse Deferred Arrangement for Incentive Compensation Awards, and the Westinghouse Personal Investment Plan. Mr. Duffy's interests in these plans have been determined to be energy concern interests for purposes of section 602(a).

It has been established to my satisfaction that requiring Mr. Duffy to divest his interests in the above benefits plans of Westinghouse Electric Corporation would impose an exceptional hardship on him and that each such interest is a vested pension interest, or a similarly vested interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Duffy a waiver of the divestiture requirements of section 602(a) of the Act, for the duration of his employment with the Department, with respect to his interests in the Westinghouse Pension Plan, the Westinghouse Executive Pension Plan, the Westinghouse Executive Pre-retirement Income Plan, and the Westinghouse Deferred Arrangement for Incentive Compensation Awards.

Mr. Duffy has agreed to transfer his interest in the Westinghouse Personal Investment Plan to another investment option in order to divest of this interest in the corporation. I have, therefore, granted Mr. Duffy a waiver of the divestiture requirements of section 602(a) of the Act with respect to this interest until October 1, 1989, the earliest date on which this transfer may be made effective.

In accordance with subsection (b) of section 606 of the Department of Energy Organization Act, Mr. Duffy will be directed not to participate for a period of one year since commencing service in the Department in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of Westinghouse Electric Corporation.

Date: July 5, 1989.

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 89-16458 Filed 7-12-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP86-168-000, et al.]

Columbia Gas Transmission Corp., et al., Offer of Settlement

July 3, 1989.

In the matter of Columbia Gas Transmission Corporation, Docket Nos. RP86-168-000, *et al.*, RP86-15-000, *et al.*, RP87-55-000, *et al.*, RP88-43-000, *et al.*, RP88-56-000, *et al.*, RP88-119-000, RP88-187-000, *et al.*, RP88-207-000, *et al.*, RP89-116-000, CP83-452-034, RP89-181-000, TA81-1-21-000, *et al.*, TA81-1-21-022, TA82-1-21-001, TA82-1-21-024, TA82-1-21-027, TA87-4-21-000, TA87-4-21-002, TA87-5-21-000, *et al.*, TA88-2-21-000, TA89-1-21-000, TC79-127, TC86-21-000, TQ88-1-21-000, TQ88-2-21-000, TQ89-1-21-000, TQ89-2-21-000, TQ89-3-21-000, TQ89-4-21-000, TM89-2-21-000, TM89-3-21-000, TM89-4-21-000, (not consolidated).

Columbia Gulf Transmission Company, Docket Nos. RP86-167-000, *et al.*, RP86-14-000, *et al.*, RP89-94-000, *et al.*, (not consolidated).

Interstate Natural Gas Pipeline Rate Design, Docket No. PL89-2-000, *et al.*

Take notice that on June 29, 1989, Columbia Gas Transmission Corporation, (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company, (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas, 77027 filed an Offer of Settlement in the captioned proceedings. The Offer of Settlement would resolve the above-referenced proceedings and provides for certificate and abandonment authorizations pursuant to sections (7)b and 7(c) of the Natural Gas Act, which are generally described as follows, all as more fully set forth in the Offer of Settlement which is on file with the Commission and open to public inspection:

(1) Article IV of the Settlement provides for revised contractual entitlement levels, including authority for abandonment of service above the initial Annual Entitlement Nomination

(AEN) levels established under the Settlement. The revised levels are described in sections A(1) and A(2) of the Stipulation and are set forth in Appendix IV-1 of the Stipulation.

(2) Article IV of the Stipulation includes tariff provisions governing AENs in accordance with the Settlement, including establishment of entitlements, Columbia's gas supply obligation during the contract year, the customers' base-period requirements for seasonal curtailment purposes and winter season AENs.

(3) Article IV further provides for customer renomination of AENs. Under that provision, Columbia would have pregranted abandonment authorization for decreases of AENs to reflect customer renominations. Furthermore, Columbia would have pregranted certificate authorization for nominated increases in AENs within "offset levels" or above such "offset levels", provided that no facilities are required and that adequate committed gas supply is available. The Settlement would also provide pregranted authority for adjustments in contract demand (DC) to maintain the applicable AEN to CD ratio, in accordance with the procedures established in the *pro forma* tariff sheets contained in Appendix IV-2 of the Stipulation.

(4) The Settlement provides certificate authority for Columbia to perform a no-fee exchange of gas with Texas Gas Transmission Corporation and for Columbia to sell capacity in certain pipelines to Cincinnati Gas & Electric Company, as more fully described in section A(3)(a) of Article IV of the Stipulation.

(5) The Settlement provides authority for the transfer of Commonwealth Gas Pipeline Corporation's (Commonwealth's) entitlements from Columbia and Columbia Gulf to Commonwealth's customers, as described in Article IV section A(3)(c)(i) of the Stipulation, and for the abandonment of service by Columbia and Columbia Gulf to Commonwealth.

(6) The Settlement provides authority for Columbia to implement Maximum Daily Delivery Obligations (MDDOs) as described in Article I, section G and the tariff provisions set forth in Appendix I-5 of the Stipulation.

(7) Article V of the Settlement provides authority for Columbia to implement a deficiency-based Gas Inventory Charge (GIC) applicable to service under the CDS Rate Schedule, or to implement any revisions to the GIC approved by the Commission in the future pursuant to Article V, section I (1) and (2) of the Stipulation. As described in Article V of the Stipulation, an initial unit rate of 35 cents is proposed. The GIC charges would be used to fund Inventory Costs as defined in the Stipulation, and would not be used to fund Gas Costs which are recoverable through Columbia's PGA. The GIC charge would be collected only if total purchases by all CDS customers fall below 75 percent of the aggregate AEN level on an annual basis, or 8 percent of the aggregate AEN level during the summer. CDS customers with individual purchase deficiencies below these threshold levels based on their individual AENs would be charged the GIC unit rate for their share of the system purchase deficiency below the applicable threshold levels.

The GIC provision is subject to a "Comparability Test" under which gas cost components of Columbia's rates are compared with gas cost components of five other pipelines. If Columbia's cost under this test exceeds that of the other pipelines, Columbia would be precluded from collecting GIC revenues for that year or from using GIC revenues to pay inventory costs attributable to that year. The GIC also contains a "true-up" mechanism, under which Columbia may retain GIC revenues for five years to fund Inventory Costs. At the end of the five-year period, Columbia must refund any unutilized GIC revenues.

(8) Article VI of the Settlement provides authority for Columbia to provide Firm Contract Storage Service under the FSS Rate Schedule as contained in Appendix VI-1 of the Stipulation. Specifically, Columbia would provide an initial storage capacity of 60 MMDth commencing November 1, 1989, increasing to 79.5 MMDth for delivery in the Contract Year commencing November 1, 1992, and each Contract Year thereafter.

(9) Article VI of the Settlement further provides authority for Columbia to sell 120 MMDth of storage gas inventory to storage service customers as their initial storage service quantities in accordance with Article VI, section H of the Stipulation. The proposed sales volumes would become the initial 120 MMDth of storage inventory for such customers, and would create the space in storage necessary to provide the contract storage service. Commencing April 1, 1991, FSS customers would have the right to tender third-party gas for injection into storage or to purchase gas from Columbia for injection into storage.

(10) The Settlement provides authority for Columbia to provide limited term "back-up" sales service in connection with the transitions necessary to provide the Firm Storage Service, together with pregrained abandonment authority therefor, as described in Article VI, section H of the Stipulation.

(11) The Settlement provides authority for the assignment and utilization of capacity in Columbia and Columbia Gulf in accordance with Article VII of the Stipulation. Effective November 1, 1989, Columbia would permanently assign to customers listed in the Stipulation 864,584 Dth per day of firm capacity on the Columbia Gulf mainline. Moreover, Columbia would assign 15,000 Dth per day of firm capacity to Access Energy Corporation, the first shipper in Columbia Gulf's first-come, first-served queue, in satisfaction of Access Energy's November 1, 1985 request for transportation service of 226,560 Dth per day. Any capacity made available in the Columbia Gulf mainline in the future would be allocated on a first-come, first-served basis.

Article VII of the Settlement provides rights for Columbia's wholesale customers to utilize their firm transportation rights on Columbia and Columbia Gulf to transport gas for system supply or for end-users, and to assign their capacity to end-users on their systems. Under the Settlement, any of the 864,584 Dth of capacity rights which are abandoned in the future would revert to Columbia but would be made available on a first-come, first-served basis if not needed by Columbia for its system supply.

(12) The Settlement provides authority for Columbia to provide a standby service under the CDS Rate Schedule, as described in Article VIII and as set forth in the *pro forma* tariff sheets contained in Appendix IV-3 of the Stipulation. Under that provision, Columbia's customers may utilize up to 50 percent of their CD (daily entitlements) and up to 50 percent of their AEN (annual entitlements) for firm transportation. Available sales volumes would be reduced on any day to the extent that a customer transports gas under the standby service.

(13) The Settlement provides authority for Columbia to implement Authorized Overrun Service under the AOS Rate Schedule, as described in Article IX and as set forth in Appendix IX-1 of the Stipulation. That rate schedule would apply to takes in excess of a customer's annual AEN level or to takes in excess of the Winter Season portion of its AEN level.

(14) The Settlement provides authority for Columbia's customers to utilize Columbia's firm transportation rights (FTR) in its upstream pipelines other than Columbia Gulf, in accordance with the provisions of Article X, of the Stipulation. Under section (A) of Article

X, Columbia would assign FTR in order of priority to firm transportation customers of Columbia, interruptible transportation customers of Columbia, and all others. All assignments would be subject to receipt of requisite certificate and abandonment authority from the Commission, and the assignee would be solely responsible to the upstream pipeline for all obligations under the assigned contract. Prior to any further reductions in contract demand with upstream pipelines, Columbia would notify its customers and convert such volumes to firm transportation and assign such rights if customers request such capacity.

Section X (B) of the Settlement further provides authority for Columbia to utilize FTR which it has on any upstream pipeline other than Columbia Gulf, including transportation capacity available to Columbia under a standby service, to provide interruptible transportation service on behalf of others when such capacity is not needed by Columbia for its system supply. The available capacity would be allocated among all existing customers on the basis of requests made within five days after notice, and on a first-come, first-served basis therafter.

15) The settlement provides authority for the modifications to the SGS Rate Schedule and abandonment or cancellation of the G, SGES and IS Rate Schedules as set forth in Article XII of the Stipulation, and the change in service from the CDS Rate Schedule to the SGS Rate Schedule by the customes identified in Appendix IV-1 of the Stipulation.

Columbia states that it will expeditiously make a copy of the Offer of Settlement available to any person desiring to comment on the certificate and abandonment authorizations sought.

Any persons desiring to file comments regarding the certificate and abandonment authorizations sought in connection with the Offer of Settlement should, on or before July 19, 1989, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 602(f)), together with a motion to intervene in accordance with the requirements of the 385.214 and the Regulations under the Natural Gas Act (18 CFR § 157.10).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-16153 Filed 7-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2772-002 Massachusetts]

Linweave, Inc., Availability of Environmental Assessment

June 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Gill Mill, A Wheel, Hydroelectric Project located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16149 Filed 7-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP73-329-014 et al.]

Chattanooga Gas Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Chattanooga Gas Company

[Docket No. CP73-329-014]

July 3, 1989.

Take notice that on June 16, 1989, Chattanooga Gas Company (Chattanooga), 811 Broad Street, Chattanooga, Tennessee 37402, filed in Docket No. CP73-329-014 an application, as supplemented June 26, 1989, to amend a certificate issued in Docket No. CP73-329 to perform a limited-term firm and interruptible liquefied natural gas (LNG) service for East Tennessee Natural Gas Company (East Tennessee) for the 1989-90 winter season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chattanooga states that on July 6, 1977 the Commission issued Chattanooga a permanent certificate in Docket No. CP73-329 to provide sales of LNG to East Tennessee of 23,000 Mcf of natural gas per day and a total volume of 500,000 Mcf. Chattanooga now proposes to amend that certificate to provide an interruptible and firm sales service of LNG for East Tennessee for the months of November 1989 through March 1990. Chattanooga indicates that under the terms of a May 22, 1989, limited term winter service contract it would deliver on a firm basis 200,000 Mcf during the November 1989 to March 1990 winter term and deliver volumes requested by East Tennessee up to 13,000 Mcf per day. Chattanooga also indicated it would sell at its sole discretion supplemental winter service of 300,000 Mcf as requested by East Tennessee for the same winter period, and up to 10,000 Mcf per day.

Chattanooga proposes to charge $5.0946 per dt equivalent of natural gas for the firm sales and $4.5910 per dt equivalent of natural gas for the supplemental winter service.

Comment date: July 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Midwestern Gas Transmission Company

[Docket No. CP88-696-003]

July 3, 1989.

Take notice that on June 16, 1989, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP88-696-003 a petition to amend the order issued December 19, 1988, as amended, in Docket No. CP88-696-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of time for the transportation of natural gas on behalf of Loutex Energy, Inc. (Loutex), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Midwestern proposes to continue to transport up to 120,000 dt equivalent of natural gas per day for Loutex on an interruptible basis under the order issued in Docket No. CP88-696-000 issued December 19, 1988. Midwestern, it is said, would receive such gas at the United States-Canadian border at Emerson, Manitoba, and redeliver gas to Loutex at Midwestern's interconnection with ANR Pipeline Company near Marshfield, Wisconsin.

For this transportation service, Midwestern represents that it would charge Loutex a transportation rate as set forth in Midwestern's Rate Schedule IT-2.

Midwestern avers that the transportation agreement would remain in force for a primary term of two years from the date of initial deliveries, and year to year thereafter unless and until terminated by either party giving proper notice.

Comment date: July 24, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1675-000]

July 3, 1989.

Take notice that on June 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1675-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Oxy USA, Inc. (Oxy), a shipper and producer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 dt equivalent of natural gas per day for Oxy pursuant to a transportation agreement dated April 28, 1989. Panhandle states that it would receive the gas from various existing points of receipt located in Colorado, Illinois, Kansas, Michigan, Oklahoma and Texas and redeliver the gas, less fuel and unaccounted for line loss, to Natural Gas Pipe Line Company in Clark County, Kansas. Panhandle indicates that the total volume of gas to be transported for Oxy on a peak day would be 50,000 dt; on an average day would be 50,000 dt; and on an annual basis would be 18,250,000 dt.

Panhandle states that it commenced the transportation of natural gas for Oxy on May 4, 1989, at Docket No. ST89-3887-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Transwestern Pipeline Company

[Docket No. CP89-1694-000]

July 6, 1989.

Take notice that on June 28, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1694-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Exxon Corporation (Exxon), a natural gas producer, under the blanket certificate issued in Docket No. CP88-133-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that pursuant to a transportation agreement dated May 5, 1989, under its Rate Schedule ITS-1, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas for Exxon. Transwestern states that it would transport the gas from receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to delivery points shown in Exhibit "B" of the agreement.

Transwestern advises that service under § 284.223(a) commenced May 17, 1989, as reported in Docket No. ST89-3675 (filed May 30, 1989). Transwestern further advises that it would transport 18,750 MMBtu on an average day and 9,125,000 MMBtu annually.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1697-000]

July 3, 1989.

Take notice that on June 28, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1697-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Citizens Gas Supply Company (Citizens) under Transco's blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated May 1, 1989, it proposes to receive up to 30,000 dt equivalent of natural gas per day of additional volumes if Transco has satisfied any pending requests for service under Rate Schedule IT, from Citizens at specified receipt points located in Offshore Louisiana and Texas and Onshore Texas and redeliver the gas at specified redelivery points located in Onshore Louisiana and Texas. Transco states that the peak day and average day volumes would be 30,000 dt equivalent of natural gas and that the annual volumes would be 10,950,000 dt equivalent of natural gas. It is indicated that on May 11, 1989, Transco initiated a 120-day transportation service for Citizens under § 284.223(a) as reported in Docket No. ST89-3744-000.

Transco further states that no facilities need be constructed to implement the service. Transco states that the service would continue until terminated on 30 days written notice. Transco proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Company

[Docket No. CP89-1702-000]

July 3, 1989.

Take notice that on June 28, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1702-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Grace Petroleum Corporation (Grace), under the blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated February 24, 1989, under its Rate Schedule T-1, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Grace. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points on the borderline between the States of Arizona and California, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3674. El Paso further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: August 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

7 El Paso Natural Gas Company

[Docket No. CP89 1703-000]

July 3, 1989.

Take notice that on June 28, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1703-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Exxon Corporation (Exxon), under El Paso's blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 79,125 MMBtu of natural gas per day for Exxon from any point of receipt located on El Paso's system to delivery points located in Arizona, California, Oklahoma, Texas and Colorado. El Paso anticipates transporting 31,650 MMBtu on an average day and an annual volume of 11,552,250 MMBtu.

El Paso states that the transportation of natural gas for Exxon commenced May 1, 1989, as reported in Docket No. ST89-3518-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88-433-000.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP89-1704-000]

July 3, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1704-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tymco Oil Company (Tymco), a marketer, under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated April 10, 1989, under its Rate Schedule ITS, it proposes to transport up to 7,500 dekatherms (dt) per day equivalent of natural gas for Tymco. ANR states that it would transport the gas from receipt points in Fremont County, Wyoming, as shown in Exhibit A of the transportation agreement, and would deliver the gas for the account of Tymco at an interconnection with Colorado Interstate Gas Company in Fremont County, Wyoming, as shown in Exhibit "B" of the agreement.

ANR advises that service under Section 284.223(a) commenced May 5, 1989, as reported in Docket No. ST89-3879-000. ANR further advises that it would transport 7,500 dt on an average day and 2,737,500 dt annually.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

9. ANR Pipeline Company

[Docket No. CP89-1706-000]

July 3, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1706-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated April 19, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,000 dekatherms (dt) per day equivalent of natural gas for PSI. ANR states that it would transport the gas from receipt points in Kansas, Louisiana, Oklahoma and Texas, and the offshore Louisiana and Texas gathering areas, as shown in Exhibit A of the transportation agreement, and would deliver the gas for the account of PSI in Tennessee, as shown in Exhibit "B" of the agreement.

ANR advises that service under § 284.223(a) commenced May 4, 1989, as reported in Docket No. ST89-3805-000. ANR further advises that it would transport 10,000 dt on an average day and 3,650,000 dt annually.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Company

[Docket No. CP89-1711-000]

July 3, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89-1711-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of General Motors Corp. (GM), under the authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for GM, an industrial end user of gas, pursuant to a transportation agreement dated March 6, 1989. The term of the transportation agreement is for a initial period of 120 days and thereafter until March 31, 1990, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice. ANR proposes to transport on a peak day up to 22,125 dekatherm; on an average day up to 22,125 dekatherm; and on an annual basis 8,075,625 dekatherm of natural gas for GM. ANR states that it would receive the gas at ANR's existing points of receipt located in the states of Kansas, Louisiana, Oklahoma and Texas and the Offshore Texas and Louisiana gathering ares and redeliver the gas of the account of GM at existing interconnections located in the state of Illinois. It is alleged that GM would pay ANR the effective rate contained in ANR's rate schedule ITS. ANR avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission s regulations. ANR commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89-3728-000.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP89-1692-000]

July 3, 1989.

Take notice that on June 28, 1989, Natural Gas pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1692-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Marathon Oil Company (Marathon), a producer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to Section 7 of the Natural Gas Act, all as more fully

set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated March 30, 1989, under its Rate Schedule ITS, it proposes to transport up to 85,000 MMBtu per day equivalent of natural gas for Marathon. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points in Oklahoma and New Mexico, as shown in Exhibit A of the transportation agreement, and would deliver the gas to delivery points in Nebraska and Illinois, as shown in Exhibit "B" of the agreement.

Natural advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-4019-000. Natural further advises that it would transport 9,000 MMBtu on an average day and 3,285,000 MMBtu annually.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1696-000]

July 3, 1989.

Take notice that on June 28, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1696-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tenngasco Corporation (Tenngasco), under the blanket certificate issued in Docket No. CP88-328-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated June 15, 1988, under its Rate Schedule IT, it proposes to transport up to 500,000 dekatherms (dt) per day equivalent of natural gas for Tenngasco. Transco states that it would transport the gas from receipt points located offshore Louisiana, offshore Texas, in Louisiana, Mississippi and Texas, and would deliver the gas at delivery points in Mississippi, onshore Louisiana, and onshore and offshore Texas.

Transco advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3742-000. Transco further advises that it would transport 10,000 dt on an average day and 3,650,000 dt annually.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Questar Pipeline Company

[Docket No. CP89-1685-000

July 3, 1989.

Take notice that on June 26, 1989, Questar Pipeline Company (Questar Pipeline) 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89-1685-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Duncan Oil, Inc. (Duncan) under the blanket certificate issued in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

Questar Pipeline states that pursuant to a Transportation Agreement dated April 13, 1989 under its Rate Schedule T-2, it proposes to transport up to 1,000 MMBtu per day of natural gas for Duncan from various receipt points on Questar Pipeline's system to an interconnection with Northwest Pipeline Corporation, who is a subsequent transporter of natural gas for Duncan.

Questar Pipeline also states that the maximum day, average day, and annual transportation 1,000 MMBtu, 600 MMBtu, and 219,000 MMBtu, respectively.

Questar Pipeline further states it commenced service on May 1, 1989, as reported in Docket No. ST89-3753-000.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Company

[Docket No. CP89-1690-000]

July 3, 1989.

Take notice that on June 27 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP89-1690-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Heartland Gas Marketing, Inc. (Heartland), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 5,000 MMBtu equivalent of natural gas on a peak day, 5,000 MMBtu equivalent on an average day, and 1,825,000 MMBtu equivalent on an annual basis for Heartland. It is stated that Southern would receive the gas at existing points on Southern's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama. It is stated that Southern would deliver equivalent volumes at various existing points on Southern's system in Georgia. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced May 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3532.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Southern Natural Gas Company

[Docket No. CP89-1691-000]

July 3, 1989.

Take notice that on June 27 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303-2563, filed in Docket No. CP89-1691-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Oxy USA, Inc. (Oxy) under the authorization issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Oxy, a producer of natural gas, pursuant to a service agreement dated April 24, 1989, under Southern's Rate Schedule IT. It is stated that the term of the service agreement is for a primary term ending May 31, 1989, with successive terms of one thereafter unless cancelled by either party. Southern proposes to transport on a peak day up to 7,600 Mcf; on an average day 7,600 Mcf; and on an annual basis 2,774,000 Mcf of natural gas for Oxy. Southern proposes to receive the gas from a receipt point in Matagorda Island Block 686 on a firm basis and various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi, and Alabama on a interruptible basis for delivery to Northern Natural Gas Company in Refugio County, Texas. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Oxy pursuant to its Rate Schedule IT. It is further stated that Southern may agree from time to time to discount the rate charged Oxy for transportation services in accordance with the provisions of Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89-3531-000.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1687-000]

July 3, 1989.

Take notice that on June 26, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1687-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities, located in Texas County, Oklahoma, under Northern's blanket certificate issued in Docket No. CP82-410-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Northern states that it requests authority to abandon in place approximately 5,210 feet of 6-inch pipeline and ground appurtenances including: (1) 2-inch blow off valve with closure; (2) 4-inch blow off valve; and (3) sales tap for Guymon Chemical Engineering Company (Guymon Chemical) through Southern Union Gas Company.

Northern states that the sales tap for Guymon Chemical was originally placed in service in 1967 and construction of the sales point was authorized by the Commission on February 6, 1967, in Northern's application at Docket No. CP67-139. Initially, the sales tap was utilized as a delivery point to Northern's Peoples Division (Peoples) to serve their industrial customer, Guymon Chemical. Northern indicates that pursuant to Northern's application at Docket No. CP72-224, Order issued December 26, 1972, Peoples sold and transferred all distribution system properties and services in the rural areas of Beaver, Ellis, Harper, Texas and Woodward counties in Oklahoma to Southern Union. Northern further indicates that the above referenced sales tap for the industrial user, Guymon Chemical, was one of the properties transferred.

Northern states that the 5,210 feet of 6-inch pipeline was placed in service in 1944 as a portion of the approximately 4 mile Jackson #1 gathering line. Northern further states that this section of line would no longer be used and has deteriorated to the point where the line needs major repairs. Also, Northern indicates that the industrial end user, Guymon Chemical, is no longer in business. Northern states that it has determined that the line is not needed to serve current or future customers.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

17 Great Lakes Gas Transmission Company

[Docket No. CP89-1681-000]

July 3, 1989.

Take notice that on June 23, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-1681-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of Western Gas Marketing U.S.A. Ltd. (WGM), until August 31, 1993, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that WGM has requested two services from Great Lakes. In the first, Great Lakes indicates that it would transport up to 250,000 Mcf per day for the account of WGM, from a point on the International Border between the United States and Canada, at Emerson, Manitoba (Emerson Receipt Point), where the facilities of Great Lakes interconnect with the facilities of TransCanada PipeLines Limited (TransCanada), to (1) an existing point of interconnection between the facilities of Great Lakes and TransCanada located at a point on the International Border at Sault Ste. Marie, Michigan (Sault Ste. Marie Delivery Point), and (2) an existing point of interconnection between the facilities of Great Lakes and Michigan Consolidated Gas Company (MichCon), located at Belle River Mills, Michigan (Belle River Mills Delivery Point).

In the second service, Great Lakes states that it would, during the summer period (April 1st to October 31), transport up to 30,000 Mcf per day from the Emerson Receipt Point to the Belle River Mills Delivery Point. Great Lakes further states that MichCon would store such volumes for WGM. Great Lakes indicates that during the winter period (November 1 to March 31), it would receive the storage volumes from MichCon at the Belle River Mills Delivery Point and deliver an equivalent quantity of volumes for the account of WGM at the Sault Ste. Marie Delivery Point.

Great Lakes states that WGM and Great Lakes have entered into two transportation service agreements, each dated June 1, 1989 (Agreement No. 1 and Agreement No. 2), which implement these arrangements. Great Lakes further states that these Agreements provide for a term ending August 31, 1993.

Great Lakes indicates that both Agreements provide for a rate for the transportation service to the Belle River Mills Delivery Point which is equal to the 100% load factor rate as determined from the demand and commodity components utilized in Rate Schedule T-4 of Great Lakes FERC Gas Tariff, under which volumes are also transported from the Emerson Receipt Point to Great Lakes' Eastern Zone.

Great Lake asserts that Agreement No. 1 provides for a rate for the transportation service to the Sault Ste. Marie Delivery Point which is equal to the 100% load factor rate as determined from the demand and commodity components utilized in the transportation component of existing Rate Schedule CQ-2 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transported from the Emerson Receipt Point to Great Lakes' Central Zone. It is stated that no new facilities would be required to provide either of the services.

Great Lakes states that WGM or its sales customers have entered into the contractual arrangements with MichCon for the transportation of volumes from Bell River Mills to points of interconnection between the facilities of MichCon and the end users who will purchase the subject volumes from WGM; and WGM has entered into the contractual arrangements with MichCon related to the storage of volumes. Great Lakes further states that WGM has entered into arrangements with various end users in Michigan and in Canada (near Sault Ste. Marie, Ontario), for the sale of the subject volumes.

Comment date: August 17 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1646-000]

July 3, 1989.

Take notice that on June 16, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1646-000 an application, as supplemented June 21, 1989, pursuant to section 7(b) of the Natural Gas Act requesting an order permitting and approving abandonment of certain sales service to Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into two service agreements with Columbia, the first dated September 19, 1966 and the second dated September 1, 1967 providing for the sale for resale of a maximum daily quantity of 23,900 Mcf of natural gas per day under Transco's Rate Schedule CD-3 and 2,500 Mcf per day under Transco Rate Schedule OG-3, respectively. Transco further states that both of these service agreements expired by their own terms prior to the proposed retroactive date requested herein. It is averred that the Commission originally authorized such service to Columbia by orders issued in Docket Nos. CP66-233-000, 37 FPC 959 (1967), and CP66-187-000, 35 FPC 482 (1966).

Transco states that effective as of April 1, 1989, Columbia has fully converted its firm sales service from Transco to firm transportation service under Transco's Rate Schedule FT pursuant to the Commission's Regulations implementing the Commission's Order No. 500. Thus, Transco requests that the abandonment of Columbia's firm sales service entitlement under Transco's Rate Schedules CD-3 and OG-3 be effective as of April 1, 1989.

Comment date: July 24, 1989, in accordance with Standard Paragraph F at the end of this notice.

19. Trunkline Gas Company

[Docket No. CP89-1628-000]

July 5, 1989.

Take notice that on June 14, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP89-1628-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline facilities, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests authority to construct and operate 20.03 miles of 24 inch pipeline loop extending from South Timbalier Block 72 to South Timbalier Block 175 at an estimated cost of $15,246,830. Trunkline proposes to finance the project from funds on hand and short term bank borrowing.

Trunkline states that the new facilities will provide capacity which is needed to transport gas on its Terrebonne System. Trunkline states that it has connected and is negotiating to connect reserves from 25 blocks in the South Timbalier and Ewing Bank areas of the Gulf of Mexico. Trunkline further states that presently, reserves discovered in ten of the 25 blocks have been estimated at 270 Bcf proved/probable with an additional 115 Bcf of reserves estimated as potential. Trunkline states that without the proposed facilities, shippers will be unable to obtain transportation via Trunkline and the producers will be deprived of a market for their gas.

Comment date: July 26, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

20. Nora Transmission Company

[Docket No. CP88-28-003]

July 5, 1989.

Take notice that on June 20, 1989, Nora Transmission Company (Nora), Post Office Box 1388, Ashland, Kentucky 41105-1388, filed in Docket No. CP88-28-003 an application, as supplemented June 27 1989, pursuant to section 7(c) of the Natural Gas Act, to amend its existing certificate of public convenience and necessity issued in Docket No. CP88-28-000 to authorize Nora to transport in interstate commerce an additional 10,000 dt equivalent of natural gas per day, on an interruptible basis, for Equitable Resources Exploration, a division of Equitable Resources Energy Company (EREX), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that in order to facilitate EREX's interruptible sales of Kentucky-produced gas to East Tennessee Natural Gas Company (East Tennessee), Nora proposes to increase its interruptible transportation service on behalf of EREX, under Rate Schedule ITS-1, by 10,000 dt equivalent of natural gas per day, for a total of up to 25,000 dt equivalent of natural gas per day, as provided by a transportation agreement dated April 1, 1989, between Nora and EREX. Nora proposes no change in the rate to be charged for this interruptible service.

Nora states that it would accept these additional volumes at the existing point of interconnection of Nora's facilities with the facilities of Kentucky West Virginia Gas Company and deliver these quantities to East Tennessee at the existing point of interconnection of Nora's facilities with the facilities of East Tennessee near Nora, Virginia. Nora indicates that no new facilities are needed to provide the proposed increase in interruptible transportation service. It is also indicated that Nora anticipates that the proposed service would commence by November 1, 1989.

Nora proposes no other changes to the authorized service.

Comment date: July 26, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

21. ANR Pipeline Company

[Docket No. CP89-1710-000]

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1710-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Panhandle Trading Company (Panhandle), a marketer. ANR explains that service commenced May 6, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3809. ANR further explains that the peak day quantity would be 75,000 dekatherms, the average daily quantity would be 75,000 dekatherms, and that the annual quantity would be 27,375,000 dekatherms. ANR explains that it would receive natural gas at three existing Louisiana interconnections and redeliver the gas at an existing Paulding County, Ohio, interconnection.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. ANR Pipeline Company

[Docket No. CP89-1708-000]

July 5, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan

48243, filed in Docket No. CP89-1708-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Unicorp Energy, Inc. (Unicorp), a marketer. ANR explains that service commenced May 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3729. ANR further explains that the peak day quantity would be 100,000 dekatherms, the average daily quantity would be 100,000 dekatherms, and that the annual quantity would be 36,500,000 dekatherms. ANR explains that it would receive natural gas at the various existing interconnections listed in Exhibit A and redeliver the gas at existing interconnections in Indiana.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1713-000]

July 5, 1989.

Take notice that on June 29, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1713-000 a request pursuant to §§ 157.216(b) and 157.205 of the Regulations under the Natural Gas Act for permission and approval to abandon sales service and related facilities provided to Wil-Ka-Way Farms, Inc. (Wil-Ka-Way), a farm tap certificated in Docket No. CP81-489-000, under the certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Panhandle states that by letter dated May 1, 1989, Wil-Ka-Way has formally confirmed that it no longer desires sales service from Panhandle and consents to Commission approval of abandonment of the farm tap facilities.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. ANR Pipeline Company

[Docket No. CP89-1705-000]

July 5, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1705-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Coastal Gas Marketing Company (Coastal) under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Act, all or more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that pursuant to a Transportation Agreement dated October 28, 1988, it proposes to transport up to 100,000 MMbtu per day of natural gas for Coastal. ANR states it would receive the gas at ANR's existing points of receipt located in the offshore Texas gathering area and redeliver the gas for the account of Coastal at existing interconnections located in the Offshore Texas gathering area.

ANR also states that the maximum day, average day, and annual transportation volumes would be 100,000 MMbtu, 100,000 MMbtu and 36,500,000 MMbtu, respectively.

ANR further states it commenced this service on May 1, 1989, as reported in Docket No. ST89-3722-000.

Comment date: August 21, 1989, in accordance with Standard paragraph G at the end of this notice.

25. Questar Pipeline Company

[Docket No. CP89-1701-000]

July 5, 1989.

Take notice that on June 28, 1989, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89-1701-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide interruptible transportation service for Stauffer-Wyoming Pipeline Company (Stauffer-Wyoming), under Questar Pipeline's blanket certificate issued by the Commission in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Questar Pipeline states that pursuant to a transportation agreement dated April 4, 1989, under its Rate Schedule T-2, it intends to transport up to 7,000 MMBtu per day equivalent of natural gas for Stauffer-Wyoming from various receipt points, listed as Appendix A, on Questar Pipeline's system and deliver to an interconnection with Northwest Pipeline Corporation, who is a subsequent transporter of natural gas for Stauffer-Wyoming.

Questar Pipeline further states that the estimated average daily and annual quantities are 2,000 MMBtu and 730,000 MMBtu equivalent of natural gas, respectively. Service commenced on May 1, 1989, as reported in Docket No. ST89-4017-000 for a 120-day period, pursuant to § 284.223(a)(1) of the Commission's Regulations, it is stated.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP89-1538-000]

July 5, 1989.

Take notice that on May 30, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1538-000 a request, as supplemented June 30, 1989, pursuant to §§ 157.7 and 175.14 of the Commission's Regulations under the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 2.0 miles of 30-inch line and related facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern is requesting authorization to construct pipeline and related facilities, looping a portion of Northern's East Leg pipeline which crosses the Mississippi River, from approximately 20 miles east of Epworth, Iowa, to a point approximately 3 miles west of Galena, Illinois. Northern states that such line is required in order to provide security and reliability in meeting its service obligations and maintaining deliveries of certificated volumes to eleven existing firm sales and transportation customers and approximately six interruptible customers served by Northern's East Leg. The firm customers total peak requirements are 302,047 Mcf per day, it is stated. Northern states that the proposed line would be "valved off" at each end where it would connect with Northern's existing line; Northern therefore requests authorization to operate the new line only during periods of outage, repairs, testing, or maintenance of the existing line. Northern estimates the proposed project to cost $6.0 million. Northern proposes to finance this proposal with internally generated funds.

Comment date: July 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

27 Panhandle Eastern Pipeline Company

[Docket No. CP89-1700-000]

July 6, 1989.

Take notice that on June 29, 1989, Panhandle Eastern Pipeline Company (Panhandle), 5400 Westheimer Court, Houston, Texas, 77251-1642, filed in Docket No. CP89-1700-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to establish an additional delivery point to its existing sales service contract for Michigan Gas Storage Company (Storage Company), under Panhandles's blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle indicates that the additional delivery point would not affect the certificated entitlement of Storage Company's LS-1 contract, since the aggregate volumes delivered on a single day will not exceed 35,000 Mcf.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-328-002]

July 6, 1989.

Take notice that on June 27 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-328-002 a petition to amend the order issuing a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act in Docket No. CP88328-000, by authorizing Transco and the holders of firm transportation capacity on its system to sell, trade or reassign those rights and sell, trade or reassign Transco's firm transportation and exchange capacity rights on other interstate pipelines to each other or to third parties in an unregulated secondary market, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, Transco seeks authority necessary to permit Transco and the holders of firm transportation capacity rights on its system to sell, trade or reassign those rights, and to sell, trade or reassign Transco's firm transportation and exchange capacity rights on other interstate pipelines, to each other or to third parties in an unregulated secondary market. Transco also seeks additional authorizations which would become necessary if Transco's proposals in its currently pending rate case in Docket No. RP87-7-000 are accepted. Transco states that such other authority would be (i) that Transco be permitted to terminate its current Rate Schedule IT and all other interruptible transportation services that it performs under its FERC Gas Tariff and abandon service thereunder (Transco believes that this is necessary because all transportation service would be provided by Transco under firm transportation agreements or by reassignment in an unregulated secondary market), and (ii) that Transco be authorized to maintain its current CD and G/OG sales service by providing such service on an unbundled basis pursuant to Rate Schedule FT for the pricing of the transportation component and reference to the purchased gas adjustment mechanism or any subsequently authorized gas inventory charge for pricing of the gas commodity.

Transco further requests that the Commission consolidate this petition with the ongoing proceeding in Docket No. RP87-7-000 in order that the issues raised by this petition may be considered and addressed in conjunction with the Docket No. RP87-7-000 proposal upon which this petition is said to be a necessary component. Transco states that the rate design and terms of service which Transco has proposed in Docket No. RP87-7-000 are closely intertwined with the secondary market proposal authorization which is sought by this filing.

Transco proposes that essentially all current capacity on the system used to render pipeline merchant service would be assigned to the existing customers. Transco proposes to define the rights FT shippers hold so as to ensure that firm transportation entitlements provide service to the customer that is comparable regardless of the customer's choice of marketers to provide its gas supply. To accomplish this, it is necessary to provide enhanced firm capacity entitlements that include access to Transco's entire production area and to Transco's upstream firm transportation and exchange rights on third party pipelines traditionally used by Transco to purchase specific gas supplies for firm sales service.

As to capacity rights, Transco states it would allocate firm capacity rights on its traditional mainline to firm sales and transportation customers consistent with Transco's existing contractual service obligations. This would be accomplished by converting any remaining traditional firm sales entitlements of customers to firm transportation entitlements. These new FT customers, and any existing FT customers by virtue of prior contract conversions or the reallocation of firm sales or transportation mainline capacity (these new and existing FT customers are referred to collectively as FT conversion customers) would have full daily contract capacity rights on Transco's mainline transmission system commencing at Compressor Station 65. Existing firm transportation customers under Transco's four certificated long haul X Rate Schedules (X-11, 42, 52 and 56) would retain their existing contractual entitlements to capacity and Transco would retain firm capacity on its mainline system needed to render service under Rate Schedules PS and ACQ, or any successor services.

Transco would be allocated a percentage of the capacity upstream of Station 65 in order to provide service under existing Rate Schedules PS and ACQ and for certificated long-haul firm transportation, and to provide for fuel and for the operational flexibility to respond on short notice to changes in flow patterns on its system. When that capacity is not necessary for such purposes, Transco would offer such capacity for sale in the unregulated secondary market. Transco would include rights under certain firm transportation and exchange agreements with upstream pipelines in the allocation process. In effect, Transco states it proposes to treat its rights on upstream pipelines as an extension of its own system.

With regard to delivery points, Transco states that each FT conversion customer would have firm transportation service rights to receive gas at that customer's traditional delivery points with Transco. With regard to receipt points, Transco proposes that all gas supply and third-party pipeline interconnect receipt points on Transco's pipeline system would be available to FT conversion customers under Rate Schedule FT.

Transco states it has proposed in Docket No. RP87-7-000 to establish conditions and rates for regulated firm transportation service on its system which would permit the creation of an unregulated secondary market in such transportation rights. Transco is herein proposing first to convert its system to unbundled firm transportation service by allocating capacity to Transco's historic firm customers consistent with Transco's existing contractual obligations. Transco asserts that this allocation of firm capacity in combination with Transco's proposed

rate design and tariff changes in the Docket No. RP87-7-000 proceeding would create the conditions necessary and sufficient for the operation of the unregulated secondary market.

Transco states that the agreements governing the sale or assignment of capacity rights in the proposed unregulated market would be the product of negotiation between the buyers and sellers in that market. Transco states it would not be a party to those agreements, except to the extent that Transco itself is either a buyer or a seller in the unregulated market. Transco asserts it would conduct business with the FT customers under the Rate Schedule FT and would look to the FT customer as the party responsible for the payment of any and all charges associated with the use of the capacity under that rate schedule and for compliance with the other terms and conditions of Transco's tariff.

Comment date: July 27 1989 in accordance with Standard Paragraph F at the end of the notice.

29. East Tennessee Natural Gas Company

[Docket No. CP89-1674-000]

July 6, 1989.

Take notice that on June 22, 1989, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP89-1674-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 0.48 mile of 22-inch pipeline loop across the Second Creek Embayment of Old Hickory Lake in Trousdale County, Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the proposed pipeline loop is to protect the integrity of its system and to permit it to maintain service in the event of failure of its existing single line which was originally installed in 1950. Applicant states that the proposed loop will not increase the throughput and will have a negligible impact on the capacity of Applicant's system.

Applicant estimates the cost of the proposed facilities to be $1,368,000. Applicant proposes to finance the project with funds on hand, or from internally generated funds.

Comment date: July 27 1989, in accordance with Standard Paragraph F at the end of this notice.

30. Transwestern Pipeline Company

[Docket No. CP89-1695-000]

July 6, 1989.

Take notice that on June 28, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1695-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas on behalf of Dolphin Energy, Inc. (Dolphin), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern proposes to transport up to 100,000 MMBtu of natural gas equivalent per day on an interruptible basis on behalf of Dolphin pursuant to a transportation agreement dated May 12, 1989, between Transwestern and Dolphin. Transwestern would receive the gas at various existing points of receipt on its system in Texas, Oklahoma and New Mexico and deliver equivalent volumes at various existing delivery points in Texas.

Transwestern states that the estimated daily and annual quantities would be 75,000 MMBtu and 36,500,000 MMBtu, respectively. Service under § 284.223(a) commenced on May 19, 1989, as reported in Docket No. ST89-3882-000.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. ANR Pipeline Company

[Docket No. CP89-1707-000]

July 6, 1989

Take notice that on June 28, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1707-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Xebec Gas Company (Xebec), a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 2,000 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for Xebec. ANR further states that the estimated daily and estimated annual volumes of natural gas that would be transported would be 2,000 dt and 730,000 dt, respectively.

ANR indicates that it would receive the natural gas at ANR's existing points of receipt located in the states of Kansas, Louisiana, Texas and Oklahoma and the Offshore Texas and Louisiana gathering areas and would redeliver the natural gas for the account of Xebec at existing interconnections located in the state of Wisconsin.

ANR states that it commenced the transportation of natural gas for Xebec on May 1, 1989, as reported in Docket No. ST89-3725-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. Tennessee Gas Pipeline Company

[Docket No. CP89-1712-000]

July 6, 1989.

Take notice that on June 29, 1989, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89-1712-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Meth Corporation (Meth), a marketer of natural gas, under Tennessee's blanket certificate, issued in Docket No. CP87-115-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 200,000 dt equivalent of natural gas on a peak day, 200,000 dt equivalent on an average day and 73,000,000 dt equivalent on an annual basis. It is stated that Tennessee would receive the gas for Meth's account at designated points on Tennessee's system in Louisiana, offshore Louisiana and Alabama, and would deliver equivalent volumes at designated points on Tennessee's system in various states. It is asserted that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the service commenced May 18, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3929.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. ANR Pipeline Company

[Docket No. CP89-1709-000]

July 6, 1989.

Take notice that on June 28, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1709-000 an application pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Fuel Services Group (FSG), a marketer of gas, pursuant to ANR's blanket transportation certificate issued July 25, 1988, in Docket No. CP88-532-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states it will receive the gas at various supply sources in the offshore areas of Louisiana and Texas and the states of Oklahoma and Louisiana, and deliver the gas for the account of FSG at various points in Brown County, Wisconsin.

ANR proposes to transport up to 4,000 dt of gas on a peak and average day and approximately 1,460,000 dt of gas annually. ANR states the transportation commenced on May 1, 1989, pursuant to the 120-day automatic authorization under § 284.223 of the Commission's Regulations under the terms of a transportation agreement dated April 7, 1989. ANR notified the Commission of the transportation service in Docket No. ST89-3726-000.

Comment date: August 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

34. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1714-000]

July 6, 1989.

Take notice that on June 29, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1714-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc. (PSI), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport, on an interruptible basis, up to 100,000 MMBtu equivalent of natural gas on a peak day, 75,000 MMBtu equivalent on an average day, and 36,500,000 MMBtu equivalent on an annual basis for PSI. It is stated that Northern would receive the gas for PSI's account at designated points on Northern's system and would deliver equivalent volumes at designated points on Northern's system. It is asserted that the service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced May 12, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3707

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

35. Natural Gas Pipeline Company of America

[Docket No. CP89-1715-000]

July 6, 1989.

Take notice that on June 29, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 filed in Docket No. CP89-1715-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Union Pacific Resources Company (Union), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on a firm basis up to 25,000 MMBtu, plus any additional volumes accepted pursuant to the overrun provision of Natural's Rate Schedule FTS, on behalf of Union pursuant to a gas transportation agreement dated April 21, 1989, between Natural and Union. Natural would receive the gas at an existing point of receipt on its system in Oklahoma and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at an existing delivery point in New Mexico.

Natural further states that the estimated average daily and annual quantities would be 25,000 MMBtu and 36,500,000 MMBtu, respectively. Service under § 284.223(a) commenced on April 26, 1989, as reported in Docket No. ST89-4048-000, it is stated.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

36. Tennessee Gas Pipeline Company

[Docket No. CP89-1723-000]

July 6, 1989.

Take notice that on June 30, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1723-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Philbro Distributor Corporation (Philbro), a marketer, under the blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated May 12, 1989, as amended, under its Rate Schedule IT, it proposes to transport up to 500,000 dekatherms (dt) per day equivalent of natural gas for Philbro. Tennessee states that it would transport the gas for Philbro from receipt points located offshore Louisiana and Texas, and in the states of Louisiana, Texas, Massachusetts, Mississippi, Pennsylvania, West Virginia, Alabama, New Jersey, Tennessee, New York, Ohio, Kentucky, Connecticut, and Arkansas, and deliver such gas to points of delivery in the states of Louisiana, Texas, Massachusetts, New York, Mississippi, Alabama, West Virginia, New Hampshire, Pennsylvania, New Jersey, Connecticut, Tennessee, Ohio, Kentucky, and Arkansas. Tennessee further states that the ultimate points of delivery are located in the states of Alabama, Connecticut, Florida, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

Tennessee advises that service under § 284.223(a) commenced June 1, 1989, as reported in Docket No. ST89-4018-000 (filed June 28, 1989). Tennessee further advises that it would transport 500,000 dt on an average day and 182,500,000 dt annually.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

37 Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1725-000]

July 6, 1989.

Take notice that on June 30, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1725-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Cabot Energy Marketing Cooperation (Cabot), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport, on an interruptible basis up to 200,000 MMBtu per day for Cabot. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the average day and annual transportation volumes would be approximately 150,000 MMBtu and 73,000,000 MMBtu, respectively.

Northern advises that service under § 284.223(a) commenced May 24, 1989, as reported in Docket No. ST89-3900.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16389 Filed 7-12-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3615-3]

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.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

DATE: Comments must be submitted on or before August 14, 1989.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Verification of Test Parameters and Parts List for Light Duty Vehicles and Light Duty Trucks. (EPA ICR #167.03). This is a renewal of a previously approved collection.

Abstract: In order to enforce compliance with the emission standards, under the emission recall program, EPA tests in-use vehicles using Federal Test Procedures (FTP). The FTP specify parameters and a parts list that vary with manufacturer and model. Therefore, EPA needs to verify with manufacturers that the specified parameters and parts list are current for, and appropriate to, the vehicles to be tested.

Burden Statement: The public reporting burden for this collection of information is estimated to average 2 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle manufacturers.

Estimated No. of Respondents: 11.

Estimated Total Annual Burden on Respondents: 120 hours.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 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.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1496; Phases 1 and 2 of Pesticide Registration Process—Federal Insecticide, Fungicide, and Rodenticide Act, as Amended. Section 4: Reregistration; was approved 05/31/89; OMB #2070-0102; expires 09/30/90.

EPA ICR #1170.03; Collection of Emergency Economic and Regulatory Support Data: Request for Generic Clearance; was approved 06/07/89; OMB #2070-0034; expires 06/30/92.

EPA ICR #0568.05; Toxic Substances Control Act (TSCA) Section 8(A)

Preliminary Assessment Information Rule (PAIR); was approved 06/07/89; OMB #2070-0054; expires 06/30/92.

Date: June 28, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 89-16418 Filed 7-12-89; 8:45 am]

BILLING CODE 6560-50-M

(FRL-3616-4)

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review. It also announces our request for emergency processing under 5 CFR 1320.18. EPA believes that emergency review and approval is appropriate because: the information in the ICR is essential to Agency's mission; it can only be obtained through the Department of Energy's (DOE) Commercial Buildings Energy Consumption Survey (CBECS); and it must be cleared by OMB by July 14, 1989, if EPA is to participate in the CBECS.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740).

DATE: EPA requests that OMB act on the ICR by July 14, 1989.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: EPA's Asbestos-Related Supplement to the Department of Energy's Commercial Buildings Energy Consumption Survey (ICR #1502).

Abstract: The Department of Energy's Energy Information Administration, at the request of EPA, has agreed to add supplemental questons on asbestos to their triennial Commercial Buildings Energy Consumption Survey. Building owners and operators will provide EPA with summer, 1989 data on the presence and abatement of asbestos in commercial buildings. EPA will use this information in its Asbestos in Buildings program.

Case for Emergency Clearance: EPA considers the acquisition of information on asbestos in commercial buildings essential to its mission to protect human health and the environment. Asbestos is a known human carcinogen and its presence in public buildings represents a potential health hazard. Without the information from this survey, EPA will be seriously hampered in its efforts to assess the risks from exposure to asbestos in commercial buildings, and may be unable to satisfactorily fulfill a promise to report its assessment to Congress.

The DOE's CBECS is the only nationwide, periodically updated (every three years) source of building characteristic data. The CBECS is well-designed, tried and tested, and has cleared OMB. It therefore offers EPA a unique opportunity to obtain reliable information on asbestos that can be extrapolated to commercial buildings nationally. EPA plans to add to the CBECS five simple yes or no questions on the presence and abatement of asbestos in public hearings.

If EPA were to ask these questions independently, we would have to develop our own survey instrument and methodology, and repeat many of the questions on the CBECS. A second survey would be inefficient and costly, and would result in needless duplication of effort by both EPA and the public. In fact, the costs of conducting our own survey on the scale of the CBECS would likely be prohibitive.

To join the DOE survey, however, we must act quickly. EPA has recently learned that DOE will begin to train personnel to administer the CBECS on July 14, 1989, and that we must have OMB clearance by that date if survey personnel are to incorporate our questions into the base questionnaire. Hence, our request for emergency processing and approval by July 14.

Burden Statement: The public reporting burden for this collection of information is estimated to average 6 minutes per response. This estimate includes time for hearing instructions and questions, and answering yes or no.

Respondents: Building Owners and Operators.

Estimated No. of Respondents: 5600.

Estimated Total Annual Burden on Respondents: 560 hours.

Send comments regarding the burden estimate or any other aspect of this collection to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW Washington, DC 20530

Dated: July 11, 1989.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-16534 Filed 7-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-834-DR]

Amendment to Notice of a Major Disaster Declaration; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-834-DR), dated June 30, 1989, and related determinations.

DATED: July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective July 5, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance).

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-16437 Filed 7-12-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Docket No. 89-14]

Credit Practices of the North Europe-U.S. Atlantic Conference and the North Europe-USA Rate Agreement; Order To Show Cause

The North Europe-U.S. Atlantic Conference ("NEAC") includes within its published tariff, at Rule 7(a), Volume A, Rules and Commodity Index, NEAC Tariff-FMC No. 15, provisions for the payment of collect freight charges.[1]

[1] The North Europe-USA Rate Agreement ("NEUSA") has filed Agreement No. 202-011242 with the Commission. Unless prevented from being effective, the NEUSA agreement is scheduled to become effective July 16, 1989 and will replace the NEAC agreement (No. 202-010637). NEAC will be

Continued

These provisions generally require that all collect charges, including all monies advanced and any charges for demurrage and detention, shall be paid to the carrier before the cargo is released from the port of discharge for delivery, subsequent movement or for on-carriage to the delivery point. However, an exception is provided for specified shippers as follows: (a) all NEAC members may extend credit up to 14 days to shippers of wine and spirits "following receipt of Carrier's invoice by Shipper, [2] and, (b) three carriers,[3] under independent action, also may extend credit for up to 14 days to shippers of chocolate confectionary in temperature-controlled containers from ports in the Hamburg-Bordeaux Range following receipt of carrier's invoice by shipper.[4]

Section 10(b) of the Shipping Act of 1984 ("1984 Act" or Act"), 46 U.S.C. app. sec. 1709, provides, in pertinent part, that:

(b) No common carrier, either alone or in conjunction with any other person, directly or indirectly may—

(6) except for service contracts, engage in any unfair or unjustly discriminatory practice in the matter of—
(A) rates;
(B) cargo classifications;
(C) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage;
(D) the loading and landing of freight; or
(E) the adjustment and settlement of claims;

(11) except for service contracts, make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever;
(12) subject any particular person, locality or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever;

It would appear that Rule 7(a) of the above-identified NEAC Tariff, by providing credit privileges to certain shippers to the exclusion of other shippers, constitutes the giving of undue or unreasonable preference and advantage to one class of shippers or description of traffic, and, in so doing, subjects other classes of shippers or descriptions of traffic to undue or unreasonable prejudice or disadvantage in violation of sections 10(b) (11) and (12) of the 1984 Act. For these same reasons, Rule 7(a) may also constitute an unfair or unjustly discriminatory practice as contemplated by section 10(b)(6) of the 1984 Act. Furthermore, NEAC may have violated section 10(b) (12) of the 1984 Act by unreasonably refusing to deal with other shippers seeking credit privileges.

Now therefore, It Is Ordered That pursuant to section 11 of the 1984 Act, 46 U.S.C. app. sec. 1710, NEAC and its members show cause why Rule 7(a), relating to extension of credit privileges to certain shippers, found in Volume A, Rules and Commodity Index, NEAC Tariff FMC No. 15, and the use, implementation and operations under such rule, should not be found to be in violation of sections 10(b)(6), 10(b)(11), and/or 10(b)(12) of the 1984 Act as unreasonably preferential, prejudicial, disadvantageous or discriminatory, in any respect whatsoever, and whether NEAC or its members violated section 10(b)(12) of the Act by refusing to deal with shippers, other than those specifically provided for in Rule 7(a), which may have sought credit privileges afforded only to certain shippers under Rule 7(a) and, if found to be in violation, why the violative provisions of this rule should not be stricken from the tariff;

It is further ordered That should it be determined that NEAC and its members have operated in violation of sections 10(b)(6), 10(b)(11) or 10(b)(12) of the Act, the matter may, pursuant to section 13 of the 1984 Act, be referred to an Administrative Law Judge for an appropriate proceeding to determine whether penalties should be assessed and, if so, the level of such penalties;

It is further ordered That this proceeding is limited to the submission of affidavits of fact and memoranda of law;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.72. Such petition shall be filed no later than August 24, 1989 for intervenors in support of the NEAC tariff and no later than September 25, 1989 for intervenors in opposition thereto.

It is further ordered That NEAC and NEUSA and member carriers of NEAC and NEUSA are named respondents in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondents and any intervenors in support of the NEAC tariff provisions at issue, no later than August 24, 1989;

It is further ordered That the Commission's Bureau of Hearing Counsel be made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by the Bureau of Hearing Counsel and any intervenors in opposition to the NEAC tariff provisions at issue, no later than September 25, 1989;

It is further ordered That rebuttal affidavits and memoranda of law, if any, shall be filed by Respondents and intervenors in support no later than October 9, 1989;

It is further ordered That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a staement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case; and

(c) Any such request for evidentiary hearing or oral argument shall be filed no later than October 19, 1989;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondents;

It is further ordered That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered That pursuant to Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission shall be issued by February 19, 1990.

By the Commission.

Joseph C. Polking,

Secretary.

BILLING CODE 6730-01-M

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disbanded and its agreement canceled when the NEUSA rate agreement becomes effective. The membership of NEUSA is the same as that of NEAC, with the addition of Incotrans BV. It is the Commission's understanding that NEUSA initially will adopt the NEAC tariff, including the credit provisions which the Order addresses. Accordingly, as appropriate, even when not specifically mentioned in this Order, any references to NEAC or its members shall be deemed to include NEUSA or its members, respectively.

[2] Presumably a carrier's invoice is presented by the time cargo is tendered.

[3] Sea Land Service, Inc., Nedlloyd Lijnen and Atlantic Container Line-Gulf Container Line.

[4] See Appendix A for full text of Rule 7(a).

APPENDIX A

NORTH EUROPE U S ATLANTIC CONFERENCE OCEAN AND INTERMODAL FREIGHT TARIFF FMC NO 15	ORIG/REV	PAGE
	1st	52
	CANCELS	PAGE
FROM/TO SEE RULE 1	Original	52
VOLUME A RULES AND COMMODITY INDEX	EFFECTIVE DATE	
	January 31st 1989	
	CORRECTION NO	66

RULE NO TARIFF RULES AND REGULATIONS

7 PAYMENT OF FREIGHT

(a) COLLECT FREIGHT

Except as otherwise expressly provided all rates charges and other remuneration (compensation) payable to Carriers for services pursuant to this Tariff shall be prepaid unless arrangements for collect payment are made All arrangements for collect payment shall be subject to the following conditions.

(1) All compensation payable to Carriers on a collect basis and all monies advanced by Carriers for the account of the cargo (advance charges Rule 27) shall be due and payable at the time cargo is tendered at Port of Discharge or Bill of Lading Port if other than Port of Discharge for delivery or subsequent movement or for on-carriage to delivery point

(2) Carriers will not release (i) cargo shipped for delivery at U S Ports whether or not a subsequent movement by Route-coding Service or any other means is arranged or (ii) through shipments for on-carriage from Port of Discharge or Bill of Lading Port if other than Port of Discharge unless and until all collect compensation and all advance charges due and payable have been received by Carriers or their agents and contractors

(3) Where cargo and Carrier containers in which it is loaded and Carrier undercarriage on which such containers have been placed are held by Carriers beyond applicable Free-Time Periods stated in this Tariff owing to non-receipt of collect compensation and advance charges which are due and payable all Demurrage and Detention Charges stated in this Tariff shall apply and all such charges which have accrued shall also be paid to Carriers before cargo is released as provided in Sub-Paragraph (2) above

APPLICABLE TO WINES AND SPIRITS ONLY
Valid thru 31st July 1989 (C)

Carriers may extend credit facilities to the Shipper for payment of applicable rates and charges in this Tariff from the first working day following receipt of Carrier s invoice by Shipper or its designated payment agent to the 14th day thereafter or if that days is not a working day to the first working day thereafter Invoices shall be promptly rendered by Carriers and paid within said credit period

(Continued on next page)

FOR EXPLANATION OF ABBREVIATIONS REFERENCE MARKS AND SYMBOLS SEE PAGES 6-10

Received Tue Jan:31 11 10:36:AM 1989 DXIDC-A (DXI F-80/80-A3846001-3100)

NORTH EUROPE - U S ATLANTIC CONFERENCE OCEAN AND INTERMODAL FREIGHT TARIFF FMC NO 15	ORIG/REV Original	PAGE 53
	CANCELS	PAGE
FROM/TO SEE RULE 1		
VOLUME A RULES AND COMMODITY INDEX	EFFECTIVE DATE October 1st 1988	
	CORRECTION NO.	

RULE NO TARIFF RULES AND REGULATIONS

7 PAYMENT OF FREIGHT (Continued)

(a) COLLECT FREIGHT (Concluded)

APPLICABLE TO CHOCOLATE CONFECTIONERY IN TEMPERATURE CONTROLLED CONTAINERS FROM PORTS IN HAMBURG - BORDEAUX RANGE

FOR THE ACCOUNT OF SEALAND SERVICE INC NEDLLOYD, AND ACL/GCL

Carriers may extend credit facilities to the Shipper for payment of applicable rates and charges in this Tariff from the first working day following receipt of Carrier s invoice by Shipper or its designated payment agent to the 14th day thereafter or if that day is not a working day to the first working day thereafter Invoices shall be promptly rendered by Carrier and paid within said credit period

* * *

FOR EXPLANATION OF ABBREVIATIONS, REFERENCE MARKS AND SYMBOLS, SEE PAGES 6-10

Received 08/31/88 11 20.36 DXIDCO' (DXI: 80-F2605049-2400-3100)

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 6, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension, with minor revision, of the following report:

Report title: Weekly Report of Foreign Branch Liabilities to, and Custody Holdings for, U.S. Addressees
Agency form number: FR 2077
OMB Docket number: 7100-0176
Frequency: Weekly
Reporters: Foreign branches of U.S. banks
Annual reporting hours: 699
Estimated average time per response: 13 minutes [37 minutes for respondents completing both items, 7 minutes for respondents completing item 1 only]
Estimated number of respondents: 62 (12 respondents completing both items on the form, 50 respondents completing item 1 only]

Small businesses are not affected.

General Description of Report

This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [5 U.S.C. 552b(4)].

This report collects weekly data from a sample of foreign branches of U.S. banks on certain types of dollar-denominated time deposits and certificates of deposit. These data are essential in calculating the money aggregate M3. The two proposed revisions will (1) increase the minimum dollar levels in two existing reporting criteria and (2) create a third criteria.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-16416 Filed 7-12-89; 8:45 am]
BILLING CODE 6210-01-M

Ace Gas, Inc., Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ace Gas, Inc.*, Deshler, Nebraska; to become a bank holding company by acquiring 49.33 percent of the voting shares of Gibbon Exchange Company, Gibbon, Nebraska, and thereby indirectly acquire Exchange Bank, Gibbon, Nebraska, which engages in the sale of credit-related life and accident and health insurance only that is directly related to extensions of credit by the bank.

In connection with this application, Applicant also proposes to acquire Deshler Insurance Agency, Deshler, Nebraska, and thereby engage in the sale of general lines of insurance within a 10-mile radius of Deshler, Nebraska, a community having a population of less than 5,000 pursuant to § 225.25 (b)(8)(iii)(A) of the Board's Regualtion Y.

Board of Governors of the Federal Reserve System, July 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 80-16411 Filed 7-12-89; 8:45 am]
BILLING CODE 6210-01-M

First Midwest Bancorp, Inc.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regrarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Bancorp, Inc.*, Naperville, Illinois, to engage *de novo* through its subsidiary, First Midwest Asset Mangement Co., Joliet, Illinois, in providing investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16412 Filed 7-12-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 27 1989.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **James M. Tate**, Abilene, Texas, to acquire 10.18 percent; and Harold L. Smith, Abilene, Texas, to acquire 7.96 percent of the voting shares of Security Shares, Inc., Abilene, Texas, and thereby indirectly acquire Security State Bank, Abilene, Texas.

Board of Governors of the Federal Reserve System, July 7 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16414 Filed 7-12-89; 8:45 am]

BILLING CODE 6210-01-M

Withee Bank Shares, et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Withee Bank Shares*, Withee, Wisconsin; to become a bank holding company by acquiring at least 90 percent of the voting shares of State Bank of Withee, Withee, Wisconsin.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lubbock National Bancshares, Inc.*, Lubbock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lubbock National Bank, Lubbock, Texas.

c. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Maket Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to acquire 100 percent of the voting shares of Bank of America State Bank, Concord, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, July 7 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16413 Filed 7-12-89; 8:45 am]

BILING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

A.H. Robins Co., Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's) held by A.H. Robins Co. The NADA's provide for the use of lenperone hydrochloride tablets or injection. The firm requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove those portions of the regulations reflecting the approvals.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-443-4093.

SUPPLEMENTARY INFORMATION: A.H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261, is the sponsor of NADA's 96-508 and 97-901, which were approved May 5, 1981. NADA 96-508 provides for use of Elanone-V (lenperone hydrochloride) Injection in cats and dogs as a tranquilizer and as an antiemetic, and for pre- and postoperative medication. NADA 97-901 provides for use of Elanone-V (lenperone hydrochloride) Tablets for the same indications, but only in dogs.

In letters dated December 21, 1988, the sponsor requested the withdrawal of approval of the NADA's because the products are no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the

Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 96-508 and 97-901 and all supplements thereto is hereby withdrawn, effective July 24, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.1236 and 522.1235.

Dated: July 7 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-16423 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending September 30, 1989

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1989, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27 1981, the variable interest rate is 12¼ percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)) in effect prior to January 27 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (8.73 percent), and rounding the result (12.23 percent) upward to the nearest ⅛ percent (12¼ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending September 30, 1989, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 10¾ percent for the quarter ending December 31, 1988; 11½ percent for the quarter ending March 31, 1989; and 12⅜ percent for the quarter ending June 30, 1989.

2. For variable rate loans executed during the period of January 27 1981 through October 21, 1985, the interest rate is 12¼ percent. Using the regulatory formula (42 CFR 60.13 (a)(3)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (8.73 percent); adding 3.50 percent (12.23 percent); and rounding that figure to the next higher one-eighth of 1 percent (12¼ percent).

3. For fixed rate loans executed during the period of July 1, 1989 through September 30, 1989, and for variable rate loans executed on or after October 22, 1985, the interest rate is 11¾ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99-129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (8.73 percent); adding 3.0 percent (11.73 percent) and rounding that figure to the next higher one-eighth of 1 percent (11¾ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: July 7 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-16421 Filed 7-12-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-150-09-4830-11]

National Public Lands Advisory Council—Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet August 11 and 12, 1989, at the Red Lion Inn—Jantzen Beach, 909 N. Hayden Island Drive, Portland, Oregon. The meeting hours will be 8:00 a.m. to 5:00 p.m., on Friday, the 11th, and 8:00 a.m. to 12:00 p.m. on Saturday, the 12th. On Thursday, August 10, Council members will participate in a field tour of BLM-managed lands in western Oregon. The proposed agenda for the meeting is:

Friday, August 11: Morning: Address by Bureau of Land Management Director; the State view of public land management in Oregon; Presentations on Forest Management issues; Meeting of Council subcommittees (Energy and Minerals, Lands, and Renewable Resources).

Afternoon: Public Statement Period; Implementation of Recreation 2000 Initiative; Presentation on Land Information System (LIS) accomplishments; Meeting of Council subcommittees.

Saturday, August 12: Morning: Council old and new business, to include Department responses to previous Council resolutions; Final meetings of Council subcommittees; Report from subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council will be open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on Friday, August 11. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written testimony prior to oral delivery. Please send written comments by August 4 to the Bureau of Land Management's Oregon State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: August 11 and 12—Council Meeting. August 11—Public Statements.

ADDRESS: Copies of public statements should be mailed by August 4 to: Director, Oregon State Office (912), Bureau of Land Management, Post Office Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, DC Office, BLM, telephone (202) 343-5101; or Ed Ciliberti, Oregon State Office, BLM, telephone (503) 231-6277

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope

related to public lands and resources under the jurisdiction of BLM.

Cy Jamison,
Director.
July 6, 1989.
[FR Doc. 89-16403 Filed 7-12-89; 8:45 am]
BILLING CODE 4310-84-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-290]

Certain Wire Electrical Discharge Machining Apparatus and Components Thereof

Notice is hereby given that the prehearing conference in this matter will be at 9:00 on July 31, 1989, in Courtroom C (Room 217) U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: July 5, 1989.
Janet D. Saxon,
Chief Administrative Law Judge.
[FR Doc. 89-16391 Filed 7-12-89; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

Bus Emissions Technology Cooperative Industry Project of Southwest Research Institute

Notice is hereby given that, on June 12, 1989, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding "Bus Emissions Technology Cooperative Industry Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that the Texas Transit Association (effective May 22, 1989) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On September 27 1988, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 21, 1988, 53 FR 41425.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 89-16430 Filed 7-12-89; 8:45 am]
BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources Section) to the National Council on the Arts will be held on August 15-17 1989, from 9:15 a.m.-5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

July 5, 1989.
Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 89-16399 Filed 7-12-89; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-16055; ASLBP No. 89-592-02-CivP]

Advanced Medical Systems, Inc., Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Advanced Medical Systems, Inc.

[Byproduct Material License No. 34-19069-01; E.A. 85-60]

This Board is being designated pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operational Support, dated May 30, 1989, entitled "Order Imposing Civil Monetary Penalties"

The Board is comprised of the following administrative judges:

Administrative Judge Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108

Administrative Judge Ernest E. Hill, 210 Montego Drive, Danville, California 94526

Issued at Bethesda, Maryland, this 6th day of July, 1989.
Robert M. Lazo,
Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.
[FR Doc. 89-16357 Filed 7-12-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative, Inc., (the licensees), for operation of Fermi-2 located in Monroe County, Michigan.

In accordance with the licensees' application for amendment dated April 3, 1989, the amendment would revise the Technical Specifications (TS) to reflect modifications to the Automatic Depressurization System (ADS). Modifications are being made to the ADS to bring the system into conformance with TMI Action Plan (NUREG-0737), Item II.K.3.18.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission s regulations.

By August 14, 1989, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first per-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 3, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 7th day of July.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16435 Filed 7-12-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co., et al., Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Duke Power Company, et al., (the licensee) for the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action: The proposed amendments would add operability and surveillance requirements for radioactive liquid effluent monitoring instrumentation for the turbine building sump. These requirements would provide a radioactive liquid waste sampling and analysis program for the demineralized sump water and its surveillance by radiation monitor EMF-31 before discharge into the Low Pressure Service Water System.

The Radwaste Treatment System (capacity 16,000 to 18,000 gallons per day) will remain the primary treatment system for processing highly contaminated wastes. The licensee proposes to install portable equipment to demineralize the larger volumes of slightly radioactive wastewater, 72,000 gallons per day or more, which can result from primary-to-secondary leaks in the steam generators. The turbine building sump also receives wastewater with very low levels of radioactivity from other sources such as floor drains and the auxiliary building drain sump. The treated wastewater would be discharged through radiation monitor

EMF-31 into the effluent from the Low Pressure Service Water System.

The Need for the Proposed Action: Primary to secondary leaks can develop through repairable defects in the steam generators and into the normally non-radioactive secondary side. Such leaks would be repaired as they occur, but require continued unit operation with leakage until the leak can be fully identified and characterized. When these leaks occur, the turbine building sump can become radioactively contaminated. The quality and quantity of this water may not be amendable to treatment in the Radwaste Treatment System because of the high volume or by the Conventional Waste Water Treatment System because of its inability to remove contaminants.

Therefore, the licensee plans to install portable equipment to process the slightly radioactive water. The proposed Technical Specifications would add operability and surveillance requirements for the processing equipment and instrumentation.

Environmental Impacts of the Proposed Action: The decision of whether the wastewater would be routed to the Radwaste Treatment System, the Conventional Wastewater Treatment System or the Low Pressure Service Water System would depend on the level of activity, anticipated volumes of sump effluent, anticipated volumes of liquid waste requiring processing through radwaste, and the need to process normal nonradioactive wastes.

Technical Specification 3/4.11.1, Table 4.11-1, already identifies the Conventional Wastewater Treatment System as a radioactive release point. All releases through this system and the Low Pressure Service Water System will be made in accordance with the Technical Specifications and will not result in unacceptable concentrations of radioactive effluents released offsite. Neither will there be any increased risk to public health and safety.

The proposed amendments will not have any impact on the environment that has not already been reviewed and approved. Furthermore, they will not affect the current accident analysis assumptions and will not cause an increase in radiological or non-radiological plant effluents, or occupational exposures, over what was previously considered.

Accordingly, Commission findings in the Final Environmental Statement Related to Operation of Catawba Nuclear Station, Units 1 and 2, dated January 1983 (NUREG-0921) regarding radiological and non-radiological releases from the plant during normal operation or after accidents are not adversely altered by this action.

Alternative to the Proposed Action: Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative. That alternative would reduce environmental impacts of plant operation but would result in increased personnel radiation exposure during plant life.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated January 1983 (NUREG-0921) related to this facility.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request of June 12, 1987 as supplemented July 9, 1987 January 8, 1988, and May 3, 1989. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated June 12, 1987 and its supplements dated July 9, 1987 January 8, 1988, and May 3, 1989; and the Final Environmental Statement related to operation of Catawba Nuclear Station, Units 1 and 2 (NUREG-0921) dated January 1983, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW Washington, DC, and the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 7th day of July, 1989.

For the Nuclear Regulatory Commission.

Lawrence P Crocker,

Acting Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16436 Filed 7-12-89; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Sick Pay and Miscellaneous Payments Report
(2) *Form(s) submitted:* BA-10
(3) *OMB Number:* New collection
(4) *Expiration date of current OBM clearance:* Three years from date of OMB approval
(5) *Type of request:* New collection
(6) *Frequency of response:* Annually
(7) *Respondents:* Businesses or other for-profit, Small businessess or organizations
(8) *Estimated annual number of respondents:* ———
(9) *Total annual responses:* 150
(10) *Average time per response:* 92 hours
(11) *Total annual reporting hours:* 138
(12) *Collection description:* The Railroad Retirement Solvency Act of 1983 added a new subsection 1(h)(8) to the RRA which expanded the definition of compensation for purposes of computing the tier 1 portion of an annuity to include sickness payments and certain other payments other than sick pay which are considered compensation within the meaning of section 1(h)(8). The collection obtains the sick pay and other types of payments considered compensation within the meaning of section 1(h)(8).

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[FR Doc. 89-16429 Filed 7-12-89;8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27001; File No. PHLX 89-31]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Margin Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1989 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to Rule 19b-4, hereby proposes to amend its Rule 722 (c)(B)(i) as follows: The text of the proposed rule change appears below. Underlining indicates additions.

(B) Subject to the exceptions set forth in subparagraphs (D) through (H) of paragraph (c)(2), the margin on any put or call issued, guaranteed or carried "short" in a customer's account shall be:

(i) In the case of puts and calls listed or traded on a registered national securities exchange or association and issued by a registered clearing corporation 100% of the current market value of the option plus the percentage of the current market value of the underlying security, foreign currency or index specified in colum II of sub-section (B)(i) below.

Notwithstanding the margin required below, the minimum margin on any put or call issued, guaranteed or carried "short" in a customer's account may be reduced by any "out-of-the-money-amount" (as defined in this subparagraph (B)(i) below), but shall not be less than 100% of the current market value of the option plus the percentage of the current market value of the underlying security or index specified in column III of sub-section (B)(i) below.

Underlying product index I	Initial and/or maintenance margin required (percent) II	Minimum margin required (percent) III	Underlying component value IV
(1) Stock	20	10	The equivalent number of shares at current market prices.
(2) Industry Index	20	10	The product of the current index group and the applicable index multiplier.
(3) Broad Index	15	10	The product of the current index index group and the applicable index multiplier
(4) Foreign Currencies [1]			
(a) Australian dollar	4	¾	
(b) British pounds	4	¾	
(c) Canadian dollars	1	½	
(d) German marks	4	¾	
(e) European Currency Unit	4	¾	
(f) French franc	4	¾	
(g) Japanese yen	4	¾	
(h) Swiss franc	4	¾	

[1] The product of units per foreign currency contract and the closing spot price.

The Exchange has established and filed with the Securities and Exchange Commission margin monitoring procedures which are uniform with all other options self-regulatory organizations. The Exchange may increase or decrease the margin requirements for options on stock, industry index stock groups and broad index stock groups specified in columns II and III of sub-section (b)(i) above through a rule filing made pursuant to section 19(b)(3)(A) of the Act, provided the margin changes are within the parameters established by such procedures. The Exchange or its designee, shall have authority for determining changes to options margin levels in accordance with the parameters. Any modifications to the Exchange's margin monitoring procedures shall be filed with the Securities and Exchange Commission.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

This proposed rule change authorizes the Exchange to change options margin requirements pursuant to a rule filing under section 19(b)(3)(A) of the Act, provided such changes are based upon uniform margin monitoring procedures filed with the Securities and Exchange Commission by the options self-regulatory organizations. The monitoring procedures are designed to ensure that prudent margin levels are maintained and to provide the options self-regulatory organizations the ability to modify margin on a timely basis using a consistent methodology. The procedures primarily rely upon statistical analysis conducted on a quarterly basis. Specifically, this analysis involves the computation of frequency distributions for seven (7) business day percentage price movements of the underlying instruments for the most recent five and one-half month period to determine the degree of coverage the current margin levels provided. This is an established methodology for determining the adequacy of options margin levels. In addition, margin levels are monitored

daily through the calculations of implied volatilities for all underlying securities and broad-based indices.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 and, in particular, section 6(b) thereof, in that the rule change is designed to insure options margin levels which provide a reasonable amount of financial protection to the securities industry and do not permit the excessive use of credit for the purchase or carrying of securities.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or 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 approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 6, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16392 Filed 7-12-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27005; File No. SR-Phlx-89-43]

Self-Regulatory Organizations; Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Postponement of the Effectiveness of the CIP Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 3, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the Act"), hereby submits this proposed rule change postponing the effectiveness of the schedule of fees applicable to the trading of Cash Index Participations ("CIPs") from the date of this filing until September 1, 1989. Accordingly, no CIP transaction value, transaction, or brokerage assessment charge will be imposed by the Exchange on any member during the period.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Statment of the Purpose of, and Statutory Basis for the Proposed Rule Change

On May 1, 1989, the PHLX filed SR-PHLX-89-08 with the Commission which established a schedule of CIP fees. Thereafter, the PHLX filed SR-PHLX-89-29 which postponed the effectiveness of these fees until June 30, 1989. The current proposal will postpone the effectiveness of that fee schedule until September 1, 1989.

The proposed rule change is consistent with section 6(b)(4) of the Act, in that it provides for no CIP fees being imposed on any member during a promotional period which introduces a competitive new product.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or approapriate in the public interest, for the protection of investors, or othewise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 thatare 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 3, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 7 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16455 Filed 7-12-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Shogun Oil, Ltd.; Order of Suspension of Trading

July 10, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Shogun Oil, Ltd. ("Shogun") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, Shogun's financial statements, financial condition, assets and business operations. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Shogun.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the common stock of Shogun, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (EDT), July 10, 1989 through 11:59 p.m. (EDT) on July 19, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16456 Filed 7-12-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 88-041]

Port Access Routes; Approaches to Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: This notice publishes the results of a Port Access Route Study to evaluate the need for vessel routing measures in the Approaches to Chesapeake Bay, VA. The Report of Study concluded that the Southern Approach part of the traffic separation scheme (TSS) should be reconfigured to incorporate a proposed deep-water route for inbound and outbound vessel traffic. The existing Precautionary Area and Eastern Approach should remain the same.

FOR FURTHER INFORMATION CONTACT: John R. Walters, Project Officer, Fifth Coast Guard District at (804) 398-6230 or Margie G. Hegy, Project Manager, Coast Guard Headquarters at (202) 267-0415.

SUPPLEMENTARY INFORMATION: The Report of Study upon which this notice is based, is available for inspection and copying at the Marine Safety Council, U.S. Coast Guard Headquarters, Room 3600, 2100 Second Street, SW Washington, DC 20593-0001 or at the Fifth Coast Guard District office, Room 509, 431 Crawford Street, Portsmouth, VA 23704-5004 between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

Regulatory History

The Traffic Separation Scheme in the Approaches to Chesapeake Bay was established on December 1, 1969, and adopted by the International Maritime Organization (IMO) on October 12, 1971. It consisted of three parts: Part I, Precautionary Area; Part II, Eastern Approach; and Part III, Southern Approach.

As required by the 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), the Coast Guard initiated a port access route study on April 16, 1979 (44 FR 22543) to evaluate potential traffic density, traffic patterns, waterway use conflicts, and the need for safe access routes in the Chesapeake Bay Entrance area. The Notice of Study Results was published on July 22, 1982, at 47 FR 31766. That study concluded that the existing TSS in the approaches to the Chesapeake Bay was adequate for the foreseeable future.

The completion of the U.S. Army Corps of Engineers (COE) dredging project in the Thimble Shoal Channel necessitated suspension of the Southern Approach lanes of the TSS. After dredging, the Thimble Shoal Channel accommodates vessels with drafts exceeding the water depths in the Southern Approach lanes. On June 3, 1988, the Coast Guard notified IMO that the Southern Approach lanes would be suspended effective October 15, 1988, and that a Port Access Route Study would be opened. Mariners were notified of this suspension in Local Notice to Mariners No. 29/88 dated July 19, 1988, and by Notice to Mariners No. 31 dated July 30, 1988. A system of safe water buoys now directs vessels to naturally occurring deeper water in the vicinity until an amended traffic separation scheme is implemented.

A Port Access Route Study was opened on July 12, 1988 (53 FR 26282). Conducted by the Fifth Coast Guard District in Portsmouth, VA, the study was opened to evaluate the need for vessel routing measures in the approaches to Chesapeake Bay. The area studied encompassed the approaches to the Chesapeake Bay, including the TSS.

The Study

The study, performed in accordance with the PWSA (33 U.S.C. 1223(c)(3), involved contacts with other Federal agencies, state government officials, and representatives of a wide variety of interests in the area. Interested parties were asked to submit their comments by October 11, 1988. Comments were also solicited through the Local Notice to Mariners. In addition, comments were specifically solicited from 165 companies/marine interests.

Uses of the Area

The entrance to Chesapeake Bay controls access to two of the largest U.S. ports, Hampton Roads and Baltimore. The ports handle all types of commodities in break bulk, container, bulk liquid and solid form. Hampton Roads is the only port in the nation which permits the importation of spent nuclear fuel rods for reprocessing. Both ports are coal export centers and in 1984, 69% of the U.S. coal exports transited the Chesapeake Bay entrance.

The waters in the study area are used for both commercial and government navigation as well as military exercises and training activities. The Navy Firing Range at Dam Neck conducts beginning and advanced training on various sized large bore rifled guns. U.S. Army anti-aircraft training is also conducted within the study area. The largest naval base in the world, U.S. Naval Base, Norfolk, is

in this area. Additionally, recreational and commercial fishing is extensive because of the proximity of the Gulf Stream.

U.S. Army Corps of Engineers (COE) Dredging Projects

Over the last decade, coal has been carried in larger vessels that require deeper water to navigate safely. These deep-draft vessels (drafts over 45') may be restricted in their ability to maneuver and may require more sea area to navigate safely. In order to stay competitive with other coal exporting countries, the U.S. has undertaken several dredging and channel improvement projects in the Chesapeake Bay and Hampton Roads area to accommodate larger colliers.

Between Cape Henry and Baltimore, eight channels (Cape Henry, York Spit, Rappahannock Shoal, Craighill, Brewerton, Craighill Entrance, Fort McHenry and Curtis Bay) will be deepened to 50 feet below mean low water. This project is scheduled to be complete in 1990.

The Water Resources Development Act of 1986, Pub. L. 99-662 dated November 17 1986, authorized the deepening of the Thimble Shoal, Newport News, Craney Island Reach, Norfolk Harbor Reach and the Entrance Reach Channels to a depth of 55 feet below mean low water. Thimble Shoal Channel provides the only means of entrance and departure for deep-draft vessels calling on Hampton Roads and ports along the James River. Thimble Shoal Channel will connect deep water at the entrance to Hampton Roads with deep water at the entrance to Chesapeake Bay. Phase I (deepening of the outbound lane of the Thimble Shoal, Newport News and Norfolk Harbor Reach Channels to 50 feet) was completed on October 15, 1988.

The COE also plans to dredge an Atlantic Ocean Channel" connecting deep water at the entrance to Chesapeake Bay with deep water in the Atlantic Ocean. As currently planned, the Atlantic Ocean Channel, in the vicinity of the Southern Approach lanes, will be completed in 1992. The 1300' wide channel will be constructed in two phases: Phase I will dredge a 650' wide, 60+ deep outbound lane; and Phase II will dredge a 650' wide, 60+ deep inbound lane.

Study Data

Vessel traffic density data for the study area was obtained from the U.S. Army Corps of Engineers *Waterborne Commerce of the United States* for the Baltimore and Norfolk Districts, and from the Maryland Port Administration, Virginia Pilot Association, U.S. Navy and the Hampton Roads Maritime Association.

The study also considered historical data obtained from the National Weather Service on weather conditions, including wind and tidal information, wave climate of the Atlantic Ocean Channel and vicinity, and seasonal conditions. The Coast Guard also reviewed environmental studies of the area conducted by the COE.

Public Comments

Seven letters acknowledged receipt of the study notice but had no comments. Six letters were received with comments or suggestions pertaining to the temporary buoy system, the proposed Atlantic Ocean Channel, and the Southern Approach lanes. The following issues were addressed in the comments:

Two commenters recommended retaining the Eastern Approach to the TSS.

Two commenters discussed use of the Atlantic Ocean Channel when Phase I (dredging of the outbound lane to 60+') is completed.

Two commenters felt there was a continuing need for a southern approach.

Two commenters addressed the proximity of the Dam Neck Firing Zone to the Southern Approach lanes. Commander, Naval Base Norfolk, stated that he will work with the COE to relocate the boundary of the firing range.

One commenter recommended installation of a RACON on the first inbound eastern and southern approach TSS buoys.

Findings and Conclusions

1. The number and size of vessels calling on Chesapeake Bay ports is expected to increase as the dredging and port improvement projects are completed.

2. There is a need for a deep-water route for vessels with drafts greater than 45'

3. There is a continuing need for the Southern Approach vessel traffic lanes, but the present configuration is not adequate.

4. There is a continuing need for the Precautionary Area and Eastern Approach parts of the TSS and the present configuration is adequate.

5. A system of safe water buoys directing vessels to naturally occurring deeper waters will meet the needs of vessels normally using the Southern Approach lanes until a new configuration is implemented.

Recommendation

The Study recommended that the Coast Guard widen and lengthen the Southern Approach of the TSS to incorporate the proposed 1300' wide Atlantic Ocean Channel as a deep-water route. It is anticipated that the Coast Guard will initiate rulemaking and seek IMO approval to reconfigure the Southern Approach as recommended.

Dated: July 7 1989.

R.T. Nelson,

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

[FR Doc. 87-16395 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Flight Service Station at Rochester Municipal Airport, Rochester, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on April 19, 1989, the Flight Service Station (FSS) at Rochester, Minnesota, was closed. Services to the aviation public in the Rochester flight plan area, formerly provided by Rochester FSS, are being provided by the automated flight service station (AFSS) at Princeton, Minnesota. This information will be reflected in the FAA organization statement the next time it is reissued.

[Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.]

June 16, 1989.

Timothy P Forte,

Regional Administrator, Great Lakes Region.

[FR Doc. 89-16453 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

Flight Standards District Office at San Jose, CA; Relocation

Notice is hereby given that on or about June 29, 1989, the Flight Standards District Office at 1387 Airport Blvd, San Jose, California 95111 will be relocating to San Jose Jet Center, 1250 Aviation, Bldg A, (second floor), San Jose, California 95110. Services to the general public will continue to be provided by this office without interruption. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Hawthorne, CA, on June 22, 1989.

Jerold M. Chavkin,

Regional Administrator, Western-Pacific Region.

[FR Doc. 89-16454 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

School Bus Safety Measures

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of most effective school bus safety measures.

SUMMARY: In May 1989, as required by the Surface Transportation and Uniform Relocation Assistance Act of 1987 the National Academy of Sciences (NAS) issued a report on school bus safety, including safety of passengers and those boarding or exiting the vehicles. That report confirmed the high level of safety provided by the Nation's school bus fleet, and also suggested measures which could further improve the safety of school buses.

The law also requires the Secretary of Transportation to review the findings of the NAS report and to determine which safety measures are most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in school buses. This notice identifies those measures. NHTSA has reviewed the recommendations in the NAS report and agrees that all have the potential for reducing the risk of death or injury to bus users. However, not all of the recommendations have the same potential for overall safety improvement. In determining which measures are "most effective, NHTSA considered the magnitude of the particular problem that each countermeasure was designed to correct, as well as that measure's effectiveness in reducing the problem.

Replacing pre-1977 school buses is considered to be a "most effective" measure, because of the higher level of crashworthiness provided by NHTSA's 1977 school bus standards and the improved mirror systems and other crash avoidance measures typically provided on newer school buses. Prohibiting standees on school buses is also considered a "most effective" measure. While primarily a crashworthiness measure to ensure that the crash protection capabilities of the school bus are effective, prohibiting standees also provides the driver with an unobstructed view both throughout the bus and in the school bus loading zone.

Studies have shown that the greatest risk to children occurs not while riding the bus, but rather while boarding and exiting the bus. Therefore, NHTSA considers the recommendations which address the safety of children in loading zones to have a significant safety potential, and considers them to be among the "most effective measures. These include: Equipping new buses with stop signal arms and cross-view mirrors, and recommendations implementing student crossing programs, pedestrian safety education programs, and school bus driver training programs. Other measures, primarily those which are designed to improve safety among occupants of school buses, would probably not be as effective, because the safety risk is already low.

FOR FURTHER INFORMATION CONTACT: Adele Derby, Associate Administrator for Plans and Policy, National Highway Traffic Safety Administration, 400 Seventh Street, SW Washington, DC 20590, telephone (202) 366-2550.

SUPPLEMENTARY INFORMATION:

Background

Each school day, over 25 million children travel to and from school, athletic events, and field trips on roughly 390,000 school buses operated by school districts and their private contractors. Despite the catastrophic church bus crash that occurred in May 1988 in Carrollton, Kentucky in which 27 people died, school bus transportation remains one of the safest forms of transportation. Even though school buses transport many more passengers per trip, the rate of occupant fatalities per mile driven for school buses is about one fourth the rate for passenger cars. School buses clearly afford school children an extremely effective and safe means of transportation, and one which is safer than any other motor vehicle system.

Each year, however, there are crashes involving school buses, which result in injuries and, occasionally, fatalities to school children. While most school bus-involved crashes are minor, the possibility of a more serious crash or catastrophic incident still remains. Every year, 10 children on average are killed in large school buses (buses with a gross vehicle weight rating greater than 10,000 pounds, which make up 80 to 85 percent of the nation's school bus fleet), and another 2 children are killed while riding in other vehicles used as school buses. However, children are at much greater risk of being killed while boarding or leaving school buses or at bus stops than they are while on board. Nearly 40 children are killed each year in loading zones.

The continuing public concern for school bus safety, including discussions on whether seat belts should be required, led to a provision in the Surface Transportation Uniform Relocation Assistance Act of 1987 directing the Secretary of Transportation to enter into appropriate arrangements with the National Academy of Sciences (NAS) to conduct a comprehensive study of the principal causes of fatalities and injuries to schoolchildren riding in schoolbuses and of the use of seatbelts in schoolbuses and other measures that may improve the safety of schoolbus transportation. NAS issued its report in May 1989. That report contained a list of recommended safety measures determined to be most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in schoolbuses. The Act also required the Secretary to review the findings of the NAS report for the purpose of determining those safety measures that are the most effective in protecting the safety of schoolchildren while boarding, leaving, and riding in schoolbuses.

NHTSA has reviewed the recommendations from the NAS report and agrees that all have the potential for reducing fatalities and injuries to users of school buses. All of the NAS recommendations are therefore endorsed by the agency. However, all of the recommendations do not have equal safety potential. In determining which measures are potentially "most effective, NHTSA considered the magnitude of the particular problem that each measure was designed to correct, as well as that measure s effectiveness in reducing that problem. Because NHTSA does not have the authority or responsibility to implement all of the NAS recommendations, the agency had to consider the effectiveness with which the states could implement recommended school bus safety measures in its determination of those that are potentially "most effective." Finally, for those recommendations which apply to the schoolbus, a number of statutory factors, such as costs and benefits, practicability and feasibility, must be considered before NHTSA can initiate rulemaking changes or additions.

Replacing pre-1977 school buses is considered to be a "most effective measure, because of the higher level of crashworthiness provided by NHTSA s 1977 school bus standards and the improved mirror systems and other crash avoidance measures typically

provided on newer school buses. Prohibiting standees on school buses is also considered a "most effective" measure. While primarily a crashworthiness measure to ensure that the crash protection capabilities of the school bus are effective, prohibiting standees also provides the driver with an unobstructed view both throughout the bus and in the school bus loading zone.

Studies have shown that the greatest risk to children occurs not while riding the bus, but rather while boarding and exiting. Therefore, NHTSA believes that recommendations which address the fatalities and injuries that occur in bus loading zones have a significant safety potential, given the greater risk to children while boarding and leaving the bus and at school bus loading zones. These are considered to be among the "most effective" measures. Other measures, primarily those which are designed to improve safety among occupants of school buses, would probably not be as effective, because the safety risk is already low.

Most Effective Programs

The conclusions and recommendations in the National Academy of Sciences' report, "Improving School Bus Safety, were prefaced with the statement:

> School bus transportation is already quite safe, but several steps can be taken to make it even safer. These steps involve modifying some federal standards, applying or upgrading several safety measures the worth of which has already been sufficiently demonstrated, and developing and evaluating promising new products and programs.

NHTSA considers the following NAS recommendations to be potentially the "most effective" in protecting the safety of school children while boarding, leaving, and riding in school buses. Some of these recommendations are aimed at the Federal government while others require action at the state or local level. Only the first two recommendations address fatalities and injuries that occur while riding in the school bus. The remainder address the safety of children in school bus loading zones.

Replacing Pre-1977 School Buses

NAS recommended that school buses manufactured before April 1, 1977 (the date when several school bus safety standards went into effect that substantially upgraded the crashworthiness of school buses) be replaced as rapidly as possible. The post-standard buses have been shown to provide significantly higher levels of occupant protection in real-world crashes.

Replacing pre-1977 school buses may be potentially one of the most effective school bus safety measures identified in the report. Effective April 1, 1977 three new federal motor vehicle safety standards (FMVSS) became effective and three other standards were upgraded. In addition, Federal requirements for school bus mirrors became effective in February, 1977 As a result, post-1977 school buses have: (1) Increased roof strength; (2) stronger joints between body panels; (3) high-backed, well-padded, stronger seats; (4) fuel system protection devices; (5) improved emergency exits; (6) "cross view" mirrors; and (7) improved hydraulic brakes. All of these contribute to the ability of post-1977 buses to offer higher levels of safety, from both crashworthiness and crash avoidance perspectives. As such, NHTSA believes this recommendation has a high potential for protecting children in loading zones as well as inside the bus. The rapid replacement of pre-1977 school buses was also a recommendation of the National Transportation Safety Board in its report on the Carrollton, Kentucky crash.

NAS also recommended that organizations operating pre-1977 buses should be informed that these buses do not meet current standards for newly manufactured buses and that the organizations should (a) rigorously maintain these older buses and (b) provide safety instruction for all passengers. NHTSA concurs with these recommendations but has no authority over private groups which operate older buses. The agency will communicate with State Directors of Pupil Transportation Safety and recommend that they inform all potential buyers of pre-1977 school buses of the need for continued maintenance of these buses and for adequate safety instruction.

Standees

NAS urged states to prohibit the operation of a school bus unless all passengers are seated. If the crash protection measures mandated by federal safety standards are to be effective, it is essential that passengers be properly seated. Passengers who are standing on a school bus are unable to take full advantage of the many safety benefits that currently provide protection for school children.

NHTSA agrees that standees present a major safety problem to state and local pupil transportation systems. Many jurisdictions permit significant numbers of standees on their buses due in part to the high cost of purchasing additional buses and in part to inadequate scheduling of school bus routes. NHTSA has long promoted the elimination of standees on school buses. This issue will be addressed in the revised Highway Safety Program Guidelines on Pupil Transportation Safety. In addition, NHTSA will continue to work with the states to encourage them to eliminate this potential safety hazard.

Cross View Mirrors. Under the provisions of FMVSS No. 111, "Rearview Mirrors" new school buses must be equipped with a series of mirrors which allow the driver to see the area immediately in front of and along both sides of the bus. NAS recommended that NHTSA determine if this standard can be modified to give the driver a better view of the areas in front of and beside the bus.

As noted in the NAS report, there are still instances where younger children are struck by their own bus. There may be opportunities to improve the bus driver's field of view beyond the levels specified in FMVSS No. 111, which could help avert some of those incidents. For example, many states and school districts purchase buses equipped with two cross-view mirrors, even though FMVSS No. 111 requires only one, for better visibility of the area in front of the vehicle.

NHTSA will initiate rulemaking this year on FMVSS No. 111, to assess the need for additional or improved mirrors, as well as to clarify terminology. NHTSA is also reviewing various other mechanisms and devices that detect children around the bus. One such example is a crossing control arm that forces children to cross in front of the bus at a safer distance, so that they stay within the field of vision of the driver.

Stop Signal Arms. NAS recommended that NHTSA require installation of stop signal arms on all new school buses and that states and local school districts consider retrofitting older buses with stop signal arms. Stop signs with flashing red lights that extend from the left side of the bus when passengers are boarding or leaving the bus are one of several devices on buses that instruct drivers of other vehicles to stop their vehicles while pupils are crossing streets and highways in school bus loading zones.

Motorists who fail to stop for school buses loading or discharging passengers are responsible for a large proportion of pedestrian school bus casualties. As a result, the revised Highway Safety Program Guideline #17 Pupil Transportation Safety, which will be published for comment in the Federal Register in the near future, will be updated to address this issue. In it, NHTSA will encourage states to enact

legislation which sets uniform school bus stopping procedures and to implement regularly scheduled public information campaigns to ensure that motorists fully understand these procedures.

Stop signal arms are currently required as standard equipment on new school buses in 28 states. NHTSA is planning to initiate rulemaking which would propose to mandate such devices on all buses. Prior to the initiation of this rulemaking, NHTSA is evaluating and comparing the effectiveness of a variety of measures, such as stop signal arms and strobe lights, which can alert drivers to the presence of children in school bus loading zones.

School Crossing Programs. NAS recommended that states field test programs in which pupils are escorted across the street or highway at bus stops by the school bus driver or an adult monitor. School bus pedestrian issues begin with crossing the street to the bus stop, continue to waiting at the bus stop, boarding and unloading of the school bus, and end after the student has returned across the street. Three to four times as many school bus pedestrians are killed in this sequence than are school bus passengers. This particular problem will be discussed in the revised Highway Safety Program Guidelines. A new section will emphasize the importance of: (1) Safe walking practices to and from bus stops; (2) how and where to wait safely for the bus; and (3) how to board and leave the bus.

Pedestrian Safety Education. NAS stressed the importance of pedestrian safety education and recommended that NHTSA assist states and local school districts in their efforts to provide instruction in pedestrian safety. NHTSA agrees that Pedestrian Safety Education is an extremely important aspect of overall school bus safety. While the NAS recommendation addresses only the issue of children walking to and from school, NHTSA believes that the use of bicycles to and from school should be included. The revised Highway Safety Program Guidelines on Pupil Transportation Safety will include a new section that specifically addresses children walking and bicycling to and from school.

School Bus Route and Stops. NAS recommended that states and local school districts review their bus routes annually and ensure that they are safely planned and followed as intended. NHTSA concurs with this recommendation and will address this issue in the revised Highway Safety Program Guidelines on Pupil Transportation Safety. This document will strongly address the importance of regular planning and review of routes for safety hazards and encourages states and local school districts to establish loading and unloading areas off the main traveled part of highways whenever possible. In addition, NHTSA believes that proper routing of school buses could reduce or eliminate the standee problem identified above.

School Bus Driver Training. NAS recommended that states establish minimum criteria for school bus driver training, to ensure the safety of children inside and outside the bus, and that drivers receive this training before transporting children. In 1974, NHTSA published model School Bus Driver and School Bus Driver Supervisor's Training courses. These two courses were pilot tested and made available to all state and local pupil transportation officials. In 1976, section 406 funds were made available to all states to conduct school bus driver training, and by 1983, a total of $33 million was expended. Yet, a number of states do not require specialized driver training to drive a school bus. The importance of school bus driver training will be reinforced in the revised Highway Safety Program Guidelines on Pupil Transportation Safety. In addition, NHTSA staff regularly encourage State Pupil Transportation Safety Directors to improve their driver training programs.

The Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99-570) stipulates that by April 1992, all drivers must pass both written and driving skills tests in order to operate commercial motor vehicles which are greater than 26,000 pounds GVWR, seat more than 15 passengers, or carry hazardous materials. Those drivers operating school buses which have a seating capacity of more than 15 passengers are covered by this law and will have to obtain commercial driver's licenses from their states. NHTSA will work with states to assist them in providing school bus driver training programs. This will help school bus drivers meet these new requirements which ensure that they have the minimum skills and knowledge levels needed to safely operate vehicles used to transport children to and from school and school-related activities.

Effective Programs

In addition to the "most effective measures discussed above, the following NAS recommendations are also considered to be effective in protecting the safety of school children while riding in school buses:

Emergency Evacuation Drills. The NAS recommendation on Emergency Exits encourages states and local school districts to initiate school bus evacuation drills at least twice each year. In the fall of 1988, the NHTSA Administrator wrote to each State Pupil Transportation Safety Director to stress the importance of these drills and their dramatic lifesaving potential in emergency situations. The revised Highway Safety Program Guidelines on Pupil Transportation Safety will recommend that each student participate in at least one supervised emergency evacuation drill each school semester.

Emergency Exits. NAS recommended that NHTSA reconsider the minimum number of emergency exits required on school buses and that NHTSA prohibit the installation of seats that obstruct emergency exit doors. FMVSS No. 217 "Bus Window Retention and Release, establishes minimum requirements for emergency exits, window and door retention and release mechanisms, and markings. Its requirements with respect to the number and types of emergency exits is the subject of an advance notice of proposed rulemaking published on November 4, 1988 (53 FR 44623).

Flammability of Interior Materials. NAS recommended that NHTSA upgrade Federal standards, if and when new energy-absorbing, fire retardant materials become available for little added cost. Although post-crash fires in school buses are rare, fires due to electrical or mechanical failures are not uncommon. No matter how they occur, fires in buses can be catastrophic, as was the Carrollton, Kentucky crash. NHTSA published an advanced notice of proposed rulemaking on November 4, 1988 (53 FR 44627) to consider whether to upgrade the performance requirements of FMVSS No. 302, "Flammability of Interior Materials, and has issued a contract to the National Institute of Standards and Technology to develop information for issuing new flammability test procedures and test criteria.

Structural Integrity. NAS recommended that NHTSA continue research to improve side-impact protection and make body components less hazardous. Two of the school bus safety standards that went into effect in 1977 FMVSS No. 220, "School Bus Rollover Protection" and FMVSS No. 221, "School Bus Body Joint Strength, have enhanced the safety of school buses in crashes. Additional efforts to improve the structural performance of school buses are underway. Research and rulemaking activities are underway to include maintenance access panels in the requirements of FMVSS No. 221. An advanced notice of proposed rulemaking

was published on June 19, 1987 (52 FR 23314). In addition, improved FMVSS No. 221 test procedures, which could result in increased floor joint strength and body panel strength, particularly at critical points along the side and corners of the bus, are being considered. Increased and/or expanded protection of the fuel system is also the subject of an advanced notice of proposed rulemaking on FMVSS No. 301, "Fuel System Integrity, published on March 30, 1989 (54 FR 13082).

Seat Back Height. NAS recommended that NHTSA revise its standards to raise the minimum height of school bus seat backs from 20 to 24 inches in order to provide added crash protection, particularly to the head. Two states, Illinois and New York, currently buy buses with seats that have higher backs than required by FMVSS No. 222, "School Bus Seating and Crash Protection.

Higher seat backs would provide a larger padded surface for occupant protection, but might impede access to emergency exits in some situations, which might also reduce the seating capacity of the bus. In addition, higher seat backs might result in the inability of the driver to monitor student behavior. NHTSA will seek additional information concerning the benefits and operational aspects of higher seat backs prior to initiating rulemaking on this subject.

Reflective Markings on School Buses. NAS recommended that NHTSA consider using reflective materials to make buses more visible and reduce nighttime accidents, and that NHTSA determine if minimum standards for these materials are warranted. Since, according to the NAS report, more serious school bus crashes tend to occur disproportionately at night on high-speed roads, it appears reasonable to increase the conspicuity of the buses at night. As part of its work in truck conspicuity, NHTSA will assess the uses of reflective materials on school buses.

School Bus Accident Data. NAS recommended that NHTSA work with states and other parties to upgrade and standardize state collected school bus accident data. The data should be used to define why and how children are being injured and to evaluate the effectiveness of school bus safety programs and devices. NHTSA agrees that evaluation of school bus safety programs is hampered by the lack of accurate and meaningful data on school bus crashes. Currently only three states are able to provide full occupancy crash data. Most states provide only the number of injuries. Many do not differentiate between vehicles that are used as school buses and retired school buses that are used for non-school activities.

NHTSA will work with the states to improve and standardize their school bus accident data. In addition, NHTSA will begin publishing an annual report entitled A Summary of Available School Bus Statistics" this summer. This document will utilize data from a number of sources such as state accident files, the Fatal Accident Reporting System (FARS) and the National Accident Sampling System (NASS). It should provide valuable insight into the pupil transportation crash experience.

Issued on: July 7, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-16407 Filed 7-7-89; 5:04 pm]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting to exchange views on proposals that will be considered at the 1st session of the Subcommittee of Experts on the Transport of Dangerous Goods of the United Nations Committee of Experts on the Transport of Dangerous Goods.

DATE: July 25, 1989, 9:30 a.m.

ADDRESS: Room 6332, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC, 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will discuss items that will be presented at the 1st session of the Subcommittee of Experts on the Transport of Dangerous Goods to be held from July 31 to August 11, 1989. The new Subcommittee of Experts on the Transport of Dangerous Goods will consider all issues previously considered by the Group of Experts on Explosives and the Group of Rapporteurs on the Transport of Dangerous Goods. Particular topics to be covered include: (1) Classification and grouping criteria for gases (Class 2); (2) adoption of a new Class 4.4 for energetic substances; and (3) the definition and packaging for infectious substances (Class 6.2).

Issued in Washington, DC on July 7 1989.

Elaine E. Joost,

Deputy Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-16396 Filed 7-12-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt

Privacy Act of 1974; Routine Uses

AGENCY: Fiscal Service, Bureau of the Public Debt, Treasury.

ACTION: Notice of a new routine use for the systems of records: Treasury/BPD.002—United States Savings-Type Securities and Treasury/BPD.003—United States Securities (other than Savings-Type Securities).

SUMMARY: The purpose of this document is to give notice under the provisions of the Privacy Act of 1974, as amended, that the Bureau of the Public Debt proposes to add a new routine use by amendment to two of its systems of records: Treasury/BPD.002—United States Savings-Type Securities and Treasury/BPD.003—United States Securities (other than Savings-Type Securities), both last published on March 1, 1988 at 53 FR 6252.

DATE: The proposed new routine use for each system of records will become effective without further notice on August 14, 1989, unless comments dictate otherwise.

ADDRESS: Send any comments to Volney M. Taylor, Information Officer, Bureau of the Public Debt, E Street Building, Room 553, Washington, DC 20239-0001. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, Room 5030, Main Treasury Building, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Volney M. Taylor, Information Officer (202) 376-4307

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt has decided that it will expand its ongoing efforts to regain contact with investors with whom it may have lost contact. These

are investors whose payments or whose correspondence advising of matured but unredeemed securities may have been returned to the Bureau. The Bureau has determined that as a way to regain contact it may undertake a matching program with other federal agencies that offer letter forwarding services. These letter forwarding services require that the Bureau furnish information on the investors with whom it has lost contact to the other Federal agency. That Federal agency would match that information against its data base, which contains address information. If a match is achieved, the Federal agency would send a letter supplied by the Bureau to the agency's current address of record for that individual. Under this service, the Bureau would not receive address information from the other Federal agency. By using such a service, the Bureau would be able to notify investors with whom the Bureau has lost contact that: (1) They should contact the Bureau to obtain these returned payments, or (2) they should redeem their matured securities or contact the Bureau if they have lost those securities.

Once this routine use is in effect, the Bureau would enter into written agreements with these agencies before any disclosures of information are made. Although these matches are excluded from the coverage of The Computer Matching and Privacy Protection Act of 1988, the Bureau will comply with all other applicable provisions of the Privacy Act.

Treasury/BPD.002 System Name

United States Savings-Type Securities—Treasury/BPD.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

Description of the change: Remove the "and" following the semicolon at the end of item (14), remove the period at the end of item (15), substitute a semicolon at the end of item 15, and add the following new routine use:

(16) To disclose through computer matching, information on individuals, with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing letter forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured unredeemed securities.

Treasury/BPD.003 System Name

United States Securities (Other than Savings-Type Securities)—Treasury/BPD.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

Description of the change: Remove the "and" following the semicolon at the end of item (14), remove the period at the end of item (15), substitute a semicolon at the end of item 15, and add the following new routine use:

(16) To disclose through computer matching, information on individuals, with whom the Bureau of the Public Debt has lost contact, to other Federal agencies for the purpose of utilizing their letter forwarding services to advise these individuals that they should contact the Bureau about returned payments and/or matured unredeemed securities.

Date: July 5, 1989.

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 89-16393 Filed 07-12-89; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

[4-00236]

Surety Companies Acceptable on Federal Bonds Liquidation; American Mutual Liability Insurance Co.

American Mutual Liability Insurance Company, a Massachusetts Corporation, formerly held a Certificate of Authority as an acceptable surety on Federal Bonds and was last listed as such at 52 FR 24605, July 1, 1987 The Company's authority was terminated by the Department of the Treasury effective April 29, 1988. Notice of the termination was published in the **Federal Register** of May 6, 1988, on page 16337

On March 9, 1989, upon a petition by the Insurance Commissioner of the State of Massachusetts, the Massachusetts Superior Judicial Court issued an Order of Liquidation with respect to American Mutual Liability Insurance Company. Mr. Roger Singer, the Insurance Commissioner, was appointed as the Liquidator of American Mutual Liability Insurance Company. All persons having claims against American Mutual Liability Insurance Company must file their claims by March 9, 1990, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that claimants asserting priority status under 31 USC 3713 who have not yet filed their claim should do so, in writing, to: Commercial Litigation Branch, Civil Division, Department of Justice, P.O. Box 875, Ben Franklin Station, Washington, DC 20044-0875. Attn: Ms. Sandra P Spooner, Deputy Director.

The above office will be consolidating any and all claims against American Mutual Liability Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202 or FTS 724-7194).

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20027 Telephone 202-287-3921.

Dated: July 5, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 89-16363 Filed 7-12-89; 8:45 am]

BILLING CODE 4810-35-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Japanese Restrictions on Telecommunications Trade; Resolution of Section 1377 Proceeding

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of proceedings concerning certain Japanese restrictions on telecommunications trade.

SUMMARY: On April 28, 1989, the USTR determined pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 that certain practices of Japan with respect to third party radio and cellular phone products and services were not in compliance with Japan's commitments under the Market Oriented Sector Specific (MOSS) Agreements on telecommunications. As a result of discussions with the Government of Japan, an agreement was reached under which Japan committed to adopt a number of specific changes in its telecommunications policy and regulations in both the cellular telephone and third party radio markets. These measures resolve the specific matters raised in the April 28 determination, such that no action now will be taken under section 301 of the Trade Act of 1974, as amended, with respect to these matters.

EFFECTIVE DATE: The proceedings were terminated effective July 6, 1989.

FOR FURTHER INFORMATION: Questions about this decision should be directed to Ms. Holly Hammonds, Associate General Counsel (202) 395-7306, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Following the April 28 determination that acts, policies or practices of Japan were not in compliance with the MOSS agreements, and pursuant to section 304(b)(1)(A) of the Trade Act of 1974, as amended, the Office of the USTR conducted a public hearing on May 24 to determine appropriate action to be taken under section 304(a)(1)(B) of that Act. On May 26, 1989, the Acting USTR determined under section 305(a)(2)(ii) of that Act that it was necessary to delay the implementation of such action.

Consultations with the Government of Japan were held from June 19 until June 28, 1989, which led to an agreement resolving the specific issues raised by the USTR in her determination under section 1377 As a result, no action against Japan now is required.

USTR, in conjunction with other agencies, will continue to analyze information on U.S.-Japan trade in telecommunications goods and services in the context of the next Section 1377 annual review and in connection with other opportunities to remedy restrictions on market access. The May 8, 1989 **Federal Register** notice announcing the April 28 USTR determination, for example, cited other matters of concern in the telecommunications area which will be pursued with Japan.

Legal Authority

Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 requires the USTR annually to review each trade agreement concerning telecommunications products or services, and in each review to determine whether a foreign country is:

(1) Not in compliance with the terms of the agreement; or

(2) Otherwise denying, "within the context of the terms of" the agreement, mutually advantageous market opportunities.

On April 25, 1989, a notice was published in the **Federal Register** (54 FR 19624) announcing the USTR affirmative determination against Japanese telecommunications products and services under section 1377

An affirmative determination under section 1377 must be treated as an affirmative determination of a violation of a trade agreement under section 304(a)(1) of the Trade Act of 1974, as amended.

Joshua Bolten,

General Counsel.

[FR Doc. 89-16404 Filed 7-12-89; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 133
Thursday, July 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 18, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employees.

DATE AND TIME: Thursday, July 20, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Nineth Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-10
Gene Karp on behalf of Senator DeConcini's 1988 Campaign.
ADP Project Status Report
Status of Presidential Audits
Position Description—Inspector General
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-16585 Filed 7-11-89; 3:13 p.m.]

BILLING CODE 6715-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Meeting

July 10, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

DATE AND TIME: July 12, 1989, 8:30 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTER TO BE CONSIDERED: Docket No. RP88-68-000, *et al.*, Transcontinental Gas Pipe Line Corporation.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

The following Commissioners voted that agency business requires the holding of a closed meeting on less than the seven days' notice required by the Government in the Sunshine Act:

Chairman Hesse
Commissioner Stalon
Commissioner Trabandt
Commissioner Moler
Commissioner Langdon

Lois D. Cashell,
Secretary.

[FR Doc. 89-16597 Filed 7-11-89; 3:48 pm]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 19, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207 beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 11, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-16596 Filed 7-11-89; 3:49 pm]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Meeting

TIME AND DATE: 9:30 a.m., Thursday, July 20, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW Washington, D.C. 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Proposed Standard Amendment to Article XIX, Section 8, Federal Credit Union Bylaws—Indemnification.
6. Final Rule: Section 701.32, Nonmember and Public Unit Accounts; and Proposed Rule: Section 701.32, Low Income Designation.
7 Final Interpretive Ruling and Policy Statement 89-1—Chartering and Field of Membership Policy.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 20, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Action under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. NCUA's FY 90 and FY 91 Budgets and Proposed Amendments. Closed pursuant to exemptions (2) and (9)(B).
5. Personnel Actions. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.

[FR Doc. 89-16578 Filed 7-11-89; 2:24 pm]

BILLING CODE 7535-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 9:30 a.m. (closed portion), 10:45 a.m. (open portion), Friday, July 28, 1989.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street, NW, Washington, DC

STATUS: The first part of the meeting from 9:30 a.m. to 10:45 a.m. will be closed to the public. The open portion of

the meeting will commence at 10:45 a.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 9:30 a.m. to 10:45 a.m.):

1. Finance Project in Southeast Asian Country.
2. Finance Project in Caribbean Country.
3. Insurance Project in Caribbean Country.
4. Proposed Budget for FY 1991 and Proposed Amendments to Budget for FYT 1990.
5. U.S. Effects Standards.
6. Claims Report.
7 Finance and Insurance Reports.
8. President's Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10:45 a.m.)

1. Approval of the Minutes of the Previous Board Meeting.
2. Determination of Countries and Areas Qualifying as Developing Countries and Areas for OPIC Programs.
3. Personnel Action.
4. Treasurer's Report.
5. Reconfirmation of Furture Meetings of the Board.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457-7079.

Peggy A. Kole,
OPIC Corporate Secretary.
July 10, 1989.

[FR Doc. 89-16560 Filed 7-11-89; 12:59 pm]
BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 17 1989.

A closed meeting will be held on Wednesday, July 19, 1989, at 2:30 p.m. An open meeting will be held on Thursday, July 20, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 19, 1989, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive action.
Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

The subject matter of the open meeting scheduled for Thursday, July 20, 1989, at 10:00 a.m., will be:

1. Consideration of whether to propose amendments to Rule 15c2-11, 17 CFR 240.15c2-11, under the Securities Exchange Act of 1934. The proposed amendments would require a broker-dealer commencing quotations: (1) to have a copy of any trading suspension order (or the companion Commission release) respecting the security issued within the preceding twelve months, and to review the required information in its records in light of such order; and (2) to obtain recent reports filed on Form 8-K by the issuer of the security. The proposed amendments also pertain to the information to be obtained regarding new reporting issuers, the period of retention of the required information, and the form to be furnished to the interdealer quotation system. For further information, please contact Michael T. Dorsey at (202) 272-2848.
2. Consideration of whether to issue a release proposing amendments to the New Capital Rule. Under the proposed Securities Exchange Act Rule 15c3-1 would be amended to raise the minimum net capital required of registered broker-dealers and to standardize the deductions that broker-dealers incur in arriving at net capital for their equity securities positions. Furthermore, the amendments would establish a haircut for zero coupon bonds and relieve certain aggregate indebtedness charges. For further information, please contact David I. A. Abramovitz at (202) 272-2398.
3. Consideration of whether to adopt Rule 32a-3 under the Investment Company Act of 1940. Rule 32a-3 would expand the time period during which certain registered management investment companies must select an independent public accountant. For further information, please contact C. Christopher Sprague at (202) 272-7779.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272-2000.

Jonathan G. Katz,
Secretary.
July 11, 1989.

[FR Doc. 89-16599 Filed 7-11-89; 3:58 pm]
BILLING CODE 8010-01-M

UNITED STATES PAROLE COMMISSION

Pursuant to the Government in the Sunshine Act
(Pub. L. 94-409) [5 U.S.C. 552b]

DATE AND TIME: Wednesday, July 19, 1989, 9:00 a.m. to 1:00 p.m.

PLACE: 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 7 cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27 These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5968.

Dated: July 11, 1989.

Michael A. Stover,
General Counsel, U.S. Parole Commission.

[FR Doc. 89-16589 Filed 7-11-89; 3:33 am]
BILLING CODE 4410-01-M

UNITED STATES PAROLE COMMISSION

Pursuant to the Government in the Sunshine Act
(Pub. L. 94-409) (5 U.S.C. 552b)

DATE AND TIME: Wednesday July 19, 1989 1:00 p.m., Eastern Standard Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open-Meeting.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Case Operations, and Administrative Sections.
3. Discussion of ways to reduce violation of parole.
4. Consideration of transferring responsibility for the District of Puerto Rico from the Northeast Region to the Southeast Region.
5. Consideration of the Fiscal Year 1991 (FY 91) Budget.
6. Adoption of form for waiver of right to Special Transferee Hearing for prisoners transferred to United States under Transfer Treaties.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission (301) 492-5952.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

July 11, 1989.

[FR Doc. 89-16590 Filed 7-11-89; 3:33 pm]

BILLING CODE 4410-01-M

federal register

Thursday
July 13, 1989

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Frameworks for Early Season Migratory Bird Hunting; Proposed Rule; Supplemental

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1989-90 early-season hunting regulations for certain migratory game birds. The Service prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions. As additional information relevant to duck production becomes available, it may be necessary to further restrict seasons proposed herein if conditions warrant.

DATES: The comment period for the proposed early-season frameworks will end on July 23, 1989. The comment period for late-season proposals will close on August 28, 1989. A Public Hearing on Late-Season Regulations will be held August 3, 1989, starting at 9 a.m.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. The August 3 Public Hearing will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (corner of 18th and E Streets, NW.), Washington, DC. Notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which may open before October 1, while late seasons may open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; and common snipe; sea ducks in the Atlantic Flyway; September teal; experimental September duck seasons in identified States; experimental and special September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Late seasons include the general waterfowl seasons; coots; moorhens and gallinules; and common snipe in the Pacific Flyway; and extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented as necessary with additional **Federal Register** documents. Following review of comments received and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register**. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register**, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. On March 27 1989, the Service published for public comment in the **Federal Register** (54 FR 12534) a proposal to amend 50 CFR Part 20, with comment periods ending as noted earlier.

On June 6, 1989, the Service published for public comment a second document (54 FR 24290) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks, with comment periods ending July 23, 1989, for early-season proposals, and August 28, 1989, for late-season proposals.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1989-90 season. All pertinent comments on the March 27 proposals received through June 22, 1989, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods on this third document are specified above under DATES. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands, and early seasons in other areas of the United States are scheduled for publication in the **Federal Register** on or about August 9, 1989.

On June 22, 1989, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 27 (54 FR 12534), June 6 (54 FR 24290), and June 9 (54 FR 24762), 1989, to review the status of mourning, white-winged and white-tipped doves, band-tailed pigeons, rails, common moorhens, purple gallinules, woodcock, common snipe, sandhill cranes, and preliminary waterfowl information. Proposed hunting regulations were discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; experimental duck seasons in September in identified States; experimental September Canada goose hunting seasons in portions of identified States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published on March 27 1989, in the **Federal Register** (54 FR 12534).

The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds. The drought that has plagued the prairies and parklands of Canada and the United States through most of the 1980s continued into 1989. It is affecting not only breeding areas but also migration

and wintering areas. Although many areas received greater rainfall than in past years, there was little runoff, pond numbers remained low and nesting cover was scarce.

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These are briefly reviewed as a matter of public information and to facilitate the Service's response to public comments received during the public hearing on June 22 and in correspondence. Unless otherwise noted, persons making the presentations are Service employees.

Mr. Brad Bortner, Woodcock Specialist, reported on the 1989 status of American woodcock. The report included harvest information gathered over the last 24 years and breeding population information (singing-ground survey) collected since 1968. The two surveys are cooperatively run by the U.S. Fish and Wildlife Service, Canadian Wildlife Service, and 39 State and Provincial wildlife agencies. The most significant findings were from the recently conducted singing-ground survey. This survey of woodcock breeding populations in the United States and Canada indicated minor decreases in woodcock in both the Eastern Region (Atlantic Flyway) and the Central Region (Mississippi Flyway and a portion of the Central Flyway) since 1988. These changes were not statistically significant. The Eastern Region population has declined 34.1 percent since 1968. The Central Region breeding population has decreased 18.9 percent since 1968. However, neither population shows any significant trend for the last 5 years.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1989 mourning dove population. The report included information gathered over the last 24 years. Trends were calculated for the most recent 2 and 10-year intervals and for the entire 24-year period. Between 1988 and 1989, the number of doves heard per call-count route showed no significant change in the 3 management units. Estimates indicated significant downward trends in the Western Unit for the 10 and 24-year periods. No significant trend was found in the Eastern Unit for either timeframe. In the Central Unit, a downward trend was indicated for the most recent 10 years, but no trend was found over the 24-year period. Trends for doves seen at the unit level over the 24-year period agreed with trends for doves heard.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, presented information on the status of white-winged and white-tipped doves in texas. Results of the 1989 whitewing call-count survey indicate a nesting population of about 375,000 birds in the Lower Rio Grande Valley. This represents 9 percent decline from 1988 and the index is 27 percent below the long-term average. Approximately 79 percent of the population was nesting in native brush habitat where a 1 percent increase was noted. Of the 21 percent of the population nesting in citrus groves, there was a 35 percent decrease in 1989. In the Upper South Texas region, 3 major colonies exhibited a 3 percent decline from last year. In West Texas (near Presidio), the small population of whitewings maintains a stable status.

For white-tipped doves, the call-count index indicated a 6 percent decline from 1988, but it is still considered to be a healthy population.

Mr. Roy Tomlinson, Southwest Dove Coordinator, presented a report on the status of white-winged doves in Arizona. In response to whitewing population declines in the 1970's, the Arizona Game and Fish Department instituted a series of restrictive regulations that have been in effect for nearly 10 years. Whitewing populations have since remained relatively stable at a reduced level. In 1988, the whitewing harvest of about 100,000 birds was 11 percent below that in 1987 and remained 45 percent below the 1978–87 average harvest. The 1989 call-count survey in Arizona indicated a 15 percent increase from 1988.

Mr. Tomlinson also discussed the status of band-tailed pigeons. The Four-Corners Population that breeds in mountainous conifer habitat of Arizona, Utah, Colorado, and New Mexico, has remained stable for the past 20–25 years. Hunting pressure is light and the combined harvest for the 4-State area is less than 5,000 birds annually.

The Pacific Coast Population distributed throughout British Columbia, Washington, Oregon, Nevada, and California, appears to be experiencing severe problems of unknown origin. Population surveys in Oregon and Washington indicate a significant long-term downward trend and the 1988 harvest for the four States and one Province indicate a 70 percent decline from the preceding 15 year average. Steps are being taken to determine the cause for the decline.

Mr. Skip Ladd, Central Flyway Representative, reported on the status of sandhill cranes. The Mid-continent Population may still be increasing. Preliminary estimates for 1989, uncorrected for visibility, indicated a spring population of about 409,000, the highest count since the current survey technique was initiated in 1978. Approximately 5,100 hunters harvested about 12,300 cranes in 8 Central Flyway States in the 1988–89 season, which represents no significant change in harvest from the previous year. The harvest in Canada was about 7,000 and harvests in Alaska and Mexico combined are believed to be less than 4,000. Collectively, total harvests of mid-continent sandhill cranes are within guidelines established for this population.

The Rocky Mountain Population of greater sandhill cranes was estimated to number about 19,100 in March of 1988, a figure not significantly different from that of 1985, the last time that adequate survey conditions prevailed, and is within the objective range of 18,000–22,000. The adjusted survey figure for 1989 is not yet available but the count, unadjusted for observer visibility bias and proportion of lesser sandhills present, is nearly identical to that of 1988. Special limited hunting seasons were held during the 1988–89 season in New Mexico, Wyoming, and Arizona, where, collectively, the harvest of Rocky Mountain sandhill cranes was approximately 450, down from about 1,100 in 1987–88. The reduction in harvest is likely the result of poor production of greater sandhill cranes due to drought in breeding areas. Based on this reduced production over the past several years, the allowable retrieved harvest of Rocky Mountain sandhill cranes for 1989–90 seasons will be reduced to 800, compared to 1,300 allowed in 1988–89.

Mr. James Bartonek, Pacific Flyway Representative, described the status of six populations of Alaska-nesting geese that have been of general concern because of their reduced numbers. The endangered Aleutian Canada geese, cackling Canada geese, and the Pacific Flyway Population of white-fronted geese are tending upward; whereas Pacific brant are stable, the spring index for emperor geese indicates a decrease in the population, the winter index of dusky Canada geese is low, as it was last year, and with little prospect for improved production. Information on forecasted fall flights of these populations will be provided during meetings in July and August pertaining to the late-season regulations-setting process.

Comments Received at Public Hearing

Six individuals presented statements at the public hearing on proposed early-season regulations and one other submitted a written statement to be included as part of the hearing transcript. The oral comments are summarized below.

Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, made comments about the 1989–90 hunting season regulations as follows:

1. September Teal Season—This season should be regarded as an integral part of the fall duck season, since its purpose was to allow maximization of sport hunting when other populations of heavily harvested species were depressed. Suspension of the early teal season in 1988 resulted in reduced hunter interest in waterfowl seasons, reduced waterfowl habitat enhancement programs on private lands, increased disease problems for wintering waterfowl including the loss of 10–15 thousand birds due to cholera, and no subsequent increase in teal numbers. After 19 years of operational seasons, the teal season has proven its worth, and should be reinstated under appropriate modifications to meet current needs.

2. Shooting Hours—A return to one-half hour before sunrise openings is recommended. The use of shooting hours to control harvest is inappropriate. Shooting hours are basic regulations which prescribe the appropriate time to hunt.

3. Special Texas White-winged Dove Hunt—Modification of the daily bag limit during the 4-day Special White-winged Dove hunt is recommended. Specifically, north and west of Del Rio in the Special Hunt Area, the bag limit would be 10 mourning, white-winged and white-tipped doves in the aggregate, no more than 2 of which could be white-tipped doves; south and east of Del Rio in the Special Hunt Area, the bag limit would be 10 doves in the aggregate, no more than 5 of which could be mourning doves and 2 of which could be white-tipped doves.

4. Middle Rio Grande Valley, New Mexico, Experimental Sandhill Crane Hunt—Continuation of this hunt in New Mexico is recommended.

5. Deming-Hatch, New Mexico, Sandhill Crane Hunt—Continuation of this southwest New Mexico crane hunt is recommended for the second year of a 3-year experimental program.

6. Texas Sandhill Crane Hunting Zone—Sandhill cranes have expanded their winter range eastward in north-central Texas and an estimated 15–20 thousand sandhill cranes now winter outside the legal crane hunting zone where they cause locally heavy damage to winter wheat. Expansion of the sandhill crane hunting zone in Texas eastward to Interstate Highway 35W is recommended. This measure would reduce crop depredation complaints and increase hunting opportunities.

7 Adoption of a limited experimental sandhill crane hunting season in Utah is recommended.

8. Adoption of proposed basic regulations for webless and waterfowl species not addressed by Recommendation Nos. 1–7 is recommended.

Mr. Lauren Schaaf, representing the Kentucky Department of Fish and Wildlife Resources, commented about the September wood duck season in Kentucky. He referred to the stepped-up banding effort in the State and expressed hope that these band recovery data will show lower mortality attributed to hunting. He indicated that an increased number of wood duck boxes have been installed in recent years and the State has continued to maintain long-term production surveys. Further, he stated that this season is very popular among hunters and he urged the Service to continue the September wood duck season.

Mr. William Goudy expressed concern about the February 28 framework closing date for woodcock hunting, particularly in Tennessee. In that State, the hunting season is split, with the second segment held in February, a time when woodcock are beginning both to nest in Tennessee and to migrate to more nothern breeding grounds. He feels that the practice of hunting northward migrating woodcock in February is morally and ethically wrong. Mr. Goudy recommended that the Service review the issue of February woodcock hunting and also restrict the use of the split season option to prevent hunting of birds moving north to nest.

Mr. John M. Anderson, representing the National Audubon Society, recommended continuation of restrictive regulations initiated in 1987 for mourning doves in the Western Management Unit. He also expressed concern about an apparent decline in mourning doves in the States of Iowa, Missouri and Arkansas, and encouraged research efforts to further study mourning doves in that area. He noted that white-winged dove regulations in Texas are complicated and research efforts in that area should continue, but that the proposed hunting regulations for south Texas appear to be reasonable. Regarding sandhill cranes, he noted that populations appear to be healthy and harvest levels are within management guidelines. He commented there is no valid reason to change regulations for Mid-Continent Sandhill Cranes in 1989, and there is no apparent reason to oppose the proposal to expand the area open to sandhill crane hunting in Texas. He stated that regulations for seasons on Rocky Mountain Sandhill Cranes appear to be reasonable. Concerning woodcock, he suggested that present regulations are appropriate and strongly recommended against establishment of any additional zones in the Eastern Management Unit while populations are low. He also strongly encouraged an in-depth review of the effect of February hunting of woodcock on nesting and population status. He recommended that no liberlizations be allowed in the early wood duck seasons.

Mr. John C. Kovarik, a Maryland hunting guide, expressed his concern about the recent declines in duck populations and his philosophy of stewardship responsibility toward lands, water, habitat and wildlife. He believed that restrictive measures taken during recent years were reasonable and necessary; however, he faulted the Service for attributing the reason for the change in the opening shooting hour in 1988 solely to aid in duck identification rather than to lower the harvest. He believed that the Service lost credibility with hunters by this action. He said that the proposed sea duck season and limits were both generous and appreciated. He believed the Service would restrict this season should circumstances warrant.

Mr. Charles Kelley, representing the Alabama Department of Conservation and Natural Resources, requested that Barbour County be included in the south zone for mourning dove hunting. He also stated that February woodcock hunting was halted in Alabama because some woodcock were nesting in February.

Mr. Robert L. Miles, submitted a letter on behalf of the Northeast Association of Fish and Wildlife Resources Agencies, expressing the unanimous concern of the agencies regarding the decline of Eastern Region woodcock populations. The Association urges the prompt final approval and funding of the American Woodcock Management Plan and the implementation of a woodcock hunting permit or stamp. The Association also requested that the hunting regulations for southern wintering areas need to be carefully monitored and thoroughly evaluated. The Service was also urged to work cooperatively with the appropriate committees of the International Association of Fish and Wildlife

Agencies in formulating a strategy to benefit eastern woodcock.

Written Comments Received

The preliminary proposed rulemaking which appeared in the **Federal Register** dated March 27, 1989, (54 FR 12534), opened the public comment period for early-season migratory game bird hunting regulations. As of June 22, 1989, the Service had received 54 comments, 49 of these specifically addressed early-season related issues. Several of these were previously addressed in the supplemental proposed rulemaking which appeared in the **Federal Register** dated June 6, 1989, (54 FR 24290). These early-season comments are summarized below and numbered in the order used in the March 27 1989, **Federal Register**. Only the numbered items pertaining to early-season written comments are included.

1. Shooting Hours

The Atlantic, Central, and Pacific Flyway Councils and the Lower Region Regulations Committee of the Mississippi Flyway Council, the States of Alaska, Arizona, California, Colorado, Minnesota, Missouri, New York, North Dakota, South Carolina and Tennessee, the California Waterfowl Association, a regional representative of the National Rifle Association, a State Chairman of Duck's Unlimited, 3 local sportsmen's organizations, and 11 individuals, opposed sunrise shooting hours as proposed in the March 27 1989, **Federal Register** (54 FR 12539) for waterfowl and other migratory game birds for the 1989–90 hunting season. Some of the arguments against the proposed regulations included:

a. Shooting hours are basic regulations which dictate the time to hunt and should not be used to regulate harvest.

b. The change to sunrise shooting complicates regulations and will likely increase violations.

c. Sunrise shooting will shift the harvest away from species such as wood ducks to other species of concern, i.e., mallards and pintails.

d. The pre-sunrise period is an aesthetic and traditional part of waterfowling.

e. Sunrise shooting will erode hunter participation and decrease funds for habitat acquisition.

f. Restrictive shooting hours were unnecessary to achieve desired reductions in harvest.

Wisconsin and 1 individual supported sunrise shooting hours. The Service proposes in this document to provide one-half hour before sunrise shooting for early-season migratory game birds.

5. Sea Ducks

A sportsmen's organization supported the proposal for the 107-day season and for a bag limit of 7 sea ducks.

6. September Teal Season

The Central Flyway Council and the Lower Region Regulations Committee of the Mississippi Flyway Council recommended that September teal seasons be reinstated. If necessary, these seasons could be restricted to reflect a depressed population status. They suggested that the teal season has been in effect for many years and was originally conceived during a period of relatively low duck populations, as now exists. The Colorado Division of Wildlife also recommended reinstatement of September teal seasons with necessary adjustments, citing the relatively low harvest rates of blue-winged teal compared to mallards and the relatively better population status of blue-winged teal since 1981 compared to other species. The Wisconsin Department of Natural Resources supported continued suspension of September teal seasons.

8. September Duck Seasons

Tennessee supported the proposal to continue the Experimental September Duck Seasons.

14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits

The Pacific Flyway Council requests that the special September Canada goose season in Wyoming be modified as follows: the 60 permits for 2 geese per season and 75 permits for 1 goose per season in two areas allowed in 1988 be increased to 160 permits for 2 geese per season for allocation among three areas in 1989.

16. Sandhill Cranes

The Central Flyway Council recommended continuation of regular seasons in the Central Flyway without change, except to permit an expansion of the area open to hunting in northcentral Texas as described in item 16 *Sandhill Cranes—Central Flyway—Regular Seasons*, published in the March 27, 1989, **Federal Register** (at 54 FR 12540–12541). The Service proposes in this rule to permit this expansion of the area open to hunting in Texas.

17. Coots

The California Department of Fish and Game (April 24, 1989) requested that frameworks for coot seasons in the Pacific Flyway be separate from those for ducks. The purpose of this change would be to maintain hunter interest during the period of restrictive duck regulations. Anticipated harvest would not be expected to exceed that occurring prior to restrictions on duck seasons. Besides providing additional opportunities to hunters, there would be benefits toward sustaining various management programs.

20. Common Snipe

The California Department of Fish and Game (April 24, 1989) requested that frameworks for common snipe seasons in the Pacific Flyway be separate from those for ducks. The purpose of this change would be to maintain hunter interest during the period of restrictive duck regulations. Anticipated harvest would not be expected to exceed that occurring prior to restrictions on duck seasons. Besides providing additional opportunities to hunters, there would be benefits toward sustaining various management programs.

23. Mourning Doves

In a letter received June 21, 1989, Tennessee requested that the daily bag limit for mourning doves in the Eastern Management Unit be increased from 12 to 18 birds.

24. White-Winged and White-Tipped Doves

In the March 27 1989, **Federal Register** (at 54 FR 12542), the Services reviewed a request from the Texas Parks and Wildlife Department for an experimental dove bag limit for its 4-day special season for white-winged doves; an aggregate daily bag limit of 12 white-winged, mourning, and white-tipped doves, no more than 2 of which could be white-tipped doves, would be permitted. The proposal was endorsed by the Central Flyway Council at their March meeting.

In a letter dated May 2, 1989, and discussed in the June 6, 1989, **Federal Register** (54 FR 24292), Texas recommended that the original proposal be modified to limit the aggregate bag limit to 10 doves per day as follows: northwest of Del Rio, 10 doves, no more than 2 of which could be white-tipped doves; southwest of Del Rio, 10 doves, no more than 5 of which could be mourning doves and 2 of which could be white-tipped doves. The Texas proposal includes a program to monitor the effects of the bag limit change if permitted.

At the June 22, 1989, public hearing, the Central Flyway Council endorsed the modified Texas proposal. The Service, after considering information on the status of mourning and white-

winged doves in Texas and the likely effect of this experimental limit, proposes to permit this bag limit experiment.

25. Migratory Bird Hunting Seasons in Alaska

The Alaska Department of Fish and Game expressed concern about taking disproportionately greater reductions in pintail harvest opportunities then elsewhere but did not ask for a change in those limits. It urged continuation of opening shooting time one-half hour before sunrise for all migratory bird hunting seasons in Alaska. The Service has proposed (54 FR 12534) that the beginning time be changed to sunrise. Alaska argued that the change would have little impact on harvest, it would elevate hunter dissatisfaction, and the effectiveness of the change could not be measured. To justify their position, Alaska reiterated arguments presented previously by the Pacific Flyway Council, specifically:

a. While seasons and limits were generous, early migrations and freezeup resulted in harvest and hunting opportunity much less than that for other States.

b. Because of disproportionate cuts in pintail harvest opportunities, a reduction in shooting hours would give false impressions regarding the expected reductions in harvests of this species as a result of this restriction.

c. Hunters may compensate for this change by increasing harvest after sunrise, therefore, nullifying anticipated reductions in harvest.

d. There is no "refuging" of ducks in Alaska which in some other areas makes the earlier opening time more important for harvest.

e. As much as 75 percent of the duck harvest is in coastal areas where tidal cycles are sometimes more influential on bird movements than daylight.

f. Civil Twilight is longer at higher than lower latitudes.

g. Opportunities for hunting other species of migratory game birds would be unnecessarily restricted.

A regional spokesman for the National Rifle Association also expressed opposition to the sunrise shooting time in Alaska.

27 Falconry

The Service received letters from 5 falconry organizations and 3 individuals expressing their support for both the extended falconry seasons and the proposal to simplify the bag and possession limits. One of these organizations also requested a clarification of the proposal to limit the number of segments allowed during the falconry extended seasons. The proposal is to limit the number of segments to no more than 3 for each extended falconry season. The proposed rule under item 27 in this document should clarify the original proposal.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies and private interests of these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl, and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments on these early-season proposals received no later than July 23, 1989, and on late-season proposals received by August 28, 1989, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). The "Final Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds" was completed and filed with the Environmental Protection Agency on June 9, 1988, and a Notice of Availability was published in the June 16, 1988, **Federal Register** (53 FR 22582). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

On June 22, 1989, the Office of Endangered Species and Habitat Conservation gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for inspection in the Office of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, 4401 North Fairfax Drive, Arlington, VA.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 27 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included

preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, Department of the Interior, Washington, DC 20240. As noted in the early **Federal Register** publication, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

List of Subject in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103–04).

Proposed Regulations Frameworks for 1989–90 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; American woodcock; common snipe; experimental September duck seasons in identified States; seas ducks in the Atlantic Flyway; September Canada goose seasons in portions of identifed States; sandhill cranes in the Central and Pacific Flyways; extended falconry seasons; and migratory birds in Alaska, Puerto Rico and the Virgin Islands.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, woodcock, common snipe, common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than August 9, 1989. States desiring these seasons to open after September 30 may make their selections at the time they select regular waterfowl seasons. Season selections for the seven States offered experimental September waterfowl seasons and Wyoming's special Canada goose season must also be made by August 9, 1989.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than August 9, 1989. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between 1/2 hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1989, and January 15, 1990, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, *or*

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Zoning: Alabama, Georgia, Louisiana and *Mississippi*, may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama: South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia: North Zone: That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnal County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line. South Zone: Remainder of the State.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1989.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, *or*

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: As an alternative to the basic frameworks, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones. Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1989 and January 25, 1990; the South zone between September 20, 1989 and January 25, 1990.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits:

Idaho, Nevada, Oregon, Utah and Washington—Not more than 30 consecutive days between September 1, 1989 and January 15, 1990. Bag and possession limits, 10/20 mourning doves (in Nevada, the daily bag and possession limits of mourning and white-winged dove may not exceed 10/20, respectively, singly or in the aggregate).

Arizona and California—Not more than 60 days to be split between two periods, September 1–15, 1989, and November 1, 1989–January 15, 1990. Bag and possession limits: in Arizona the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. In California the bag and possession limits for mourning and white-winged doves are 10 and 20, singly or in the aggregate.

White-Winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico, and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1989. *Florida* may select its hunting season between September 1, 1989 and January 15, 1990.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day. In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and run concurrently with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. In that portion of the special area *north and west of Del Rio*, the daily bag limit may not exceed 10 white-winged, and mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 4 may be white-tipped doves. In that portion of the special area *south and east of Del Rio*, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 10 may be mourning doves and 4 may be white-tipped doves.

and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1989, and January 25, 1990, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1989, and January 15, 1990, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected);

however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 15, 1989, and January 1, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 16 consecutive days, with a bag and possession limit of 4.

Zoning: California may select hunting seasons of 16 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1 and November 30, 1989.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1989, in the North Zone and October 1 and November 30, 1989, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1989, and January 20, 1990, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits:

In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species.

In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits:

In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway [2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1989, and January 31, 1990. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1989, and February 28, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1989, and February 28, 1990. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1989, through January 20, 1990, in the Atlantic and Mississippi Flyways and September 1, 1989, through January 21, 1990, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway, seasons must be the same as the duck seasons. Seasons may be split into two segments. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Seasons not to exceed 58 days between September 1, 1989, and February 28, 1990, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I-90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1989 and February 28, 1990, may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I-35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to I-35 at Austin; I-35 to I-35W; I-35W to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting a valid Federal sandhill crane hunting permit.

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 (revised July 28, 1987), by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1–November 30, 1989 except September 1, 1989–January 31, 1990, in the Hatch-Deming Area (Zone) in New Mexico (Sierra, Luna, and Dona Ana Counties).

2. Season(s) in any State or zone may not exceed 30 days.

3. Daily bag limits may not exceed 3 and season limits may not exceed 9.

4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

6. All hunts except those in Arizona and Wyoming will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1989, and January 20, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut* and *New York;* in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in *Delaware, Maryland, North Carolina* and *Virginia;* and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season daily bag and possession limits.

Special September Wood Duck Seasons

Florida: An experimental 5-consecutive-day wood duck season may be selected in September. The daily bag limit will be 3 wood ducks and the possession limit will be double the daily bag limit.

Tennessee and Kentucky: Experimental 5-consecutive-day wood duck seasons may be selected in September. The daily bag limit will be 2 wood ducks and the possession limit will be double the daily bag limit.

Special Early-September Canada Goose Seasons

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by *Michigan, Illinois, North Carolina,* and *Minnesota* subject to the following conditions:

1. Outside dates for the season are September 1–10, 1989.

2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively. In North Carolina, hunting will be by State permit to take not more than 2 Canada geese daily and 4 in possession.

3. Areas open to the hunting of Canada geese are as follows:

Michigan:

Lower Peninsula—all areas except the Shiawassee River, Allegan, Lapeer and Muskegon State Game Areas (SGA), the Shiawassee National Wildlife Refuge, that portion of the Maple River SGA east of State Road, that portion of the Pointe Mouillee SGA south of the Huron River, Muskegon County Wastewater Area, and the Fish Point and Nayanquing Point Wildlife Areas.

Upper Peninsula—that area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate Highway 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

Illinois: McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

North Carolina: That portion of the State west of Interstate 95; see State hunting regulations for area descriptions.

Minnesota:

Twin Cities Metropolitan Zone—all or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

Fergus Falls/Alexandria Zone—all or portions of Pope, Douglas, Otter Tail, Wilkin, and Grant Counties.

Southwest Border Zone—all or portions of Martin and Jackson Counties.

4. Areas open to hunting must be described, delineated and designated as such in each State's hunting regulations.

Wyoming may select a September season for Canada geese subject to the following conditions:

1. The season must be concurrent with the September Sandhill crane season.

2. Outside dates for the season(s) are September 1–22, 1989.

3. Hunting will be by State permit.

4. No more than 160 permits, in total, may be issued for the Salt River (Star Valley) and Bear River Areas in Lincoln County and the Eden-Farson Agricultural Project Area in Sweetwater and Sublette Counties, combined.

5. Eash permittee may take no more than 2 geese per season.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1989 and March 10, 1990.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry.

Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period from September 1 to March 10, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and will be evaluated, in cooperation with States offering such extensions, after a period of several years.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1989–1990

Outside Dates: Between September 1, 1989, and January 26, 1990, Alaska may select seasons on waterfowl, snipe, cranes, and tundra swans subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting seasons:

Ducks, geese and brant—107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Unit 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exceptions:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season should be concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 5 and a possession of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Zone they are 6 and 18, respectively. The basic limits may not include more than 2 pintails daily and 6 pintails in possession. There is no open season on canvasback. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common Snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swans—In Game Management Unit 22 an experimental open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.
2. The season must be concurrent with the duck season.
3. The appropriate State agency must issue permits, obtain harvest and hunter participation data, and report the results of this hunt to the Service by June 1, 1990.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1989–90

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons:

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1989, and January 15, 1990, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed scaly-naped pigeons.

Closed Areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca.

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south of Km 6 on Route 186; (4) all lands within Km 14 on the west and the Carribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas consisting of all Cidra Municipality and portions of Aguas Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera, which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between November 5, 1989, and February 28, 1990, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocynga bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Proposed Frameworks for Selecting Open Season Dates for Hunting Birds in the Virgin Islands, 1989–90

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1989 and January 15, 1990, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground dove (*Columba passerina*)—stone dove, tobacco, dove rola, tortolita (protected).

Scaly-naped (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1989, and January 31, 1990, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Date: July 5, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-16302 Filed 7-2-89; 8:45 am]

BILLING CODE 4310-55-M

federal register

Thursday
July 13, 1989

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; American Burying Beetle, Shale Barren Rock Cress, and Osterhout Milk-Vetch, et al., Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN-1018-AB23

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the American Burying Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the American burying beetle (*Nicrophorus americanus*) to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. Once widely distributed throughout eastern North America, this species has disappeared from most of its former range. Two known populations currently exist, one in eastern Oklahoma and the other on an island off the coast of New England. Despite extensive efforts to locate additional populations, only two specimens have been found elsewhere in more than ten years. The cause of the species' decline is unknown. Critical habitat is not being determined. This action implements Federal protection provided by the Act for the American burying beetle.

DATE: The effective date of this rule is August 14, 1989.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts, 02158.

FOR FURTHER INFORMATION CONTACT: Anne Hecht at the above address or by telephone (617/965-5100 or FTS 829-9316).

SUPPLEMENTARY INFORMATION

Background

Nicrophorus americanus, described by Olivier in 1790 (Perkins 1980), is a member of the family Silphidae, the carrion beetles. Generally known as the American burying beetle, this species has also been referred to as the giant carrion beetle (Wells et al. 1983). The American burying beetle is the largest member of its genus in North America, measuring 25-36 mm (1.0-1.4 inches) in length. Distinguishable by its large size, the American burying beetle is also identifiable by a large orange-red pronotal disk. This, the orange antennal club, red frons, and two pairs of scalloped red spots on the elytra (wing covers) contrast sharply with a black background (Wells et al. 1983).

Investigations to date indicate that the biology of the American burying beetle is similar to that of other species of the genus, except that the carrion selected for breeding purposes tends to be larger (Kozol et al. 1987). Schweitzer and Master (1987) based the following description of the American burying beetle's life history on Kozol's paper and their own observations:

> Beetles of both sexes are attracted to appropriate carrion at night, generally soon after dark. Apparently males and females fight among themselves until one pair (usually the largest male and female) remains on the carcass. These individuals then bury it, often before dawn of the first morning. The carrion may then be moved laterally for some distance (often over a meter) underground. Eventually, a chamber is constructed. Eggs are laid on the carrion and at least one, usually both, parents remain with the eggs and subsequent larvae. Larvae cannot survive without parental care. They emerge as adults in about 48-56 days and the parents and young then disperse. Occasionally, individuals may succeed in rearing two broods of young. As far as is known, the young, which emerge in July and August, do not reproduce until the following June or July. Adults overwinter, probably singly in the soil. Adults feed on carrion and apparently also capture and consume live insects.
>
> Apparently, any kind of vertebrate carrion between about 50 and 200 grams is acceptable Brood sizes varied between 8 and 23 teneral adults eclosed.

Once widely distributed throughout eastern North America, this species has disappeared from most of its historic range. Historical records include 32 states, the District of Columbia, and 3 Canadian provinces encompassing the area from Nova Scotia and Quebec, south to Florida and west to Minnesota, South Dakota, Nebraska, Oklahoma, and Texas (Wells et al. 1983, Schweitzer and Master 1987). Two extant populations are known, one on a New England island and the other in eastern Oklahoma.

The New England island population was estimated at 520 beetles (850 beetles at the high end of the 95% confidence interval) in 1986 (Kozol et al. 1987). All but one capture occurred on a portion of the island where much of the land is owned by a State agency or by private conservation organizations.

The existence of the eastern Oklahoma population was recently brought to the attention of the U.S. Fish and Wildlife Service (Service). This population is known from collections at blacklight of one specimen in 1979, one specimen of unknown date sometime between 1979 and 1987 seven specimens in 1987 and one specimen in 1988. Several circumstances, including the sporadic pattern of these collections at a blacklight that has reportedly been operated for more than 5000 hours since 1976 and the fact that at least five other species of *Nicrophorus* are regularly collected at this site, suggest that the size and stability of this population may be a matter of concern (pers. comm. Pat Mehlhop, Oklahoma Natural Heritage Inventory, 1988).

In the early 1980's, an incident involving collection of a single American burying beetle occurred about 40 miles north of the site of the Oklahoma population described above. Nightly blacklighting conducted during one week each summer over an eight year period yielded only the one specimen at this locale (pers. comm. D. Davis, Smithsonian Institution, 1988). It is unclear whether there is a relationship between this specimen and the other Oklahoma collections.

A single specimen was captured and released at a second site in New England in 1985. Extensive efforts using both carrion baits and blacklights resulted in the capture of over 7000 *Nicrophorus* species at this location in 1986, but failed to retrap this species (Schweitzer and Master 1987).

Anderson (1982) speculated that the natural habitat of the species is mature climax forest, but the fact that there is no forest on the island where the beetle is found today casts serious doubt on this thesis. Habitat occupied by the known population includes maritime shrub thickets, coastal moraine grassland, and pastureland. There is agreement that availability of significant humus and top soil suitable for burying of carrion is an essential habitat requirement of the American burying beetle (Schweitzer and Master 1987).

Davis (1980) detailed the decline in the number of American burying beetle specimens in collections and solicited information on the locations of existing populations. Anderson (1982) found a pattern of increasing localization in capture records. The *IUCN Red Data Book* (Wells *et al.* 1983) described this species as having experienced "one of the most disastrous declines of an insect's range ever to be recorded, and stated that the Service should be encouraged to list it as an endangered species. In 1980, the Service included *Nicrophorus americanus* in a status review of insects in major public collections (Perkins 1980). The American burying beetle was recognized as a Category 2 candidate for listing in the Service's May 22, 1984 (49 FR 21670) invertebrate review notice. Category 2 taxa are those for which existing information indicates the possible

appropriateness of proposing listing under the Endangered Species Act (Act), but for which sufficient biological information is not presently available to support a proposed rule.

In 1987 the Eastern Regional Office of The Nature Conservancy compiled the results of a range-wide status survey for the American burying beetle. Since 1960, this once ubiquitous species has been collected only in Ontario, Kentucky, Arkansas, Michigan, Oklahoma, Nebraska (pers. comm. Brett Ratcliffe, Nebraska State Museum, 1988) and in two New England states. Moreover, failure of extensive efforts in 1986 to recapture American burying beetles at the sites of most recent captures in Arkansas and Michigan suggests a continuing constriction of the species' range. Significant efforts in 1986 and 1987 to locate American burying beetles on another New England island, where a 1985 capture was reported, were unsuccessful. Other recent unsuccessful capture efforts were conducted in northwestern Pennsylvania, New Jersey, New York (Long Island), Tennessee, western North Carolina, Torreya State Park in Florida, and on mainland areas in New England. The abundance of the species in collections (including student collections) with capture dates prior to 1950 and the ease of capture at blacklight and pitfall traps experienced at the site of the known extant island population confirm that these unsuccessful efforts to locate American burying beetles are indicative of their decline throughout most of their former range.

Summary of Comments and Recommendations

In the October 11, 1988 proposed rule, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Copies of the proposed rule were mailed to appropriate State resource agencies, county governments, Federal agencies, scientific organizations, and other interested parties, with a request for comments. Notices inviting public comment were published in newspapers of general circulation in all areas where American burying beetles have been captured during the last ten years and in several other areas with less recent capture records. Ten written comments were received; all supported the proposed rule. No new information was received.

Summary of Factors Affecting the Species

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 set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the American burying beetle (*Nicrophorus americanus*) are as follows:

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

As described above, the American burying beetle has almost entirely vanished from its former range. It is possible that future search efforts may result in discovery of another extant population. However, the extent of the species' decline suggests that any newly discovered populations are also vulnerable to whatever factors have caused their disappearance elsewhere.

Anderson (1982) believed that, as with a similarly large European *Nicrophorus* species, the decline of the American burying beetle was due to the destruction of "primary" or virgin forest, which he speculated was the essential habitat of the species. This hypothesis is refuted by the fact that many records document collections of the species in various locations more than a century after destruction of the primary forest. Furthermore, the site of the known New England population supports no forests. It is possible that loss of some obscure habitat component has contributed to the beetle's disappearance, but habitat generally similar to that of the known population is not rare (Schweitzer and Master 1987).

B. Over-Utilization for Commercial, Recreational, Scientific, or Educational Purposes

Collection has not been a factor in the present decline of this once ubiquitous species (Schweitzer and Master 1987). However, ease of trapping could make remaining populations vulnerable to over-collection if their locations were to become well known.

C. Disease or Predation

Predation has probably not been a factor in this species' decline, but introduction of a non-native, species-specific pathogen could explain the fact that this species has disappeared while several other species of the same genus (for example, *N. orbicollis* and *N. tomentosus*) with similar habits continue to thrive (pers. comm. Andrea Kozol, Boston University, 1988). Such a hypothesis is also consistent with the location of the two remaining populations: one on an island and the other on the edge of the species' historic range. No studies addressing this theory have been undertaken to date.

D. The Inadequacy of Existing Regulatory Mechanisms

This species has no legal protection in any State where it is known or suspected to exist. Localized regulations requiring that electronic bug-zappers in the vicinity of the known population be equipped with grids small enough to exclude American burying beetles would remove the potential for take described under E, below. Lack of understanding of the causes of the species' decline precludes recommendation of other regulations for protection of the species at this time. It is possible that future studies of the species will show a need for such regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

A low reproductive rate (compared with other insects) limits the ability of this species to rebound from any period of elevated mortality.

Use of electronic bug-zappers in the vicinity of American burying beetles could result in take of this species. Other *Nicrophorus* species have been killed by zappers and American burying beetles are attracted to identical light sources (pers. comm. Michelle P Scott, Boston University, 1987). Since *Nicrophorus* males are involved in brood-rearing, this sex (which is selectively killed by zappers in most insect groups) is not functionally surplus.

Some speculation has focused on the possible role of the pesticide DDT in the decline of the American burying beetle. Some support for this hypothesis is furnished by reports that the site of the known island population, unlike most other New England islands and many mainland areas, was never extensively sprayed for mosquito or gypsy moth suppression. However, most other recent records of the species are from farming areas where DDT would likely have been used prior to its banning. Further, if DDT contamination of the beetle's food supply had occurred, it is hard to explain why other carrion-feeding members of the genus were not similarly affected (Schweitzer and Master 1987).

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 American burying beetle as endangered. Endangered status is warranted by the decline in the species' range from more than a third of the continental United States and parts of southeastern Canada to only two verified populations. Failure of 1986 efforts to relocate the species in Arkansas and Michigan suggests that whatever caused the decline of the species was still at work at least as recently as the mid 1970's. While it is not improbable that other remnant populations will be discovered in the future, it is likely that those populations remain vulnerable to the factors that have caused the general decline of the species. Further, there is no known way to reverse any decline that might occur in the known populations.

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 which 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 this species at this time. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). As discussed under "Factor B" above, ease of trapping could make the American burying beetle vulnerable to collectors who might be attracted to the locale of the known populations by the publication of maps and other specific location information. No benefit from critical habitat designation has been identified that outweighs the threat of collection.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

The Act requires development and implementation of recovery plans for listed species. Because the causes of the decline of the American burying beetle are unknown, it is probable that initial recovery activities will focus on research to determine those causes. Later actions may include efforts to reestablish the species in suitable locations in its former range.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is 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. The Service has not identified any ongoing or proposed projects with Federal involvement that could affect this species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general trade 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, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations on take of endangered and threatened species and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC, 20036 (202/343-4955).

National Environmental Policy Act

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

References Cited

Anderson, R.S. 1982. On the decreasing abundance of *Nicrophorus americanus* Olivier (Coleoptera:Silphidae) in eastern North America. Coleopt. Bull. 36(2):362-365.

Davis, L.R. 1980. Notes on beetle distributions with a discussion of *Nicrophorus americanus* Olivier and its abundance in collections. (Coleoptera:Scarabeidae, Lampyridae and Silphidae). Coleopt. Bull. 34(2):245-251.

Kozol, A.J., M.P Scott, and J.F.A. Traniello. 1987 Distribution and natural history of the American burying beetle *(Nicrophorus americanus)*. Unpublished report for the Eastern Heritage Task Force of The Nature Conservancy.

Perkins, P.D.P. 1980. North American insect status review. Contract 14-16-0009-79-052 final report to USDI Office of Endangered Species.

Schweitzer, D.F., and L.L. Master. 1987 *Nicrophorus americanus* (American burying beetle): results of a global status survey. Report for Region 5 of the U.S. Fish and Wildlife Service.

Wells, S.M., R.M. Pyle, and N.M. Collins. 1983. The IUCN red data book. IUCN, Gland, Switzerland, pp 379-381.

Author

The primary author of this rule is Anne Hecht of the Service's Regional Office in Newton Corner, Massachusetts (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under

INSECTS, 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						
INSECTS							
Beetle, American burying (=Giant carrion beetle).	*Nicrophorus americanus.*	U.S.A. (eastern States south to FL, west to SD and TX), eastern Canada.	NA	E	351	NA	NA

Dated: June 12, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-16344 Filed 7-12-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB23

Endangered and Threatened Wildlife and Plants; "Arabis Serotina" (Shale Barren Rock Cress) Determined to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Arabis serotina* (shale barren rock cress) to be an endangered species. It is found only in western Virginia and eastern West Virginia. Presently, 26 populations, totaling fewer than 1,000 reproductive individuals, are known. Many populations are adversely affected by deer browsing, construction and maintenance of roads and railroads, and livestock grazing. Several populations occur on Federal lands in the Monongahela and George Washington National Forests. This listing implements the protection provided by the Endangered Species Act of 1973, as amended, for *Arabis serotina.* Critical habitat has not been determined.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ecological Services Field Office, Suite 322, 315 S. Allen Street, State College, Pennsylvania 16801.

FOR FURTHER INFORMATION CONTACT: Sharon W. Morgan, Fish and Wildlife Biologist (see ADDRESSES section) (814/234-4090).

SUPPLEMENTARY INFORMATION:

Background

Shale barren rock cress (*Arabis serotina* Steele), a member of the mustard family, is one of several plant species endemic to dry, exposed, mid-Appalachian habitats known as shale barrens (Keener 1983). These unique shale slopes of Paleozoic age are found in the Ridge and Valley Section of the Appalachian Mountains from Pennsylvania south to Virginia and West Virginia. Usually surrounded by deciduous forest woodlands, shale barrens are isolated islands of habitat characterized by steep southern exposures (generally greater than 20 degree slopes), relatively sparse vegetative cover, high temperatures and low moisture in the summer, and are usually undercut by a stream at the base (Keener 1983). Eighteen endemic plant taxa are recorded from the shale barrens, including *Arabis serotina* and three other Federal candidate plant species (*Allium Oxyphilum, Taenidia montana, Trifolium virginicum)* (Keener 1983).

This species is biennial, with populations usually consisting of two age-classes: young, nonreproductive individuals present in basal rosette form; and second-year plants that are potentially reproductive individuals present in the form of erect, flowering plants lacking a basal rosette of leaves. Another component of populations is the seed bank, consisting of dormant, ungerminated seeds found either at the ground surface or buried in the soil. *A. serotina* may not be a strict biennial, meaning that rosettes may persist longer than one year, resulting in a delay of flowering and fruiting beyond the second year. Plants typically grow to a height of 30 to 60 cm. (one to two feet), with a spreading, compound inflorescence of many tiny whitish flowers, each approximately two to three mm. long (one-eighth inch).

Originally described by Edward Steele in 1911, the species has been confused with the morphologically similar *Arabis laevigata* (Muhl.) Poir var. *burkii* Porter. Hopkins (1937) reduced *Arabis serotina* to synonymy under *Arabis laevigata* var. *burkii.* Both taxa occur on shale barrens, although the latter is not an endemic. Weiboldt (1987a, 1987b) has shown that *Arabis serotina* is distinguished from *Arabis laevigata* var. *burkii* by several key characteristics. *A. serotina* is taller with wider and more-branched inflorescences, and has smaller flowers and more narrowly winged seeds than *A. laevigata* var. *burkii.* There are also considerable differences between the flowering periods of the two taxa. All varieties of *A. laevigata,* including var. *burkii,* bloom in April and May and set seed before *Arabis serotina* begins to bloom in late June or early July. *Arabis serotina* continues to bloom into September (Wieboldt 1987b).

Arabis serotina is presently known from only 26 populations in five Virginia counties (Allegheny, Augusta, Bath, Highland and Rockbridge) and three West Virginia counties (Greenbrier, Hardy and Pendleton). An additional 1934 record from Shenandoah County, Virginia has not been relocated and is considered historic. The species has never been documented to be more widespread, and the reported distribution in seven West Virginia counties (Strausbaugh and Core 1978) was based on collections of *A. laevigata* var. *burkii* (Bartgis 1985). The species' highly restricted range appears to be a result of biogeographic events and not due to recent land-use changes or the lack of suitable habitat elsewhere. During 1983-85, a survey of 70 shale barrens in eight West Virginia counties resulted in only a few new populations (Bartgis 1985). Searches of 15-20 barrens in the range of *A. serotina* in Virginia revealed few additional populations (Mr. Lipford, Virginia Natural Heritage Program, pers. comm. 1988).

In both Virginia and West Virginia, all populations occur on Brallier Formation

shales on south- to southwest-facing slopes at elevations of 1300 to 2500 feet. Most of the known populations occur partially or completely in the George Washington and Monongahela National Forests.

Populations are fairly small at all 26 locations. Since plants in the rosette stage are inconspicuous and easily overlooked, most population counts refer to only flowering and/or fruiting plants. Approximately 130 reproductive plants were found at the 13 Virginia sites in 1987 (M. Lipford, pers. comm. 1987) and only about 700 reproductive individuals comprised the 13 West Virginia populations in 1985 (Bartgis in press). Although a few additional populations may be located in the future, the typically small population sizes suggest that the total number of individuals will remain small. In both states, most populations are moderately to severely browsed by deer. Rangewide, sites have been affected to some degree by road or railroad construction, small flood-control proejcts, and grazing by livestock.

The U.S. Fish and Wildlife Service (Service) recognized *Arabis serotina* as a Category 2 candidate for listing in the Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species published in the **Federal Register** on November 28, 1983 (48 FR 53641). Category 2 comprises those taxa for which listing is possibly appropriate but for which existing information is insufficient to support a proposed rule. The updated notice of review for plant taxa published on September 27 1988 again included *Arabis serotina* in Category 2.

In 1985, the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *Arabis serotina* and other Federal candidate species. Those reports (Bartgis 1985, Rawinski and Cassin 1986) documented a high degree of threat at most *Arabis serotina* sites and recommended immediate listing by the Service. This listing implements the protection provided by the Endangered Species Act of 1973 (16 U.S.C. *et seq.*) as amended, for *Arabis serotina*.

Summary of Comments and Recommendations

In the November 17 1988 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 Covington Virginian, the Daily News Leader (Staunton), the Pendleton Times, the Inter-Mountain and the Moorefield Examiner from November 22, 1988 through December 4, 1988. Ten comments were received, including letters from one Federal agency, one State agency, three colleges or universities, and five conservation organizations or individuals. Eight commentors supported listing, one acknowledged receipt of the proposal and the final commenter requested additional information. In addition, two of the commentors suggested that critical habitat be listed. The Service's reasons for not determining critical habitat for this species are stated below.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Arabis serotina* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Arabis serotina* Steele (shale barren rock cress) are as follows:

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

In West Virginia, five of the shale barrens supporting known populations of *Arabis serotina* have been partially destroyed by road construction and a sixth was affected by a small flood-control dam which degraded the habitat available for the species (Bartgis in press). In Virginia, three shale barrens supporting known *Arabis serotina* populations were partially destroyed by road construction, two were damaged by railroad construction, and one is crossed by a hiking trail (T. Wieboldt, Virginia Polytechnic Institute, pers. comm. 1987). The extent of the impacts of all these projects upon the *Arabis serotina* populations is unknown. Two of the West Virginia populations have been grazed by sheep or goats in the past. While no longer grazed by livestock, presently both sites have little vegetation, marked erosional features, and very few *Arabis serotina* individuals (Bartgis in press).

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

Arabis serotina is not known to be used for any commercial or recreational purpose. Because of its rarity, it may be subject to collection by botanists and curiosity seekers. Since most populations consist of 20 or fewer individuals, collection or vandalism at those sites could eliminate populations.

C. Disease or Predation

The larvae of the butterfly Olympia marble (*Euchloe olympia*) have been reported to feed on *Arabis serotina* (Clench and Opler 1983), but the report is believed erroneous. Timing of larval emergence suggests that they feed on *A. laevigata* var. *burkii* (Bartgis in press). White-tailed deer (*Odocoileus virginianus*) are known to heavily browse *Arabis serotina* populations.

As in many northeastern states, deer populations are increasing in both Virginia and West Virginia, resulting in greater browsing pressure on many herbaceous plants. In West Virginia, eight of eleven *A. serotina* populations surveyed in 1985 had been browsed by deer resulting in partial or complete loss of 15 percent to 70 percent (average 30 percent) of the inflorescences in those populations. For example, in an unusually large population of 124 plants only 47 plants successfully set seed (Bartgis in press). At three Virginia populations with only one or two reproductive individuals each, all were browsed in 1987 (M. Lipford pers. comm. 1987). Since the plant is a biennial inhabiting a stressful environment, such a significant loss of propagules in any given year could lead to lower reproductive success. As the median reproductive population size observed in West Virginia during 1985 was 17 plants, and in Virginia during 1987 was seven plants, any minor decreases in reproductive potential through grazing or other means could completely eliminate populations.

D. Inadequacy of Existing Regulatory Mechanisms

Arabis serotina is not currently protected by any state or local laws or regulations. Four populations in West Virginia and seven in Virginia occur in established National Forest Special Interest Areas (U.S. Dept. of Agriculture 1986a, 1986b). These areas are managed by the Forest Service to protect the habitat and species present. Some of these populations extend onto adjacent private land. Special Interest Areas (SIA) are not permanent designations and may be revoked by the

administrating national forest. Although the SIA designation prevents habitat alteration, it does not provide protection from threats such as deer predation that may adversely affect these populations.

One West Virginia population occurs on a shale barren leased by The Nature Conservancy (TNC), and that organization is also securing voluntary protection of at least two additional populations. These voluntary agreements have no binding legal status. The ten populations on private land are not protected by any laws or regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Shale barren communities are relatively long-term features of the landscape, but may gradually be replaced by woodlands through succession (Keener 1983). However this process is slow and is unlikely to affect more than a very few *Arabis serotina* populations in the near future.

A. serotina is the most sporadic and rarest of the shale barren endemics (Wieboldt *in* Rawinski and Cassin 1986) and recent surveys show that populations have declined in the past few years. In addition to predation by deer, populations have been adversely affected by severe droughts in 1987 and 1988. One Virginia shale barren supported 100 reproductive individuals in 1985, but in 1987 only nine were found. Another Virginia shale barren showed three individuals in 1984 but none was found in 1987 (M. Lipford, pers. comm. 1987). At one West Virginia barren which had 136 reproductive individuals in 1985, only 12 plants set fruit in 1987 (Bartgis in press).

Many biennial species typically exhibit fluctuations in population numbers from year to year; however, repeated loss of reproductive individuals several seasons in succession poses a serious threat to long-term survival of species. Low population numbers combined with continually decreasing contributions to the seed bank result in the species being particularly vulnerable to any natural or human-caused stresses. No attempt has been made to assess the size of the seed bank at any population. If present trends continue, the future of smaller populations will be highly uncertain.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this final rule. Based on this evaluation, the preferred action is to list *Arabis serotina* as endangered. Habitat degradation and loss of reproduction through grazing pose severe problems to the continued existence of the species. Although 26 populations are known, 15 of these populations number 20 or fewer individuals, making the species particularly vulnerable to any threats. In addition, most of the available shale barren habitat for this species has been inventoried, making it unlikely that many new populations will be found.

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 a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Arabis serotina*. Very small population sizes make this species particularly vulnerable to any vandalism or collecting. Since the plant occurs in unique, easily-identified habitats, publication of critical habitat maps may result in vandalism and collection by curosity seekers. The Act prohibits taking of plants only in cases of (1) Removal and reduction to possession on lands under Federal jurisdiction, or malicious damage or destruction on such lands; (2) removal, cutting, digging up, or damaging or destroying plants in knowing violation of any State law or regulation, including State criminal trespass law. The Forest Service, The Nature Conservancy and landowners of major populations on private land have been informed of population locations and the importance of protecting the species' habitat. Listing will result in habitat protection through the recovery process and section 7 consultations. Therefore, it would not be prudent to determine critical habitat for *Arabis serotina*.

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 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 U.S. Department of Agriculture, Forest Service partially or completely owns sixteen of the known *Arabis serotina* populations. Activities in these areas that may affect the species would require section 7 consultation.

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 *Arabis serotina*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal Lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including 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 species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

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

References Cited

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Author

The primary author of this rule is Sharon W. Morgan (see ADDRESSES section) using substantial information provided by Rodney L. Bartgis, West Virginia Department of Natural Resources.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

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 of Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under the Family Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h)

Species		Historic Range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard Family						
Arabis serotina	Shale barren rock cress	U.S.A. (VA, WV)	E	352	NA	NA

Dated: June 12, 1989

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–16345 Filed 7–12–89; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB18

Endangered and Threatened Wildlife and Plants; Final Rule to Determine Astragalus osterhoutii and Penstemon penlandii to be Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has determined two plants, *Astragalus osterhoutii* (Osterhout milk-vetch) and *Penstemon penlandii* (Penland beardtongue), to be endangered species under the Endangered Species Act of 1973, as amended. Both species are endemic to Middle Park in Grand County, Colorado, where they grow on shale badlands. Penland beardtongue is only known within 2 miles of the type locality. The Osterhout milk-vetch occurs in scattered populations over a 15-mile range. Both species occur largely on Federal land administered by the Bureau of Land Management, with smaller occurrences on State and private land. The Osterhout milk-vetch would be impacted directly by dam construction and inundation, and secondarily by recreational uses and development around the proposed Muddy Creek Reservoir. The single Penland beardtongue area is a fragile habitat vulnerable to off-road vehicle damage. The determination that *Astragalus osterhoutii* and *Penstemon penlandii* are endangered species will provide them protection under the authority of the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the State Supervisor's Office, Fish and Wildlife Enhancement, 730 Simms Street, Room 290, Golden, Colorado 80401 and at the Western Colorado Fish and Wildlife Enhancement Office, 529 25½ Road, Suite B–113, Grand Junction, Colorado 81505.

FOR FURTHER INFORMATION CONTACT: John Anderson at the Grand Junction address above (303/243–2778 or FTS 322–0351).

SUPPLEMENTARY INFORMATION:

Background

Astragalus osterhoutii and *Penstemon penlandii* are herbaceous perennial wildflowers endemic to Middle Park, a

sagebrush basin in north-central Colorado. They are restricted to badlands of Upper Cretaceous Niobrara and Pierre Shale and of Tertiary (Miocene Troublesome Formation) siltstone sediments at 2,250–2,350 meters (7,450–7,700 feet) elevation within 6 miles to the north and east of the town of Kremmling. *Astragalus osterhoutii* Jones was described in 1923 by Marcus Jones (1923) from material collected by George Osterhout, an early Colorado botanist. Osterhout first collected it in fruit July 17 1905 (specimen 3038), and in flower June 9, 1906 (specimen 3235) at "Sulphur Springs" (holotype) and "about 4 miles below Sulphur Springs, Grand County" (cotype). The holotype (at the Pomona College Herbarium, Rancho Santa Ana Botanic Garden, California) is a combination of material from these two specimens. The type locality had been interpreted to be near the town of Hot Sulphur Springs, which is 17 miles east of Kremmling (Barneby 1964, Peterson et al. 1981); but, despite several searches, the Osterhout milk-vetch has never been found in this area. However, the population recently located along Troublesome Creek is adjacent to Sulphur Gulch, which contains a Sulphur Spring (about 6 miles northeast of Kremmling), and this is likely the type locality (Rupert Barneby, New York Botancial Garden, *in litt.*, 1987).

Until the 1980's, *A. osterhoutii* was collected only five times and from two additional localities: a small population 1 mile northeast of Kremmling and the largest population along Muddy Creek 6 miles north of Kremmling. These populations were discovered by Beath in 1939 and 1940 respectively (Peterson *et al.* 1981). The population along Muddy Creek was further delineated during the preparation of the status report (Peterson *et al.* 1981) and the Rock Creek/Muddy Creek Reservoir Draft Environmental Impact Statement (Grah and Neese 1987). Occurrences along Pass Creek and Red Dirt Creek near Hinman Reservoir, a few miles west of Muddy Creek, were also discovered during inventories for the Draft Environmental Impact Statement (Grah and Neese 1987). During graduate studies at the University of Colorado, Jeff Karron located two sites, 1 mile and 5 miles northeast of Kremmling, the latter along Troublesome Creek. These sites probably represent Beath's 1939 locality and Osterhout's original "Sulphur Springs" locality in the Sulphur Gulch/Troublesome Creek vicinity, respectively. In the summer of 1988, the author found a small colony of about 500 plants of *A. osterhoutii* on a shale hill along the north side of the Colorado River 3 miles east of Troublesome Creek.

There are an estimated 25,000 to 50,000 Osterhout milk-vetch plants, approximately 90 percent of the total for the species, in the vicinity of Muddy Creek. The remaining 10 percent of the species occurs on the eastern and western extremities of the range at Troublesome and Red Dirt Creek (a tributary of Muddy Creek), respectively.

Penstemon penlandii Weber was independently discovered in the summer of 1986 by David Johnson of Western Resource Development Company (Weber 1986) and the author while on visits to the Osterhout milk-vetch Troublesome Creek site located by Karron. While the Osterhout milk-vetch is found only along one gulch here, the Penland beardtongue population of approximately 5,000 plants extends over the whole series of badlands between Troublesome Creek and Sulphur Gulch, which are approximately 1½ miles long and ½ mile wide. In the summer of 1988, the author located a small colony of 500 plants along Troublesome Creek 2 miles north of the type locality. This is the only known area for the Penland beardtongue.

A. osterhoutii and *P penlandii* are both disjunct from their nearest relatives, which occur approximately 150 miles away in southwestern Wyoming and northwestern Colorado: *A. grayi* and *A. nelsonianus* (Barneby 1964), and *P paysoniorum* (Weber 1986) and *P gibbensii* (personal observation), respectively. These species may be remnants of a previous extension of northern species southward during glacial or pluvial periods. As such, they can provide clues to past floristic migrations and are scientifically valuable in the study of biogeography. *A. osterhoutii* has also been the subject of evolutionary studies comparing rare and common species of *Astragalus* (Karron 1987a). Their adaptation to specific geologic habitats makes them good scientific subjects for such studies.

A. osterhoutii is a tall rush-like plant with linear leaflets and several bright green stems up to 100 centimeters (40 inches) tall. There are 12–25 large white flowers, 2.4 centimeters (1.0 inch) long, per inflorescence (flowering stalk), and stipitate pendulous pods, 4.5 centimeters (1.8 inches) long. *P penlandii* is a short plant with linear leaves and several clumped, pubescent stems up to 25 centimeters (10.0 inches) tall. There are 5–15 bright bicolored flowers with blue lobes and a violet throat, 1.2–1.5 centimeters (0.5–0.6 inch) long, per inflorescence; the fruits are small brown capsules. Both species are characterized by clusters of showy flowers relative to the size of the plant.

The largest population of the Osterhout milk-vetch occurs on shale benches along Muddy Creek, the site of the proposed Muddy Creek Reservoir. While the lower edges of this population would be inundated by the proposed reservoir, there would be additional impacts to the remainder of the population from associated development and recreational use of the reservoir and the surrounding benches (U.S. Forest Service and U.S. Bureau of Land Management 1988). Changes in vegetative composition, particularly an increase in big sagebrush density due to past grazing history, may have resulted in a decrease in the size and/or density of Osterhout milk-vetch populations. The Troublesome Creek/Sulphur Gulch badlands, the habitat of both the Osterhout milk-vetch and Penland beardtongue, are a fragile habitat susceptible to damage from off-road vehicle use. Approximately two-thirds of the large Osterhout milk-vetch population along Muddy Creek is on Federal land administered by the Bureau of Land Management (Bureau); the remaining one-third is mostly on private land, with two colonies on State land (although the edges of other Osterhout milk-vetch colonies may be within State highway rights-of-way). The small occurrences up Pass Creek and Red Dirt Creek near Hinman Reservoir are on private land. The small site 1 mile northeast of Kremmling is on Bureau land, and the Troublesome Creek/Sulphur Gulch populations of Osterhout milk-vetch and Penland beardtongue are on Bureau land and private land.

Federal action involving *A. osterhoutii* began with section 12 of the Endangered Species Act (Act) of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *A. osterhoutii* was included as "endangered" in the July 1, 1975, petition. On December 15, 1980 (45 FR 82485), and September 27 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *A. osterhoutii* was included in these notices as a category 2 species.

Category 2 comprises taxa for which the Service possesses information indicating that proposing to list them as endangered or threatened species is possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) are not currently available to support listing. The present proposal is based on biological data from Peterson et al. (1981), Karron (1987a), and Grah and Neese (1987).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *A. osterhoutii*, were treated as being newly petitioned on October 13, 1982. On October 13, 1983, October 12, 1984, October 11, 1985, October 10, 1986, and October 9, 1987 the Service made successive 1-year findings that the petition to list *A. osterhoutii* was warranted, but precluded by other listing actions of higher priority. The Service published a proposed rule to list *A. osterhoutii* and *P penlandii* as endangered species on July 5, 1988 (53 FR 25181), constituting the next 1-year finding that would have been required on or before October 9, 1988.

Because it was discovered in 1986, after the last notice of review for plants was published in the **Federal Register** in 1985, there has been no previous Federal action involving *P penlandii*.

Summary of Comments and Recommendations

In the July 5, 1988, proposed rule (53 FR 25181) 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 and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited public comments were published in the *Middle Park Times* on August 4, 11, 18, and 25, 1988, and in the *Rocky Mountain News* on September 1 and 2, 1988. A public hearing was requested by the Grand County Board of Commissioners (County) on August 5, 1988, and by the Colorado River Water Conservation District (Water District) on August 12, 1988. The Service extended the initial comment period to October 24, 1988 (53 FR 37009), to accommodate the requested public hearing which was held on October 13, 1988, in Kremmling, Colorado. Newspaper notices announcing the public hearing and the extension of the comment period were published in the *Middle Park Times* on October 6, 1988, and in the *Rocky Mountain News* on October 6 and 7 1988. At the hearing a Service botanist read a prepared statement and showed slides of the plants and their habitat. Individuals in the audience were then given the opportunity to present their oral comments. Following the comments there was a question and answer period. Six people attended the public hearing and three presented oral comments. Eleven written comments also were received in response to the proposed rule. The three oral comments were from parties who also submitted written comments and raised similar issues.

Seven written comments in support were received, including the State, conservation groups, and professional botanists; three written comments in opposition were received from a local (county) government and a local water district; and one written comment was neutral. Two oral comments in opposition to the listing were received from a local water district and a local (county) government, and one supporting comment was received from a professional botanist. Written and oral comments of similar content are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: The Water District and the County stated that the estimated population size of Osterhout milk-vetch along Muddy Creek was 100,000 plants and that the plant covered 50 percent more acres in 1987 than in 1985. Therefore, the impacts of the Muddy Creek Reservoir were less than indicated in the Service's proposed rule which states 25,000 plants and uses the 1985 acreage figure.

Response: The 100,000 figure was used in a preliminary Biological Assessment (U.S. Forest Service 1987), but the final Biological Assessment (U.S. Bureau of Land Management 1989) and the Supplemental Draft Environmental Impact Statement (U.S. Forest Service and Bureau of Land Management 1988) use a figure of 50,000 plants. The estimate of 25,000 plants is the result of personal observations by a Service botanist in July 1986, August 1987 and July 1988. All of these figures are based on ocular estimates of the same plant populations, but by different observers. The higher figures are based on extrapolations of an estimated average density over the total acreage, rather than an actual census. Extrapolations are usually high estimates because plants are not evenly distributed in nature, due to such things as micro-habitat differences or limited seed dispersal. The Service believes that the degree or level of impact should be determined based on the low end of population fluctuations, which represents its base population number.

The range of *A. osterhoutii* does not appear to be expanding and is still confined to a small part of Middle Park. It should also be understood that during flood stages an additional, undetermined number of plants would be inundated. Moreover, besides the direct impacts, another 80 acres of habitat could be impacted by recreational activities and development.

Issue 2: The Water District and the County stated that existing Bureau of Land Management regulations and the Conservation Plan proposed in the (now) Final Biological Assessment (U.S. Bureau of Land Management 1989) are sufficient to minimize impacts to *A. osterhoutii*.

Response: Unless *A. osterhoutii* is listed there would be no legal requirement for the Bureau to make the Conservation Plan or any other measures permit conditions of the project. The Final Biological Assessment (U.S. Bureau of Land Management 1989) specifically states that protection would only be required by the Bureau if Osterhout milk-vetch is listed, which supports the need for listing. The Service believes that the Conservation Plan by itself may be insufficient to protect the species, and that protection of additional plant sites is necessary. Moreover, the habitat manipulation techniques in the Conservation Plan are experimental and their success uncertain. And finally, if the species is not listed there is no law requiring the Bureau to protect the species and administer its recovery if the Conservation Plan falls short of its goal or if future activities are planned that could affect the species.

Issue 3: The Water District stated that "* the best scientific and commercial data currently available does not justify endangered status [for *Astragalus osterhoutii*].

Response: Professional botanists who have worked on the species, including a Service botanist, a graduate student whose dissertation included the species, professional botanists with the State and conservation groups, and consultants on the Muddy Creek Reservoir, think that existing biological data support endangered status. Their

data and conclusions are included in this rulemaking. A pre-proposal letter from a consultant stated: "Both species are highly vulnerable to extinction by virtue of extremely limited distribution habitat, and population numbers *" (Elizabeth Neese, independent consultant, *in litt.*, 1988). Also, their fragile habitat is highly susceptible to surface disturbance. The Osterhout milk-vetch was a candidate for listing as threatened or endangered (1980) before the Muddy Creek Dam was proposed (1985).

Issue 4: The Water District stated that listing would not further elevate awareness of the plant's status and promote conservation efforts.

Response: The fact that the plants and their habitats have already received consideration in the environmental impact statement and biological assessment has already contributed to an awareness of them among parties involved in that project. However, other interested parties such as the World Conservation Centre are notified once a species is listed. Increasing awareness is only one reason for listing.

Issue 5: The Water District stated that there is not a serious present threat to the Penland beardtongue.

Response: Off-road vehicle use and mineral exploration are definite threats to the species. Off-road vehicle damage and mineral exploration have occurred in the area, and both are a threat to the species' fragile habitat.

Issue 6: The County stated that private lands around the reservoir are zoned at the least intensive county zoning designation, Forestry and Open.

Response: The Forest and Open zoning does require 20–60 percent open space in developments, but still allows lodges and cabins to be built. Therefore, surface disturbance of the habitat would still be possible.

Issue 7: The County stated that both species occur in the Pass Creek, Red Dirt Creek, and Troublesome Creek areas.

Response: All inventories by consultants and the Service through the 1988 field season have shown Penland beardtongue to be limited to just the Troublesome Creek area. The Service has not received any data documenting occurrences of Penland beardtongue at these other sites.

Issue 8: The County stated that only marginal habitat at the lower edges of the population would be damaged by inundation and bench sloughing.

Response: The plant density is naturally lower at the edge of an occurrence on the sideslopes of draws than at its center on the top of a bench. However, because of the plant's rarity and limited range, the edges of the occurrences are still important to its survival. They represent the potential expansion and enlargement of an occurrence. Also, bench sloughing around the reservoir would "eat" into the benches and hence the center of the occurrences where the highest densities of plants exist.

Issue 9: The County stated that past and present grazing impacts on the species may have been greater than the effect of a reservoir on a fringe of the population.

Response: Past grazing, particularly historically high numbers around the turn of the century, have significantly altered the pristine ecological condition of Middle Park. Because the plants grow best in open ecological settings with little vegetative competition, and past overgrazing has caused an increase in big sagebrush density, it is possible that the two plants were more common in the pristine habitat. Studies with habitat manipulation of sagebrush stands have been proposed in the Conservation Plan to test this hypothesis. If it is correct, then this is another factor endangering the plants above and beyond the reservoir and its secondary impacts. Current levels of grazing, which are much lower than historic levels, are probably not further endangering the plants.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus osterhoutii* and *Penstemon penlandii* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus osterhoutii* Jones (Osterhout milk-vetch) and *Penstemon penlandii* Weber (Penland beardtongue) are as follows:

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

A. osterhoutii and *P penlandii* are both naturally rare species. *A. osterhoutii* has only one major population along Muddy Creek, with small scattered outlying colonies up to a distance of 6 miles away. *P penlandii* is known only from one area, with two occurrences 2 miles apart along Troublesome Creek/Sulphur Gulch (which is also the eastern most area for *A. osterhoutii*). The badlands on which an estimated 5,000 individuals of *P penlandii* occur are currently vulnerable to modification from off-road vehicle use because of their fragile soils, steep topography, and arid environment. There are dirt roads running through the badlands which provide easy access for off-road vehicle use. Off-road vehicle damage and mineral exploration have occurred on the area. The resulting modification of the habitat could result in a curtailment of the range for Penland beardtongue.

The major population of *A. osterhoutii* along Muddy Creek has an estimated 25,000 to 50,000 plants (personal observation; represents about 90 percent of the total for the species) on 132 acres and is threatened by the proposed Muddy Creek Reservoir. With construction of the high dam proposal at 7,485 feet elevation, 18 acres or 14 percent of the Muddy Creek population would be inundated. An alternative lower dam proposal at 7,475 feet would inundate 10 acres or 8 percent of the population (Bio/West 1988). Also, during flood stages there would be a short term rise of 8 to 10 feet in the reservoir level which would inundate an undetermined number of additional plants. Additional direct losses from reservoir construction could result from the raised water table through perennial soil saturation, and from surface disturbance due to construction activities such as road building, creation of borrow pits, and heavy equipment movement (Grah and Neese 1987). While direct inundation and bench sloughing would destroy habitat at the lower edges of the population, significant secondary impacts to the benches around the reservoir and along Alkali Slough and Pass Creek could occur with the building of recreation facilities and increased use of the area by people and off-road vehicles. The presence of the reservoir would likely stimulate private development within the plant's range near the reservoir. These potential secondary impacts would be the same for either dam height and could cause destruction, modification, or curtailment of Osterhout milk-vetch habitat or range.

Depending upon the degree of future recreational usage, secondary impacts from the Muddy Creek Reservoir may be even greater to the Osterhout milk-vetch than direct impacts from reservoir construction (Grah and Neese 1987). In addition to the direct impacts mentioned above, 80 acres, or 60 percent of the habitat of *A. osterhoutii*, could be threatened by secondary impacts from

recreational activities associated with the Muddy Creek Reservoir proposal (Bio/West 1988). Proposed mitigation plans to offset direct and secondary impacts of the reservoir construction and recreation include management of the habitat remaining around the reservoir to minimize effects to the milk-vetch; fencing the habitat and designing public recreational facilities to minimize the impact on the species; protection of off-site populations; land exchanges; a monitoring program with possible habitat manipulation; and plant surveys for avoidance of the milk-vetch during construction.

Mining claims exist along Muddy Creek where the Osterhout milk-vetch occurs. Also, the density of *A. osterhoutii* has been observed to be lower in big sagebrush stands than in the adjacent open benchlands where it normally grows. It may be that the past grazing history has caused an increase in big sagebrush cover with a resultant canopy closure and modification of Osterhout milk-vetch habitat with loss of individuals through lowered densities of populations.

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

Taking for these purposes has not been documented. However, both plants have showy flowers and grow in accessible areas, thus both are vulnerable to collecting and vandalism.

C. Disease or Predation

No threats are known.

D. The Inadequacy of Existing Regulatory Mechanisms

There are no existing Federal or State laws which protect *A. osterhoutii* and *P penlandii*. The Act would provide protection and encourage active management through the Available Conservation Measures" discussed below.

E. Other Natural or Manmade Factors Affecting its Continued Existence

A. osterhoutii is an obligate outcrossing species (Karron 1989) that requires primarily ground-nesting bumble bees for pollination (Karron 1987b). Thus, its pollinators, as well as the plants themselves, could be impacted by surface disturbance. Also, a sufficiently large population size must be maintained to support pollination by outcrossing. Genetic studies by Karron *et al* (1988) using starch gel electrophoresis show that *A. osterhoutii* is already genetically depauperate, probably due to small population size. The studies also show that genetic differences exist between the Muddy Creek population and those east of Kremmling, emphasizing the need for protection of both sites.

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 *Astragalus osterhoutii* and *Penstemon penlandii* as endangered. Both are restricted endemics occurring on a limited habitat, and with only one major population each. *A. osterhoutii* would be impacted directly by construction of the proposed Muddy Creek Reservoir, and secondarily by recreational uses and development around the reservoir. *P penlandii* is vulnerable to off-road vehicle damage to its fragile habitat. There presently exists no opportunity for protection under existing legislation (State and Federal). For reasons given below, it is not considered prudent to propose designation of critical habitat.

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 presently prudent for these species at this time because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might increase if detailed critical habitat maps are published. Such maps would identify areas on public and private land, thereby making it more difficult for Federal enforcement agencies to protect the species. As discussed under Factor B in the "Summary of Factors Affecting the Species, both plants have showy flowers and grow in accessible areas, thus both are vulnerable to collecting and vandalism. Federal involvement in the areas where the plants occur can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting these species' habitat, and such protection will be addressed through the recovery process and through section 7 procedures. Therefore, it would not be prudent to determine critical habitat for *A. osterhoutii* and *P penlandii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A. osterhoutii and *P penlandii* occur primarily on Federal land administered by the Bureau. The Bureau's involvement could include section 7 consultation on the proposed Muddy Creek Reservoir, monitoring the impacts of off-road vehicle use, and studying the effects of grazing systems on vegetative composition. The Army Corps of Engineers would also be involved in any section 7 consultation for the reservoir because of the need for a 404 permit. On both Federal and private land, the Service expects that listing would elevate the awareness of these plants' status and foster efforts aimed toward their conservation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign

commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to *A. osterhoutii* and *P penlandii*, it is anticipated that few, if any, trade permits would ever be sought or issued because these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329 (703/358-2093).

National Environmental Policy Act

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

References Cited

A complete list of all references cited here is available upon request from Fish and Wildlife Enhancement Offices in Golden, Colorado (303/236-2675 or FTS 776-2675) or Grand Junction, Colorado (303/243-2778 or FTS 322-0351, see **ADDRESSES** above).

Author

The primary author of this final rule is John L. Anderson, botanist, U.S. Fish and Wildlife Service, Grand Junction, Colorado (303/243-2778; FTS 322-0351, see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17 Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the families Fabaceae and Scrophulariaceae, 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					
Fabaceae—Pea family						
Astragalus osterhoutii	Osterhout milk-vetch	U.S.A. (CO)	E	353	NA	NA
Scrophulanaceae—Snapdragon family						
Penstemon penlandii	Penland beardtongue	U.S.A. (CO)	E	353	NA	NA

Dated: June 12, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-16346 Filed 7-12-89; 8:45 am]

BILLING CODE 4310-55-M

federal register

Thursday
July 13, 1989

Part IV

Federal Emergency Management Agency

Federal Insurance Administration

Mandatory Purchase of Flood Insurance; Guidelines; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

Mandatory Purchase of Flood Insurance; Guidelines

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Issuance of guidelines.

SUMMARY: These Guidelines pertain to the mandatory flood insurance purchase requirements contained in sections 102(a) and 102(b) of the Flood Disaster Protection Act of 1973, as amended, (codified as sections 4012a(a) and 4012a(b) of 42 USC), (Pub. L. 93–234, 87 Stat. 975), December 31, 1973, and reflect experience gained by the Federal Insurance Administration (FIA) in its administration of the National Flood Insurance Program over the past twenty years following the enactment of the National Flood Insurance Act of 1968, as amended. (Pub. L. 90–448, 82 Stat. 572, 42 U.S.C. 4001–4128.) They revise and replace Guidelines previously published in the **Federal Register** on July 17 1974, at pages 26186–93; as revised on February 17 1978, at pages 7142–48; on March 22, 1978, at page 11862; and on July 21, 1980, at pages 48711 and 48712.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Rose, Jr., Executive Assistant to the Federal Insurance Administrator, Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472, (202) 646–2780.

SUPPLEMENTARY INFORMATION: The implementation of the statutory mandatory flood insurance purchase requirements of the 1973 Act cited above is the responsibility of Federal Agencies and Federal Instrumentalities and does not rest upon the Federal Insurance Administration (FIA). However, section 205(b) of the 1973 Act (42 U.S.C. 4128(b)) provides that Federal Agencies and Federal Instrumentalities shall, in cooperation with the Director of the Federal Emergency Management Agency, issue appropriate rules and regulations to govern the carrying out of the Agencies' and Instrumentalities' responsibilities under the 1973 Act.

Pursuant to this mandate for cooperation, during the period in which FIA was a part of the United States Department of Housing and Urban Development, FIA issued Guidelines designed to provide such guidance concerning the insurance purchase requirements as might be helpful in promoting greater uniformity and understanding of the requirements among Federal Agencies, Federal Instrumentalities, private lending institutions, and their trade associations, and the public. Over the past ten years numerous questions of interpretation have arisen which have been discussed at many productive meetings between FIA and representatives of Federal Instrumentalities and Agencies. While FIA's Guidelines are not binding upon these groups, FIA was encouraged by the Federal Financial Institutions Examination Council to update the earlier Guidelines, and the Council members, who have reviewed interim drafts of these Guidelines and offered valuable suggestions, have agreed to disseminate this final edition. FIA wishes to express its deep appreciation for the assistance and suggestions received not only from the Council, but from others within the Agencies and Instrumentalities involved in the mandatory flood insurance purchase requirements. In publishing these Guidelines FIA invites continuing dialogue with all interested parties.

Contents

The Guidelines are intended to provide guidance to Federal Agencies, Federal Financial Regulatory Agencies (defined by statute as Federal Instrumentalities), lenders, borrowers and the general public. They are divided into six sections, A through F as follows:

Section A, an introduction describing the National Flood Insurance Program, and through a tracing of its legislative history providing the events and rational which led to the enactment of the mandatory flood insurance purchase requirement.

1. Statutory authority for the National Flood Insurance Program (NFIP).
2. Background history and brief description of the NFIP
3. Status of studies and maps for the NFIP as of January 1, 1989.
4. Letters of Map Amendment and Letters of Map Revision.

Section B, describing the legislative background and the provisions of the Mandatory Flood Insurance Purchase Requirements of the 1973 Act, and listing six fundamental facts necessary for an understanding of the requirements.

1. Background and legislative history of the Flood Disaster Protection Act of 1973.
2. Basic description of Mandatory Flood Insurance Purchase Requirements.
3. Six basic components of the 1973 Act.

Section C, describing the application of the 1973 Act to Federal Officers and Agencies.

1. Federal Agencies defined.
2. Application of the 1973 Act to Federal Officers and Agencies in communities participating in the NFIP
3. Effect of Letters of Map Amendment and Letters of Map Revision on the flood insurance purchase requirement.
4. What is "Financial Assistance" under the 1973 Act?
5. How much flood insurance is available?
6. How much flood insurance must be purchased?
7 Mandatory Flood Insurance Purchase Requirements as determiend by the Small Business Administration.
8. Restrictions on Federal Financial Assistance by Federal Officers and Agencies in non participating communities

Section D, describing the application of the 1973 Act to Federal Instrumentalities and private lenders subject to their jurisdiction.

1. Application of the 1973 Act to Federal Instrumentalities and to private lenders
   (a) Federal Instrumentalities defined
   (b) Legislative purposes and specific mandate
   (c) How much flood insurance must be purchased, for how long, and to what transactions does the purchase requirement apply?
2. Coastal Barrier Resources Act (COBRA)
3. Effect of Letters of Map Amendment and Letters of Map Revision
4. Application of 1973 Act upon conventional loans in non participating communities
   (a) What is a conventional loan?
   (b) Authority for lenders to make conventional loans in special flood hazard areas of non participating communities
   (c) Notification requirements and Notice Form

Section E, consisting of Guidelines to an Interpretation of the 1973 Act, with 9 subsections discussing:

1. Standards by which lenders Are judged
   (a) Significance of the location of the structure
   (b) Examination of the map
   (c) The "Good Faith Standard"
   (d) The Lender's reliance upon assistance
   (e) Who must make determinations?
   (f) What is determined?
   (g) How to record that a determination was made
   (h) The ultimate responsibility of the lender
2. Should the amount of insurance required reflect the value of the land?
   (a) The 1973 Act refers to buildings and mobile homes
   (b) What the NFIP Policy covers
   (c) What if the loan is secured only by land upon which there are no structures?
   (d) What if a detached garage of a residential property, to which 10% of the principal structure's insurance is applicable, is in the special flood hazard area, while the principal structure is outside and what is the status of a tool shed or shack similarly located?
3. What is the impact of the flood insurance purchase requirement if improvements on the real property are of nominal value, and the purpose of the loan transaction is primarily to facilitate the purchase of land for subsequent development?
   (a) Status of surplus buildings of nominal value on land purchased for development
   (b) What if there is a structure in a special flood hazard area which is being used for residential or commercial purposes on land whose value alone would be sufficient to

secure the loan without regard to the value of the building?

(c) NFIP deductibles and definition of structure

(d) Buildings in the course of construction

4. Unavailability of flood insurance for specific buildings in communities participating in the NFIP

(a) Coastal Barrier Resources Act (COBRA)

(b) Section 1316 of the 1973 Act and buildings in violation of State or local laws

(c) Section 1316, as applicable to Federal Officers and Agencies

(d) NFIP underwriting restrictions in eligibility or availability of flood insurance

5. Applicability of the 1973 Act to purchase of mortgages by lenders

6. Acceptance of private flood insurance policies and "Write Your Own Policies"

7. Lenders' remedies in the event of prior failure to require flood insurance

8. Home Equity Loans under the 1973 Act

9. Federal Financial Institutions Council Interagency examination procedures and examiner checklist for compliance

Section F describing requirements of the 1973 Act as to Condominiums

1. Insurance/Property repair responsibilities of Condominium Associations

2. Lenders' Interest

3. Nature of condominium ownership/lenders exposure

4. Peril of flood

5. Changes in the market place

6. NFIP coverage—satisfying lender requirements

7. Residential coverage—unit owner

8. Residential coverage—Condominium Association

9. Condominium Master Policy (CMP) under the NFIP

10. Non-residential coverage—Condominiums

11. Coverage options

(a) Individual Dwelling Policy

(b) General Property Policy

(c) Condominium Master Policy

An index follows these sections.

A. Introduction

1. Statutory Authority for the National Insurance Program

The National Flood Insurance Program (NFIP) became effective on January 28, 1969, (33 FR 17804) and was authorized by the National Flood Insurance Act of 1968, (Title XIII of the Housing and Urban Development Act of 1968, as amended, Public Law 90-448, 82 Stat 476, 48 U.S.C. 4001-4128). The position of Federal Insurance Administrator was authorized by the Urban Property Protection and Reinsurance Act of 1968, (Title XI of the Housing and Urban Development Act of 1968, and the Federal Insurance Administration was established under the Housing and Urban Development Act of 1968 as part of the United States Department of Housing and Urban Development (HUD). The Secretary of HUD delegated to the Federal Insurance Administrator the responsibility for administering the NFIP.

Subsequently, on June 19, 1978, President Carter forwarded to the Congress Reorganization Plan No. 3 of the 1978 (43 FR 41493) (which had the effect of a Federal statute). This Plan, in addition to creating the Federal Emergency Management Agency (FEMA), transferred the functions authorized and described in the National Flood Insurance Act of 1968 and the position of Federal Insurance Administrator to FEMA. The organization of FEMA was further defined in Executive Order 12127 dated March 31, 1979 (44 FR 19367) and Executive Order 12148, dated June 20, 1979. On April 1, 1979, in a notice published in 44 FR 20962, and later codified at 44 CFR 2.64, the Director of FEMA delegated responsibility for the administration of the NFIP to the Federal Insurance Administrator of the Federal Insurance Adminstration (FIA), which had become a Directorate within FEMA.

2. Background History and Brief Description of the National Flood Insurance Program

Between 70 and 80 percent of all natural disasters in the United States involve flooding, and from its earliest days the Federal government has been involved with the peril of flooding. Through re-channeling, or through dams and levees, restricting the flow of waters, as well as through the development of hydroelectric power and irrigation, the Federal government has attempted to ameliorate the effects of flooding. But in spite of all these actions, vast sums of money have had to be expended through the response mechanism of Federal Disaster Assistance.

In 1968 the Congress embarked upon a new course of action and focused upon ways in which flood damage could be avoided or reduced by making the public aware of its potential exposure to flooding and by providing, through the authorization of a Federal flood insurance program, an incentive to encourage communities to adopt floodplain management ordinance that would mitigate the effects of flooding upon new construction. Taking note of the fact that insurance coverage against the peril of flooding was virtually unavailable in the private sector, the Congress enacted the National Flood Insurance Act of 1968, and authorized the National Flood Insurance Program, which represented a new approach to assisting the victims of flooding by providing an opportunity for property owners to purchase from the Federal government insurance protection for structures and contents exposed to the peril of flooding.

Because the availability of government flood insurance without hazard mitigation would only have increased the potential for flood damage by encouraging unwise construction, FIA was directed under the 1968 Act to conduct studies throughout the United States to determine in each community the location of areas of special flood hazard and to issue Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) showing the location of these areas and to notify each community of such identification. Eligibility for the purchase of flood insurance was made available only to those individuals or corporations whose insurable property is located within a community that has agreed with the Federal government to adopt ordinances that will mitigate the impact of future flooding. The most significant of these required ordinances are those which, for example, condition the issuance of building permits for new residential construction in areas of special flood hazard upon the requirement that the building be constructed so that the lowest floor will be located above the base flood elevation, if that figure is provided on a Flood Insurance Rate Map issued by FIA.

Participating communities that fail to adequately enforce their flood plain management ordinances may be placed on probation if they do not take corrective actions within a specified time period. NFIP policyholders in that community will be notified of the pending probation and that their policies may become subject to a surcharge on their flood insurance premiums. If a community which has been placed on probation fails to bring its floodplain management program into compliance with the NFIP requirements, it may be suspended from the NFIP a step which would terminate its status as a participating community. In that event NFIP policies would not be renewed for property owners in that community and no new policies would be issued. Experience shows that the probation process leads to compliance and, as of January 1989, only three communities have had to be suspended for lack of compliance. However, communities are routinely suspended for failure to adopt or amend their floodplain management ordinances to incorporate new flood hazard information or revisions of NFIP regulations. Experience shows that within a very short time most of these communities become participating again.

3. Status of Studies and Maps for the National Flood Insurance Program as of January, 1989

Some 18,642 communities have been identified as flood prone through the publication of a flood map by FIA. The total number of communities participating in the NFIP is 17,797 including some 1,851 communities for which no special flood hazards have been identified and for which no map has been published. Property owners within these participating communities are eligible to purchase flood insurance to protect buildings located anywhere within such communities, both inside and outside of special flood hazard areas (subject to restrictions of the Coastal Barrier Resources Act, discussed below). Some 2,700 communities which have been mapped do not presently participate, and property owners in those communities are not eligible to purchase flood insurance.

While these figures constantly change, as a benchmark it may be useful to record the fact that as of January, 1989, of the 17,797 participating communities, 16,537 are in the Regular Program. Their property owners, therefore, are eligible to purchase the maximum amounts of insurance coverage available under the Program.

Presently, only 1,260 participating communities remain in the Emergency Program phase, where only limited amounts of insurance are available. Flood risk studies currently underway in these communities are scheduled for completion before September 30, 1991. Upon their completion, Flood Insurance Rate Maps will be issued and will replace the Flood Hazard Boundary Maps currently in effect for each of these communities. At that time, these communities will, also, be eligible for conversion to the Regular Program phase and eligibility for higher amounts of insurance coverage.

Special flood hazard areas are determined with reference to the "100-year" flood standard, which is the national standard on which NFIP regulations are based. It is also the standard adopted by virtually every federal agency and most state agencies for the administartion of their floodplain management programs. The 100-year flood, also referred to as a base flood, is defined as the flood having a 1 percent probability of being equalled or exceeded in any given year. The risk of experiencing a flood of this magnitude increases with the length of time considered.

Of special interest to lenders is the fact that within the special flood hazard area there is a 26 percent chance (about 1 in 4) of experiencing such a flood over a typical 30 year mortgage period. By contrast, during the term of a 30 year mortgage, there is only a 1 percent chance of suffering a fire loss.

But, while necessary for applying floodplain management requirements and establishing uniform flood insurance rates, the term 100-year flood can be misleading. Although it represents the long term average recurrence interval for a flood of this magnitude, such floods may be experienced in any given year. There have been numerous instances since the NFIP was established where communities have sustained two, and even three, 100-year or greater floods within a several year period. A notable example took place in the 1970s when within 5 years after experiencing Tropical Storm Agnes in 1972, Pennsylvania was batterd by another 100 year flood, demonstrating the value of the standard as a tool for measuring exposure to a 100 year flood, but not for predicting its timing. The 100-year flood might be more properly termed the "one percent annual chance flood" which represents its true probability of being equalled or exceeded in any year.

Special flood hazard areas include only those areas which are in the 100-year floodplan. The delineation of areas subject to such inundation is determined by FEMA through engineering studies. Special flood hazard areas are usually refined into Zones A, AO, AH, AE, A99, VO, VE, or V (Older maps utilize numbered A Zones, eg. A1, A2, A30, and numbered V Zones, eg. V1, V2, V30 in lieu of the newer AE and VE Zones, respectively. (New maps use fewer zone designations for purposes of simplicity). The term special flood hazard area does not include areas outside the 100-year floodplain, which are referred to as moderate to minimal risk and are designated Zone X. (Older maps differentiate the X Zone into Zones B and C, which represent moderate and minimal flood risks, respectively). Areas for which no flood hazard evaluation has been made by FEMA are designated as Zone D.)

4. Letters of Map Amendment or Map Revision Removing Properties From Special Flood Hazard Areas

Situations occasionally arise in which a piece of real property is shown on a flood map as being in a special flood hazard area even though the property is, in fact, above the 100 year flood level. This happens because flood insurance maps cannot reflect every rise in terrain and there will be instances where there will be "natural islands" of high ground in the special flood hazard area that were inadvertently included in the special flood hazard areas. Nevertheless, until the map has been changed, lenders are bound by the information shown on FIA maps and cannot validly make a determination on their own that is inconsistent with the map.

Fortunately, there is a very workable mechanism for resolving such problems. FIA has created an efficient procedure by which a property owner can submit elevation materials in support of a request for a Letter of Map Amendment (LOMA) removing the property from the special flood hazard area. Such a process involves only the property owner and the FIA and does not require that the community become involved.

A related but different situation is presented when a property owner, whose land is within a special flood hazard area below the 100 year flood level, grades and fills the site to raise the level of the land above the 100 year flood level. This situation differs from the one above because in the previous situation the natural level of the land at the time that the map was issued was above the 100 year flood level and no artificial improvement was needed to accomplish that level. In cases where physical changes have had to be made to raise the level of the property above the base flood elevation, FIA will not issue a letter of map amendment. However, with the concurrence of the community FIA will issue a Letter of Map Revision (LOMR) which, for the purposes of the property owner will accomplish the same purpose. A LOMR can also be used to correct a mistake made in the original analysis or when conditions have changes as in the case of the construction or removal of a dam or other flood control structure.

The request must be made by, or concurred in, by the community because changes in land level that result from grading and the placing of fill on the property may have an impact upon other property owners. The submission of a request for a letter of map revision from the community evidences that the change in land level has been reviewed by the community and been found to be compatible with the community's planning. Letters of map revision may also be granted in situations where channels have been dug or reservoirs built to reduce base flood elevations and where levees or floodwalls have been constructed to protect areas. (It should be noted that in floodways of special flood hazard areas, which include the channel of a river and the adjacent flood-plain that must be reserved in an

obstructed condition, the placing of fill or other development is not allowed if it will result in increased flood levels.)

A seemingly related, but different, situation is presented when a property owner, whose land is at a level below the 100 year flood level, i.e. the base flood elevation, in a special flood hazard area, builds an elevated building, supported by walls or pilings, whose lowest floor is above the 100 year flood level. In this situation there is no basis for the issuance of either a letter of map amendment or map revision. The building is still in the designated special flood hazard area and its foundation can come into direct contract with flood waters. However, the elevation of the building will be reflected in the lower insurance rate and premium that such elevation will have made possible.

Only the Federal Insurance Administration can amend an official map to remove or add a particular property location from a designated SFHA by a Letter of Map Amendment, or revise a map by a Letter of Map Revision to change the special flood hazard area or revise the elevations on a map.

B. The Mandatory Flood Insurance Purchase Requirement

1. Background and Legislative History of the Flood Disaster Protection Act of 1973

From 1968 until the adoption of the Flood Disaster Protection Act of 1973, the purchase of flood insurance was voluntary. Unfortunately, despite the availability of the insurance, after major flooding disasters in 1972 it became evident that relatively few flood victims had purchased flood insurance. From the standpoint of the Federal government the question has been not whether the Federal government would be called upon to provide relief to those who suffered from flooding, but, rather, through what mechanism would Federal funds be made available. Therefore, the failure of the public to avail itself of the benefits of flood insurance as an alternative to the disaster assistance approach became a matter of concern to the Congress.

This concern was expressed by the Congress in the findings contained in sections 2(a) (2), (3), (4) and (5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4002), which noted "the availability of Federal loans, grants, guaranties, insurance, and other forms of financial assistance are often determining factors in the utilization of land and the location and construction of public and private industrial, commercial and residential facilities" and that "property acquired or constructed with grants or other Federal assistance may be exposed to risk of loss through floods, thus frustrating the purpose of which such assistance was extended" and that "the Nation cannot afford the tragic losses of life caused annually by flood occurrences, nor the increasing losses of property suffered by flood victims, most of whom are still inadequately compensated despite the provision of costly disaster relief"

The Congress defined its purpose in section 2(b)(4) of the 1973 Act as being to "require the purchase of flood insurance by property owners who are being assisted by Federal programs or by Federally supervised, regulated, or insured agencies or institutions in the acquisition or improvement of land or facilities located or to be located in identified areas having special flood hazards"

2. Basic Description of Mandatory Flood Insurance Purchase Requirements, as Contained in the Flood Disaster Protection Act of 1973

Since March 2, 1974, the Flood Disaster Protection Act of 1973, hereinafter the "1983 Act" has required the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance from any Federal officer or agency for acquisition or construction purposes with respect to any building or mobile home located in any area that has been identified by the Director of the Federal Emergency Management Agency as a special flood hazard area, within any community participating in the National Flood Insurance Program. (Recent terminology adopted by the Department of Housing and Urban Development and regulatory changes in the language of the National Flood Insurance Program's Standard Flood Insurance Policy refer to "mobile homes" as "manufactured homes.")

The act also requires Federal Financial Regulatory Agencies (Federal Instrumentalities) to direct lenders subject to their regulatory jurisdiction to require borrowers, whose security consists of buildings or mobile homes located in a special flood hazard area in a participating community, to purchase flood insurance. Contents coverage is not required unless, as specified in the statute, there is any "personel property securing the loan"

3. Six Fundamental Components of the 1973 Act

In assessing the impact of the 1973 Act and gaining an understanding of its provisions, the six most important factors to keep in mind are:

(a) Although the intent of the statute is to require the purchase of flood insurance by borrowers in special flood hazard areas, the directives and prohibitions contained in the 1973 Act apply only to Federal officers and agencies, and to Federal Instrumentalities that are required by the statute to issue implementing rules. The 1973 Act, by itself, does not require or prohibit action on the part of communities, owners of improved real property, or lending institutions.

(b) The directives and prohibitions of the 1973 Act require implementing rules only as to transactions that involve improved real estate located in special flood hazard areas designated by FEMA on its Flood Hazard Boundary Maps and Flood Insurance Rate Maps. Improved real estate for purposes of the act, is property on which there is already standing, or in the course of construction, a walled and roofed building insurable under an NFIP flood insurance policy.

(c) Inasmuch as the NFIP does not insure land and provides coverage only for buildings, the fact that part of the borrower's real property may be located in a special flood hazard area does not require that flood insurance be purchased for a building located on that real property unless some portion of the building itself, and not just a portion or portions of the real property, is located in a special flood hazard area.

(d) Because the NFIP and its flood insurance policies are not available in communities that are not participating in the NFIP the mandatory flood insurance purchase requirement applies only with respect to property located in special flood hazard areas in communities participating in the NFIP

(e) As to properties located outside the special flood hazard areas, and whose Zone designations are B, C, X, or D, the 1973 Act does not apply and, therefore, there is no mandatory flood insurance purchase requirement.

(f) Lenders are free to consider requiring flood insurance in a participating community on the basis of their own business judgment, even if the building that is the security for a loan is located outside of a special flood hazard area.

While the mandatory flood insurance purchase requirement applies only to properties located in special flood hazard areas of participating communities, it is important to remember that flood insurance is available throughout participating communities. This is especially significant in light of the fact that, historically, the NFIP's loss ratio

indicates that one-third of claims paid have actually been outside of special flood hazard areas. Areas where lenders and property owners may wish to exercise additional caution include, but are not limited to, areas subject to flooding due to stormwater, areas where the NFIP has used approximate methods to map flood hazard areas, and the more remote areas where no flood hazard areas have been designated by FEMA. To facilitate the purchase of flood insurance outside of special flood hazard areas, in January, 1989, the NFIP began offering a low cost "preferred risk" policy for structures located in Zones B, C, and X.

Some properties in a participating community may be ineligible for flood insurance because of statutory restrictions or underwriting rules of the NFIP The consequences of the unavailability of flood insurance in such instances will be discussed further along.

C. Application of the 1973 Act to Federal Officers and Agencies

1. Federal Agencies Defined.

Federal Agencies are defined in section 3(a)(2) of the 1973 Act, 42 U.S.C. 4003(a)(2), as "any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation"

2. Application of the 1973 Act in Communities that are participating in the National Flood Insurance Program.

The first application of the mandatory flood insurance purchase provision of the 1973 Act is contained in section 102(a), 42 U.S.C. 4012a(a), which addresses the responsibility of Federal officers and agencies in approving financial assistance for acquisition or construction purposes for use in any special flood hazard area in communities that are participating in the NFIP A community participates in the NFIP by entering into an agreement with the FIA to adopt and enforce ordiances which are designed to reduce the vulnerability of property in that community to the peril of flooding. In return for that participation, most owners of residential and commercial property in that community become eligible to purchase flood insurance for their buildings from the NFIP. If the community is participating in the NFIP that participation makes flood insurance available to the property owners in that community and Federal officers and agencies are authorized to provide financial assistance in that community.

But, under section 102(a) of the 1973 Act, Federal officers and agencies are prohibited from providing financial assistance unless the property to which that financial assistance is applicable is protected by flood insurance (if the particular property is eligible for flood insurance under the rules of the NFIP) and must, therefore, require the purchase of flood insurance as a condition of making such financial assistance available. The term "property" to which the mandatory flood insurance purchase requirement applies is described as "the building or mobile home and any personal property to which such financial assistance relates" The flood insurance must remain in force "during the anticipated economic life of the project" and the insurance coverage must be "in an amount that is at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available under the National Flood Insurance Act of 1968, whichever is less. (But note that when the amount of flood insurance that can be purchased was raised by the Congress in 1977, a statutory cap on the amount that must be purchased was established by the Congress.)

3. Effect of Letters of Map Amendment and Map Revision Upon Purchase Requirement

Questions are frequently asked concerning buildings that are located on ground that is shown as being in a special flood hazard area, but that is actually above the 100 year flood level. As noted above, under Section A 4., there are procedures under which a Letter of Map Amendment or a Letter of Map Revision can be obtained which will take the particular portion of real property and the improvements thereon out of the special flood hazard area. However, it is important to keep in mind that until a property owner has received a Letter of Map Amendment or a Letter of Map Revision, removing the improved real property from the special flood hazard area, Federal agencies (as well as lenders regulated by Federal Instrumentalities), must rely only upon flood hazard boundary maps and flood insurance rate maps.

Thus, if a building is shown as being in a special flood hazard area, the purchase requirements of the 1973 Act apply. When the property owner obtains a Letter of Map Amendment of Letter or Map Revision, he may submit the letter to the Federal agency and the Federal Agency may release the property owner from the obligation to purchase flood insurance. However, even though a Federal Agency is not required to compel the purchase of flood insurance with respect to improved real property that is subject to a letter of map amendment or map revision, the Agency has the discretionary right to continue to require flood insurance if the Agency chooses to do so. It must also be kept in mind that when a property owner with property below the 100 year flood level builds an elevated building whose lowest floor is above the 100 year flood level, there is no basis for the issuance of either a letter of map amendment or map revision and the flood insurance purchase requirement continues to apply. The reason for requiring the insurance is that the foundation on which the house is elevated is still below the base flood elevation in the special flood hazard area where it remains exposed to the action of floodwaters.

4. What is "Financial Assistance"?

Federal "financial assistance" and "federal financial assistance" for acquisition or construction purposes are defined in sections 3 (a)(3) and (4) of the 1973 Act. (42 U.S.C. 4003), "Financial assistance" is defined as any "loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of "direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States. and similar forms of direct and indirect assistance from Federal agencies, such as Federal Housing Administration or Veterans Administration loans, insurance or guaranties.

Federal "financial assistance for acquisition or construction purposes" is defined as "any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, whether or not the building is enhanced, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans."

Federal Agencies, such as the Federal Housing Administration, the Veterans Administration and the Small Business Administration and the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), the latter two having been specifically included in the definition contained in section 3(a)(2) of the 1973 Act, are forbidden by the Act from approving any financial assistance

in the form of a loan or guaranty of a loan in the case of a building to which such financial assistance relates which is located in a special flood hazard area unless flood insurance has been purchased to protect that building against the peril of flooding, thereby protecting the interests of the Federal entity against the consequences of flood damage to the property.

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation of the Department of Housing and Urban Development have interpreted the term financial assistance to include their purchase of mortgage loans from lending institutions and include in their definition of hazard insurance, the peril of flood. It should be noted that the servicing guidelines of FNMA and FHLMC require that the current servicer of loans sold to those agencies assume responsibility for flood insurance renewals. The term Federal financial assistance includes loans, grants, guarantees and similar forms of direct and indirect assistance from Federal agencies such as HUD, the Federal Housing Administration (FHA) and the SBA.

The 1973 Act applies and thus restricts flood related Federal financial assistance pursuant to the Disaster Relief Act of 1974. However, the current definition of financial assistance contained in section 3(a)(4) of the 1973 Act does not apply to and, therefore, does not restrict assistance for disasters that are not related to flooding.

5. How Much Flood Insurance is Available?

The amounts of flood insurance currently available under the NFIP are as follows:

	Emergency Program	Regular Program Maximum insurance available	Maximum amount of Insurance Required by 1973 Act, as Amended in 1977
Building Coverage:			
Single-family dwelling	$35,000	$185,000	$70,000
Other residential	100,000	250,000	200,000
Non-residential	100,000	200,000	200,000
Small Business	100,000	250,000	200,000
Contents Coverage (per unit):			
Residential	10,000	60,000	20,000
Non-Residential	100,000	200,000	200,000
Small Business	100,000	300,000	200,000

(Higher limits of basic coverage are available under the Emergency Program in Hawaii, Alaska, U.S. Virgin Islands, and Guam.)

[1] Federal instrumentalities, as well as lenders, while not required by statute, may choose to require insurance above this amount on the basis of their evaluation of the risk to which the property is exposed.

6. How much Flood Insurance Must be Purchased?

In addressing the question of how much insurance must be purchased, section 102(a) of the 1973 Act prohibits the providing of financial assistance "unless the building or mobile home and any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the project, covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; *Provided,* That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan"

However, on October 12, 1977 the requirement that insurance be purchased to "the maximum limit of coverage made available" under the 1968 Act was revised and made subject to a statutory cap by section 1306(b)(6) of the National Flood Insurance Act of 1968, [42 U.S.C. 4013(b)(6)], which states:

> the Flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973 do not apply to the additional flood insurance limits made available in excess of twice the limits made available under paragraph 1306(b)(1).

Section 1306(b)(1) authorizes the Federal Insurance Administration to make available under the lower limits of the Emergency Program $35,000 of coverage for any single family dwelling and $100,000 for any residential structure containing more than one dwelling unit. (In the States of Alaska and Hawaii and in the Virgin Islands and Guam the figures are $50,000 and $150,000). Section 1306(b)(1) makes available $100,000 for commercial structures. Thus the maximum cap on the mandatory flood insurance purchase requirements provided by section 1306(b)(6) is two times these amounts, namely, $70,000 for single family dwellings, and $200,00 for other structures.

7 Are the Amounts of Flood Insurance That Must Be Purchased Always the Same, Regardless of Which Federal Agency or Instrumentality Is Responsible for Enforcing the Flood Insurance Purchase Requirement?

In the exercise of its statutory responsibilities the Small Business Administration has made an interpretation of the statutory provisions cited above and requires insurance up to the value of a property, or the maximum amount of insurance that can be purchased, whichever is less, regardless of the actual amount of the loan. In this way the borrower becomes more fully protected against the peril of flooding. While the Act does not require insurance to value, a practice normal in property insurance, neither does it prohibit it, and SBA has used its authority to align the treatment of flood insurance with the standard treatment of other hazard insurance.

The basic amounts of insurance required by statute are discussed above in Section C 5. of these guidelines. Some of the Federal agencies, however, such as the Federal National Mortgage Association (FNMA), have adopted different requirements to protect their interests. The FNMA requires, "the amount of flood insurance to be equal to the lesser of 100% of the insurable value of the (condominium) facilities or the

maximum coverage available under the appropriate National Flood Insurance Administration program Thus, for a lender to be absolutely sure that it is complying with the specific requirements of the Federal agency that regulates, supervises or insures that institution, it should carefully review the requirements of such agencies or Instrumentalities and not rely solely on these guidelines.

In those cases where the amount of the loan or the insurable value of the property exceeds the statutorily required amount of flood insurance, it would seem to be a wise business practice to encourage the purchase of enough flood insurance to protect the interests of both the mortgagor and the mortgagee, to the extent that such interests can be protected, by the coverages under the NFIP

8. Restriction on Federal Financial Assistance by Federal Officers and Agencies in Communities that are not participating in the National Flood Insurance Program

Section 202(a) of the 1973 Act (42 U.S.C. 4106(a)) addresses the responsibility of Federal officers and agencies with respect to federal financial assistance in areas of special flood hazard of communities that are not participating in the National Flood Insurance Program and in which flood insurance is not available. In order to prevent the Federal government from being financially exposed to potential loss as a result of flood damage to uninsured buildings located in areas of special flood hazard, Federal officers and agencies are specifically prohibited by section 202(a) from providing financial assistance for acquisition or construction purposes, for use in areas of special flood hazard if the community is not participating in the NFIP

Section 202(a), read by itself, has a very broad scope, for its prohibition refers to any assistance for acquisition or construction purposes that would be used in any special flood hazard area. However, read in conjunction with the definition of financial assistance contained in paragraph (4) of section 3 of the 1973 Act, as discussed above, it becomes clear that section 202(a) limits financial assistance to "financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein"

Thus, for example, section 202(a) does not prevent financial assistance for the construction of roads and bridges in special flood hazard areas of non participating communities. But it does prohibit assistance for constructing any building. This prohibition applies even if the building would not have been eligible for flood insurance had it been located in a participating community, as in the case of a building that is partially underground and used as a pumping station in a sewer system. The prohibition against providing financial assistance in non participating communities, therefore, is based not so much upon the fact that the protection of NFIP flood insurance is not available in non participating communities as it is to the fact that the community has not agreed to mitigate the hazard of flooding through floodplain management.

D. Application of the 1973 Act to Federal Instrumentalities and to Private Lenders Who are Subject to Their Jurisdiction

Of special significance to Federal Instrumentalities and the lenders regulated by, or whose deposits are insured by, the Instrumentalities is the second area to which the 1973 Act applies in sections 102(b) and 202(b), which address conventional loans by such lenders, as distinguished from Federal financial assistance.

1. In Communities That are Participating in the National Flood Insurance Program and Where Federal Flood Insurance can Therefore be Made Available

(a) Instrumentalities Defined

The term "Federal Instrumentality" is defined in section 3(a)(5) of the 1973 Act (42 U.S.C. 4003(a)(5)), as the "Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

(b) Legislative Purpose and Specific Mandate

The purpose behind these Sections is seen in the Congressional finding in section 2(a)(4) of the 1973 Act that "Federal Instrumentalities insure or otherwise provide financial protection to banking and credit institutions whose assets include a substantial number of mortgage loans and other indebtedness secured by property exposed to loss and damage from floods and mudslides" As noted above, the Act does not, by itself, require or prohibit activities on the part of lenders. Section 102(b) of the Act (42 U.S.C. 4012a(b)) directs the Federal Instrumentalities to adopt regulations requiring lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located in a special flood hazard area in a community that is eligible for the purchase of National Flood Insurance, if the building, mobile home, and any personal property securing such loan, is to be the security for the loan. (The requirement only applies if the particular property is eligible for flood insurance under the rules of the NFIP.)

(c) How Much Insurance Must be Purchased and for How Long Must it be in Force, and to What Transactions Does the Requirement Apply?

The Act requires that "the building or mobile home and any personal property securing the loan" be covered "for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan, or to the maximum limit of coverage made available with respect to the particular type of property under the Act, whichever is less" However, as noted above, on October 12, 1977 the requirement that insurance be purchased to "the maximum limit of coverage made available" under the 1968 Act was revised by section 1306(b)(6) of the National Flood Insurance Act of 1968, (42 U.S.C. 4013(b)(6)), and made subject to a statutory cap of twice the limits made available under paragraph 1306(b)(1).

The specific language of the Act describes very broadly the transactions that come within the purchase provisions and includes instances in which lenders "make, increase, extend, or renew any loan secured by improved real property or a mobile home located or to be located" in a special flood hazard area of a community "in which flood insurance has been made available under the National Flood Insurance Act of 1968." This also includes such transactions as second mortgages and home equity loans.

Note: In all of these instances, lenders should be aware that, subject to available policy limits, they have the discretion to require higher amounts of coverage than required by law if they consider it necessary to protect the full amount of their interests, as well as those of the borrowers.

2. In Portions of Participating Communities That Have Been Designated by the Department of the Interior as Undeveloped Areas Under The Coastal Barrier Resources Act (COBRA)

While ordinarily almost any building in a community that is participating in the NFIP is eligible for flood insurance, there is one significant situation in which Congress has chosen to deny residents of a participating community eligibility for flood insurance. The Coastal Barrier Resources Act (COBRA), Pub. L. 97-348, was adopted by Congress in October of 1982 to amend the National Flood Insurance Act of 1968, as amended, by adding section 1321 (42 U.S.C. 4028). Section 1321 prohibits the NFIP from providing flood insurance protection for structures built or substantially improved after October 1, 1983, in any of the areas designated by the Department of the Interior as an undeveloped coastal barrier.

Buildings already located in the designated areas and walled or roofed prior to October 1, 1983 remain eligible for coverage. If a building built in a designated area prior to October 1, 1983 sustains major damage as a result of a fire, hurricane or other causes, the restored structure would not be eligible for flood insurance coverage. Major damage is considered to be damage in an amount of 50% or more of the structure's pre-damage fair market value. Similarly, improvements to a structure built prior to October 1, 1983, on a designated undeveloped coastal barrier area which total 50% or more of the structure's pre-improvement fair market value would eliminate the structure's eligibility for coverage under the NFIP Only the undeveloped coastal barrier portion of each community is affected by COBRA's insurance limitation. The remainder of the participating community remains eligible under the NFIP for flood insurance coverage for new and existing construction.

The Department of the Interior was assigned the task of determining which of the coastal areas were undeveloped coastal barriers and of submitting a list to the Congress. The final Congressional designation included 187 undeveloped portions of 134 coastal communities. Additional areas are currently under consideration for inclusion in the Coastal Barrier Resources System. The question as to whether any requirements are placed upon lenders who wish to make conventional loans with respect to uninsurable property on an undeveloped coastal barrier in a special flood hazard area of a participating community is specifically answered by section 1321 of the 1968 Act, (42 U.S.C. 4028). That section provides:

> A federally insured financial institution may make loans secured by structures which are not eligible for flood insurance under this title by reason of subsection (a).

Thus, while lenders would still have to notify borrowers that the property was in a special flood hazard area, as required by Section 1364 of the 1968 Act, the unavailability of flood insurance does not prevent the making of the conventional loan. However, the lender would be well advised to assess the flood risk at the site and make a decision on granting the loan based on that assessment.

3. In Communities That are Participating in the NFIP—Property Subject to Letters of Map Amendment or Map Revision

As noted above, there are procedures under which a Letter of Map Amendment or a Letter of Map Revision can be obtained which will take the particular portion of real property, and the improvements thereon, out of the special flood hazard area. However, it is important to keep in mind that until a property owner has received a Letter of Map Amendment or Letter of Map Revision, the lender must rely upon flood hazard boundary and flood insurance rate maps. If a particular piece of property is shown as being in a special flood hazard area, the lender is bound by the information and must apply the insurance purchase requirements of the 1973 Act in accordance with the map.

However, even though a lender is not required to compel the purchase of flood insurance with respect to improved real property that is subject to a letter of map amendment or map revision, the lender has the discretionary right to continue to require floor insurance if the lender chooses to do so. When a property owner with property below the 100 year flood level builds an elevated building whose lowest floor is above the 100 year flood level, there is no basis for the insurance of either a letter of map amendment or map revision and the flood insurance purchase requirement continues to apply, because the foundations supporting the elevated building in the special flood hazard area is still below the base flood elevation where it is exposed to the action of the water. However, premium levels may reflect reduced exposure to damage.

4. In Communities That are not Participating in the National Flood Insurance Program

It is important to note that while Federal officers and agencies are still prohibited by section 202 (a) of the 1973 Act, (42 U.S.C. 4106(a)) from providing financial assistance with respect to improved real property in areas of flood hazard in communities that are not participating in the NFIP and in which the sale of National Flood Insurance is not authorized, the making of conventional loans in such communities by private lenders became permissible in 1977

(a) What is a Conventional Loan?

A conventional loan is a loan by a private lender, as distinguished from a loan by a Federal government agency, that is not secured, insured or guaranteed by a Federal government agency. Such a loan, even when made by a lender that is regulated by or has its deposits insured by a Federal Financial Regulatory Agency (Federal Instrumentality), remains a conventional loan because the loan itself is not secured, insured or guaranteed by a Federal government agency.

(b) Authority for Lenders to Make Conventional Loans in Special Flood Hazard Areas of Non Participating Communities.

An amendment to the 1973 Act (frequently referred to as "The Eagleton Amendment" contained in the Housing and Community Development Act of 1977 (Pub. L. 95-128), deleted from the Act its original section 202(b) (42 U.S.C. 4106(b)) requirement that Federal Instrumentalities issue regulations prohibiting lenders from making conventional loans with respect to property in non participating communities. The original prohibition was replaced by a new section 202(b) which substituted in its place a notification requirement. Consequently, lenders regulated by, or whose deposits are insured by Federal Instrumentalities may make conventional loans secured by mortgages on improved real property and mobile homes in areas of special flood hazard in communities that are not participating in the NFIP They may do so notwithstanding the fact that such property is not eligible for the purchase of National Flood Insurance, and, thus, the mandatory flood insurance purchase requirement does not apply with respect to such loans. However, lenders should carefully evaluate the underwriting risk involved in making such loans.

(c) Requirements for Notification to the Borrower if Improved Real Property That is the Security for the Loan is in a Special Flood Hazard Area

The notice requirements, by their specific language, apply only when improved real property is the security for a loan. The requirements do not apply to unsecured loans, or to loans secured by improved real property that is not located in a special flood hazard area. While the Housing and Community Development Act of 1977 removed the prohibition against making conventional loans in non participating communities, the "notice" provision, which is the current section 202(b) of the Flood Disaster Protection Act of 1973, requires the Instrumentalities to compel lenders to notify borrowers as to whether Federal Disaster Relief will be available to the property in the event of a disaster caused by flood. For the convenience of lenders, FIA has drafted a notice form, FEMA Form 81-2.

BILLING CODE 6718-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

SUGGESTED LENDER'S NOTICE

SATISFIES NOTICE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE ACT OF 1968, AS AMENDED AND THE FLOOD DISASTER PROTECTION ACT OF 1973

NOTICE TO BORROWER OF PROPERTY IN SPECIAL FLOOD HAZARD AREA

Notice is given to _____ that the
(Borrower)
improved real estate or mobile home described in the attached instrument is or will be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area. This area is delineated on _____'s Flood
(Community Name)
Insurance Rate Map (FIRM) or, if the FIRM is unavailable, on the Flood Hazard Boundary Map (FHBM0. This area has a 1% chance of being flooded within any given year. The risk of exceeding the 1% chance increases with time periods longer than one year. For example, during the life of a 30-year mortgage, a structure located in a special flood hazard area has a 26% chance of being flooded.

NOTICE TO BORROWER ABOUT FEDERAL FLOOD DISASTER ASSISTANCE

(Lender Check One)

☐ Notice in Participating Communities

The improved real estate or mobile home securing your loan is or will be located in a community which is now participating in the National Flood Insurance Program. In the event your property is damaged by flooding in a Federally declared disaster, Federal disaster relief may be available. However, such relief will be unavailable if your community is not participating in the National Flood Insurance Program at the time such assistance would be approved, *(assuming your community has been identified as flood-prone for at least one year).* This assistance usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of your flood insurance.

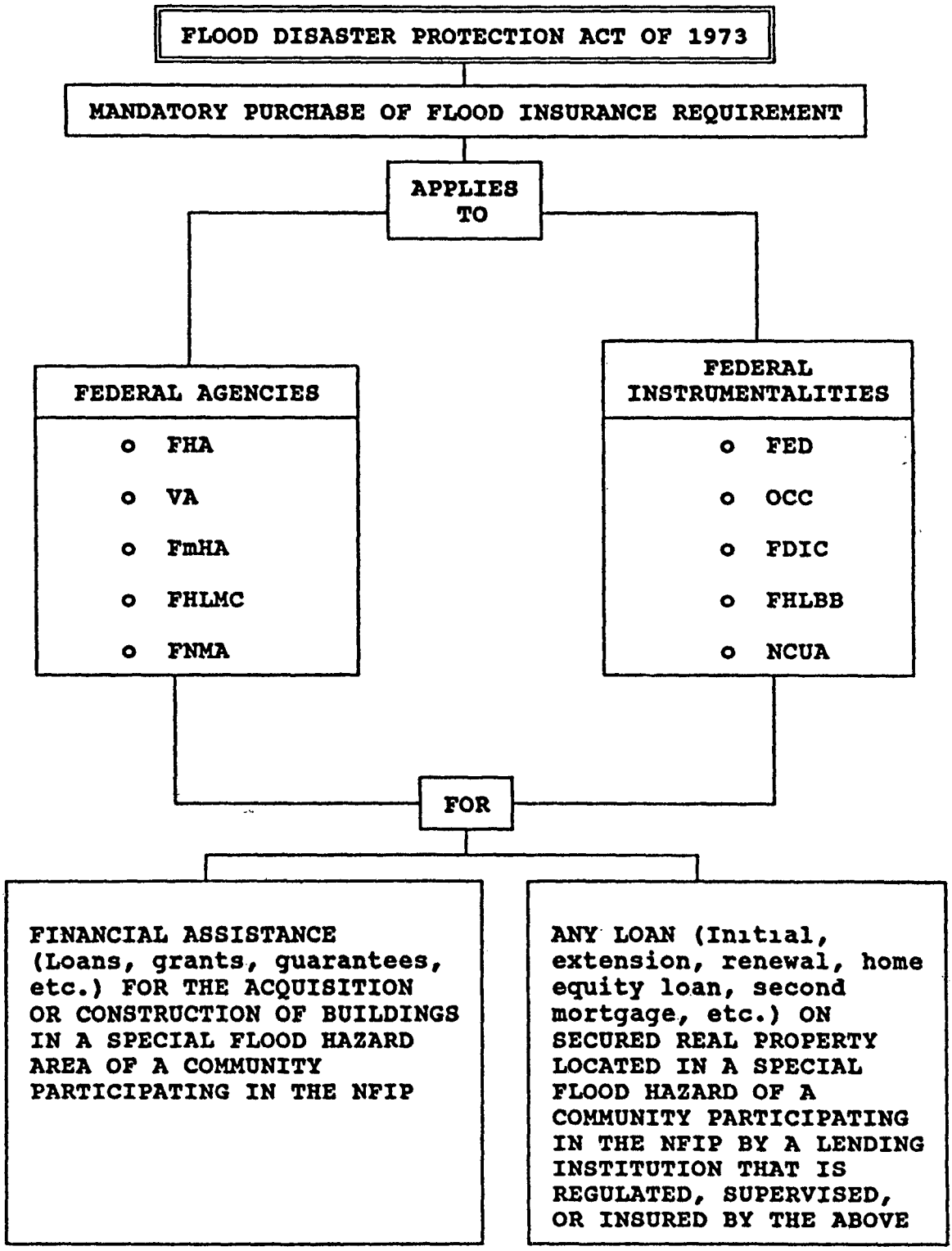
☐ Notice in Nonparticipating Communities

The improved real estate or mobile home securing your loan is or will be located in a community which is not participating in the National Flood Insurance Program. This means that you are not eligible for Federal flood insurance. In the event your property is damaged bv flooding in a Federally declared disaster, Federal disaster relief will be unavailable, *(assuming your community has been identified as flood-prone for at least one year).* Federal flood disaster relief will be available only if your community is participating in the National Flood Insurance Program at the time such assistance would be approved.

_____
(Bank Official's Name)

_____ _____
(Borrower s Name) *(Date)*

FEMA FORM 81-2 (11/79)



BILLING CODE 6718-01-C

An additional requirement, mandated by section 1364 of the National Flood Insurance Act of 1968, as amended, (42 U.S.C. 4104a), directs the Instrumentalities to compel lenders to notify the purchaser or lessee of the improved real property or mobile home in writing of the special flood hazard to which the property is exposed or obtain satisfactory assurances that the seller or lessor has so notified the purchaser or lessee. These notifications are to be made "a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction" Consistent with the recommendation by the Federal Financial Institutions Examination Council, FIA believes that the "reasonable time requirement is satisfied if the notices are provided ten days before the closing, or at the time of commitment if this occurrs less than ten days before the closing.

E. Guidelines to an Interpretation of the 1973 Act

The paragraphs above constitute a descriptive analysis of the provisions of the 1973 Act. What follows is an analysis of some of the issues that have arisen under the Act based upon the experience that the Federal Insurance Administration has gathered over the past twenty years and the discussions we have had with representatives of Federal agencies and Instrumentalities. The views expressed below represent our best effort toward providing guidance and we welcome the views of other Federal agencies and the Federal Instrumentalities on these subjects.

1. What is the Standard by Which a Lender Should Be Judged in Considering its Determination as to Whether a Structure Is or Is Not in an Area of Special Flood Hazard?

(a) Significance of the Location of the Structure

As pointed out above, the mandatory flood insurance purchase requirements of the 1973 Act apply only where improved real property, i.e., a structure, is located in a special flood hazard area in a community that is participating in the National Flood Insurance Program. Such a structure must be insurable under the NFIP and under NFIP rules an insurable "structure means any walled and roofed improvement predominately above ground). Even though a portion of real property on which a structure is located may lie within an area of special flood hazard, the purchase and notice requirements of the 1973 Act do not apply unless the structure itself, or some part of the structure is in the special flood hazard area. Prudence may suggest the wisdom of the lender's choosing as a matter of its own discretion to require the purchase of flood insurance where the distance from the structure to the edge of the special flood hazard area is minimal, but such a decision is not compelled by the 1973 Act.

(b) Examination of the Map

In order to determine whether a structure is located in an area of special flood hazard it is necessary to examine the location of the structure in relationship to the areas of special flood hazard shown on Flood Hazard Boundary Maps or Flood Insurance Rate Maps. However, despite FEMA's efforts to make the maps as useful as possible, the descriptions of special flood hazard areas contained in some maps may, in some instances, not be clear enough to permit lenders to decide with certainty and precision whether or not property which is the security for a loan or which is the subject of financial assistance is located in such an area. It is for this reason that FEMA has recommended a "Good Faith Standard"

(c) The "Good Faith Standard"

As in its earlier editions of these Guidelines, FIA recommends that for the purposes of the 1973 Act, a lender's decision, made in the exercise of due diligence and good faith as to the location of a property which is the subject of a loan on such a map, be considered final and sufficient to comply with the 1973 Act. In such instances, it FIA's view that where a good faith finding has been made by a lender or its agent, acting pursuant to the requirements of the 1973 Act, that the property is outside the special flood hazard area, such finding as to the location of the property should be considered final with respect to such property regardless of any change of ownership of the property or status of the loan. In FIA's view, under the 1973 Act, subsequent revision of the map would not necessitate the making of a new determination or require the lender to go back and compel the borrower to purchase flood insurance, even if the new map clearly showed the structure to be in a special flood hazard area. However, prudence might suggest the desirability of so doing.

However, if there should be any subsequent making, increasing, extension, or renewal of a loan with respect to which the property is subject, in FIA's view, the original finding should remain final only if the map upon which the original finding was based was still in effect and unrevised as to the property in question. Thus, if a map was subsequently revised, any subsequent making, increasing, extension, or renewal of the loan should take into account the new map, and a new determination should be made at that time as to whether flood insurance must be required for the subsequent transaction.

(d) Lenders' Reliance Upon Assistance

Lenders may reasonably seek assistance from firms or individuals, including map determination service organizations, that have demonstrated their knowledge concerning flood maps, and reasonable reliance upon such guidance in the making of a lender's determination should, for most practical purposes, be regarded as consistent with due diligence and good faith. In many instances Community officials and appraisers may be a helpful and knowledgeable resource. FIA does not believe that there would be reason for objection to having the costs passed on to borrowers if permitted by the loan contract and applicable State and Federal law.

(e) Who Must Make Determinations?

An insurance company, insurance agent or appraiser is under no statutory or regulatory duty to make determinations as to whether a structure is exempt from the flood insurance purchase requirement and any "determination" made by them does not alter the regulatory responsibility of the lender to make such determinations. Circumstances could be contemplated in which an insurance company, insurance agent or appraiser might have expertise that a lender would find helpful and persuasive, but whatever determination is made remains the full responsibility of the lender.

(f) What is Determined?

The determinations referred to above address only the question as to whether the location of a particular structure is within the area on a map which is designated by the Federal Insurance Administrator as being a special flood hazard area (SFHA), which is the area inundated by a flood having a one percent chance of annual occurrence (Zones A, AE, A1–A–30, AH, AO, V VE, V1–30). Any question concerning the correctness of the map or whether the exact location of the structure in the special flood hazard area should have been designated by the FIA as being in a SFHA is totally beyond the authority of the lender.

Only the Federal Insurance Administration can amend an official

map to remove or add a particular property location from a designated SFHA by a Letter of Map Amendment, or revise a map by a Letter of Map Revision to change the special flood hazard area or revise the elevations on a map.

(g) How to Record that a Determination was Made?

FEMA Forms 81-3 and 81-2 were developed by FIA to help lenders notify borrowers of their status under the NFIP maps and to enable them to notify borrowers of any changes in NFIP maps which may have altered the boundaries of special flood hazard areas in such a way as to cause a borrower's structure to no longer be located in an area of special flood hazard. These notices create a record showing that the lender has made a determination or a redetermination as to the status of the borrower's structure and when placed in the files of the lender demonstrate to examiners of Federal Instrumentalities that there is a proper basis for a borrower to have been required to purchase flood insurance, or permitted not to purchase, or to drop a flood insurance policy after a map revision. Additionally, many lenders, as well as the Federal agencies, such as FNMA, Freddie Mac, FMHA, HUD and VA, use the Uniform Residential Appraisal Report form which contains, amongst other things, questions on the location of a property relative to flood hazard areas. When a determination is made that a structure is not in a special flood hazard area, evidence should be recorded showing, at the least, the map panel used, the date and number of the map, the name of the community, the zone in which the property is located, and the address of the structure. A photocopy of the official map, marked to show the location of the property would provide a convenient record.

BILLING CODE 6718-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

CERTIFICATION OF REDETERMINATION OF A PROPERTY'S LOCATION RELATIVE TO SPECIAL FLOOD HAZARD AREAS

TO: _____ Date _____
(NAME OF GRANTEE, BORROWER, INSURED)

RE (Loan) (Transaction) No _____

RE Flood Insurance Policy No _____

This will certify that as of this date, authorized personnel of this institution have examined the latest (Flood Hazard Boundary Map/Flood Insurance Rate Map) now in effect for _____ (NAME OF COMMUNITY COUNTY STATE) effective _____ (DATE) and have determined that the property which is the subject of the above-referenced loan/transaction is not located in a special flood hazard area as represented on the above-referenced revised map

Flood insurance had been required as a condition for the loan/transaction in question because the property was shown as located in a special flood hazard area on _____ (NAME OF COMMUNITY) s Flood Hazard Boundary Map/Flood Insurance Rate Map effective _____ (DATE) at the time the loan/transaction was processed

This institution now deems _____ (NAME OF GRANTEE, BORROWER, INSURED) waived from maintaining flood insurance coverage on the basis of the Federal Insurance Administration's latest map now in effect for _____ (COMMUNITY'S NAME, _____ COUNTY STATE) effective _____ (DATE) which in our judgment excludes the property in question from an identified special flood hazard area

Address of Institution

Institution _____

By _____
(Authorized Signature)

Federal Agency _____

By _____
(Authorized Signature)

FEMA FORM 81-3 (11/79)

CONTROL NO. 593-213

U.S. GOVERNMENT PRINTING OFFICE 1984 O 458-454

(h) The Ultimate Responsibility of the Lender

But, in all these situations the lender, using such evidence as is reasonable, must take the responsibility for making determinations and redeterminations, regardless of whether the lender actually makes the determination or hires someone else to do it. Because it is the lender that requires the purchase of flood insurance, only the lender can make a determination or a redetermination, and only the signature of a representative or duly authorized agent of the lender on Form 81-2 and 81-3 can make the form take on any significance in terms of establishing the status of the improved real property and providing the lender with a record of the determination or redetermination.

2. Should the Amount of Insurance Required Reflect the Value of Land?

(a) The 1973 Act Refers to Buildings and Mobile Homes

Section 102(a) of the 1973 Act conditions the granting of financial assistance by Federal officers and agencies upon there being flood insurance coverage with respect to "the building or mobile home and any personal property to which such financial assistance relates" in an amount at least equal to "its development cost (less estimated land cost)" Thus this section of the statute clearly expresses the intent of Congress that the amount of insurance be related only to the cost of the building and not include the cost of the land.

Section 102(b) describes the flood insurance purchase requirement for lenders making conventional loans in terms of "improved real estate or a mobile home located or to be located" in a special flood hazard area and uses the language similar to that in section 102(a), conditioning the making of a loan in a participating community upon there being flood insurance covering "the building or mobile home and any personal property securing such loan"

This reference to "buildings and mobile homes" is consistent with the fact that the National Flood Insurance Program insures only buildings, including manufactured homes (mobile homes), and does not insure land. Thus improved real estate, as used in section 102(b) of the 1973 Act means land with a building on it and the mandatory flood insurance purchase requirement applies only to the buildings and manufactured homes which constitute the improvements on the land.

(b) What the NFIP Policy Covers

Moreover, it should be kept in mind that the NFIP policy does not provide insurance coverage for losses in excess of the value of a structure. The determination of whether the loss will be paid on the basis of replacement value or actual cash value depends upon whether the residence is primary, and whether the insured has purchased insurance of up to at least 80% of the replacement cost of the structure. Under the NFIP policy, "replacement value" means that the coverage is intended to include the full cost of repair or replacement without deduction for depreciation. The term "actual cash value" means that the coverage is intended to include repair or replacement less depreciation. A dwelling which is the principal residence of an insured may be insured for its replacement cost value, but secondary residences, condominium units in vertical high rise buildings and commercial buildings may be insured only for their actual cash value.

In light of the above, in requiring the purchase of flood insurance the lender should first calculate the amount of the loan, or the maximum amount of insurance available under the National Flood Insurance Program, whichever is less. Having developed that figure, the lender may, depending upon its view of the flood risk, take into account the statutory "cap" of section 1306(b)(6), which, for example, limits the mandatory purchase to $70,000 for single family residential structures. Then, the value of the land should be subtracted from the overall value of the property in reaching a determination as to the value of the improved property, ie, the structure, that is to be insured. This is especially significant in cases where the proposed loan clearly exceeds the value of the insurable buildings. In instances where the lender does not take into account separate valuations of land, which is not insurable under the NFIP and improvements, which are insurable, the insured may, unfortunately, be paying for coverage that is in excess of the amount that the NFIP will pay in the event of a loss. In FIA's view, lenders should avoid creating such a situation.

(c) What If the Loan Is Secured Only by Land Upon Which There Are No Structures?

If a lender makes a loan which does not give the lender a lien on any land upon which there is a building, i.e., improved real property, no flood insurance purchase requirement applies. Thus, if a lender can separate his loan so as to become the holder of a mortgage that is secured by land alone, no flood insurance purchase requirement applies because the NFIP does not insure land, and the 1973 Act does not address mortgages secured by land alone.

(d) What If a Detached Garage of a Residential Property, to Which 10% of the Principal Structure's Insurance Is Applicable, Is In the Special Flood Hazard Area, While the Principal Structure Is Outside of the Special Flood Hazard Area?

Flood insurance on the principal structure would not be required because of its location outside the special flood hazard area. But if the detached garage is part of the security for the loan, flood insurance on the garage would be required and could be purchased through a separate policy on the General Property Form, covering just the garage. However, if the value of the principal structure is sufficient to serve as security for the loan, the requirement would not apply if the lender was willing to delete the garage from the description of improved real property securing the loan. In agreeing to do this, a prudent lender would consider the value of the garage and the likely degree of its exposure to damage in the event of flooding, as well as whether the close proximity of the house to the special flood hazard area raised questions as to the safety of the house, itself. If, instead of a detached garage in the special flood hazard area, there was a tool shed or similar shack with no foundation and not attached to the land, such property would not be insurable under the NFIP Being more in the nature of personalty as opposed to realty, it would not be part of the security for the loan, and no flood insurance would be required.

3. What is the Impact of the Insurance Purchase Requirement if Improvements on the Real Property are of Nominal Value, and the Purpose of the Loan Transaction is to Facilitate the Purchase of Land for Subsequent Development?

(a) Surplus Buildings of Nominal Value on Land Purchased for Development

Instances arise when real estate is purchased for the purpose of development and the presence of a structure on the land is not a factor in the purchase of the land. In fact, in many situations, the developer's plan may call for the structure to be demolished as soon as development occurs. But, because the 1973 Act speaks of "improved real estate" in triggering the mandatory flood insurance purchase

requirement, questions are frequently asked as to whether flood insurance must be required in such situations. It is FIA's view that the answers to such questions should be approached through a view of the purposes for which the purchase requirements of the 1973 Act were adopted, namely to protect lenders and the Federal resources against potential losses resulting from unsecured loans, and to protect unwary borrowers against financial losses resulting from uninsured buildings.

In these situations the acquisition of the building is not the primary purpose behind the purchase of the land, and frequently the structure is not intended to remain in place when the property is developed. If the value of the building was less than the NFIP $500 deductible, clearly there would be no requirement for the purchase of flood insurance. But, even if the value exceeded $500, given the fact that the transaction involves primarily land, this would be an appropriate situation for wording the mortgage so as specifically exclude such a building as part of the security for the loan. In this kind of situation where the structure is not being used for residential or commercial purposes and where there is no intent to improve it or use it for such purposes, and where the loan is adequately secured without including the building, in FIA's view, the flood insurance purchase requirement would not apply.

(b) What If There Is a Structure in a Special Flood Hazard Area Which Is Being Used for Residential or Commercial Purposes on Land Whose Value Alone Would be Sufficient to Secure the Loan Without Regard to the Value of the Building?

The 1973 Act does not give a lender the option of enabling the borrower to avoid the purchase of flood insurance, even though the land may be so valuable that it would provide more than adequate security for the amount of the loan, without taking into account the value of the building on the land. If the land has a building upon it, and the lender has a security interest in that building, the Act requires the lender to require the purchase of flood insurance to protect its security interest. In so doing, the lender is also protecting the government's interests by preserving the assets of agencies which insure the lender's deposits.

(c) NFIP Deductibles and Definition of Structure

It should be kept in mind that the NFIP has a minimum $500 deductible, which means that if the actual cash value of a structure, taking into account depreciation, did not exceed $500, the structure would for practical purposes be uninsurable because there could never be any claim payment in the event of flood damage. It should also be kept in mind that the NFIP insures only walled and roofed structures which are principally above ground and are permanently affixed to sites. Also eligible are silos and grain storage buildings, and buildings in the course of construction, i.e. under construction, but before they have become walled and roofed. Buildings are walled and roofed when they have two or more rigid external walls in place and are roofed and adequately anchored so that they will resist flotation, collapse and lateral movement. The Flood Insurance Manual lists as ineligible for insurance coverage gazebos, pavilions, pole barns, pumping stations, and storage tanks, and thus, the presence of such structures would not give rise to any question as to the purchase of flood insurance.

(d) Buildings in the Course of Construction

However, when a structure is to be built which when completed will be a walled and roofed structure that will be eligible for coverage, flood insurance must be purchased. Therefore, where a development loan is made for the purpose of constructing insurable improvements on land, flood insurance coverage must be purchased to keep pace with the new construction. The only practical way of implementing the flood insurance coverage is to require the purchase of the policy at the time that the development loan is made and requiring that the policy be purchased to cover the eventual value of the property to be constructed.

Since October 1, 1986, buildings that are in the course of construction but have yet to be walled and roofed are eligible for flood insurance, subject to certain underwriting restrictions. The 1986 regulations and policy changes resolved a prior problem which arose out of the fact the lenders had to require the purchase of flood insurance policies that could not provide any coverage until a future date when the building would be considered to be walled and roofed. This significant change recognizes the flood peril faced by a builder during the process of construction and brings the NFIP more into conformity with the practices of fire insurers by providing insurance coverage that begins during the period of time when construction is taking place. Unless defined stages of development can be identified, the most practical way of implementing the flood coverage may be to require the purchase of the policy at the time that the development loan is made and funds are disbursed.

For new construction in Regular Program communities, where elevation certificates are required, the certificate and the premium will be based upon an elevation figure derived from construction drawings. However, the policy will not be renewed until a new certificate based upon actual construction has been submitted. In any event, the point of the 1986 change is that coverage under the policy becomes available immediately when the construction starts and is not delayed until the building has reached a roofed and walled condition.

4. What are the Consequences if a Structure is Located in a Community That is Participating in the National Flood Insurance Program, but Flood Insurance is not Available With Respect to That Particular Structure?

It is the view of FIA that in using the words "the sale of flood insurance has been made available" the Congress meant the mandatory flood insurance purchase requirement of section 102(b) to address the situation where FIA, through the NFIP offers to sell a flood insurance policy to the owner of the particular structure that is the subject of the transaction. Where the Federal government has chosen to limit the availability of flood insurance in a participating community, the inability of the property owner to purchase flood insurance does not require a lender to refrain from making a conventional loan with respect to that property.

(a) Coastal Barrier Resources Act

There are several reasons why flood insurance might not be available to a particular structure. One of the most significant is the Coastal Barrier Resources Act (COBRA), Pub. L. 97–348, mentioned above, which was adopted by Congress in October of 1982 to reduce or restrict Federal government actions that were believed to be encouraging the development of certain coastal barrier areas, including both islands and mainland property, that are currently undeveloped. While COBRA does not prevent private financing and development, it limits financial assistance by Federal agencies on undeveloped coastal barriers, except for enumerated situations such as assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety. Such emergency assistance would not include disaster assistance and government loans.

(b) Section 1316 of the 1973 Act and Buildings in Violation of State or Local Laws

Another statutory provision which prohibits the sale of flood insurance as to particular properties is section 1316 of the 1968 Act (42 U.S.C. 4023) which prohibts the sale of new flood insurance for any property which the Director finds "has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupany in flood-prone areas.

Questions have arisen as to whether a conventional loan can be made when the building is located in a special flood hazard area of a community that is participating in the NFIP but where the particular building is not eligible for flood insurance protection because it has been declared to the in violation of local floodplain management building codes. Under section 102(b) of the 1973 Act, which makes the flood insurance purchase requirement applicable to properties to which flood insurance has been made available, the making of a conventional loan would not be prohibited with respect to a building cited under section 1316 of the 1968 Act. Nevertheless, compliance with the provision notifying the borrower that the building is in a special flood hazard area would be especially important. It is important that Federal Instrumentalities and lenders subject to their jurisdiction be aware that properties which come under the provisions of section 1316 of the 1968 Act because of violations which relate to protection against flooding will, in most cases, be highly susceptible to flood damages, and are a far greater risk to the lender than structures that are compliant with floodplain management ordinances.

(c) Section 136, as Applicable to Federal Officers and Agencies

Questions have arisen as to the applicability of section 1316 to section 102(a), which applies to the approval of financial assistance by Federal officers and agencies. Federal officers and agencies should make their own determinations as to whether they should approve financial assistance with respect to a building that the community has declared to be in violation of local ordinances designed to reduce the peril of flood damage to such building. And in coastal barrier areas they must consider the restrictions placed on Federal assistance by COBRA.

(d) NFIP Underwriting Restrictions on Eligibility for Flood Insurance

In addition to COBRA and section 1316 of the 1968 Act; there are policy provisions and underwriting rules of the Standard Flood Insurance Policy sold under the NFIP which preclude certain properties from eligibility for coverage. For example, structures built over water cannot be insured under the Program, nor can boat houses. The NFIP coverages also contain restrictions on insurance coverage, such as the protions of homes consisting of finished basements where only enumerated and limited coverage is available.

5. The Applicability of the 1973 Act to the Purchase of Mortgages by Lenders

Among the Federal Instrumentalities two different views have been expressed on the subject of the applicability of the Act to transactions involving the purchase of mortgages by lenders. The Federal Home Loan Bank Board has taken a position which is similar to that expressed by the Federal Insurance Administration in FIA Guidelines dated 1978, and has interpreted the Act as including not only the origination of mortgage loans, but also the purchase of mortgage loan portfolios in the secondary market and participations thereof. Thus, under this view purchased mortage loans secured by improved property in a SFHA must be covered by flood insurance, where applicable, unless the original loan was made pursuant to a formal loan commitment issued prior to March 2, 1974.

On the other hand, the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Comptroller of the Currency have interpreted the Act to apply only to the origination of mortgage loans and not the purchase of mortgage loans in the secondary market. Lenders should, therefore, follow the interpretations of the particular Federal Instrumentality to whose examinations they are subject for authoritative guidance. In FIA's view, the term "where applicable" as used in connection with the position that the statute does apply to the purchase of mortgages, means that such a requirement pertains only to mortgage loans involving improved real property in areas of special flood hazard in communities participating in the National Flood Insurance Program, and in which flood insurance is thereby available through the NFIP

6. Acceptance of Private Flood Insurance Policies To Meet Statutory Requirement and the Acceptance of NFIP "Write Your Own Policies

FIA would welcome the availability of adequate flood insurance from the private insurance market. Had adequate and assured flood insurance protection been available through the private insurance market in 1968, the NFIP might not have been necessary. To give the public the benefits of the marketing and servicing expertise of the private insurance industry, FIA has since 1983 been making flood insurance available through the NFIP "Write Your Own Program (WYO) which enables the public to purchase the same NFIP coverage from private companies that have agreed to enter into agreements with FIA. The coverage, eligibility and premiums are the same on WYO policies as in the case of policies that are issued directly by the FIA through its servicing company. The FIA has guaranteed that in the event that any WYO company is required by State regulatory authorities to cease writing insurance and is unable to pay flood insurance claims under any WYO policy, FIA will assume all obligations for the payment of covered claims under that policy. Thus, lenders and insureds should not hesitate to accept NFIP policies written either directly by FIA or through a WYO company.

In the event of a submission of a flood insurance policy that is not issued by the NFIP through FIA or a WYO company, FIA believes that the following criteria should be met with respect to any flood insurance policy submitted to a lending institution or a Federal agency in purported satisfaction of the insurance purchase requirements of the 1973 Act.

(a) The insurer should be licensed to do business in the jurisdiction where the property is located, by the Insurance Department of that jurisdiction, except as indicated in (b) below.

(b) In the case of a non-residential commercial property insured pursuant to a policy of difference in conditions, multiple peril, all risk, or other blanket coverage, it should be sufficient if the insurer is recognized, or not disapproved, as a surplus lines insurer by the Insurance Department of the jurisdiction where the property is located.

(c) The flood insurance policy issued by the insurer should include an endorsement which requires that the insurer give 30 days written notice of cancellation or non-renewal to the insured with respect to the flood

insurance coverage and that to be effective such notice must be mailed to both the insured and the lender or Federal agency and must include information as to the availability of flood insurance coverage under the NFIP

(d) The policy should guarantee that the flood insurance coverage, considering both deductibles and exclusions or conditions offered by the insurer, is at least as broad as the coverage by the NFIP policies.

(e) Lenders should satisfy themselves that a mortgage interest clause similar to that contained in NFIP policies is contained in the policy.

In the opinion of the FIA, an insurance policy that meets all of the above criteria meets the insurance purchase requirements of section 102 of the 1973 Act. To the extent that the policy differs from the FIA policy, the differences should be carefully examined before consideration is given to acceptance of the policy as sufficient protection under the 1973 Act.

7 Lenders Remedies in the Event of Prior Failure to Require Flood Insurance

The history of the NFIP since the enactment of the 1973 Act indicates that lenders have not consistently required the purchase and renewal of flood insurance policies as required by regulations issued by Federal Instrumentalities pursuant to the 1973 Act. Questions arise as to what steps are available for lenders whose attention has been directed to the situation at a later time. The issue has been raised to FIA with growing frequency that because of the rapid turnover of the servicing of mortgages, some loan originators may be paying little or no attention to the flood insurance purchase requirement because the servicing is sold so quickly.

This could result in no flood coverage being written to protect the interests of either the mortgagor or the mortgagee. It also means that any subsequent servicer of that loan would be provided with no basis upon which it can know that the property is located in the floodplain and therefore maintain the flood insurance coverage. Also when a flood insurance policy is written in conjunction with a closing, FIA fears that subsequent servicers may not be notifying the insurance agent who originally wrote that policy of the change in mortgagee (or servicer) to enable renewal and/or cancellation notices to be sent to the proper party (lender) servicing the loan. Thus, in the case where the insurance payments were not escrowed, the mortgage servicer would have no way of knowing whether or not the borrower continued to renew the policy or allowed it to lapse.

Lenders selling mortgages in the secondary market to FNMA, FHLMA or GNMA, (Federal Agencies under the 1973 Act) should be aware that those Agencies will be requiring that the security for such mortgages in special flood hazard areas be protected by flood insurance. The remedies available to the lenders will vary depending upon the language in the loan agreements. Most mortgages require that the borrower obtain and maintain hazard insurance. This provision was originally developed with a view to fire insurance at a time when flood insurance was not available. But in light of the fact that flood insurance under the NFIP has been offered for twenty years, the term "hazard insurance" should be broad enough to include flood insurance. On the basis of discussions FIA has had with Federal Instrumentalities and the U.S. Department of Housing and Urban Development, it is FEMA's view that if the loan agreement is specific in requiring hazard insurance, that provision, especially when coupled with the regulatory obligation upon the lender to require the borrower to purchase flood insurance, gives the lender ample authority to require the borrower to purchase flood insurance, even at a date subsequent to the date on which the loan was initiated. On the basis of these same discussions, FEMA believes that if the borrower refused to purchase flood insurace, the bank would be justified in purchasing the insurance for the borrower and charging the borrower for the cost. In the case of loans that are being paid off through escrow agreements, this process would be greatly facilitated. For new construction in Regular Program communities, NFIP rules require the submission of an elevation certificate with the application, and that certificate is in FEMA s view a cost of the procurement of flood insurance.

FIA's same discussions lead FEMA to conclude that where appraisal procedures include an analysis as to whether the improved real estate is in a special flood hazard area, the costs attributable to that process would be proper expenses in connection with the costs of appraisal. FIA is in the course of exploring the feasibility of a forced placement capability for flood insurance to facilitate the prompt procurement of flood insurance when there is doubt that flood insurance has been purchased or kept in force by the borrower.

8. Home Equity Loans Under the 1973 Act

The currently popular Home Equity Loans are clearly secured loans of the kind covered under the 1973 Act and trigger the flood insurance purchase requirement. The simplest way in which a lender could protect its interests and comply with the purchase requirements would be to consider that when the bank has filed its lien, based on the signing of the Home Equity Loan agreement, the purchase of insurance becomes mandatory to the amount of the loan authority (subject to the limit on insurance available and the insurance requirement cap) if the improved real property is located in a special flood hazard area of a participating community. This procedure would be similar in concept to the way in which many mortgage lenders have typically handled their property insurance requirements for building construction loans prior to the existence of an actual insurable building.

However, the difficulty with this solution lies in the fact that the Home Equity Loan is more like an approved line of credit to be utilized in the future. A borrower could argue that so long as the lender has not paid out any money, there is no flood exposure and consequently no flood insurance purchase requirement. But to impose the requirement each time that a borrower drew a check on his loan authority might be administratively difficult. An alternative, therefore, might be for the lender to examine its books each calendar year, and when a loan has actually been made under the Home Equity loan authority, require flood insurance to protect that loan on the basis of the information at year end. The Lender would then require updates each year to take into account additional loans actually made during the preceding year. While this would create a time lag in the procurement of flood insurance, it would seem to tie the requirement directly into the use of the funds. It is the view of FIA that such flexibility of compliance options would be reasonable, considering that the statute may not have been enacted with the Home Equity Loan concept in mind. In any event, the Federal Instrumentalities have the final responsibility for determing how Home Equity Loans shall be handled under the 1973 Act.

9. Federal Financial Institutions Examination Council Interagency Examination Procedures and Examiner Checklist for Compliance With the Mandatory Flood Insurance Purchase Requirements of the Flood Disaster Protection of 1973

Examination Objectives

1. To determine whether an institution has established an effective system for ascertaining whether property that secures a loan requires flood insurance.

2. To determine whether the institution provides the required flood insurance disclosures.

3. To determine whether the institution maintains sufficient records to evidence compliance with the flood insurance requirements of its supervisory agency.

Examination Procedures

1. Determine whether any of the communities in the institution's trade area have designated special flood hazard areas, and whether or not any of the communities are participating in the National Flood Insurance Program.

2. Review the institution's policies, both written and informal, and internal controls concerning flood insurance, particularly, the method used by the institution to make the flood hazard determination. Interview the appropriate personnel to ascertain that these policies are implemented in the prescribed manner.

3. Obtain and review copies of the following:

a. All records and other information, i.e. flood maps and appraisal forms, used to determine whether improved real estate or mobile homes are located in the special flood hazard areas. Check these records to determine whether they are up-to-date. If the institution uses flood maps, verify that the instituion has a flood map for each community in the trade area.

b. Written notices (forms) that inform borrowers that the property securing a loan is in a special flood hazard area and whether or not federal disaster relief assistance will be available if the property is damaged by flooding (refer to sample notices).

c. Written acknowledgements from borrowers indicating their understanding that the property securing the loan is or will be located in a special flood hazard area and that they have received the notice regarding the availability of federal disaster relief assistance.

4. Review an adequate sample of loan files to ascertain:

a. That the institution's stated method of determining whether loans secured by improved real estate or a manufactured home are located in a special flood hazard area is followed in practice;

b. That the institution requires flood insurance for covered loan related property located in a special flood hazard area of a community that participates in the National Flood Insurance Program;

c. That the institution does not make covered loans located in a special flood hazard area if the community does not participate in the National Flood Insurance Program and the loan is insured or guaranteed by an agency of the Federal government, such as the Federal Housing Administration, the Veterans Administration, and the Small Business Administration;

d. That sufficient flood insurance coverage is provided when flood insurance is required; and

e. That proper notifications are furnished to borrowers, as well as written acknowledgements are received from borrowers, within the required time limits.

f. That lapsed policies are renewed where applicable.

5. Determine whether the institution has taken steps to correct violations regarding flood insurance which may have been cited in previous examinations.

Examination Checklist

1. Does the institution offer or extend consumer or business loans (purchase or nonpurchase) [1] that are secured by improved real property or manufactured homes as defined in the provisions of the National Flood Insurance Program, and if yes, does a review of loan records indicate that covered loans are offered or extended in communities with officially designated special flood hazard areas which refer to an official Federal Emergency Management Agency eligibility list? If yes, complete the following sections:

Methods of Flood Hazard Determination:

2. Does the review of records indicate the use of a satisfactory method of making flood hazard determinations? ..... Yes No

3. Is a proper method used by branch and subsidiary offices? ..... Yes No

4. If the institution makes the flood determination (and does not have this function performed by an outside agent through a contract), are all current flood maps maintained for all communities in the institution's trade area ..... Yes No

5. Does the institution ensure that flood insurance is obtained where appropriate? ... Yes No

6. Indicate the method(s) used to make special flood hazard area determinations.

Consumer Notification Procedures:

7 Does a review of forms and procedures indicate that proper written notices are provided in connection with covered loans? ..... Yes No

8. If the institution does not provide such notification, does it obtain satisfactory written assurances from a seller or lessor that the borrower has been properly notified of the fact that the property is located in a special flood hazard area prior to the execution of the agreement ..... Yes No

9. Are notifications provided within the required time limit? ..... Yes No

10. Prior to closing, does the institution obtain a satisfactory written acknowledgement from the borrower that the improved property or manufactured home securing the loan is or will be located in a special flood hazard area? ..... Yes No

11. Indicate the method(s) of notification used.

Sufficiency of Coverage:

12. Does a review of files (or procedures) indicate that a sufficient amount of flood insurance coverage is required of loans granted within communities in:

a. the Emergency Program ..... Yes No

b. the Regular Program ..... Yes No

13. Does a review of files (or procedures) indicate that insurance policies are renewed annually? (Refer to workpapers from past examinations and list applicable customer names.) ..... Yes No

Non Participating Communities:

14. If the institution grants federally related loans (such as Federal Housing Administration, Veterans

[1] The Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Comptroller of the Currency interpret the term financial assistance to include only the origination of mortgage loans and not the purchase of loans.

Administration, and Small Business Administration loans) does it refrain from granting such loans when the property securing the loan is or will be located in a special flood hazard area of a non-participating community? ..... Yes No

15. Are proper notices of the unavailability of Federal Disaster relief assistance (conventional loans only) given to borrower whose property is located in a special flood hazard area of a non-participating community? ..... Yes No

F The Requirements of the 1973 Act as to Condominiums

1. Insurance/Property Repair Responsibility of Condominium Associations

Condominium Associations, by both State law and association by-laws, typically have the responsibility to purchase and maintain adequate insurance on their buildings and common areas of those buildings. In addition, they also have the responsibility to make repairs to all commonly owned property, regardless of whether or not there is adequate insurance to cover damage to the property.

However, it must also be kept in mind that typically, it is the condominium association unit owners who actually own property. In almost all situations the condominium association itself does not own the property, but is only the governing body for the condominium and contractually responsible for representing and protecting the unit owners' undivided interests in the common areas. The "condominium" in the aggregate sense, therefore, would be the collection of property rights comprising all individual units and common elements.

From an insurance point of view the representative capacity of the condominium association gives it the insurable interest in common areas, and even gives it the right to purchase coverage on individual units as a means of protecting the entire condominium community. It is only in that sense that the association might be thought of as having a quasi ownership interest.

In the past, Associations have traditionally fulfilled their insurance responsibility by purchasing some form of master "Difference in Conditions" policy. Because of the unique nature of condominium ownership, these policies have provided protection for the structural portion of the buildings, usually including most of the internal portions of the individual units as well. Individual policies were also available from the private insurance industry, but typically provided coverage for the unit owner and only for things unique to him, such as his contents and physical surface changes made by him to the internal portion of his unit, such as new wall, floor or ceiling coverings, all of which was of little interest to the lender as their mortgagee interests were considered protected by the Association's master policy.

2. Lenders Interest

The interests of individual lenders in the mortgages they have provided on individual units have typically been satisfied by obtaining evidence of the existence of these master insurance policies, even though the Associations, unlike the unit owners, normally do not have mortgages. Such insurance by Associations has proven a convenience to lenders since, in essence, full hazard insurance coverage is provided through one policy, alleviating the need to deal with a separate policy for each individual unit's mortgage.

3. Nature of Condominium Ownership/ Lenders Exposure

The concept of condominium ownership shapes not only the nature of the borrower's exposure to insurable risk, but also the kind of property interest that the lender receives as security for the loan. While the owner of a unit in a condominium building, especially in the case of a townhouse, may appear to have the same kind of property interest as the owner of a separately owned detached house, there is, in fact, a vast difference between their interests. In its simplest terms, the owners of a condominium unit does not have exclusive ownership of the walls, floor and roof of his residence or of the land upon which it rests. His exclusive property interest is limited to the space within the walls, floor and roof. Although he typically retains the exclusive right to occupy and sell this unit, all of his other interests in the common areas of the condominium are shared in common with the owners of the other units owned by the members of the condominium association.

There are various kinds of structures, involving condominium ownership. A condominium building may be a vertical, multiple story unit building (often called a "high rise"), a townhouse or row house or, infrequently, a single unit building. The ownership interest of a purchaser of a unit usually includes (1) the airspace in the individual unit; (2) certain property attached to the building but within the unfinished perimeter walls, floor and ceiling of the unit; and (3) an undivided interest with all other unit owners in the common elements.

The items attached to the building within the perimeter walls, floor and ceiling, are often referred to as "improvements and betterments" or "additions and betterments" which include floor, wall and ceiling coverings, cabinets, wallpaper, paneling, fixtures, built in appliances, partition walls, tubs, toilets, sinks, counter areas, etc. If a flood damages one or more units in a condominium building, and the individual unit owner of a damaged unit sustains damge to the improvements and betterments within this unit, he is not entitled to financial assistance from his fellow unit owners as to such property and must look to his own insurance protection.

But unlike the owner of a detached individually owned non-condominium home, he is not primarily responsible for repairing the common elements in which he has an undivided interest, such as building walls, roofs, floors, stairways, lobbies, lawns, parking lots, sidewalks, and recreational facilities. Because of the multiplicity of these ownership interests, a condominium association is typically the corporate entity responsible for the operation, maintenance and repair of a condominium. Its membership is made up of the condominium unit owners, all of whom collectively have an obligation to each other to maintain and repair the commonly owned property. This specific obligation is customarily authorized and spelled out in the by-laws of an association and is included in the condominium unit owner's contract agreement which requires each unit owner to pay a proportionate share of the amount of money needed to perform maintenance and repair, as well as other administrative and operating expenses, including the building up of reserves. They are usually collected monthly in order to provide a dependable source of operating funds for the association. The by-laws and unit owner's agreement will also confer upon the Board of Directors of an association the authority, following loss or damage to the common elements, to levy special assessments, as necessary, to provide for the repair or reconstruction of loss or damage to the common elements. Thus, the funds for repair and/or reconstruction can be

obtained from the association's own funds and from the proceeds from claims filed against insurance policies and/or assessments levied against the individual unit owners.

4. Peril of Flood

Traditionally, the peril of flood was covered in the Difference in Conditions policies mentioned earlier. Associations that wished even more complete protection against the peril of flood than these policies offered, i.e., coverage for the deductible, would also purchase a policy under the NFIP for each building in the floodplain. The motivation for such purchases stems from the fact that Associations have the responsibility to purchase insurance in general to protect their property. Thus, it was not driven by lender's insurance requirements placed on individual unit owners. However, those requirements were nonetheless able to be satisfied by that broad policy coverage purchased by the Association.

As a result of this, few individual flood insurance policies were purchased under the NFIP covering the individual mortgages issued by lenders for units involving condominium ownership in buildings located in flood hazard areas, as such coverage was evidently deemed by lenders to be unnecessary and possibly duplicative.

5. Changes In The Market Place

In the mid 1980's, conditions in the property insurance market changed, however, resulting in insurance companies either not continuing to offer such broad based coverage at all or continuing to offer such coverage, only on a much more limited basis and virtually without any protection from the peril of flood. At that time Associations, insurance agents, and lenders began to bring the issue to the attention of the Federal Insurance Administration. This brought focus on the flood insurance available from the FIA, as more and more the NFIP became virtually the only flood insurance available for most types of residential property.

6. NFIP Coverage—Satisfying Lender Requirements

In one sense, in a manner similar to that followed in the private insurance sector, the NFIP has provided two different policies, one for individual unit owners, regardless of the type of configuration employed for their units, and another for the Associations. Unlike the private insurance sector, however, the insurance policies of the NFIP can only be issued as authorized by the National Flood Insurance Act of 1968, as amended, and, consequently NFIP policies are required to have various limitations and differences that distinguish them from insurance policies provided by the private insurance sector. Most significantly, NFIP insurance policies are limited as to the amount of coverage that they can provide for individual unit owners as well as for the Association. Again, as differentiated from the insurance coverage provided by the private sector, the NFIP's unit owner policy provides coverage for the unit owner's interest in the common areas of all buildings "owned" by the Association, as well as for the internal portion of his own unit.

7 Residential Coverage—Unit Owner

Regardless of the type of building a residential condominium unit may be located in, the NFIP considers the unit to be a single family dwelling (except for the limitation of its value to actual cash value rather than replacement value). The unit owner can purchase in his own name a flood insurance policy on his unit within a building involving condominium ownership. In addition, if the unit owner has not already insured that same unit, the condominium association may separately insure a particular unit in the name of the owner of record, specifying the unit number and the name of the association, as their interests may appear. This would provide the same kind of coverage as could be purchased individually by the unit owner. Such a policy will cover the improvements and betterments the unit owner has made within that unit. It will also respond to assessments levied upon the residential unit owner by his condominium association for flood damages which occur in the building in which the unit owner resides as well as the structural and or common elements of other buildings owned by the condominium association for the repair of which he may be subject to assessment. However, because the NFIP policy does not cover lawns, parking lots, sidewalks and other improvements away from the building, the portion of any assessment attributable to damage to such items would not be covered under an NFIP policy.

Insurance policies covering an individual residential unit are available in amounts up to the limits of coverage, and at the rates available, for a "single family" dwelling, regardless of the type of building in which the unit is located. But it must be noted that only those residential condominium units that are separate structures or are located in a townhouse or rowhouse configuration are eligible for replacement cost coverage.

However, coverage is available to owners of units in other types of buildings, including high rise condominium buildings, on an actual cash value basis. Building coverage under a unit owners policy applies first to his or her individually owned building improvements and betterments and, then, to the damage to the building's overall common elements, which are the unit owner's responsibility and for which he or she is subject to assessment. The unit owner's policy described above will cover the owner s personal contents, such as furniture, but only if separate contents coverage is purchased by the unit owner.

8. Residential Coverage—Condominium Association

However, inasmuch as the unit owners collectively have the responsibility of repairing the common elements, the condominium association has been the traditional logical entity to be the purchaser of flood insurance. By insuring the overall condominium structure, the Association can reduce the likelihood that it will have to assess unit owners for funds with which to make repairs. A condominium association may, in addition to purchasing policies on each individual unit, purchase insurance coverage on a residential building containing five or more units under a separate General Property Form. The policy will cover building common elements as well as the building elements (improvements and betterments) within all units in the building.

The reason that condominium associations had to purchase the General Property Form and supplement it with separate policies on the individual units is that the statute governing the NFIP limits the amount of coverage available on multi-unit residential buildings to only $250,000, without regard to the size, value or type of ownership involved. This has posed a problem because such an amount is in most cases NOT sufficient to meet the collective, individual, and statutory flood insurance requirements with respect to all the mortgages for all the units located in a specific building.

For this reason, FIA has encouraged lenders to treat the flood insurance requirement on individual mortgages for individual units in buildings involving condominium ownership in the same way as they would for single family detached properties, and to require that flood coverage be purchased to protect their interests in those mortgages by having unit owners, or the Association, purchase individual unit owners

Dwelling Policies. When this practice is followed, there should be every reason to believe that the mandatory flood insurance purchase requirement for lenders has been satisfied.

9. Condominium Master Policy (CMP) Under the NFIP

Beginning in early 1989, FIA made available to Condominium Associations, only, a Master Policy that provides flood insurance coverage on each residential condominium building separately, on one form, in much the same way that the private sector does for other hazards, without imposing the burden of purchasing individual policies for each unit. Initially this policy is being made available only for such buildings with three or more floors and five or more units. In addition to these benefits, the cost of such a policy will in most cases be significantly less expensive than the cost of multiple individual policies, while at the same time providing even more coverage, at the lower price.

The rationale for making the Condominium Master Policy available at a lower cost is that by offering a more attractive and comprehensive policy, the NFIP will be in a position to issue more policies that will be in amounts reflecting the total value of the insured properties rather than issuing policies which cover only a fraction of the total value of the properties. In insurance terminology this is referred to as realizing "more insurance to value This should prove to be a great advantage to lenders, Associations, unit owners and insurance agents as it will provide more complete flood insurance protection for less cost. In short, in a greatly simplified fashion it will assist the unit owners and their mortgage lenders in meeting the mandatory flood insurance purchase requirements, Mortgage lenders should realize, however, that it would be impractical to expect that every mortgagee with an interest in one or more units in such buildings will be able to be listed as such on the CMP Associations that purchase this policy in most cases do not have a mortgage on the property, and therefore would have no reason to list mortgagees on such policies. Other property insurance policies purchased by associations in the private sector to protect such buildings against other perils, typically, do not list mortgagees for the above reason, as well as because of the practical aspects of the difficulty the insurers would have in keeping current with the names and addresses of all such mortgagees. Thus, the protection that exists for the interests of the mortgagees on their mortgages in condominium buildings under Master Policies purchased in the private sector has always had to consist of the fiduciary responsibility that is placed on the association's Board of Directors, in the By-Laws of the associations for insuring the property and maintaining the property in a proper state of repair.

10. Non-Residential Coverage—Condominiums

Individual units in multi-unit *non* residential condominium buildings are treated differently by the NFIP The commonly owned structural elements of such buildings, together with any community owned contents for that building, may *not* be insured by the individual unit owners. They may, however, be insured in the name of the association. Owners of nonresidential units may purchase individual contents coverage in their own name for their own contents.

11. Coverage Options—For Lenders

(a) *Individual Dwelling Policies.* A lender can require the borrower to purchase and maintain an individual Dwelling Policy for the appropriate amount, as discussed previously.

(b) *General Property Policy.* A lender might accept evidence of a General Property Policy purchased by the association. However, as mentioned previously, the coverage limits available under this policy are only $250,000, and that amount is the total for the entire building. It is therefore unlikely that this will be sufficient insurance to cover all mortgages in the building. Even though such an amount might appear to be sufficient to cover an individual mortgage, its actual ability to provide protection with respect to that mortgage will have to be significantly reduced at the time of loss, as any benefits arising out of that coverage will be shared with all of the other unit owners in that building, regardless of whether or not they have a mortgage.

Note: Lenders should be cautioned that they should not accept evidence of this policy as automatically fulfilling their statutory requirement, without further reviewing the policy's details as to the amount of coverage being provided each unit in that building.

(c) *Condominium Master Policy.* A lender could accept evidence of this policy being purchased by the association to meet the lenders regulatory requirement. The lender should be careful to assure that the amount of coverage purchased will be sufficient to meet its regulatory requirements. It will be easier for this to be the case because this policy is a compilation of individual Dwelling policies. Therefore, because the coverage limits available under the Condominium Master Policy are $185,000 times the number of units, the association may purchase up to that amount. The simplest way for a lender to be certain that the coverage on such a policy is sufficient is for the lender to divide the coverage purchased by the number of units in the building. If the resulting amount is at least $70,000, and the value of the average unit is at least that amount, then the total coverage purchased under that policy is probably sufficient to meet the lender's basic requirements, on the basis of the statutory cap of $70,000.[2]

If sufficient amounts of Flood Insurance are purchased by the Association under option (c), this might be the best option for a lender to consider, as it will be the one most likely to fulfill the mandatory Flood Insurance Purchase Requirements. Since it is likely that it will be handled administratively by the association in the same manner as in the case of their other forms of property insurance, it should assure a higher likelihood that the Association will renew the policy.

In this connection it should be noted that $70,000 is the maximum amount of insurance required for single family residential dwellings by section 1306(b)(6) of the 1968 Act (section 1413(b)(6) of Title 42 U.S.C.), which on October 12, 1977, modified the language of Section 102 of the original 1973 Act, which defined the purchase requirement as being "at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to this particular type of property under the [1968] Act, whichever is less.

NATIONAL FLOOD INSURANCE PROGRAM—APPLICATION TO CONDOMINIUMS

Ownership			Insurable Interest		Flood Coverage Available	
Property/Location	Unit owner	Association	Unit owner	Association	Unit owner	Association
Within unit:						
Air space	Y	N	N	N	N	N
Wall, floor and ceiling coverings, improvements and betterments.	Y	N	Y	N	Y	Y
Common structural elements	N	Y	Y	Y	Y	Y [6]
Contents	Y	N	Y	N	Y	N
Outside unit:						
Common structural elements of all buildings owned by association.	Y	Y	Y	Y	Y	Y
Common areas (non-structural)	Y	Y	N	N	N	N
Common contents	Y	Y	Y	Y	Y	Y

Except when contents of unit are commonly owned.

The unit owner owns a proportional share of the total common elements.

[3] Ownership divided proportionally amongst all unit owners.

NFIP covers only buildings and their contents.

The Dwelling Policy covers the unit owner's insurable interest in structural elements of the unit as well as those for all the common structural elements of the NFIP insured buildings. This policy may be purchased by either the unit owner or the association. Associations may, in certain cases, also purchase a Condominium Master Policy, which gives similar coverage of both units and common elements.

[6] Only the association may purchase a General Property Policy. It covers all common structural elements of the building, including those within a unit, to the extent that adequate amounts of coverage have been purchased. This would include the improvements and betterments within the units.

Except when the association owns the contents in a unit as common property. For more detailed information on the condominium concept see the four examples and descriptive exhibits which follow:

BILLING CODE 6718-01-M

Example I

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Pre-FIRM Construction, Zone A)

		CURRENT DWELLING POLICY (Actual)	NEW CONDOMINIUM MASTER POLICY (Estimates)
AMT. OF COVERAGE/UNIT	$70,000	$70,000	$70,000
NO. OF UNITS	100		
AMT. OF COVERAGE/BLDG.	$7 MILLION	$7 MILLION	$7 MILLION
RATES D.P —Single Family C.M.P —Other Residential/ Single Family		$.55/.17 400 × $ .55 = $220 300 × $ .17 = 51	$.55/.17 1,150 × $ .55 = $ 633 68,850 × $ .17 = $11,705
PREMIUM—UNIT/BLDG.		$271	$12,338
EXPENSE CONSTANT		$45/UNIT	$ 45/ BLDG.
TOTAL PREMIUM/UNIT		$ 316	$12,383
NO. OF UNITS		X 100	N/A
TOTAL PREMIUM/BLDG.		$ 31,600	$12,383
DEDUCTIBLE—UNIT/BLDG.		$500/UNIT × 100 = $ 50,000	$ 500

NET SAVINGS/BENEFIT TO THE ASSOCIATION	ANNUAL PREMIUM	$19,217
	LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	$ 49,500
	BOARD FIDUCIARY RESPONSIBILITY MET	
NET BENEFIT TO THE PRODUCER/WYO COMPANY	ONE APPLICATION FORM ONE POLICY ONE DECLARATIONS PAGE ONE SET OF NOTICES	

Example 2

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Post-FIRM Construction, Zones A1-30, Lowest Floor At BFE)

		CURRENT DWELLING POLICY (Actual)	NEW CONDOMINIUM MASTER POLICY (Estimates)
AMT. OF COVERAGE/UNIT	$70,000	$70,000	$70,000
NO. OF UNITS	100		
AMT. OF COVERAGE/BLDG.	$7 MILLION	$7 MILLION	$7 MILLION
RATES		$.30/.06	$.35/.06
D.P —Single Family		400 × $ .30 = $120	1,150 × $ .35 = $ 403
C.M.P —Other Residential/ Single Family		300 × $ .06 = 18	68,850 × $ .06 = $ 4,131
PREMIUM—UNIT/BLDG.		$138	$ 4,534
EXPENSE CONSTANT		$45/UNIT	$ 45/ BLDG.
TOTAL PREMIUM/UNIT		$ 183	$ 4,579
NO. OF UNITS		X 100	N/A
TOTAL PREMIUM/BLDG.		$ 18,300	$ 4,579
DEDUCTIBLE—UNIT/BLDG.		$500/UNIT × 100 = $ 50,000	$ 500

NET SAVINGS/BENEFIT TO THE ASSOCIATION	ANNUAL PREMIUM	$13,721.
	LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	$ 49,500
	BOARD FIDUCIARY RESPONSIBILITY MET	
NET BENEFIT TO THE PRODUCER/WYO COMPANY	ONE APPLICATION FORM ONE POLICY ONE DECLARATIONS PAGE ONE SET OF NOTICES	

Example 3

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Post-FIRM Construction, Zone AO-AH, No Basement, Without Certification)

		CURRENT DWELLING POLICY (Actual)	NEW CONDOMINIUM MASTER POLICY (Estimates)
AMT. OF COVERAGE/UNIT	$70,000	$70,000	$70,000
NO. OF UNITS	100		
AMT. OF COVERAGE/BLDG.	$7 MILLION	$7 MILLION	$7 MILLION
RATES		$.55/.17	$.65/.17
D.P —Single Family		400 × $ .55 = $220	1,150 × $ .65 = $ 748
C.M.P —Other Residential/ Single Family		300 × $ .17 = 51	68,850 × $ .17 = $11,705
PREMIUM—UNIT/BLDG.		$271	$12,453
EXPENSE CONSTANT		$45/UNIT	$ 45/ BLDG.
TOTAL PREMIUM/UNIT		$ 316	$12,498
NO. OF UNITS		X 100	N/A
TOTAL PREMIUM/BLDG.		$ 31,600	$12,498
DEDUCTIBLE—UNIT/BLDG.		$500/UNIT × 100 = $ 50,000	$ 500

NET SAVINGS/BENEFIT TO THE ASSOCIATION	ANNUAL PREMIUM	$49,102
	LOWER DEDUCTIBLE/ INCREASED COVERAGE AT NO ADDITIONAL COST	$49,500
	• BOARD FIDUCIARY RESPONSIBILITY MET	
NET BENEFIT TO THE PRODUCER/WYO COMPANY	• ONE APPLICATION FORM ONE POLICY ONE DECLARATIONS PAGE ONE SET OF NOTICES	

Example 4

FLOOD INSURANCE COVERAGE/COSTS FOR CONDOMINIUMS IN MULTI-STORY BUILDINGS

CURRENT INDIVIDUAL DWELLING POLICIES VERSUS NEW CONDOMINIUM MASTER POLICY

(Regular Program, Post-FIRM Construction, Zones AO-AH, No Basement, With Certification)

		CURRENT DWELLING POLICY (Actual)	NEW CONDOMINIUM MASTER POLICY (Estimates)
AMT. OF COVERAGE/UNIT	$70,000	$70,000	$70,000
NO. OF UNITS	100		
AMT. OF COVERAGE/BLDG.	$7 MILLION	$7 MILLION	$7 MILLION
• RATES		$.17/.06	$.17/.06
D.P —Single Family		400 × $ .17 = $ 68	1,150 × $ .17 = $ 195
C.M.P —Other Residential/ Single Family		300 × $ .06 = 18	68,850 × $ .06 = $ 4,131
PREMIUM—UNIT/BLDG.		$ 86	$ 4,326
EXPENSE CONSTANT		$45/UNIT	$ 45/ BLDG.
TOTAL PREMIUM/UNIT		$ 131	$ 4,371
NO. OF UNITS		X 100	N/A
TOTAL PREMIUM/BLDG.		$ 13,100	$ 4,371
DEDUCTIBLE—UNIT/BLDG.		$500/UNIT × 100 = $ 50,000	$ 500

NET SAVINGS/BENEFIT TO THE ASSOCIATION	ANNUAL PREMIUM	$8,729
	LOWER DEDUCTIBLE / INCREASED COVERAGE AT NO ADDITIONAL COST	$49,500
	BOARD FIDUCIARY RESPONSIBILITY MET	
NET BENEFIT TO THE PRODUCER/WYO COMPANY	ONE APPLICATION FORM ONE POLICY ONE DECLARATIONS PAGE ONE SET OF NOTICES	

FEDERAL EMERGENCY MANAGEMENT AGENCY

FEDERAL INSURANCE ADMINISTRATION

NATIONAL FLOOD INSURANCE PROGRAM
CONDOMINIUM MASTER POLICY

INDIVIDUAL FEATURES

POLICY IN EFFECT	o AS OF JANUARY 1, 1989
INSURED·	o ASSOCIATION ONLY
BUILDINGS ELIGIBLE.	o 3 OR MORE FLOORS / 5 OR MORE UNITS
PROPERTY COVERED·	o ALL COMMON STRUCTURAL BUILDING ELEMENTS o INTERNAL UNIT ELEMENTS - WALL, FLOOR, CEILING COVERINGS - IMPROVEMENTS & BETTERMENTS
ASSESSMENT COVERAGE.	o YES *
COVERAGE LIMITS	o $185 000 X NO. OF UNITS IN BLDG. OR ACTUAL CASH VALUE OF BLDG. (WHICHEVER IS LESS)
COVERAGE TYPE.	o ACTUAL CASH VALUE
DEDUCTIBLE	o $500 PER BUILDING (NOT UNIT)
EXPENSE CONSTANT·	o $45 PER BUILDING (NOT UNIT)
RATES	o LOWER THAN WITH OTHER NFIP POLICIES o USED DIFFERENTLY - RESULTS IN LOWER PREMIUM
PREMIUM:	o SIGNIFICANTLY LOWER - UP TO 60% PLUS
MINIMUM COVERAGE REQUIREMENT?	o INSURANCE TO VALUE STRONGLY URGED

* So long as the following assessment criteria are met.
1) Other bldgs. of association covered by General Prop. policy
2) Association flood coverage must be NFIP coverage.
3) Coverage amount must be ACV or maximum available, whichever is less.

BILLING CODE 6718-01-C

Index

Actual Cash Value Coverage. Secs E 2.(b), F 5.
Additions and Betterments. Sec F 3.
Airspace Sec F 3.
Amount of Flood Insurance Available. Sec C 5.
Assessments for Condominium Unit Owners. Sec F 8.
Base Flood Elevation Sec A 2.
Basements, Limitations on Coverage. Sec E 4.(d).
Buildings Built Over Water. Sec E 4.(d).
Buildings in the Course of Construction. Sec E 3.(d).
Buildings Built in Violation of Local Ordinances. Sec E 4.(b).
Certificate of Redetermination. Sec E 1.(g).
Coastal Barriers Resources Act (COBRA). Secs D 2., E 4.(a).
Common Interests of Condominium Unit Owners. Sec F 3.
Communities, Number Participating in NFIP Sec A 3.
Condominiums Sec F
Condominium Associations. Sec F 1.
Condominium Master Policy. Sec F 9.
Condominium Unit Owners. Sec F 1.
Contents Coverage, Requirement For. Sec B 2.
Conventional Loans Sec D 4.(a).
Costs Incurred by Lenders. Sec E 7
Deductible under Insurance Policy. Sec E 3.(a).
Department of the Interior. Sec D 2.
Department of Housing and Urban Development (HUD). Sec E 7
Depreciation Sec E 2.(b).
Detached Garage of Residence. Sec E 2.(d).
Determination of Lenders Sec E 1., E1(e).
Development Loan Sec E 3.(d).
Difference in Conditions, Policies of Insurance. Sec F 4.
Disaster Relief Act of 1974. Sec C 4.
Disaster Assistance Sec E 4.(a).
Eagleton Amendment Sec D 4.(B).
Elevated Building Secs A 4., B 1.
Elevation Certificate Sec E 3.(d).
Emergency Program under the NFIP Sec A 3.
Escrow Sec E 7
Federal Agencies Sec C 1., C 4.
Federal Financial Institutions Examination Council. Sec D 4.(c).
FFIEC Examination Procedures and Examiner Checklist. Sec E 9.
Federal Home Loan Mortgage Association. Sec C 4.
Federal Housing Administration. Sec C 4.
Federal Instrumentalities Sec D 1.(a).
Federal Insurance Administrator. Sec A 1.
Federal National Mortgage Association Requirements. Sec C 7.
FEMA Form 81-2 Sec D 2.(c).
FEMA Form 81-3 Sec E 1.(g).
Flood Hazard Boundary Maps (FHBM). Sec A 2.
Flood Insurance Rate Map (FIRM). Sec A 2.
Floodway Sec A 4.
Financial Assistance, Federal Financial Assistance. Sec C 2., 4., 8.
Forced Placement Sec E 7.
Garages, Detached Sec E 2.(d).
Gazebos Sec E 3.(c).
General Property Policy Sec F 10(b).
Good Faith Standard by Which Lenders Are Judged as to Determinations. Sec E 1.(c).
Guidelines, Mandatory Flood Insurance Purchase. Sec E.
Hazard Insurance, Term Used in Mortgages. Sec E 7.
High Rise Buildings Sec F 3.
Home Equity Loans Secs D 1.(c), E 8.
How Much Flood Insurance Must Be Purchased. Secs C 6., D 1.(c), E 2.(b).
How Long Must Insurance Coverage Be Kept. Sec D 1.(c).
HUD Uniform Residential Appraisal Form. Sec E 1.(g).
Improved Real Estate, Improved Real Property. Secs E 2.(a), (b), (c), (d).
Improvements and Betterments. Sec F 3.
Ineligibility of Property for Flood Insurance. Secs E 3.(c), E 4.(a), (b), (d).
Insurable Structures Sec E 1.(a).
Insurance To Value Sec F 9.
Lender's Remedies to Achieve Compliance After Initiation of Loan. Sec E 7.
Letter of Map Amendment (LOMA). Secs A 4., C 3., D 3.
Letter of Map Revision (LOMR). Secs A 4., C 3., D 3.
Local Floodplain Management Ordinances. Sec A 2.
Loss Ratio Outside Special Flood Hazard Areas. Sec B 3.
Maximum Amount of Flood Insurance Coverage Required by Law. Secs C6., D1.(c), E 2.(b).
Maximum Amount of Flood Insurance Coverage Available under NFIP Secs C5., D 1.(c), E 2.(b).
Mobile Homes and Manufactured Homes. Sec B 2.
National Credit Union Administration. Sec D 1.(a).
Non Participating Communities. Sec C 8.
Notification under Coastal Barrier Resources Act. Sec D 2.
Notification of Borrowers of Flood Hazards. Sec D 4.(c).
Notification of Borrowers, Reasonable Time For. Sec D 4.(c).
Number of Communities in NFIP Sec A 3.
One Hundred Year Flood (100 Year Flood). Sec A 3.
Participation by Communities in NFIP Secs A 2., B 3.
Personal Property Sec B 2.
Personal Property, Requirement of Coverage For Purchasers of Improved Real Estate. Sec B 2.
Personalty, such as Tool Sheds or Shacks. Sec E 2.(d).
Pole Barns Sec E 3.(c).
Preferred Risk Policy Sec B 3.
Principal Property, Principal Residence of an Insured Homeowner. Sec E 2.(b).
Private Policy of Flood Insurance, Acceptability by Lenders. Sec E 6.
Probation, Imposed on Communities For Non Compliance. Sec A 2.
Purchase of Mortgage Loans. Sec E 5.
Purchase of Mortgage Loans by Federal Agencies. Sec C 4.
Regular Program of the National Flood Insurance Program. Secs A 3., E 3.(d).
Reliance by Lenders on Outside Advice in Making Determinations. Sec E 1.(d).
Replacement Cost Coverage in Connection with Loss Payments. Sec E 2.(b).
Roads and Bridges, Federal Financial Assistance. Sec C 8.
Row Houses Sec F 3.
Second Mortgages Sec D 1.(c).
Secondary Residences of Insureds. Sec E 2.(b).
Secondary Mortgage Market. Sec E 5.
Section 1364 of 1968 Act Concerning Notice to Borrowers. Sec D 4.(c).
Section 1316 of 1968 Act Concerning Non Compliant Structures. Sec E 4.(b).
Small Business Administration, Loans By. Sec C 7
Special Flood Hazard Area, Area of Special Flood Hazard. Sec A 2., 3.

Standards by Which Lenders are Judged in Making Determinations. Sec E 1.
Status of Studies and Maps. Sec A 3.
Storage Tanks ..... Sec E 3.(c).
Structures, Walled and Roofed. Sec E 1.(a).
Subsequent Revision of Flood Maps, Impact on Prior Loans. Sec E 1.(c).
Subsequent Revision of Flood Maps, Impact on Subsequent Loans. Sec E 1.(c).
Suspension of Communities for Non Compliance Problems. Sec A 2.
Tool Sheds or Shacks ..... Sec E 2.(d).
Town Houses ..... Sec F 3.
Undivided Interest of Condominium Unit Owners. Sec F 3.
Universal Residential Appraisal Report Form. Sec E 1.(g).
Value of Land ..... Sec E 2.(a).
Veterans Administration.... Sec C 4.
Walled and Roofed Structures. Sec E 1.
Write Your Own Program.. Sec E 6.
Zones, Flood Zones for Mapping and Rating Purposes. Sec A 3.

Date: June 28, 1989.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 89-16200 Filed 7-12-89; 8:45 am]

BILLING CODE 6718-01-M

federal register

Thursday
July 13, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Suspension of Transponder With Altitude Encoding Equipment Requirement Below the Chicago, IL, Terminal Control Area; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25957; Special Federal Aviation Regulation (SFAR) No. 56]

Temporary Suspension of Transponder With Altitude Encoding Equipment Requirement Below the Chicago, IL, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action suspends portions of the requirements of the Federal Aviation Regulations, which require the use of transponder and altitude reporting equipment below and outside the Terminal Control Area (TCA) at Chicago, IL. This action is intended to accommodate the transition through that area of a large number of non-transponder-equipped aircraft traveling to and from the annual convention of the Experimental Aircraft Association at Oshkosh, WI, and will not compromise the safety of aircraft operations in the affected area.

DATES:

Effective date: July 23, 1989.
Expiration date: August 6, 1989.

FOR FURTHER INFORMATION CONTACT: A. Wayne Pierce, Air Traffic Rules Branch, ATO-230 Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8783

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

Each year the Experimental Aircraft Association (EAA) holds its national convention at Oshkosh, WI; this year the dates of the convention are July 31 through August 3. During these conventions unusually large numbers of aircraft operate into and out of Oshkosh. The FAA estimates that the number of aircraft participating will be on the order of 15,000 or more. Many of those aircraft will be traveling through or near the Chicago area enroute to or from the convention.

The FAA works with the EAA in a number of ways to provide for the safety of all participants and non-participants. During the period of the convention, the FAA establishes a temporary air traffic control "tower" using both radio and visual signals to control traffic and works with the EAA to establish procedures for aircraft arrival and departure at the convention. Despite the extraordinary number of aircraft which travel to this convention and participate in it each year, the convention has an excellent safety record.

On June 21, 1988, the FAA published a final rule expanding the requirements for the use of transponders with altitude encoding capability (Mode C) within 30 nautical miles of TCA primary airports, commonly referred to as the "veil. O'Hare International Airport in Chicago is an example of a TCA primary airport. Those requirements became effective on July 1, 1989.

The Need for Regulation

Many of the aircraft which participate in the EAA convention are of a type which are excluded from the requirements of the Mode C rule because those aircraft do not have an electrical system necessary to support the Mode C equipment. Many others are not excluded and would be required to carry the Mode C equipment for operations within 30 miles of O'Hare Airport unless otherwise authorized by ATC under the provisions of the rule. The FAA is prepared to accommodate the number of requests which will occur on a routine basis, as well as the unusual number of requests expected during the period immediately after the effective date of the rule on July 1. However, the FAA estimates that if each non-equipped aircraft bound to or from the EAA convention and traveling through the Chicago area were to request an authorization, the number of requests would be more than could be processed. Further, the FAA believes that, generally those aircraft which circumnavigate the TCA and 30-mile veil will not create a condition of compressed traffic. However, where the number of aircraft involved is as great as that expected for the EAA convention, and if the non-equipped aircraft covered by the regulation are required to circumnavigate the veil, the possibility of such congestion would be increased to a level which the FAA has determined would decrease the operational efficiency of the air traffic system in the Chicago area. In addition, many of the aircraft proceeding to Oshkosh are experimental, home-built, or antique aircraft which are not normally operated in long cross-country flights. Many such aircraft, while passing east of Chicago on the way to and from Oshkosh, would be required to operate over Lake Michigan up to 20 miles from the shore.

On the basis of the above, I find that these conditions constitute a situation requiring immediate action by the agency in order to maintain efficiency in the operation of aircraft in the Chicago area and avoid unnecessary compression of traffic during the periods of convention arrivals and departures.

The Rule

This rule suspends applicability of the requirement to carry a Mode C transponder when operating below 3,000 feet MSL between 10.5 nautical miles and 30 nautical miles from O'Hare Airport. The suspension of these requirements is only for the period of July 23, 1989 until August 6, 1989.

Effective Date of Final Rule

Because of the pending arrival in Oshkosh of large numbers of aircraft beginning in late July, immediate action is required to maintain the efficiency of flight operations in the Chicago area at an acceptable level. For this reason, and because the condition will begin to occur on July 26, I find that the notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reason, I find that good cause exists for making this rule effective less than 30 days after issuance.

Economic Assessment

The FAA has determined that this action is not a "major rule" under Executive Order 12291 and is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The immediate nature of the action required does not permit the prior completion of a full regulatory evaluation. The rule has no identifiable costs. Benefits of the rule

will be the most efficient routing of a large number of aircraft through the Chicago area during the July 23–August 6 period and a mitigation of the potential impact on ATC resources resulting from the Oshkosh convention. These benefits are not practically quantifiable, however. Because the action is a nonsignificant rulemaking and is temporary, a further regulatory evaluation will not be performed.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Visual flight rules, ATC transponder and altitude reporting equipment and use.

The Special Federal Aviation Regulation

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*, E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 56 to read as follows:

Special Federal Aviation Regulation (SFAR) No. 56—Temporary Suspension of Transponder With Altitude Encoding Equipment Requirement Below the Chicago, IL, Terminal Control Area

During the effective dates of this SFAR and in the airspace area described herein below, the requirements of § 91.24(b)(2) of the FAR are suspended.

(a) Airspace area. That airspace below 3,000 feet MSL between 10.5 nautical miles and 30 nautical miles from Chicago O'Hare International Airport, excluding airspace within the TCA.

(b) Effective dates. The provisions of this SFAR become effective at 12:01 a.m. local time, on July 23, 1989 and terminate at 11:59 p.m., local time, on August 6, 1989.

Expiration. This special rule expires at 11:59 p.m., local time, on August 6, 1989.

Issued in Washington, DC, July 7 1989.

James B. Busey,

Administrator.

[FR Doc. 89–16432 Filed 7–10–89; 12:56 pm]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 54, No. 133

Thursday, July 13, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

27855-28016.....3
28017-28408.....5
28409-28664.....6
28665-28794.....7
28795-28998.....10
28999-29316.....11
29317-29528.....12
29529-29700.....13

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

302.....28964
305.....28964
310.....28964

3 CFR

Proclamations:
5995.....28409
5996.....28993
5997.....28999
5998.....29313

Executive Orders:
11958 (Amended by EO 12680).....28995
12163 (Amended by EO 12680).....28995
12171 (Amended by EO 12681).....28997
12680.....28995
12681.....28997
12682.....29315

Administrative Orders:
Presidential Determinations:
No. 89-16 of June 22, 1989.....28017

5 CFR

1201.....28632
1202.....28657
1203.....28658
1204.....28658
1205.....28662
1206.....28664
1209.....28654

Proposed Rules:
900.....28426

7 CFR

2.....28665
29.....27855
33.....29317
400.....28019, 28411
401.....28795
905.....29318
910.....28796
916.....27856
917.....27856, 29321
921.....29319
922.....29319
923.....29319
924.....29319
928.....29318
929.....29323
946.....27862
948.....29324
955.....29325
958.....29324
989.....29326
1040.....29327
1260.....28019
1822.....29329
1823.....29329
1910.....29329
1941.....28019, 29329
1942.....29329
1943.....28019, 29329
1944.....29329
1945.....29329
1951.....28019, 28020, 28411, 29329
1955.....29329
1965.....29329
1980.....28021

Proposed Rules:
29.....27883
319.....29566
401.....28019, 28428, 28820
449.....28429
911.....29338
927.....29340
947.....29341
987.....29342
989.....29343
1762.....27883
1864.....29569
1956.....29569
1965.....29569

8 CFR

100.....29438
103.....29438, 29440
242.....29438
245.....29440
245A.....29434, 29442
264.....29438
299.....29438

Proposed Rules:
103.....29344
242.....29050

9 CFR

92.....29003

Proposed Rules:
54.....29576
75.....28070

10 CFR

2.....27864, 29008
7.....28554
26.....29139
51.....27864
60.....27864

Proposed Rules:
2.....28822

12 CFR

226.....28665

Proposed Rules:
5.....28072
561.....27885
563.....27885

14 CFR

39 ..... 28022, 28023, 28025, 28026, 28028, 28554, 29008, 29009, 29529, 29530, 29534, 29535, 29537, 29538
71 ..... 28029, 29539, 29540
91 ..... 28769, 29698
97 28029
107 28765
108 28985
Proposed Rules:
Ch. I 28074
1 28978
39 ..... 29050-29056, 29577 29579, 29580, 29582
71 ..... 28074, 29057-29059
91 28978
108 28982
121 28978
125 28978
129 28978
135 28978

15 CFR

50 29010
771 29011
774 28665
786 29011
Proposed Rules:
25 28430

16 CFR

305 28031

17 CFR

200 28796
201 28797
211 29333
240 28799
241 28799

19 CFR

10 28412
134 29540
141 28412
178 28412

20 CFR

655 28037

21 CFR

177 29018
310 ..... 28772, 28780
520 29543
522 29543
524 29543
556 28051
558 ..... 28051, 28154, 29335, 29544
573 29019
1308 28414
Proposed Rules:
10 28872
310 28872
314 28872
320 ..... 28823, 28872
341 28442

22 CFR

34 28415

23 CFR

Proposed Rules:
658 29060

24 CFR

203 28053

26 CFR

1 28576
602 28576
Proposed Rules:
1 ..... 28075, 28683, 29061

29 CFR

1910 ..... 28054, 28154, 29142, 29545, 29546
1915 29142
1917 29142
1918 29142
1926 29546
2610 ..... 27872, 28944
2622 27872
2644 27872
2670 29025
2675 29025

30 CFR

Proposed Rules:
715 28443
936 29583

31 CFR

103 28416
344 28752

33 CFR

100 ..... 28814, 29547
165 28814
167 28061
Proposed Rules:
100 29348

35 CFR

103 29335
117 29335
135 29335
Proposed Rules:
103 29584
133 29584

37 CFR

1 29548
2 29548
201 27873

38 CFR

3 28445
17 ..... 28667 28673
19 28445
21 28676
Proposed Rules:
36 28683

39 CFR

111 27879

40 CFR

52 ..... 27880, 29310, 29554, 29555
82 ..... 28062, 29336
131 28662
228 29034
271 ..... 28677, 29557
761 28418
763 29460
Proposed Rules:
22 29516
52 ..... 28684, 28689, 29061, 29063, 29349
60 ..... 28447 29352
81 29349
82 29353
142 29516
302 29306
355 29306
707 29524

42 CFR

57 28065

43 CFR

Proposed Rules:
5450 29357
5460 29357

46 CFR

502 29036

47 CFR

1 29037
22 ..... 28815, 28816
73 ..... 28677 28678, 29038, 29559-29561
74 29039
80 29040
90 28678
Proposed Rules:
Ch. I 28789
2 28823
15 ..... 28690, 28691, 28693
73 ..... 27904, 28077 28695, 28696, 29067, 29587 29588
87 28823

48 CFR

1 29278
4 29278
7 29278
8 29278
14 29278
15 29278
17 29278
19 29278
22 29278
25 29278
36 29278
37 29278
38 29278
47 29278
51 29278
52 29278
53 29278
204 28419
705 28068
706 28068
715 28068
752 28068
Ch. 18 28186
Proposed Rules:
15 29296
43 29296
52 29296

49 CFR

89 28680
171 28750
172 28750
173 28750
176 28750
178 28750
192 27881
193 27881
195 27881
390 28818
391 28818
393 28818
571 29041-29045
1011 29337
Proposed Rules:
512 28696
571 29067-29071
572 29071

50 CFR

17 ..... 29652, 29655, 29658
642 29561
661 28818
672 ..... 28422, 28681
674 28423
Proposed Rules:
20 29640
285 29359

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

In the List of Public Laws printed in the **Federal Register** on July 12, 1989, Public Laws 101-53, 101-54, and 101-55 were incorrectly printed as Public Laws 100-53, 100-54, and 100-55, respectively. They should read as follows:

H.R. 2119/Pub. L. 101-53

To authorize the exchange of certain Federal public land in Madison County, Illinois. (July 6, 1989; 103 Stat. 144; 2 pages) Price: $1.00

H.J. Res. 276/Pub. L. 101-54

Designating September 14, 1989, as "National D.A.R.E. Day. (July 7 1989; 103 Stat. 146; 2 pages) Price: $1.00

H.J. Res. 298/Pub. L. 101-55

Designating July 14, 1989, as "National Day To Commemorate the Bastille Day Bicentennial. (July 7 1989; 103 Stat. 148; 1 page) Price: $1.00

Last List July 11, 1989

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Administration of George Bush

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Presidential Documents

Monday, January 23, 1989
Volume 25—Number

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