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Thursday
January 11, 1990

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: January 30, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.

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Presidential Documents

Title 3—

The President

Proclamation 6088 of January 9, 1990

Martin Luther King, Jr., Federal Holiday, 1990

By the President of the United States of America

A Proclamation

As we observe a national holiday in honor of the birthday of the Reverend Dr Martin Luther King, Jr., we celebrate a life dedicated to the struggle for racial equality and justice. With determination, courage, and a firm commitment to nonviolence, Dr. King worked to free men and women throughout the United States from "the manacles of segregation and the chains of discrimination."

Martin Luther King, Jr., loved this country and firmly believed in the timeless ideal expressed in its Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Knowing that "a house divided against itself cannot stand," Dr. King devoted his life to striving for racial unity and equality in the United States. He believed our Nation had strayed from the noble course set in our Declaration of Independence and the Constitution, and he was determined to see that America remain faithful to the principles they enshrine.

In his words and deeds, Martin Luther King, Jr., reminded all Americans of the stern admonition issued by Abraham Lincoln in 1858, when he warned the people of Edwardsville, Illinois, of the tragic consequences that continued tolerance of slavery could hold for the United States. President Lincoln, like great Americans of all generations, knew that our Nation's strength lies in the conviction that every human being is of inestimable worth and that the only legitimate end of government is to protect the God-given rights of each individual. "Destroy this spirit," Lincoln warned, "and you have planted the seeds of despotism at your own doors. Familiarize yourselves with the chains of bondage and you prepare your own limbs to wear them. Accustomed to trample on the rights of others, you have lost the genius of your own independence and become the fit subjects of the first cunning tyrant who rises among you."

Like President Lincoln, Martin Luther King, Jr., knew that the United States could not remain a free and great nation so long as the rights of any individual are denied. He knew that America's promise of freedom and justice for all is rooted in the magnificent design of our Creator, and he knew that this promise must not be distorted or destroyed by bigotry and discrimination.

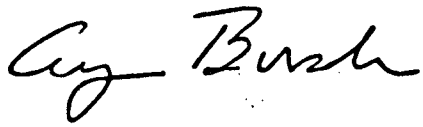
Dr. King told us that he had a dream. We see now that it was not just a dream but a vision. Recalling the Proverb that states "where there is no vision, the people perish," Dr. King shared with us his hope and foresight. He had "seen the promised land," and he inspired each of us to view it with him.

Today, even though many of the darkest "clouds of racial prejudice" have been dispersed, even though we are closer to that day when people "will not be judged by the color of their skin, but by the content of their character," we must continue working to promote racial unity and equal opportunity in the United States. This is our solemn duty—and it is the greatest honor we can give to the memory of Dr. Martin Luther King, Jr.

By Public Law 98-144, the third Monday in January of each year has been designated as a legal public holiday in honor of the "Birthday of Martin Luther King, Jr."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue, of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 15, 1990, as the Martin Luther King, Jr., Federal Holiday.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of January, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-889
Filed 1-9-90; 3:04 pm]
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Editorial note: For the President's remarks on Jan. 9 on signing Proclamation 6088, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 2).

Rules and Regulations

Federal Register
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Thursday, January 11, 1990

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

OFFICE OF PERSONNEL MANAGEMENT

RIN 3206-AD53

5 CFR Parts 841, 870, 871, 872, 873, and 890

Survivor Benefits, Health Benefits, and Life Insurance for Certain Annuitants

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim Federal Employees Retirement System (FERS), Federal Employees' Group Life Insurance (FEGLI) Program, and Federal Employees Health Benefits (FEHB) Program regulations regarding individuals eligible for an immediate annuity under the "Minimum Retirement Age (MRA) plus 10" provision of the FERS law. These regulations (1) provide for reinstatement of life insurance and health benefits coverage for individuals who qualify for an immediate annuity when they leave Federal service but postpone the commencing date of the annuity, and (2) enable survivors of these individuals to qualify for survivor benefits and health insurance coverage as surviving family members.

DATE: Interim regulations are effective January 11, 1990. Comments must be received on or before March 12, 1990.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 632-4634, extension 207.

SUPPLEMENTARY INFORMATION: Public Law 99-335, enacted June 6, 1986, established the Federal Employees Retirement System (FERS). Under a provision of FERS, known as the "MRA plus 10" provision (5 U.S.C. 8412(g)), employees who separate from service after attaining the minimum retirement age specified in 5 U.S.C. 8412(h) and completing 10 years of creditable service (including at least 5 years of civilian service) are eligible for an immediate annuity. Employees who separate after meeting these requirements may apply for and receive an annuity immediately. The annuity is reduced by 5/12 of 1 percent for each month the retiree is under age 62 when the annuity commences (5 U.S.C. 8415(f) and 5 CFR 842.404). To lesson this age reduction, separated employees may postpone the annuity commencing date to the first day of any month before they become age 62. The separated employees may apply for retirement immediately and then postpone the commencing date of the annuity or they may wait until they are ready for the annuity to begin to make application. These regulations clarify the circumstances under which health and life insurance may continue for employees who postpone their annuity commencing date under FERS and the status of their survivors if they die before they apply for the annuity.

Life Insurance

Under these regulations, the FEGLI coverage of employees who separate after qualifying for an immediate annuity under 5 U.S.C. 8412(g), but postpone the commencing date of their annuity, terminates at the end of the pay period during which they separate. These former employees have the same 31-day temporary extension of coverage and opportunity to convert to nongroup coverage as other employees who separate from service.

When the postponed annuity benefits eventually begin, the life insurance coverage held immediately before separation resumes if the individual meets the statutory requirements for continuing coverage after retirement. (To continue life insurance into retirement, the law requires the person to have been insured under the FEGLI program throughout the 5 years of service immediately preceding the date of retirement, or the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years). Under these regulations, the resumed insurance takes effect on the commencing date of annuity, or on the date the election of the commencing date is received by OPM, whichever is later.

Under the FEGLI law, employees who retire after December 31, 1989, must continue to pay for basic life insurance coverage after retirement until they reach age 65. Employees who retire earlier do not have to pay for basic life insurance coverage (unless they elect a higher level of post-age 65 protection than is provided with the no-cost option). Most employees who receive an immediate annuity separated from their Federal jobs for the purpose of retirement, and they are considered to have retired on the date they separated. However, those who postpone the commencing date of their annuities did not separate for the purpose of retirement. These regulations provide that for the purpose of determining whether a retiree must continue to pay for basic life insurance, former employees who postpone the commencing date of their annuities are considered to have retired on the day before their annuities commence. For example, a person who separated in 1988 with title to an immediate "MRA plus 10" annuity and who wants the annuity to begin on February 1, 1990, pays the same premium cost for basic life insurance as a person who actually separates for retirement on January 31, 1990, with a commencing date of February 1.

In these regulations, we move the definition of immediate annuity from § 870.601(d) to § 870.103 and revise it to clarify that the annuity of individuals who separate under 5 U.S.C. 8412(g) is an immediate annuity for FEGLI purposes even if they postpone the commencing date.

Health Benefits

Employees who separated from service after qualifying for an immediate annuity under the MRA plus 10 provision (5 U.S.C. 8412(g)), whether or not they postpone the commencing date, are included in the definition of "annuitant" under the Federal Employees Benefits (FEHB) law (5 U.S.C. 8901(3)) and are eligible for FEHB coverage when they begin receiving an annuity. These regulations revise the

definition of "immediate annuity" in part 890 to clarify that the annuity these individuals receive is considered an immediate annuity for FEHB purposes.

Under these regulations, the FEHB enrollments of employees who separate from service after meeting the MRA plus 10 requirements for an immediate annuity but postpone receipt of annuity must be terminated. These individuals have the same 31-day extension of coverage and right to convert to nongroup coverage as any other employees whose enrollments terminate upon separation. Effective January 1, 1990, they will also be subject to title II of Pub. L. 100-654, Provisions Relating to Temporary Continuation of Coverage for Certain Individuals. (See OPM's interim regulations published in the **Federal Register** (54 FR 52333) on December 21, 1989.) When their annuity commences they may reenroll in an FEHB plan. The reenrollment takes effect on the first day of the month after the month in which OPM receives the health benefits registration form or on the commencing date of annuity, whichever is later.

Former spouses of employees who separate from service and qualify for an immediate annuity under the MRA plus 10 provision are eligible for FEHB under the same circumstance as other former spouses as provided in part 890, subpart H. Because the separated employee is eligible to receive an immediate annuity at any time after separating from service, OPM is the employing office for the former spouse if the divorce occurs after the employee separates from service but before he or she applies for an annuity.

In addition, § 890.101(a)(2) is being revised to correct a minor typographical error.

Survivor Benefits

These regulations also amend FERS regulations to protect the survivors of former employees who separate from covered positions with title to an immediate annuity and who postponse filing the retirement application. A new § 841.204 provides that, for purposes of determining eligibility for survivor benefits, former employees who meet the age and service requirements for an immediate MRA plus 10 annuity when they separate from service, but who die before actually filing an application, are deemed to have applied for their annuities. A deemed application is necessary to clarify that a surviving spouse of one of these former employees is eligible for survivor benefits as the survivor of an annuitant.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. These interim regulations merely clarify the retirement and insurance status of individuals (and their surviving spouses) who qualify for certain retirement benefits under Pub. L. 99-335, which was effective January 1, 1987.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects

5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

5 CFR Parts 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Life insurance, Health insurance.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR parts 841, 870, 871, 872, 873, and 890 as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for subpart B of part 841 continues to read as follows:

Authority: 5 U.S.C. 8461.

2. Section 841.204 is added to read as follows:

§ 841.204 Deemed application to protect survivors.

(a) A former employee is deemed to have filed an application for annuity if the former employee—

(1) Was not reemployed in a position subject to FERS under subpart A of part 842 of this chapter on the date of death;

(2) Dies after separation from Federal service but before actually filing an application for benefits; and

(3) At the time of separation from Federal service, was eligible for an immediate annuity under § 842.204(a)(1) and was eligible to elect to postpone the commencing date of that annuity under § 842.204(c) of this chapter.

(b) A former employee who is deemed to have filed an application under paragraph (a) of this section is considered to have died as a retiree.

(c) For purposes of determining the amount of a survivor annuity, the annuity of a former employee who, under paragraph (a) of this section, is deemed to have filed an application is computed as though the commencing date were the first day of the month after the former employee's death.

PART 870—BASIC LIFE INSURANCE

3. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

4. In § 870.103, the definition of "immediate annuity" is added to read as follows:

§ 870.103 Definitions.

* * * * *

"Immediate annuity" means (1) an annuity that begins to accrue no later than one month after the date the insurance would otherwise stop and (2) an annuity under § 842.204(a)(1) of this chapter for which the commencing date has been postponed under § 842.204(c) of this chapter.

* * * * *

5. In § 870.401, a new sentence is added to the end of paragraph (g)(1), to read as follows:

§ 870.401 Withholdings and contributions.

* * * * *

(g)(1) * * * For purposes of this paragraph, an individual who separates from service after meeting the requirements for an immediate annuity under 5 U.S.C. 8412(g) is deemed to retire on the day before the annuity commences.

* * * * *

6. In § 870.501, paragraphs (b), (c), (d), and (e) are redesignated as paragraphs (c), (d), (e), and (f), and a new paragraph (b) is added to read as follows:

§ 870.501 Termination and conversion of insurance coverage.

* * * * *

(b) The basic insurance of an employee who separates from service upon meeting the requirements for an immediate annuity under § 842.204(a)(1)

of this chapter and who postpones receipt of annuity as provided by § 842.204(c) of this chapter, stops on the date of separation from the service, subject to a 31-day extension of basic life insurance coverage.

* * * * *

7. In § 870.601, paragraph (d) is removed and paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f), and paragraph (a)(4) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 870.601 Eligibility for life insurance.

(a) * * *

(4) * * * If an individual whose basic life insurance coverage terminated as provided by § 870.501(b) has exercised the conversion right, and his or her terminated group coverage resumes as provided by § 870.604, the conversion policy must be terminated and the premiums paid for coverage under the conversion policy after the date coverage resumed must be refunded to the insured.

* * * * *

8. Section 870.604 is added to read as follows:

§ 870.604 MRA-plus-10 annuitants.

The basic life insurance of an individual whose coverage terminated under § 870.501(b), and who meets the requirements for continuing basic life insurance after retirement as stated in § 870.601(a), resumes on the commencing date of annuity or on the date the application for annuity is received by OPM, whichever is later. The individual must file an election as provided in § 870.601 (b) and (c) to be received by OPM within 60 days after OPM mails a notice of insurance eligibility and election form.

PART 871—STANDARD OPTIONAL LIFE INSURANCE

8a. The authority citation for part 871 continues to read as follows:

Authority: 5 U.S.C. 8716.

9. Section 871.606 is added to read as follows:

§ 871.606 MRA-plus-10 annuitants.

That standard optional life insurance of an individual whose coverage terminated under § 871.501(a), and who meets the requirements for continuing standard optional insurance after retirement under § 871.501(b), resumes on the commencing date of annuity or on the date the application for annuity is received by OPM, whichever is later.

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

9a. The authority citation for part 872 continues to read as follows:

Authority: 5 U.S.C. 8716.

10. Section 872.606 is added to read as follows:

§ 872.606 MRA-plus-10 annuitants.

The additional optional life insurance of an individual whose coverage terminated under § 872.501(a), and who meets the requirements for continuing additional optional insurance after retirement under § 872.501(b), resumes on the commencing date of annuity or on the date the application for annuity is received by OPM, whichever is later.

PART 873—FAMILY OPTIONAL LIFE INSURANCE

10a. The authority citation for part 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

11. Section 873.606 is added to read as follows:

§ 873.606 MRA-plus-10 annuitants.

The family optional life insurance of an individual whose coverage terminated under § 873.501(a), and who meets the requirements for continuing family optional insurance after retirement under § 873.501(b), resumes on the commencing date of annuity or on the date the application for annuity is received by OPM, whichever is later.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

12. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100-654; § 890.803 also issued under sec. 303 of Pub. L. 99-569, 100 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744.

13. In § 890.101, the definition of "employing office" is amended by revising paragraphs (a) (2) and (3), by reserving a new paragraph (a)(7), and by adding paragraph (a)(8); and the definition of "immediate annuity" is amended by adding a sentence at the end to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

"Employing office" * * *

(2) For a former spouse of an annuitant whose marriage dissolved after the employee's retirement and who has entitlement to receive future annuity payments under sections 8341(h), 8345(j), 8445, or 8467 of title 5, United States Code, "employing office" is the office that has the authority to approve payment of annuity for the annuitant or former spouse concerned.

(3) For a former spouse of a current employee, and a former spouse of an annuitant or separated employee having title to a deferred annuity or to an immediate annuity under 5 U.S.C. 8412(g), whose marriage dissolved during the employee's Federal service, "employing office" is the agency that employed the employee or annuitant at the time the marriage was dissolved.

* * * * *

(7) [Reserved]

(8) For a former spouse of an employee who separated from service after qualifying for an immediate annuity under 5 U.S.C. 8412(g), whose marriage dissolves after the employee separated from service but before the date the separated employee's annuity commences, and who is entitled to continued coverage under Subpart H of this part, "employing office" is the office that has the authority to approve payment of annuity for the annuitant or former spouse concerned.

* * * * *

"Immediate annuity" * * * For an individual who separates from service upon meeting the requirements for an annuity under § 842.204(a)(1) of this chapter, "immediate annuity" includes an annuity for which the commencing date is postponed under § 842.204(c).

* * * * *

14. In § 890.301, a new paragraph (bb) is added to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(bb) *Reenrollment upon application for postponed MRA-plus-10 annuity.* A former employee who meets the requirements for an immediate annuity under 5 U.S.C. 8412(g) and for continuation of coverage under 5 U.S.C. 8905(b) at the time of the separation and whose enrollment is terminated under § 890.304(a)(2) may register to enroll in a health benefits plan under this part within 60 days after OPM mails the former employee a notice of eligibility and the appropriate registration form. If such former employee dies before the end of the 60-day election period in the preceding sentence, a survivor who is entitled to a survivor annuity may register to enroll in a health benefits plan under this part within 60 days after OPM mails the survivor employee a notice of eligibility and the appropriate registration form.

15. In § 890.304, paragraphs (a) (2), (3), (4), and (5) are redesignated as paragraphs (a) (3), (4), (5), and (6), and a new paragraph (a)(2) is added to read as follows:

§ 890.304 Termination of enrollment.

(a) * * *

(2) The last day of the pay period in which he or she separates after meeting the requirements for an immediate annuity under § 842.204(a)(1) of this chapter, but postpones receipt of annuity as provided by § 842.204(c).

* * * * *

16. In § 890.306, paragraph (h) is redesignated as paragraph (i), and a new paragraph (h) is added to read as follows:

§ 890.306 Effective dates.

* * * * *

(h) *Reenrollment upon application for postponed MRA-plus-10 annuity.* The effective date of a reenrollment under § 890.301(bb) is the first day of the month following the month in which OPM receives the registration form or on the commencing date of annuity, whichever is later. The effective date of a survivor's enrollment under § 890.301(bb) is the first day of the month following the month in which OPM receives the registration form.

* * * * *

[FR Doc. 90-661 Filed 1-10-90; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-78-110]

Energy Conservation Program for Consumer Products; Final Rulemaking Regarding Regulations Related to Energy Conservation Standards for Consumer Products; Correction

AGENCY: Department of Energy.

ACTION: Final rule; correction.

SUMMARY: In the rule document published in the **Federal Register** of February 7, 1989 (54 FR 6062), please make the following correction. On page 6074, the amendatory language for § 430.2 should read as set forth below:

3. Section 430.2 is amended by revising the definitions of "Act", "Furnace", "Secretary", and "Water heater"; removing the definitions of "Administrator" and "Energy efficiency standard"; inserting the word "energy" in place of the last five words in the definition for "Packaged terminal air conditioner"; and adding the following definitions in alphabetical order.

EFFECTIVE DATE: March 9, 1989.

FOR FURTHER INFORMATION CONTACT: Michael J. McCabe, (202) 586-9127.

Issued in Washington, DC, December 29, 1989.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 90-589 Filed 1-10-90; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 90-1]

Operating Subsidiaries, Other Equity Investments, Conversions, Changes in Equity Capital, Subordinated Debt

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is amending its regulations governing operating subsidiaries to set forth its existing policies on imposing conditions in approvals of national bank operating subsidiaries. In addition, the OCC is adding a new section to part 5 which requires national banks to notify the OCC of plans to make certain equity investments authorized by statute. It is also amending regulations governing conversions, changes in equity capital, and issuance of subordinated debt to provide time frames for consummation following preliminary approval. This action will assist the OCC in its obligations regarding the safety and soundness of the national banking system and improve OCC efficiency.

EFFECTIVE DATE: February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila G. Ogilvie, National Bank Examiner/Senior Licensing Policy and Systems Analyst, Bank Organization and Structure (202) 447-1184, or Linda A. Gottfried or Christopher Manthey, Senior Attorneys, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements changes proposed in a notice of proposed rulemaking, published in the **Federal Register** on January 27, 1989 (54 FR 4038) ("NPRM"), and carries out the purposes of the OCC's Corporate Activities Review and Evaluation ("CARE") program. The CARE program was described in the **Federal Register** of October 15, 1980 (45 FR 68586).

Discussion

Operating Subsidiaries

The OCC is adopting the proposed amendment to paragraph (d) of § 5.34 as set forth in the NPRM, with minor technical changes. This final rule establishes by regulation the OCC's policy regarding conditional approvals of operating subsidiary notifications. It also reorganizes that paragraph.

Two comments pertaining to this proposed amendment were received from representatives of various insurance industry associations. In summary, these commenters believe that the OCC may not give unconditional approval to an operating subsidiary notification when the notification raises what the commenters characterize as substantial questions under the Bank Holding Company Act ("BHCA") without resolution of those questions by the Board of Governors of the Federal Reserve System ("FRB"). It is suggested that OCC regulations should set forth explicitly that, in determining whether the activities described in an operating subsidiary notification exceed those legally permissible for a national bank operating subsidiary, the OCC will consider the restrictions of the BHCA.

These views previously were set forth in litigation against the OCC regarding an approval for a national bank to offer municipal bond insurance through an operating subsidiary. *See American Insurance Association* v. *Clarke*, 656 F. Supp. 404 (D.D.C. 1987), *rev'd in part*, No. 87-5128, (D.C. Cir. 1988), *modified*, 865 F.2d 278 (D.C. Cir. 1989). There, without resolving these BHCA issues, the district court relied on FRB regulation 12 CFR 225.22(d)(1), which, pursuant to section 4(c)(5) of the BHCA, permits bank holding company-owned national banks to own operating subsidiaries as permitted by the OCC without obtaining approval from the FRB. The court of appeals initially reversed the district court opinion on this issue but later vacated aspects of its decision relating to the BHCA.

A national bank's decision to carry on activities in an operating subsidiary as opposed to the bank itself is a business decision. National bank operating subsidiaries are treated under the National Bank Act, 12 U.S.C. 1, et seq.,

as part of the bank itself. The subsidiaries' activities are limited to activities permissible for the parent national bank. 12 CFR 5.34(c). They are subject to all banking law restrictions applicable to the parent national bank; their books are consolidated with those of the bank; and they are subject to examination and supervision by the OCC along with the bank. *See* 12 CFR 5.34(d). Thus, to determine whether a national bank operating subsidiary legally may conduct a particular activity, the OCC is governed by the rules applicable to national banks themselves. Once the OCC has determined that an activity is legally permissible for national banks, the only remaining issues relevant to the OCC's action on an operating subsidiary application relate to specific supervisory and/or policy considerations.

Therefore, the OCC finds the commenters' position to be without legal basis. In the OCC's view, no modification of the proposed rule is necessary.[1]

The final rule has been revised in light of the recent enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, with the addition of a specific reference to 12 U.S.C. 1818(i) in § 5.34(d)(4). Title IX of FIRREA permits the imposition of civil money penalties for violations of, among other things, any regulation or any condition imposed in writing in connection with the grant of any application or other request.

Equity Investments

One comment was received concerning proposed § 5.36, "Other Equity Investments." The commenter believed that the proposed regulation had the potential to impinge upon the regulatory jurisdiction of the Farm Credit Administration.

This regulation would not affect the substantive activities of agricultural credit corporations. It merely reserves the right of the OCC to supervise national bank investments in such corporations. Since the National Bank Act makes the OCC the primary regulator of national banks, we do not believe that the proposed regulation would infringe upon the jurisdiction of any other agency. The Farm Credit Administration did not comment on the proposed rule.

Minor technical changes have been made to the final rule. In addition, the final rule has been revised in light of the recent enactment of FIRREA. The proposed rule referred to section 408(m) of the National Housing Act. However, FIRREA repealed that section and reenacted substantially the same language as section 13(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(k). In addition, the phrase "insured institution," which was used in section 408(m), has been replaced by "savings association" in section 13(k). Therefore, the "definition" paragraph of the proposed rule is now obsolete and has been eliminated, and following paragraphs have been relettered accordingly. Paragraph (d)(1) of § 5.36, regarding notification of planned equity investments, has been revised slightly to conform with these changes. Also, specific reference to 12 U.S.C. 1818(i) has been added to paragraph (d)(3).

Time Frames

OCC received no comments on its proposal to limit the time period between OCC approval of conversations, changes in equity capital, and subordinated debt applications and the consummation of these transactions. Thus, these changes are implemented as proposed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small banks.

Executive Order 12291

The OCC has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this final rule: (1) Would not have an annual effect on the economy of $100 million or more; (2) would not result in a major increase in the cost of bank operations or government supervision, nor would it be likely to generate substantially higher payments for borrowers, and (3) would not have a significant adverse impact on competition, employment, investment, productivity, innovation, or competition with foreign-based entities.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. [OMB Control No. 1557-0014].

List of Subjects in 12 CFR Part 5

National banks, Corporate activities, Operating subsidiaries, Conversions, Equity capital, Equity investments, Subordinated debt, Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Authorities and Issuance

For the reasons set out in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for Part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.;* 12 U.S.C. 93a.

2. In § 5.24, paragraph (c)(4) is revised to read as follows:

§ 5.24 Conversion.

* * * * *

(c) * * *

(4) *Commencement of business as national bank.* When all statutory requirements and other conditions have been met, the Office will issue a charter certificate. The charter will provide that the institution is authorized to commence business as a national bank as of a specified date. Conversions must occur within six months of preliminary approval. An extension of this period is generally not granted; however, in the event of extraordinary circumstances, a request for extension may be submitted to the appropriate district office or Multinational Banking in Washington, DC.

* * * * *

3. In § 5.34, paragraphs (d)(1)(ii) and (d)(1)(iii) are revised, and new paragraphs (d)(1)(iv) and (d)(4) are added to read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(d) * * *

(1) * * *

(ii) The bank may acquire or establish an operating subsidiary or perform new activities in an existing operating subsidiary, after 30 days from the date the Office receives the bank's letter, unless otherwise notified by the Office, or in less than 30 days if so notified by the Office. The Office may extend the 30-day period if it determines that the

[1] The views expressed above are set forth more fully in comments to the FRB submitted by the OCC in response to the FRB's proposed recision of 12 CFR 225.22(d)(2)(ii), a regulation exempting from FRB prior approval the establishment or acquisition by bank holding company-controlled state banks of subsidiaries engaged in activities permitted to state banks under state law. *See* Letter from Dean S. Marriott, Senior Deputy Comptroller for Bank Supervision Operations to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System (April 28, 1989).

bank's letter raises issues which require additional information or additional time for analysis. If the 30-day period is extended, the bank may acquire or establish an operating subsidiary, or may perform new activities in an existing operating subsidiary, only upon written approval by the Office.

(iii) The Office reviews the bank's proposal to determine if the proposed activities exceed those legally permissible for a national bank's operating subsidiary and to ensure that the proposal is consistent with prudent banking principles and Office policy. The Office reserves the right to grant written approval subject to conditions when there are legal or supervisory concerns.

(iv) A bank may acquire or establish an operating subsidiary without notifying the Office provided:

(A) The activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary;

(B) The establishment or acquisition of the prior subsidiary was considered permissible by the Office;

(C) The activities in which the new subsidiary will engage continue to be considered legally permissible by the Office; and

(D) The activities will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank.

* * * * *

(4) *Conditions imposed in writing.* In permitting a bank to acquire or establish an operating subsidiary or perform new activities in an existing operating subsidiary, the Office may impose one or more legal or supervisory conditions in connection with its approval. Any such condition shall be enforceable as a condition imposed in writing by the Office in connection with the granting of a request by a bank within the meaning of 12 U.S.C. 1818 (b) or (i).

4. A new § 5.36 is added to subpart C to read as follows:

§ 5.36 Other equity investments.

(a) *Authority.* 12 U.S.C. 24(7), 93a.

(b) *Rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 of this part do not apply to national bank notifications of other equity investments.

(c) *General.* National banks are authorized to make equity investments in various types of business organizations by 12 U.S.C. 24(Seventh) and other statutes.

(d) *Policy and procedure*—(1) *Notification.* A national bank intending to make an equity investment, pursuant to statutory authorization, in an agricultural credit corporation, a savings association eligible to be acquired under section 13 of the Federal Deposit Insurance Act, or other equity investment which may be authorized by statute after February 12, 1990, shall submit a letter to the appropriate Deputy Comptroller. The letter must detail the proposed activities of the business in which the bank plans to invest. It must also discuss the financial and managerial resources and future prospects of that business, and must describe the financial capability of the bank to make the proposed investment. The Office may request any additional information it considers necessary to make a decision regarding the permissibility of the proposed investment.

(2) *Review period.* The bank may make the proposed investment after 30 days from the date the Office receives the bank's letter unless notified to the contrary, or in less than 30 days if notified by the Office. The Office will utilize the 30-day period to review the bank's proposed investment. The 30-day period may be extended upon notice to the bank if the bank's notification raises issues that require additional information or time for analysis by the Office. If the 30-day period is extended, the bank may make the proposed investment only upon written approval by the Office.

(3) *Conditions imposed in writing.* The Office may impose legal or supervisory conditions in connection with its approval. Any such condition shall be enforceable as a condition imposed in writing by the OCC in connection with the granting of a request by a bank within the meaning of 12 U.S.C. 1818 (b) or (i).

(Approved by the Office of Management and Budget under control number 1557-0014)

5. In § 5.46, a new paragraph (g)(4) is added to read as follows:

§ 5.46 Changes in equity capital.

* * * * *

(g) * * *

(4) Changes in equity capital must occur within 12 months of preliminary approval. An extension of this period is generally not granted; however, in the event of extraordinary circumstances, a request for extension may be submitted to the appropriate district office or Multinational Banking in Washington, DC.

* * * * *

6. In § 5.47, a new paragraph (g)(3) is added to read as follows:

§ 5.47 Subordinated debt as capital.

* * * * *

(g) * * *

(3) Subordinated debt must be issued within 12 months of preliminary approval. An extension of this period is generally not granted; however, in the event of extraordinary circumstances, a request for extension may be submitted to the appropriate district office or Multinational Banking in Washington, DC.

* * * * *

Dated: January 5, 1990.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 90-573 Filed 1-10-90; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-266-AD; Amdt. 39-6466]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 series airplanes, which requires an inspection for improperly installed wiring and plumbing in the right engine fire protection system, and modification, if necessary. This amendment is prompted by a report of improperly installed plumbing on a Model ATR42 series airplane, and a report that potential exists for improperly installed wiring on other airplanes of this model. This condition, if not corrected, could result in severe damage to the airplane in the event of an engine fire.

EFFECTIVE DATE: January 23, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, 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. Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction General 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 Aerospatiale Model ATR42 series airplanes. There has been a report that, during an inspection of an Aerospatiale Model ATR42 series airplane being returned to service following repair, the plumbing for the engine fire protection system was found to be improperly installed. It was also noted that the potential exists for the wiring to be reversed on other airplanes of this model. In either case, following crew action when an engine fire is detected, the fire extinguisher fluid would be routed to the wrong engine, which could lead to an uncontrolled fire in the engine where the fire initiated. This condition, if not corrected, could result in severe damage to the airplane in the event of an engine fire.

Aerospatiale has issued All Operators Message DS/E 20/89, dated December 4, 1989, which describes procedures to inspect for improperly installed wiring and plumbing in the right engine fire protection system, and modification, if necessary. The DGAC has classified this message as mandatory.

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 situation is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires an inspection for improperly installed wiring and plumbing in the right engine fire protection system, and modification, if necessary, in accordance with the Aerospatiale message described above.

This is considered to be interim action. The manufacturer is currently developing a modification to preclude the type of event which prompted this action. Once this modification is developed, the FAA may consider further rulemaking action to remove the requirement for inspections required immediately following any maintenance action which could result in mis-wiring and/or mis-plumbing.

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 transporation, 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:

Aerospatiale: Applies to Model ATR42 series airplanes, Serial Numbers 003 through 100, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished; and thereafter, compliance is required immediately following any maintenance action which could result in mis-wiring and/or mis-plumbing.

To detect incorrectly installed fire protection system plumbing and/or wiring, accomplish the following:

A. Conduct an inspection of the right engine fire extinguishing system wiring and plumbing in accordance with the Aerospatiale All Operators Information Message DS/E 20/89, dated December 4, 1989. If any pipes or electrical connectors are improperly installed, prior to further flight, correct the installation in accordance with the Aerospatiale message.

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, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

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 information from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, 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.

This amendment becomes effective January 23, 1990.

Issued in Seattle, Washington, on December 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-667 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-155-AD; Amdt. 39-6468]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to certain Airbus Model A300 series airplanes, which requires repetitive eddy current inspections of the left- and right-hand lower flanges of gantries 1 to 5 between Frame 47 and Frame 54, and repair, if necessary. This amendment is prompted by results of the manufacturer's full-scale fatigue testing, which revealed cracks in the lower flanges beteen Frame 47 and Frame 54. Undetected fatigue cracks could lead to reduced structural capability of the fuselage.

EFFECTIVE DATE: February 12, 1990.

ADDRESSES: 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: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive eddy current inspections of the left- and right-hand lower flanges of gantries 1 to 5 between Frame 47 and Frame 54, and repair, if necessary, was published in the **Federal Register** on September 11, 1989 (54 FR 37474).

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.

One commenter supported the rule.

Another commenter noted that the service bulletin does not have an equivalency provision which allows operators to purchase equivalent parts manufactured in the United States, and once the rule is adopted, the operator must then request prior approval from the FAA to install equivalent parts under the alternate means of compliance provision. The commenter recommended that the FAA add a new provision which would allow operators to make minor changes in the accomplishment instructions of an AD without prior approval from the FAA. Such deviations could be approved by the manufacturer's Designated Engineering Representative (DER) or the appropriate FAA Principal Maintenance Inspector (PMI). The FAA does not concur with the commenter's suggestion. Where parts equivalency (or repair) data doesn't exist, it is essential that the FAA have feedback as to the type of parts being installed (or repairs being made), and the FAA has determined it is appropriate that the Manager of the Standardization Branch approve any such deviations to AD requirements. Given that possible new relevant issues might be disclosed during this process, it is imperative that the FAA have such feedback. Only by reviewing deviation approvals, can the FAA be assured of this feedback and of the adequacy of the installed parts.

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.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 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 $31,680.

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:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-53-266, dated March 13, 1989, certificated in any category. Compliance is required within 30 days after the effective date of this AD or upon the accumulation of 28,500 landings, whichever occurs later, unless previously accomplished; and thereafter at intervals not to exceed 4,500 landings.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Perform eddy current inspection of the left-hand and right-hand lower flanges of gantries 1 to 5, between Frame 47 and Frame 54, in accordance with Airbus Industrie Service Bulletin A300-53-266, dated March 13, 1989. If cracks are found, repair prior to further flight, in accordance with the service bulletin.

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, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

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 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 at the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 12, 1990.

Issued in Seattle, Washington, on December 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-668 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-149-AD; Amdt 39-6470]

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 all Boeing Model 727 series airplanes, which requires the addition of a cotter pin to the landing gear control selector valve actuator arm. This proposal is prompted by one report of an all wheels-up landing, due to a nut missing from the landing gear control selector valve actuator arm installation. This condition, if not corrected, could result in additional wheels-up landings.

EFFECTIVE DATE: February 12, 1990.

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. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. 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 727 series airplanes, which requires installation of a self-locking castellated nut and cotter pin on the landing gear control valve actuator arm, was published in the Federal Register on August 24, 1989 (54 FR 35195).

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

One commenter stated that a reported lead time of 300 days for spare parts is incompatible with the proposed 3,000 flight cycle compliance time, and requested that the compliance time be extended accordingly. The FAA does not concur. The manufacturer has advised the FAA that it has increased its spare parts inventory to support this AD. Therefore, the FAA does not consider parts availability to be a current problem.

Two commenters stated that tooling requirements are not defined in the applicable manufacturer's service bulletin. Both commenters stated that the required machining tolerances cannot be accomplished, on the airplane, without tooling. The FAA agrees with this comment. Since issuance of the NPRM, the FAA has reviewed and approved Boeing Service Bulletin 727-32-0372, Revision 2, dated December 14, 1989, which includes suggested tooling to allow machining on the airplane. In addition, the required machining tolerances listed in the service bulletin have been increased. The AD has been revised to allow modification in accordance with this service bulletin.

One commenter requested that the requirement for a penetrant inspection of the cotter pin hole be eliminated because it is not practical. This commenter stated that both the actuator arm and splined shaft are made of aluminum alloy and are easily machined without exposing the metal to damage which would require a penetrant inspection. Since the cotter pin hole is very lightly loaded, the FAA concurs with the request. The final rule has, in effect, been revised to delete this requirement since the applicable revised service bulletin has deleted this procedure from the accomplishment instructions.

One commenter requested the requirement for primer in the cotter pin hole be eliminated because the primer would fill the small hole. The FAA does not agree with this request because the primer is required for corrosion protection. However, to eliminate the problem of plugging the hole, the revised service bulletin now specifies that installation of the cotter pin is to be accomplished when the primer is wet.

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 with the changes noted above. These changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Parts cost is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $68,580.

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 all Model 727 series airplanes certificated in any category. Compliance required within the next 3,000 landings after the effective date of this AD, unless previously accomplished.

To prevent nose and main landing gear failure to extend properly due to a disconnect of the landing gear control selector valve actuator arm, accomplish the following:

A. Modify the selector valve actuator arm and splined shaft, in accordance with Figure 1. of Boeing Service Bulletin 727-32-0372, dated May 11, 1989, or Revision 2, dated December 14, 1989.

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 February 12, 1990.

Issued in Seattle, Washington, on December 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-666 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-41-AD; Amdt. 39-6469]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 series airplanes, which currently requires external eddy current inspections for cracks in fuselage skin and certain longerons on airplanes that have accumulated more than 45,000 landings. This amendment reduces the initial inspection compliance threshold to 30,000 landings, and adds a requirement to perform internal visual inspections of certain longerons. This amendment is prompted by additional reports of cracked or failed skin and longerons on airplanes with as few as 32,724 landings. This condition, if not corrected, could result in degradation of the structural integrity of the fuselage and lead to rapid decompression of the airplane.

EFFECTIVE DATE: February 12, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60). This information 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.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5323.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 88-24-08, Revision 1 (R1), Amendment 39-6071 (54 FR 1675; January 17, 1989), applicable to McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 series airplanes, to require internal and external inspections of fuselage skin and longerons in the overwing area on airplanes with 30,000 or more landings, was published in the **Federal Register** on May 30, 1989 (54 FR 22911).

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

The Air Transport Association (ATA), on behalf of its member operators, commented that the proposed rule would unduly penalize operators who have previously performed an internal inspection for longerons 7 left through 7 right, since the proposed AD would require an internal inspection of longerons 10 left through 10 right. This requirement would, in effect, require certain operators to perform a second internal inspection in as few as 500 cycles since the first inspection. The FAA agrees. In order to relieve this burden while still maintaining safe inspection parameters, the final rule has been revised to provide an optional external eddy current inspection every 2,500 landings until compliance with the full internal inspection requirements is accomplished prior to the accumulation of 7,500 landings after the effective date of this amendment.

Two commenters suggested that it is not necessary to perform both external and internal repetitive inspections and requested that the AD be revised to require only one type of repetitive inspection. The FAA agrees. The FAA has determined that an external eddy current inspection from longeron 10 left through 10 right at a more frequent interval will provide a level of safety equivalent to that provided by combined internal and external inspections of this same area at the extended interval. Paragraph E. of the final rule has been revised accordingly to provide this optional repetitive inspection schedule.

One commenter stated that the AD should incorporate terminating action to eliminate the requirement for repetitive inspections. The FAA agrees. The FAA has reviewed McDonnell Douglas Service Rework Drawing SR09530132 and has determined that accomplishment of the rework procedure described in Revision B of that drawing constitutes terminating action for the repetitive inspection requirements of this amendment. The final rule has been revised accordingly.

Since issuance of the Notice, the FAA has reviewed and approved McDonnell Douglas Service Bulletin A53-230, Revision 3, dated September 28, 1989. This revision to the service bulletin is essentially identical to Revision 2 (which was referenced in the Notice), but adds instructions for fabrication of rework parts. The final rule has been revised to cite this latest revision as the applicable service document.

Paragraphs A. and B. of the final rule have been revised to clarify that the initial external eddy current inspections must be accomplished using both low and high frequency eddy current inspection techniques, as specified in the applicable service bulletin.

In addition, as stated in the preamble to the NPRM, one purpose of this action was to lower the initial inspection threshold to "prior to the total accumulation of 30,000 landings." As proposed, however, this reduction would apply only to airplanes that had accumulated at least 30,000 landings as of the effective date of the AD. Since the FAA's intent is to lower the threshold for all airplanes, regardless of when they reach that threshold, Paragraph B. has been revised to require inspections "prior to the accumulation of 30,000 landings or within 90 days after the effective date of this amendment, whichever occurs later."

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 with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 920 Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 578 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 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 $2,312,000.

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 amending Amendment 39-6108 (54 FR 1675; January 17, 1989) as follows:

McDonnell Douglas: Applies to Model DC-9 -10, -20, -30, -40, -50, and C-9 (Military) series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent fatigue cracking and subsequent failure of the fuselage skin or longerons, accomplish the following:

A. Prior to the accumulation of 45,000 landings, or within 30 days after January 28, 1989, (the effective date of Amendment 39-6108), whichever occurs later, unless accomplished within the last 2,500 landings, perform initial external low and high frequency eddy current inspections of the fuselage skin and longerons from longeron 7 left through 7 right, in accordance with the accomplishment instructions of McDonnell Douglas DC-9 Alert Service Bulletin A53-230, Revision 3, dated September 28, 1989, within the range of fuselage stations for the particular series airplanes as specified in Table 1 of the service bulletin.

Note: Inspections performed in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A53-230, N/C, dated November 2, 1988, Revision 1, dated December 22, 1988, or Revision 2, dated April 21, 1989, meet the requirements of this paragraph.

B. Prior to the accumulation of 30,000 landings, or within 90 days after the effective date of this amendment, whichever occurs later, unless accomplished within the last 2,500 landings, perform initial external low and high frequency eddy current inspections of the fuselage skin and longerons from longeron 7 left through 7 right, in accordance with the accomplishment instructions of McDonnell Douglas DC-9 Alert Service Bulletin A53-230, Revision 3, dated September 28, 1989, within the range of fuselage stations for the particular series airplanes as specified in Table 1 of that Service Bulletin.

Note: Inspections performed in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A53-230, N/C, dated November 2, 1988; Revision 1, dated December 22, 1988; or Revision 2, dated April 21, 1989; meet the requirements of this paragraph.

C. Prior to the accumulation of 2,500 landings after the accomplishment of the external inspections in accordance with paragraph A. or B., above, perform an aided visual inspection of the longerons from longeron 10 left through 10 right from inside the fuselage, in accordance with the accomplishment instructions of McDonnell Douglas DC-9 Alert Service Bulletin A53-230, Revision 3, dated September 28, 1989, within the range of fuselage stations for the particular series airplanes as specified in Table 2 of that Service Bulletin.

D. As an option to the initial visual inspections required by paragraph C., above, for airplanes that have previously accomplished an internal visual inspection of only longerons 7 left through 7 right prior to the effective date of this amendment: Prior to the accumulation of 2,500 landings after that internal visual inspection, perform an external high frequency eddy current inspection of longerons 8 left through 10 left, and 8 right through 10 right, within the range of fuselage stations for the particular series airplanes, as specified in Table 2 of McDonnell Douglas DC-9 Alert Service Bulletin A53-230, Revision 3, dated September 28, 1989. Repeat this external eddy current inspection at intervals not to exceed 2,500 landings until the internal visual inspection (of longerons 10 left through 10 right) required by paragraph C., above, is accomplished prior to the accumulation of 7,500 landings after the effective date of this amendment.

E. Except as provided by paragraph D., above, conduct repetitive inspections according to either paragraph E.1. or E.2., below:

1. Repeat the external eddy current and internal visual inspections as required by paragraphs A., or B., and C. above, at intervals not to exceed 5,800 landings; or

2. Repeat the external eddy current inspections as required by paragraph A. or B., above, from longerons 10 left through 10 right at intervals not to exceed 2,500 landings.

F. If cracks are detected, prior to further flight, repair in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A53-230, Revision 3, dated September 28, 1989. If Option II, Condition 2, of the Service Bulletin is selected, accomplish removal of interim repair doubler(s) and accomplish permanent longeron repair(s) within 2,500 landings after installation of the interim repair doublers.

G. Completion of the rework procedure defined in McDonnell Douglas Service Rework Drawing SR09530132, Revision B, dated July 28, 1989, constitutes terminating action for the repetitive inspection requirements of this AD.

H. 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, FAA, Northwest Mountain Region.

I. 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, CI-HCO (54-60). 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 39-6108, AD 88-24-08-R1.

This amendment becomes effective February 12, 1990.

Issued in Seattle, Washington, on December 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-663 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-20-AD; Amdt. 39-6471]

Airworthiness Directives; deHavilland Models DHC-2 Mk. I (L-20A, YL-20, U6, U-6A) and DHC-2 Mk. II Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to deHavilland Models DHC-2 Mk. I and DHC-2 Mk. II airplanes, which supersedes AD 54-11-01, and requires inspections for cracks and distorted rivets at the horizontal tailplane to fuselage front attachment brackets and replacement of these brackets if cracked. This action extends the serial number effectivity of the AD and introduces additional modifications for these airplanes. This action is prompted by new service information from the manufacturer which will prevent failure of these brackets and the resultant loss of the airplane.

DATES: Effective February 13, 1990.

Compliance: As prescribed in the body of the AD.

ADDRESSES: deHavilland Service Bulletin (S/B) No. 2/42, Revision C, dated February 2, 1989, applicable to this AD, may be obtained from Boeing of Canada Ltd., deHavilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD superseding AD 54-11-01 and requiring inspections for cracks and distorted rivets at the horizontal tailplane to fuselage front attachment and replacement, as necessary, on certain deHavilland Models DHC-2 Mk. I and DHC-2 Mk. II airplanes was published in the **Federal Register** on September 11, 1989 (54 FR 37476). The proposal was to supersede AD 54-11-01 and require initial and repetitive inspections for cracks in the horizontal tailplane to fuselage Pre-Modification No. 2/1338 attachment brackets, P/N C2-FS-543A and P/N C2-FS-544A, and distorted rivets in the brackets on deHavilland Models DHC-2 Mk. I and DHC-2 Mk. II airplanes. Replacement of cracked brackets and distorted rivets with new brackets, P/N C2FS1589 and P/N C2FS1590, and bolts, AN174-H12A, in Modification No. 2/1338, would be required to be accomplished prior to further flight. Pre-Modification 2/1338 brackets, P/N C2-FS-543A and P/N C2-FS-544A are no longer available. AD 54-11-01 required that the ¼ inch diameter forward attachment bolts must be replaced every 1000 hours time-in-service, and the new AD will continue to require this replacement of these bolts per S/B No. 2/42. The proposal resulted from additional service information developed by the manufacturer after AD 54-11-01 was issued. AD 54-11-01 was issued in 1954 and is applicable to certain serial numbered deHavilland Models DHC-2 Mk. I and DHC-2 Mk. II airplanes, with the exception of the agricultural model. That AD was based on information presented in deHavilland Technical News Sheets (TNS) Nos. 73 and 75, Series B, which specified repetitive inspections for cracks of the tailplane to fuselage front attachment brackets, inspections for distorted rivets therein, and replacement of damaged parts with new parts. Also, the tailplane front attachment bolts were to be replaced at every 1000 hours repetitive inspection.

During production of the Model DHC-2 Mk. I airplanes, the TNS were never updated to include airplanes with serial numbers (S/N) 619 through 1056. It was not until S/N 1057 was produced that Modification No. 2/1338 was incorporated on the production line. This modification involves the installation of thicker brackets and rivets, and eliminates the need for the 1000 hour repetitive inspections.

Consequently, deHavilland issued S/B No. 2/42, dated August 14, 1987, to include airplane S/N 1 through 1056 for the inspections, and to introduce Modification No. 2/1338, or Agriculture Modification 2/984, as applicable, with new replacement brackets for damaged Pre-Mod parts. Revision C to S/B No. 2/42 dated February 2, 1989, was issued to revise Figure 2 and change from AN456AD6-5 and -6 rivets to AN470AD6-5 and -6 rivets.

Transport Canada which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada made this bulletin and the actions recommended therein by the manufacturer mandatory by issuance of Canadian AD CF-54-08R1 to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian 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 Transport Canada combined with 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 has examined the available information related to the issuance of deHavilland S/B No. 2/42, Revision C, dated February 2, 1989, and Canadian AD CF-54-08R1 by Transport Canada, and concluded that the condition addressed by S/B No. 2/42, revision C, dated February 2, 1989, and Canadian AD CF-54-08R1 was an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Accordingly, the FAA proposed an amendment to part 39 of the Federal Aviation Regulations to include an AD on this subject which supersedes AD 54-11-01.

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 except for minor editorial corrections.

The FAA has determined that this regulation involves 166 airplanes at an approximate one time cost of $440 for inspection and replacement of brackets for each airplane, or a total one-time fleet cost of $73,040. A typographical error in the NPRM indicated a bracket replacement cost of $270 instead of $240 per airplane, however, the fleet costs were shown correctly at a total of $73,040. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant financial 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 the provisions of 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

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); 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 54-11-01 with the following new AD:

Dehavilland: Applies to Models DHC-2 Mk. I (including L-20A, YL-20, U-6, and U-6A), and DHC-2 Mk. II (serial numbers 1 through 1056) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD. To ensure the structural integrity of the horizontal tailplane to fuselage front attachment brackets, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS), or prior to the accumulation of 1000 hours TIS, whichever occurs later after the effective date of this AD, unless already accomplished per the requirements of AD 54-11-01, and thereafter at intervals not to exceed 1000 hours TIS:

(1) Inspect attachment brackets, part number (P/N) C2-FS-543A and P/N C2-FS-544A for cracks and distorted rivets in accordance with paragraph 'A' of the "ACCOMPLISHMENT INSTRUCTIONS" in deHavilland Service Bulletin (S/B) No. 2/42, Revision C, dated February 2, 1989.

(2) Prior to further flight replace any distorted rivets as indicated in the above S/B, paragraph 'B', and any cracked brackets as indicated in paragraph 'C' of the Service Bulletin.

(b) At each interval not exceeding 1000 hours TIS since the last bolt replacement, replace all ¼ inch diameter forward attachment bolts on the tailplane front attachment brackets with new bolts, P/N AN174-H12A, in accordance with S/B No. 2/42 Rev C.

(c) The repetitive inspections or modifications in paragraph (a) of this AD are not required on airplanes modified in accordance with deHavilland Modification No. 2/1338, or Agriculture Modification No. 2/984, as applicable.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where the requirements of this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office. All persons affected by this directive may obtain copies of the documents referred to herein upon request to Boeing of Canada, Ltd; deHavilland Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 54-11-01.

Issued in Kansas City, Missouri, on December 28, 1989.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-664 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-159-AD; Amdt. 39-6430]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires that the FAA-approved maintenance inspection program include inspections which will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Supplemental Structural Inspection Document (SSID). As a result of a reassessment of the inspections required for certain SSI's, the Model 747 SSID has been revised by the aircraft's manufacturer to incorporate additional inspections. This amendment requires that operators of the candidate fleet of airplanes adjust their FAA-approved maintenance inspection programs to provide no less than the DTR's listed in the later revision of the SSID. Failure to detect cracks in an SSI would result in a loss of structural integrity.

DATES: Effective February 12, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 12, 1990.

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: Mr. Richard H. Yarges, Airframe Branch, ANM-120S; telephone (206) 431-1925. 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 by revising AD 84-21-02, Amendment 39-4936 (49 FR 48890; November 13, 1984), applicable to Boeing Model 747 series airplanes, to require additional or revised inspections, was published in the **Federal Register** on September 15, 1989 (54 FR 38248).

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

Only one comment was received and it stated no objection to the rule as proposed.

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 115 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 6 operators have 73 airplanes of U.S. registry that will be affected by this AD, that it will take approximately 50 manhours per airplane to accomplish the required actions, and 100 manhours per operator to update its maintenance program. Estimating the average labor cost to be $40 per manhour, the cost to amend the maintenance program will be $24,000 and the cost to accomplish the inspections will be $146,000. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $170,000.

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, Incorporation by reference.

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:

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 AD 84-21-02, Amendment 39-4936 (49 FR 48890; November 13, 1984), to read as follows:

Boeing: Applies to Model 747 series airplanes, certificate in any category, listed in § 3.0 of Boeing Document No. D6-35022, "Supplemental Structural Inspection Document" (SSID), Revision C, dated April 1989.

Compliance is required as indicated in the body of the AD, unless previously accomplished.

To ensure the continuing structural integrity of the total Boeing Model 747 fleet, accomplish the following on the candidate fleet:

A. Within 3 months after the effective date of this amendment, incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required Damage Tolerance Rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6-35022, Revision C, dated April 1989. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and be implemented in accordance with the procedures in §§ 5.0 and 6.0 of the SSID.

B. Cracked structure must be repaired before further flight, in accordance with an FAA-approved method.

C. Aircraft may be ferried to a maintenance base for required repair, in accordance with FARs 21.197 and 21.199.

D. 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.

E. Operators who have acceptably incorporated Boeing Document No. D6-35022, Revision C, dated April 1989, into their approved maintenance program are exempt from the provisions of this AD.

Note: Acceptable incorporation is considered to include the reporting requirements of § 6.0 of the SSID.

The revision to the maintenance program shall include and be implemented in accordance with the procedures specified in Boeing Supplemental Structural Inspection Document (SSID) D6-35022, Revision C, dated April 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected 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; or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

This amendment amends Amendment 39-4936, AD 84-21-02.

Issued in Seattle, Washington, on December 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-669 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-177-AD; Amdt. 39-6472]

Airworthiness Directives; Gulfstream Aerospace Model G-II (1159), G-III (1159A), G-IIB (1159B), and G-IV Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Gulfstream Model G-II, G-III, and G-IIB series airplanes, and to certain Model G-IV series airplanes, which requires repetitive inspections of the takeoff warning systems to ensure proper operation, and repair or modification, if necessary. This amendment is prompted by a recent report of an inoperative takeoff warning system on a Model G-II series airplane, and possible malfunction of the warning system on the Model G-IV series airplane under certain atmospheric conditions. This condition, if not corrected, could result in an airplane taking off in an unsafe takeoff configuration.

DATE: Effective February 13, 1990.

ADDRESSES: The applicable service information may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Williams, ACE-130A; telephone (404) 991-3020. Mailing address: FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations to include an airworthiness directive, applicable to all Gulfstream Model G–II, G–III, and G–IIB series airplanes, and to certain Model G–IV series airplanes, which requires repetitive inspections of the takeoff warning system to ensure proper operation, and repair or modification, if necessary, was published in the **Federal Register** on September 25, 1989 (54 FR 39189).

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

Several commenters supported the rule, but objected to the repetitive inspections since these inspections have been established in their computerized maintenance program or are required as part of their Maintenance Manuals. They further stated that most, if not all, Gulfstream operators have accomplished the initial inspection, so to issue an AD is redundant, unnecessary, and results in an additional administrative burden to the operator. The FAA does not concur. The Gulfstream Customer Bulletin and the operator's maintenance manuals are not mandatory. Therefore, the FAA has determined that this AD is necessary to ensure the accomplishment of the initial inspection and the repetitive inspections on all affected airplanes.

One commenter recommended that the repetitive inspection interval should be changed from every 150 hours time-in-service to 12-month intervals. The commenter further stated that this change should be made considering the varied utilization rates of corporate aircraft, and that historical data reveals lack of problems associated with the takeoff warning system. The FAA does not concur with the request to extend the repetitive inspection interval.

The FAA has determined that the interval proposed is the maximum permissible inspection time allowed without compromising air safety. However, if an operator can provide substantiating data to the FAA that will justify a change in the repetitive inspection interval specified in the AD, and still maintain an acceptable level of safety, that request will be considered in accordance with the provisions of paragraph D. of the final rule.

One commenter recommended repetitive functional checks at 300-hour cycles for the Gulfstream IV series airplanes, rather than an operational check, to allow operators to verify the system's integrity every other inspection cycle. The functional check can be performed by the flight crew quickly and with relative ease, while the operational check is a time consuming procedure that requires an engine ground run with a protractor attached to the throttle quadrant to verify certain actions at various degrees of throttle movement. Should a problem present itself during the functional test, an operator could perform an operational check, if needed, to repair the system. the FAA partially concurs. Upon further investigation, the FAA has determined that a functional test, which is less burdensome, would provide adequate testing without affecting safety. Paragraph C. of the final rule has been revised accordingly. However, the FAA has determined that the repetitive interval as proposed is the maximum permissible inspection time allowed without compromising air safety. If an operator can provide substantiating data to the FAA that the functional check at the 300-hour inspection interval will provide an acceptable level of safety, that request will be considered in accordance with the provisions of paragraph D., of the final rule.

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 with the change noted above.

There are approximately 531 Gulfstream Model G–II, G–IIB, G–III, and G–IV series airplanes of the affected design in the worldwide fleet. It is estimated that 440 airplanes of U.S. registry will be affected by this AD. It will take approximately 2 manhours per airplane to accomplish the operational checks for the Model G–II, G–IIB and G–III series airplanes, and approximately 12 manhours to accomplish the operational checks and modification for the Model G–IV series airplanes. The average labor cost will be $40 per manhour. The estimated cost for the required modification parts for the Model G–IV series airplanes is $540 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $109,460.

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:

Gulfstream: Applies to all Model G–II (G–1159), G–III (1159A), G–IIB (1159B) and certain G–IV, Serial Numbers 1000 through 1092, series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent an airplane taking off in an unsafe takeoff configuration, accomplish the following:

A. For all Model G–II (G–1159) and G–IIB (G–1159B) series airplanes: Within 25 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 150 hours time-in-service, perform an operational check of the takeoff warning system, and repair, if necessary, in accordance with Gulfstream Aerospace Customer Bulletin Number 388, Amendment 1, dated August 15, 1989. If the system does not function properly, it must be repaired prior to further flight, in accordance with the Customer Bulletin.

B. For all model G–III (G–1159A) series airplanes: Within 25 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 150 hours time-in-service, perform an operational check of the takeoff warning system, in accordance with Gulfstream Customer Bulletin Number 106, dated May 1, 1989. If the system does not function properly, it must be repaired prior to further flight, in accordance with the Customer Bulletin.

C. For Model G–IV series airplanes, Serial Numbers 1000 through 1092: Within 25 hours time-in-service after the effective date of this

AD, perform an operational check and modification of the takeoff range warning indication switches, in accordance with Gulfstream Aircraft Service Change Number 122, dated May 31, 1989. A functional check must be repeated at intervals not to exceed 150 hours time-in-service. If the system does not function properly, it must be repaired prior to further flight, in accordance with the Service Change.

D. 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.

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

E. 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 Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. These documents 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 February 13, 1990.

Issued in Seattle, Washington, on December 29, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-665 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 26083; Amdt. No. 354]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 95

Aircraft, Airspace.

Issued in Washington, DC on December 8, 1989.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 g.m.t.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 354 EFFECTIVE DATE, JANUARY 11, 1990

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO READ IN PART		
COLUMBIA, MO VOR/DME	SEDALIA, MO NDB	4000
§95.1001 DIRECT ROUTES-U.S.		
ATLANTIC ROUTES		
IS AMENDED TO READ IN PART		
A555		
BIMINI, BF NDB	STELLA MARIS, BF NDB	
VIA BIMINI NDB 121.00/ 132 56		*2000
*1300 - MOCA		
STELLA MARIS, BF NDB	GRAND TURK, BF NDB	*2000
*1300 - MOCA		
§95.6010 VOR FEDERAL AIRWAY 10		
IS AMENDED TO READ IN PART		
LITCHFIELD, MI VORTAC	U.S. CANADIAN BORDER	3000
§95.6018 VOR FEDERAL AIRWAY 18		
IS AMENDED TO READ IN PART		
GUTHRIE, TX VORTAC	MILLSAP, TX VORTAC	*10000
*3500 - MOCA		
§95.6070 VOR FEDERAL AIRWAY 70		
IS AMENDED TO READ IN PART		
RAYMO, TX FIX	JIMIE, TX FIX	*4000
*1600 - MOCA		
JIMIE, TX FIX	JETTY, TX FIX	*4000
*1500 - MOCA		
§95.6120 VOR FEDERAL AIRWAY 120		
IS AMENDED TO READ IN PART		
MULLAN PASS, ID VOR/ DME	*CHARL, MT FIX	**10000
*16000 - MRA		
*13000 - MCA CHARL FIX, E BND		
**9200 - MOCA		
§95.6138 VOR FEDERAL AIRWAY 138		
IS AMENDED TO READ IN PART		
PIETY, WY FIX	SIDNEY, NE VORTAC	7600
§95.6382 VOR FEDERAL AIRWAY 382		
IS AMENDED BY ADDING		
GRAND JUNCTION, CO VORTAC	*CONES, CO VOR/DME	12000
*14000 - MCA CONES VOR/DME, SE BND		
CONES, CO VOR/DME	*DURANGO, CO VOR/DME	15300
*12000 - MCA DURANGO VOR/DME, NW BND		
§95.6407 VOR FEDERAL AIRWAY 407		
IS AMENDED TO READ IN PART		
JIMIE, TX FIX	JETTY, TX FIX	*4000
*1500 - MOCA		
§95.6433 VOR FEDERAL AIRWAY 433		
IS AMENDED TO READ IN PART		
DUPONT, DE VORTAC	SOMTO, PA FIX	*3000
*2400 - MOCA		
SOMTO, PA FIX	YARDLEY, PA VORTAC	*2400
*1400 - MOCA		
§95.6445 VOR FEDERAL AIRWAY 445		
IS AMENDED TO READ IN PART		
DUPONT, DE VORTAC	SOMTO, PA FIX	*3000
*2400 - MOCA		
SOMTO, PA FIX	YARDLEY, PA VORTAC	*2400
*1400 - MOCA		
§95.6139 VOR FEDERAL AIRWAY 139		
IS AMENDED TO READ IN PART		
INNDY, RI FIX	BURDY, MA FIX	2000
BURDY, MA FIX	SEEDY, NH FIX	*5000
*1500 - MOCA		
§95.6175 VOR FEDERAL AIRWAY 175		
IS AMENDED TO READ IN PART		
LINDE, IA FIX	*MADUP, IA FIX	**5500
*5500 - MRA		
**2900 - MOCA		
MADUP, IA FIX	SIOUX CITY, IA VORTAC	*5500
*2900 - MOCA		
§95.6188 VOR FEDERAL AIRWAY 188		
IS AMENDED TO READ IN PART		
CARLETON, MI VORTAC	U.S. CANADIAN BORDER	3000
§95.6214 VOR FEDERAL AIRWAY 214		
IS AMENDED TO READ IN PART		
DUPONT, DE VORTAC	SOMTO, PA FIX	*3000
*2400 - MOCA		
SOMTO, PA FIX	YARDLEY, PA VORTAC	*2400
*1400 - MOCA		
§95.6231 VOR FEDERAL AIRWAY 231		
IS AMENDED TO READ IN PART		
TUFFY, MT FIX	*MISSOULA, MT VORTAC	
	S BND	12000
	N BND	9000
*10000 - MCA MISSOULA VORTAC, S BND		
§95.6297 VOR FEDERAL AIRWAY 297		
IS AMENDED TO READ IN PART		
RONDO, MI FIX	PELLSTON, MI VORTAC	3000
IS AMENDED TO DELETE		
U.S. CANADIAN BORDER	CARLETON, MI VORTAC	2100
§95.6301 VOR FEDERAL AIRWAY 301		
IS AMENDED TO READ IN PART		
KLOGE, CA FIX	RUMSY, CA FIX	7000
RUMSY, CA FIX	WILLIAMS, CA VORTAC	5000
§95.6448 VOR FEDERAL AIRWAY 448		
IS AMENDED TO READ IN PART		
CLASS, ID FIX	KALISPELL, MT VOR/DME	*12000
*9600 - MOCA		
§95.6451 VOR FEDERAL AIRWAY 451		
IS AMENDED TO READ IN PART		
GROTON, CT VOR	AVONN, RI FIX	6000
AVONN, RI FIX	BURDY, MA FIX	2000
BURDY, MA FIX	SEEDY, NH FIX	*5000
*1500 - MOCA		
§95.6536 VOR FEDERAL AIRWAY 536		
IS AMENDED TO READ IN PART		
CELIR, MT FIX	*KALISPELL, MT VOR/ DME	
	SW BND	12000
	NE BND	11500
*9000 - MCA KALISPELL VOR/DME, E BND		
KALISPELL, MT VOR/DME	GAPAR, MT FIX	*16000
*10900 - MOCA		
CHOTE, MT FIX	GREAT FALLS, MT VORTAC	7000

FROM	TO	MEA	MAA
§95.7006 JET ROUTE NO. 6			
	IS AMENDED BY ADDING		
LANCASTER, PA VORTAC	BROADWAY, NJ VOR/DME	18000	45000
BROADWAY, NJ VOR/DME	SPARTA, NJ VORTAC	18000	45000
SPARTA, NJ VORTAC	ALBANY, NY VORTAC	18000	45000
ALBANY, NY VORTAC	PLATTSBURGH, NY VORTAC	18000	45000
§95.7054 JET ROUTE NO. 54			
	IS AMENDED TO READ IN PART		
OLYMPIA, WA VORTAC	BAKER, OR VORTAC	#29000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
BAKER, OR VORTAC	BOISE, ID VORTAC	18000	45000
§95.7090 JET ROUTE NO. 90			
	IS AMENDED TO READ IN PART		
SEATTLE, WA VORTAC	MOSES LAKE, WA VOR/DME	18000	45000
MOSES LAKE, WA VOR/DME	HELENA, MT VORTAC	#28000	45000
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
HELENA, MT VORTAC	MILES CITY, MT VORTAC	28000	45000
§95.7228 JET ROUTE NO. 228			
	IS DELETED		
LANCASTER, PA VORTAC	BROADWAY, NJ VOR/DME	18000	45000
BROADWAY, NJ VOR/DME	SPARTA, NJ VORTAC	18000	45000
SPARTA, NJ VORTAC	ALBANY, NY VORTAC	18000	45000
ALBANY, NY VORTAC	PLATTSBURGH, NY VORTAC	18000	45000
§95.7589 JET ROUTE NO. 589			
	IS ADDED TO READ		
ROSEBURG, OR VOR/DME	CORVALLIS, OR VOR/DME	18000	45000
CORVALLIS, OR VOR/DME	U.S. CANADIAN BORDER	28000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-94		
	IS AMENDED BY ADDING		
SCURRY, TX VORTAC	GREGG COUNTY, TX VORTAC	53	SCURRY
	V-382		
	IS AMENDED BY ADDING		
CONES, CO VOR/DME	DURANGO, CO VOR/DME	25	CONES

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-90		
	IS AMENDED BY ADDING		
HELENA, MT VORTAC	MILES CITY, MT VORTAC	115	HELENA
	J-589		
	IS AMENDED BY ADDING		
CORVALLIS, OR VOR/DME	VICTORIA, CANADA VOR/DME	100	CORVALLIS

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BILLING CODE 4910-13-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, 416, and 422

RIN 0960-AB85

Federal Old-Age, Survivors, and Disability Insurance Benefits; Black Lung Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Organization and Procedures; Application of Circuit Court Law

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations implement a new policy for applying holdings of the United States Courts of Appeals that we determine conflict with Social Security Administration (SSA) policy in adjudicating claims under title II and title XVI of the Social Security Act (the Act) and title IV, Part B of the Federal Mine Safety and Health Act of 1977. The regulations explain the manner in which we will apply those holdings, and as part of that policy, describe the limited conditions under which we may decide to relitigate the issue(s) decided by a circuit court in a particular case.

EFFECTIVE DATES: These amendments are effective January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 965-1769.

SUPPLEMENTARY INFORMATION: On November 18, 1988, we published at 53 FR 46628 proposed rules to implement a new policy for applying circuit court holdings that conflict with SSA policy. In general, those proposed rules provided that, when we determine that a circuit court holding conflicts with that policy and the Government does not seek further review of the decision (or is unsuccessful on seeking further review), we will publish an Acquiescence Ruling describing the administrative case and the court decision, identifying the issue(s), and explaining how we will apply the holding at all levels of administrative adjudication within the circuit. The proposed rules also provided a procedure for readjudicating claims decided after the date of a circuit court decision, but before the date that we publish an Acquiescence Ruling. The proposed rules provided for the relitigation of issue(s) within a circuit when circumstances arise which bring into question whether the circuit court would reseach the same conclusion on an issues(s) if the issue(s) were presented to the court again. Finally, the proposed rules defined the conditions under which we would rescind an Acquiescence Ruling as obsolete.

We received 14 comments in response to the NPRM. Seven comments were submitted by private attorneys or law school professors, and five expressed the views of legal service or claimant advocacy organizations. In addition, the Chairman of the Administration Conference of the United States (ACUS) and its Judicial Review Committee submitted joint comments. We also received comments from the American Bar Association's Commission on the Legal Problems of the Elderly. These comments are grouped according to subject matter and discussed below.

Comment: Misapplication of Existing Policy

Nine commenters suggested that we have not fully implemented our existing policy whereby we issue Acquiescence Rulings advising our adjudicators how to apply circuit court holdings which conflict with our interpretation of the Social Security Act or implementing regulations. Specifically, these commenters alleged that we have not identified all existing circuit court holdings at variance with our policy and issued Acquiescence Rulings informing adjudicators how those holdings should be applied. They also alleged that in reviewing circuit court decisions to determine whether they conflict with our policy, we read them too narrowly and thus, wrongly decide that an Acquiescence Ruling is unnecessary.

Response

After we revised our policy in 1985, we reviewed approximately 800 prior circuit court decisions to identify those requiring an Acquiescence Ruling and instituted an ongoing review of all subsequent decisions of the circuit courts. Thus, we review every circuit court decision to determine whether a court's holding conflicts with our policy. As a result of these procedures, we have issued 36 Acquiescence Rulings and have a number of others under consideration.

The vast majority of adverse circuit court decisions do not conflict with our policy; they are based either on whether substantial evidence supports the Secretary's final administrative decision or on whether the final administrative decision adheres to established policy. Whether or not the holding of a particular circuit court decision "conflicts" with our policy is not always clear, and this may account for the concern expressed in some comments about the number of Acquiescence Rulings issued to date in relation to the number of court of appeals decisions we have received. In the Disability programs, for example, the courts have developed differing expressions of the rules for weighing various types of evidence or assessing subjective complaints or symptoms. Although some of these formulations differ in their wording, they are not inconsistent with our policy. In such situations, we do not believe that it is necessary to issue an Acquiescence Ruling. Rather, we may provide instructions to adjudicators to ensure that our policy is followed correctly or revise our regulations to provide more specific policy guidance on the matter at issue.

If a person believes that we have overlooked or misconstrued a holding in a court of appeals decision, that person may bring this matter to our attention and we will respond appropriately

Comment: Apply Circuit Court Decisions Nationwide

One commenter suggested that to improve national uniformity in the administration of the Social Security programs, circuit court holdings which conflict with our policy, but do not conflict with the precedent of other circuits, should be applied nationwide.

Response

As a number of studies on the subject of Federal agency acquiescence have noted, nationwide adoption of the decision of the first circuit court to address an issue precludes other circuit courts from considering the issue. In 1984, when Congress was considering legislation that would have required the Social Security Administration to acquiesce in courts of appeals decisions, the Solicitor General of the United States expressed similar objections, stating that the practical effect of that legislation would be to require the Department of Justice to consider seeking Supreme Court review of the first adverse decision on an issue by any court of appeals. An approach that would require nationwide adoption of the first court of appeals decision on a particular issue would not be an improvement in national uniformity, but would rather result in the first circuit that happened to rule on an issue setting the agency's national policy on that subject. In effect, the circuit court that

would rule first would rule last. This is a result that could hardly be intended by any reasonable version of acquiescence, and we have not adopted the suggestion.

Comment: Implement Circuit Court Decision Pending Further Review

Four commenters addressed the provision that we would not implement a circuit court holding which conflicts with our policy by issuing an Acquiescence Ruling until the Government had decided not to seek further review or had sought such review but was unsuccessful. One comment suggested that we apply circuit court holdings, whether or not we issue a ruling, until the last appellate court to which the Government might appeal reverses or vacates the circuit court decision or until a change in the law negates or modifies the holding. Another commenter noted that, at the Administrative Law Judge (ALJ) and Appeals Council levels of administrative review, staff are trained in reading and understanding judicial decisions and are capable of, and should be allowed to, consider circuit court holdings without the benefit of an Acquiescence Ruling.

Response

The provision of the proposed rule which these comments address was predicated on the fact that, as a party to litigation, the Government has the same right to appeal under the Federal Rules of Appellate Procedure as other litigants. The legal issue decided by a court is not settled until appeal rights are exhausted. Therefore, we do not believe it is appropriate to apply a circuit court's legal interpretation to other cases when we do not know whether the court's first interpretation will be the ultimate law of the circuit.

To address the fact that final judicial resolution of issues may take some time, the NPRM proposed a procedure for readjudicating cases decided between the time of a court decision in which we determine the holding is in conflict with our policy and the time that we publish an Acquiescence Ruling. That procedure permits claimants to have their cases readjudicated if they demonstrate that application of the Acquiescence Ruling could change our prior determination or decision on their claims. We have retained this procedure in the final regulation.

Although we agree that the legal training and experience of ALJs and members of the Appeals Council allows them to read court decisions with greater ease than other adjudicators, we have not adopted this comment. First, under this final acquiescence policy, Acquiescence Rulings apply to all levels of adjudication, not only to the ALJ and Appeals Council levels, unless a holding by its nature applies only to certain levels of adjudication. Thus, the approach suggested in this comment would create different standards of adjudication at the different levels of administrative review. Second, interpreting and applying a circuit court holding is not always a simple matter, as we noted previously. Finally, by statute, establishing policy is the Secretary's responsibility; adjudicators are responsible for applying that policy to the facts in any given case. Therefore, we believe that to ensure the uniform and consistent adjudication necessary in the administration of a national program, the agency must analyze court decisions and provide adjudicators as specific a statement as possible explaining the agency's interpretation of a court of appeals holding, as well as providing direction on how to apply the holding in the course of adjudication.

Comment: Burden on Claimant to Demonstrate Ruling Applies

Five commenters sought further clarification regarding the "readjudication" procedure, or objected to the burden it places on claimants. As noted in the response to the previous comments, the NPRM provided that, for claims decided after the circuit court decision but before publication of an Acquiescence Ruling in the **Federal Register** a claimant could request "application of the ruling to the prior determination or decision." The claimant must "demonstrate that application of the ruling could change the prior determination or decision."

One commenter argued that "it should not be the claimant's responsibility and burden" to demonstrate that the ruling applies because "[a]pplication of the Social Security Act should not be an adversarial process, and if a court decision has relevance to an application for benefits, the law and its interpretation by a court should be applied without further action by a claimant."

Finally, two commenters suggested that, after the issuance of a circuit court decision containing a holding which conflicts with our policy, we maintain a list of all cases decided after that date which might be decided differently if the court holding were considered. Once an Acquiescence Ruling is published, we should then automatically readjudicate those cases and issue new determinations or decisions.

Response

After we publish an Acquiescence Ruling, we will apply it to all active claims. Thus, claimants need not take any action to have Acquiescence Rulings applied to pending claims or those which they have appealed. The purpose of the readjudication procedure is to provide claimants an expeditious means to have an Acquiescence Ruling applied to their claims by the adjudicator most familiar with that claim. The readjudication procedure, therefore, allows a claimant to seek immediate application of the ruling, avoiding the necessity to appeal if a ruling could change the prior decision.

With regard to maintaining case listings, we considered such an approach, but have rejected it as unworkable. Once we receive adverse decisions, we must analyze them to determine whether or not their holdings conflict with our policy.

Often, a court's decision is directed to a procedural, rather than substantive issue, and commonly a court's holding is based on the adjudicator's failure to follow established policy, and thus, does not conflict with the policy itself.

As a matter of operational necessity, some time will always elapse between the date of a court decision and the time that we could notify all adjudicators to begin listing cases which might be affected by its holding. Thus, a substantial number of cases would not be listed for later readjudication. The process which these comments suggest presumes instantaneous, comprehensive identification of all cases, which operationally we cannot accomplish. Therefore, despite the fact that requiring claimants to seek readjudication does require some action on their part, we have concluded that this is the most efficient and effective way to proceed and have not adopted these comments in the final regulations. This result is similar to that which occurs in court. If a district court decides a case and a court of appeals later issues a more favorable rule in a different case, the district court plaintiff must petition the district court to have the more favorable rule applied to his case. Consistent with our commitment to providing the highest quality service to the public, we will, through a variety of means, inform the public about circuit court decisions which may affect their claims.

Comment: Definition of "Demonstrate"

Other commenters sought further definition of the term "demonstration" that a ruling applies.

Response

Although the issues and factual circumstances that might be involved in any particular Acquiescence Ruling are

difficult to predict, we have addressed this comment by adding the following sentence to the final regulation: "A claimant may demonstrate that the ruling applies by submitting a statement which cites the ruling and indicates what finding or statement in the rationale of the prior determination or decision conflicts with the ruling."

Comment: Review of Conclusion not to Readjudicate

Three commenters objected to the provision in the NPRM that "our conclusion not to readjudicate will not be subject to further administrative or judicial review." One commenter argued that this statement "is an attempt to arbitrarily limit the rights of a claimant/beneficiary under the Act, and is of questionable validity." The other comments questioned the constitutionality of denying a person the right to judicial review of our conclusion not to readjudicate.

Response

Under current regulations and case law, a number of administrative actions are not subject to further administrative or judicial review. For example, the courts have upheld our regulatory policy that, under most circumstances, a decision regarding whether or not a prior determination or decision may be reopened and revised is not subject to judicial review. Thus, we do not believe that the statute requires us to afford claimants the opportunity for further administrative or judicial review.

Our rationale for not permitting further appeal on the question of whether or not a ruling applies to a claim is that once we conclude that readjudication is not necessary, the next step should be appeal on the substantive merits of the claim itself, not the readjudication question. In reaching a decision on the substantive issue(s), the readjudication issue will be resolved, conserving limited administrative and judicial resources. As one commenter noted, it would be "much more reasonable * * * [to] simply provide full administrative appellate rights in these cases on the merits of the cases, rather than on the dispute about whether application of the circuit court decision would have made any difference in the case."

For persons who do not appeal timely and subsequently become aware that an Acquiescence Ruling may apply to their claim, the readjudication procedure is available. In addition, claimants may also petition to have their claims reopened, if the grounds for reopening are met. We believe that the combination of appeal, readjudication and reopening provides a fair process that protects the rights of claimants. Therefore, the readjudication procedure in the final regulation remains unchanged, except for the amendment described below. We have added the readjudication procedure to the list of actions in 20 CFR 404.903 and 416.1403 that are not initial determinations to make explicit in those sections that further administrative and judicial review is not available.

In analyzing the comments on this section of the NPRM, we noted that resolving a readjudication request might consume part or all of the claimant's appeal period (sixty days, plus five days mail time). Thus, we have added the following sentence in the final regulation to ensure that claimants who request readjudication instead of appeal do not inadvertently lose their right to appeal: "If a claimant files a request for readjudication within the sixty day appeal period and we deny that request, we shall extend the time to file an appeal on the merits of the claim to sixty days after the date that we deny the request for readjudication."

Comment: The Constitution does not Permit Relitigation

A number of commenters questioned whether the Constitution permits SSA (or any Government agency) to relitigate an issue within a circuit. One typical comment argued that SSA "does not have the power or discretion under the Unite[d] States Constitution to decide what decisions it will follow." On the other hand, in their joint comments on the proposed regulations, the Chairmen of the Administrative Conference of the United States and its Committee on Judicial Review recognized the appropriateness of intracircuit nonacquiescence, within certain limits, and strongly supported the proposed rule as "a judicious balancing of the Agency's responsibilities to seek national uniformity in policy and program administration and to deal with claimants in a fair and minimally burdensome way."

Response

We recognize that intracircuit nonacquiescence is a topic about which knowledgeable individuals disagree, as the public response to our proposed regulations has shown. However, we do not believe that a Federal agency is constitutionally precluded from relitigating an issue within a circuit that has previously issued a ruling adverse to the Government's position. In *United States* v. *Estate of Donnelly*, 397 U.S. 294–295 (1970), the Supreme Court said, "Acts of Congress are generally to be applied uniformly throughout the country from the date of their effectiveness onward. Generally, the United States, like other parties, is entitled to adhere to what it believes to be the correct interpretation of a statute, and to reap the benefits of that adherence if it proves to be correct, except where bound to the contrary by a final judgment in a particular case." In *United States* v. *Mendoza*, 464 U.S. 154 (1984), the Supreme Court recognized that the constraints peculiar to Government litigation, such as the amount and geographic breadth of such litigation, the nature of the issues involved, and the potential for successive administrations "properly * * * to take different positions with respect to the resolution of a particular issue," justified the adoption of a rule for Government litigation different from those applicable to private citizens. 464 U.S. at 159–163. In rejecting unanimously the argument that the Government is precluded from relitigating in one case an issue decided in a prior proceeding involving the Government and a different litigant, the *Mendoza* Court held that, although the Government was bound by the prior judgment with respect to the parties to that earlier suit, "it is not further bound in a case involving a litigant who was not a party to the earlier litigation." 464 U.S. at 162. Moreover, in recently authorizing review in *Patterson* v. *McClean Credit Union*, the Supreme Court stated that "it is surely no affront to settled jurisprudence to request argument on whether a particular precedent should be modified or overruled." 108 S. Ct. 1419–20.

Finally, after perhaps the most thorough examination to date of the separation of powers, due process, and equal protection arguments that have been advanced in support of an alleged constitutional bar against nonacquiescence, a study sponsored by the Administrative Conference of the United States concluded that such arguments are not persuasive. See Estreicher, S., and Revesz, R., *Nonacquiescence by Federal Administrative Agencies*, 98 Yale L.J. 679, 718–735 (1989). This study's rejection of a *per se* bar against intracircuit nonacquiescence lends further support to our position.

Comment: Re-visit Issues through On-going Litigation

One commenter suggested that the relitigation procedure in the NPRM is not necessary to raise an issue which a circuit court previously decided; rather, SSA should use on-going litigation (cases pending before the district or

circuit courts) to bring the issue to the court's attention.

Response

We agree that using on-going litigation as a vehicle to raise issues previously decided by a court of appeals and seek further clarification of a circuit court's prior holding is an essential part of the litigation process. When the issues in on-going litigation are related to those previously decided, we will endeavor to use pending litigation rather than the relitigation process to resolve them. However, because we do not believe that all issues can be raised and resolved through pending litigation, we have retained the relitigation procedure in the final regulation.

Comment: Activating Events for Relitigation are too Generous

One commenter stated that the activating events which might prompt relitigation are too generous to the agency. Specifically, the commenter suggested that relitigation based on "enactment of legislation which affects a closely analagous body of law" might lead to the concept that provisions of "closely analogous programs" are the standard by which the courts would determine whether the agency's rules are arbitrary and capricious.

This commenter also suggested that the activating event concerning subsequent circuit court precedent in other circuits was too vague and asked how many subsequent decisions would be necessary and how closely aligned they must be to the circuit court decision which led to the Acquiescence Ruling. The commenter recommended that in lieu of this provision, we should support "petition[s] for certiorari" so that conflicts among the circuit courts can be resolved by the Supreme Court.

Response

In drafting the "activating events" for relitigation, we believe we defined them as clearly as possible, and we do not consider them overly generous to the agency. In our view, it is impossible to predict and thus define with any more precision what specific actions by the Congress, the Supreme Court, or other circuit courts might provide a sound legal basis for relitigating an issue within a circuit. Moreover, we believe that actions of Congress affecting a closely analogous body of law could be grounds for relitigation. As many of the comments suggest, and as we have noted in the NPRM and this final regulation, relitigation within a circuit would not be the primary means by which we would resolve conflicts in regulatory or statutory interpretation.

The vast majority of adverse circuit court decisions do not contain holdings which conflict with our policy; they are based either on whether substantial evidence supports the Secretary's final administrative decision or on whether the final administrative decision adheres to established policy. When circuit court holdings do conflict with our policy, we expect to resolve conflicts by actively pursuing our right to seek further review, resurfacing issues in related litigation, clarifying our regulations, or seeking amendments to the statute.

The Solicitor General determines when the Government will file a petition for *certiorari* with the Supreme Court, as well as what the Government's position may be when another party seeks *certiorari* in a case in which the Government is a party. We will continue to consult with the Department of Justice on whether to oppose another party's petition for *certiorari* to resolve conflicts among the circuits and whether to attempt to relitigate an issue in the lower courts before asking the Supreme Court to review it.

Because we believe that it is essential to preserve the Government's right to relitigate when other avenues for resolving conflicts are not available and a sound legal basis for relitigation exists, we have retained the relitigation provisions in the final regulations.

Comment: Paying Benefits during Relitigation

One commenter recommended that we pay benefits to claimants who would be eligible for payments under circuit court law while we relitigate an issue within a circuit.

Response

We do not believe we have the authority to pay benefits as this commenter suggests. In order to bring the issue in dispute before a Federal court for relitigation, we must first deny the claim of an individual which raises the issue. This is necessary because the Constitution limits the jurisdiction of Federal courts to actual cases or controversies, such as those where an individual claims benefits and we deny the claim. Our authority to pay benefits is also limited by section 205(i) of the Act to those claims where there has been a final decision of the Secretary or a court awarding benefits. Where the claim has been denied by the Secretary, as it must be where the claim is to be the vehicle for relitigation, the Act precludes us from paying benefits while the court action is pending.

The issue of benefit payments to claimants whose cases are subject to the relitigation procedure is also related to the question of how cases are selected for relitigation. In the proposed rules, we specifically requested comments on this matter, but received only one. In their joint comments, the Chairmen of the Administrative Conference of the United States and its Committee on Judicial Review noted that the Conference "has not studied in any detail the question of the impact on claimants when SSA decides to relitigate an issue. Thus we do not have any specific suggestions as to how SSA might select the claims to be chosen for relitigation (other than the purely legal consideration of selecting claims in which the fact situations present the clearest and most uncluttered presentation of the relevant issues)."

Because we do not expect to relitigate very often and cannot now predict what the issue might be, the final regulations contain the same provisions as the proposed rules on this point. We will, as the Conference suggested, "explore[e] various options for ameliorating the impact of relitigation" on claimants when we decide that relitigation is appropriate.

Comment: Relitigate Cases with Attorney Representation and Pay Attorney Fees

One commenter suggested that, in order to increase the likelihood that claims selected for relitigation will in fact be pursued to Federal court, we should send notices announcing our intention to relitigate an issue only to persons who have attorney representation. In addition, the commenter recommended that the regulations provide that, "regardless of how the courts ultimately decide the case, SSA will pay all of the attorney's fees. In cases where the plaintiff prevails, SSA should agree to pay Equal Access to Justice Act fees without any dispute in the courts."

Response

The fact that the vast majority of claimants who appeal to the ALJ and Appeals Council levels of administrative review are represented provides reasonable assurance that a sufficient number of claims we select for relitigation will be pursued to Federal court. In addition, we also believe that disparate treatment on the basis of representation would raise serious questions of unequal treatment.

In regard to the payment of attorney fees, under current law, we are authorized only to pay attorney fees from Federal funds (as opposed to the payment of attorney fees from

claimants' past-due benefits under section 206 of the Social Security Act) under the provisions of the Equal Access to Justice Act (EAJA). If we relitigate an issue within a circuit and the court declines to adopt our position, only a court may decide the question of whether or not a petition for EAJA fees should be granted. We will decide at that time whether or not to oppose the petition.

Comment: Clarify Actions after Relitigation

One commenter suggested that we specify more clearly what actions we will take after we relitigate an issue and do not prevail, including whether we will readjudicate cases. The proposed rules stated that, in order to implement "any subsequent decision of the circuit court or Supreme Court * * * quickly and efficiently," we would "maintain a listing of all claimants" who receive a notice indicating our intent to relitigate.

Response

We have added language to the end of this provision so that it now reads, "we will maintain a listing of all claimants who receive this notice and will provide them with the relief ordered by the court." Because the court might provide relief other than readjudication, we have not attempted to identify all possible forms that relief might take.

Comment: Do not Revoke the 1970 APA Waiver Statement

A number of commenters addressed our statement in the Preamble to the NPRM that we regard "Acquiescence Rulings and related **Federal Register** notices as interpretative rules which would be exempt from the notice of proposed rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553(b). If this view is made subject to legal challenge, the Department will not apply the policy statement it issued in 1970 as regards the public's participation in rulemaking with respect to the Ruling or notice at issue." Some commenters interpreted this statement to be an attempt to withdraw the 1970 waiver and objected to both the withdrawal and the use of a Preamble as the vehicle to withdraw the statement.

Response

We did not intend this statement to withdraw or revoke in any way the Department's 1970 policy statement. Rather, we included this statement in the Preamble of the NPRM to advise the public that we consider Acquiescence Rulings and related **Federal Register** notices announcing adoption or rescission of an Acquiescence Ruling or a decision to relitigate to be interpretative rules not subject to notice and public comment under the APA.

Comment: Effective Date of Acquiescence Rulings

Two commenters noted that the NPRM provided that Acquiescence Rulings would generally be effective on the date of publication in the **Federal Register** and suggested that they should be effective as of the date of the circuit court decision.

Response

By stating that Acquiescence Rulings would generally be "effective" on the date of publication, we meant that adjudicators would begin to apply the Acquiescence Ruling to pending claims on the date that the ruling is published.

Ordinarily this will mean that we will apply the ruling to the full pending claim even if the claim covers a time period prior to the date of the court's decision. For claims that were decided after the date of the court's decision, but before publication of the ruling, our readjudication procedure provides an opportunity for claimants, in effect, to request that the ruling be made effective as of the date of the court's decision with respect to their claims. As discussed above, we believe that this is a reasonable procedure, given the practical impossibility of implementing immediately any circuit court holding.

The Final Regulations

In addition to the changes based on the comments discussed above, we have made minor technical changes for clarification and consistency. These final regulations provide that we will apply a United States Court of Appeals holding that we determine conflicts with SSA policy unless the Government seeks further review of the decision. We generally will not issue an Acquiescence Ruling for a particular decision until the Government has timely exhausted all avenues of judicial review or has decided to refrain from pursuing further judicial review in the particular case.

When the Government does not seek further review, or is unsuccessful on further review, we will publish a Social Security Acquiescence Ruling and we will apply the circuit court holding at all levels of administrative adjudication within the applicable circuit to all claims presenting the issue(s) addressed in the ruling unless the holding by its nature applies only to certain levels of adjudication. The ruling will describe the administrative case and the court decision, identify the issue(s) considered, and explain how we will apply the holding within the applicable circuit, including, as necessary, how the holding relates to other decisions within the circuit.

We will publish all rulings, including Social Security Acquiescence Rulings as well as all other rulings, in the **Federal Register**. In the past, Social Security Rulings and Social Security Acquiescence Rulings have been published singly and in cumulative annual editions, but only summaries of Social Security Acquiescence Rulings have appeared in the **Federal Register**. All rulings will also be published for sale by the Government Printing Office and made available at district and branch offices as well as the field offices of the Office of Hearings and Appeals. Generally, the rulings will be effective on the date of publication in the **Federal Register** and will be applied to all active claims that raise the issue(s) addressed in the ruling.

If we make a determination or decision on a claim after the date of a circuit court decision, but before we publish an Acquiescence Ruling, and after the publication of the ruling, the claimant requests application of the ruling to the prior determination or decision and can demonstrate that application of the ruling could change the prior determination or decision, we will readjudicate the claim at the same level it was last adjudicated in accordance with the requirements of the ruling. The readjudication in this circumstance will be limited to consideration of the issue(s) addressed by the ruling. Any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with our regulations. Our denial of a request for readjudication will not be subject to further administrative or judicial review.

Although we will apply a circuit court holding which conflicts with our interpretation of the Social Security Act or regulations, circumstances may arise which bring into question whether the circuit court would reach the same conclusion as it did in its prior decision if the issue(s) were relitigated within the circuit. Accordingly, the regulations also establish a process for the relitigation of issues whereby we may apply our interpretation of the Social Security Act or regulations in the future administrative adjudication of claims.

The first step in the relitigation process requires the occurrence of an activating event which raises the question of whether the circuit court would reach the same conclusion if the issue(s) previously decided were presented to it again. In general, these activating events include:

1. An action by both Houses of Congress that indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law; or

2. A statement in a majority opinion of the same circuit that indicates the court might no longer follow its previous holding if a particular issue were presented again; or

3. Subsequent circuit court precedent in other circuits that supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

4. A subsequent Supreme Court decision that presents a reasonable legal basis for questioning a circuit court holding on which we based a Social Security Acquiescence Ruling.

The second step in the relitigation process requires that the General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concur that relitigation of an issue and application of our interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

The third step in the relitigation process requires publication of a notice in the **Federal Register** that we will apply our interpretation of the Social Security Act or regulations as to the issue that was the subject of the Acquiescence Ruling at the administrative level within the circuit. The notice will explain why we made this decision. We will continue the policy of applying our interpretation of the Act or regulations in order to relitigate an issue.

After we have published a notice in the **Federal Register** of our intent to relitigate an issue that is the subject of an Acquiescence Ruling, we will take steps to expedite administrative and judicial review and resolution of the issue in question and ensure that we are able to comply with any subsequent circuit court of Supreme Court decision. First, any claimant in the appropriate circuit whose claim is made subject to the relitigation procedure established in this regulation will receive a separate notice with the determination or decision on the claim. That notice will explain the difference(s) in policy between the Acquiescence Ruling and our interpretation of the Social Security Act or regulations and inform the claimant that the agency is seeking to relitigate the issue in the circuit. Claims not subject to relitigation will continue to be decided in accordance with the circuit standard contained in the Acquiescence ruling. Second, the agency will maintain a listing of all claimants who receive such notices so that any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently.

We will attempt to maintain national uniformity in the administration of our programs by seeking Supreme Court review of holdings in adverse circuit court decisions which have a major impact on program administration, by clarifying our regulations when their ambiguity has resulted in a circuit court holding interpreting them differently from the way we intended them to be interpreted, by issuing a new regulation(s) if a circuit court holding concerns an issue(s) which the current regulations do not address, and by seeking corrective legislation from the Congress. Accordingly, we will rescind as obsolete a Social Security Acquiescence Ruling when: the Supreme Court overrules or limits a circuit court holding on an issue that was the basis of an Acquiescence Ruling; a circuit court overrules or limits its prior holding on an issue that was the basis of an Acquiescence Ruling; a Federal law is enacted that removes the basis for the holding of a circuit court that was the subject of an Acquiescence Ruling; or we subsequently clarify, modify or revoke a regulation or ruling that was the subject of a circuit court holding that conflicts with our interpretation of the Social Security Act or regulations. We will also rescind as obsolete a Social Security Acquiescence Ruling when we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue was the subject of a circuit court holding that conflicted with our interpretation of the Social Security Act or regulations and that holding is not one which was compelled by the statute or the Constitution.

We are adopting the acquiescence policy set forth in this final rule not because we believe that this policy, or any acquiescence policy, is legally compelled. Rather, we are adopting this acquiescence policy under the Secretary's discretionary authority. The standards that will be applied in determining whether to acquiesce are for internal purposes and are neither intended to nor will create any privately enforceable rights. The manner in which we will respond to an adverse court of appeals holding is matter committed to our discretion in the first instance and may involve the balancing of competing policy considerations. The policy we are adopting, which reflects our judgment regarding the appropriate response to adverse court of appeals holdings, is an appropriate exercise of our responsibility to administer the vast and complex Social Security benefit programs in a manner that is least burdensome to Social Security claimants and preserves our ability to attempt to maintain national uniformity in program administration.

Cases Affected

The procedures set forth in these regulations apply to cases under titles II and XVI of the Social Security Act and under title IV, part B of the Federal Mine Safety and Health Act of 1977.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will not have an annual effect on the economy of 100 million dollars or more, or otherwise meet the threshold criteria. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will only affect individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivors Insurance; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

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

20 CFR Part 410

Administrative practice and procedure; Black lung benefits; Death benefits; Disability benefits; Miners.

20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Supplemental security income (SSI).

20 CFR Part 422

Freedom of information; Administrative practice and procedure; organization and functions (Government agencies); Social security.

Dated: January 4, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: January 4, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, parts 404, 410, 416, and 422 of 20 CFR are amended as follows:

PART 404—[AMENDED]

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

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302; sec. 5 of Pub. L. 97–455, 96 Stat. 2500; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

2. Section 404.903 is amended by adding new paragraph (o) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(o) Denying your request to readjudicate your claim and apply an Acquiescence Ruling.

3. New § 404.985 is added to read as follows:

§ 404.985 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) We will apply a holding in a United States Court of Appeals decision which we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the Government seeks further review of that decision or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the holding to claims at all levels of administrative adjudication within the applicable circuit unless the holding, by its nature, applies only at certain levels of adjudication.

(b) When we determine that a United States Court of Appeals holding conflicts with our interpretation of a provision of the Social Security Act or regulations and the Government does not seek further review or is unsuccessful on further review, we will issue a Social Security Acquiescence Ruling that describes the administrative case and the court decision, identifies the issue(s) involved, and explains how we will apply the holding, including, as necessary, how the holding relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of their publication in the **Federal Register** and will apply to all determinations and decisions made on or after that date. If we make a determination or decision between the date of a circuit court decision and the date we publish an Acquiescence Ruling, the claimant may request application of the published ruling to the prior determination or decision. The claimant must first demonstrate that application of the ruling could change the prior determination or decision. A claimant may so demonstrate by submitting a statement which cites the ruling and indicates what finding or statement in the rationale of the prior determination or decision conflicts with the ruling. If the claimant can so demonstrate, we will readjudicate the claim at the level at which it was last adjudicated in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our denial of a request for readjudication will not be subject to further administrative or judicial review. If a claimant files a request for readjudication within the sixty-day appeal period and we deny that request, we shall extend the time to file an appeal on the merits of the claim to sixty days after the date that we deny the request for readjudication.

(c) After we have published a Social Security Acquiescence Ruling to reflect a holding of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this secton occurs.

(1) Activating events: (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law;

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again;

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court holding upon which we base a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue and that we will apply our interpretation of the Social Security Act or regulations at the administrative level within the circuit to claims selected for relitigation. The notice will explain why we made this decision.

(d) When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply our interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice and will provide them with the relief ordered by the court.

(e) We will rescind as obsolete a Social Security Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occurs:

(1) The Supreme Court overrule or limits a circuit court holding that was the basis of an Acquiescence Ruling;

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling;

(3) A Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court holding that conflicted with our interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

PART 410—[AMENDED]

4. The authority citation for subpart F of part 410 is revised to read as follows:

Authority: Secs. 413(b), 426(a), 507, and 508 of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b), 936(a), 956, and 957.

5. Section 410.615 is amended by adding new paragraph (j) to read as follows:

§ 410.615 Administrative actions that are not initial determinations.

* * * * *

(j) The denial by the Administration of a request to readjudicate a claim and apply an Acquiescence Ruling.

6. New § 410.670c is added to read as follows:

§ 410.670c Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) The Administration will apply a holding in a United States Court of Appeals decision which it determines conflicts with its interpretation of a provision of the Social Security Act or regulations unless the Government seeks further review or the Administration relitigates the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. The Administration will apply the holding to claims at all levels of administrative adjudication within the applicable circuit unless the holding, by its nature, applies only at certain levels of adjudication.

(b) When the Administration determines that a United States Court of Appeals holding conflicts with the Administration's interpretation of a provision of the Social Security Act or regulations and the Government does not seek further review or is unsuccessful on further review, the Administration will issue a Social Security Acquiescence Ruling that describes the administrative case and the court decision, identifies the issue(s) involved, and explains how the Administration will apply the holding, including, as necessary, how the holding relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of their publication in the **Federal Register** and will apply to all determinations and decisions made on or after that date. If the Administration makes a determination or decision between the date of a circuit court decision and the date an Acquiescence Ruling is published, the claimant may request application of the published ruling to the prior determination or decision. The claimant must first demonstrate that application of the ruling could change the prior determination or decision. A claimant may so demonstrate by submitting a statement which cites the ruling and indicates what finding or statement in the rationale of the prior determination or decision conflicts with the ruling. If the claimant can so demonstrate, the Administration will readjudicate the claim at the level at which it was last adjudicated in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. A denial of a request for readjudication will not be subject to further administrative or judicial review. If a claimant files a request for readjudication within the sixty day appeal period and that request is denied, the Administration shall extend the time to file an appeal on the merits of the claim to sixty days after the date that the request for readjudication is denied.

(c) After the Administration has published a Social Security Acquiescence Ruling to reflect a holding of a United States Court of Appeals on an issue, the Administration may decide under certain conditions to relitigate that issue within the same circuit. The Administration will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) Activating events: (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law;

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again;

(iii) Subsequent circuit court precedent in other circuits supports the Administration's interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court holding upon which the Administration bases a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of the Administration's interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

(3) The Administration publishes a notice in the **Federal Register** that it intends to relitigate an issue, and that it will apply its interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why the Administration made this decision.

(d) When the Administration decides to relitigate an issue, it will provide a notice explaining its action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply the Administration's interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, the Administration will maintain a listing of all claimants who receive this notice and will provide them the relief ordered by the court.

(e) The Administration will rescind as obsolete a Social Security Acquiescence Ruling and apply its interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court holding that was the basis of an Acquiescence Ruling;

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling;

(3) A Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) The Administration subsequently clarifies, modifies or revokes the regulation or ruling that was the subject of a circuit court holding that the Administration determined conflicts with its interpretation of the Social Security Act or regulations, or it subsequently publishes a new regulation(s) addressing an issue(s) not previously included in its regulations when that issue(s) was the subject of a circuit court holding that conflicted with its interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

PART 416—[AMENDED]

7. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98-460, 98 Stat. 1802.

8. Section 416.1403 is amended by adding new paragraph (a)(10) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(10) Denying your request to readjudicate your claim and apply an Acquiescence Ruling.

* * * * *

9. New § 416.1485 is added to read as follows:

§ 416.1485 Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) We will apply a holding in a United States Court of Appeals decision which we determine conflicts with our interpretation of a provision of the Social Security Act or regulations unless the Government seeks further review of that decision or we relitigate the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. We will apply the holding to claims at all levels of administrative adjudication within the applicable circuit unless the holding, by its nature, applies only at certain levels of adjudication.

(b) When we determine that a United States Court of Appeals holding conflicts with our interpretation of a provision of the Social Security Act or regulations and the Government does not seek further review or is unsuccessful on further review, we will issue a Social Security Acquiescence Ruling that describes the administrative case and the court decision, identifies the issue(s) involved, and explains how we will apply the holding, including, as necessary, how the holding relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of their publication in the **Federal Register** and will apply to all determinations, redeterminations or decisions made on or after that date. If we make a determination or decision between the date of a circuit court decision, and the date we publish an Acquiescence Ruling, the claimant may request application of the published ruling to the prior determination or decision. The claimant must first demonstrate that application of the ruling could change the prior determination or decision. A claimant may so demonstrate by submitting a statement which cites the ruling and indicates what finding or statement in the rationale of the prior determination or decision conflicts with the ruling. If the claimant can so demonstrate, we will readjudicate the claim at the level at which it was last adjudicated in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. Our denial of a request for readjudication will not be subject to further administrative or judicial review. If a claimant files a request for readjudication within the sixty day appeal period and we deny that request, we shall extend the time to file an appeal on the merits of the claim to sixty days after the date that we deny the request for readjudication.

(c) After we have published a Social Security Acquiescence Ruling to reflect a holding of a United States Court of Appeals on an issue, we may decide under certain conditions to relitigate that issue within the same circuit. We will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) Activating events: (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law;

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again;

(iii) Subsequent circuit court precedent in other circuits supports our interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court holding upon which we base a Social Security Acquiescence Ruling.

(2) The General Counsel of the Department of Health and Human Services, after consulting with the Department of Justice, concurs that relitigation of an issue and application of our interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

(3) We publish a notice in the **Federal Register** that we intend to relitigate an Acquiescence Ruling issue, and that we will apply our interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why we made this decision.

(d) When we decide to relitigate an issue, we will provide a notice explaining our action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply our interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, we will maintain a listing of all claimants who receive this notice and will provide them with the relief ordered by the court.

(e) We will rescind as obsolete a Social Security Acquiescence Ruling and apply our interpretation of the Social Security Act or regulations by publishing a notice in the **Federal Register** when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court holding on an issue that was the basis of an Acquiescence Ruling;

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling;

(3) A Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court holding that conflicted with our interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

PART 422—[AMENDED]

10. The authority citation for subpart E of part 422 is revised to read as follows:

Authority: Secs. 205, 1102, 1106, and 1871 of the Social Security Act, 42 U.S.C. 405, 1302, 1306, and 1395hh; Section 413(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 923(b); 8 U.S.C. 1360; 26 U.S.C. 6103; 5 U.S.C. 552 and 552a.

11. Section 422.406 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 422.406 Publication.

* * * * *

(b) *Publication of rulings.* Although not required pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), the following rulings will be published in the **Federal Register** as well as by other forms of publication:

(1) Social Security Rulings are published in the **Federal Register** under the authority of the Commissioner of Social Security and are binding on all components of the Administration. These rulings represent precedent final opinions and orders and statements of policy and interpretations that have been adopted by the Administration.

(2) Social Security Acquiescence Rulings are published in the **Federal Register** under the authority of the Commissioner of Social Security and are binding on all components of the Administration, except with respect to claims subject to the relitigation procedures established in §§ 404.984 (c) and (d), 410.610c (c) and (d), and 416.1484 (c) and (d). For a description of Social Security Acquiescence Rulings, see §§ 404.984(b), 410.610c(b), and 416.1484(b) of this title.

* * * * *

§ 422.408 Statements of policy and interpretations not published in the Federal Register [Removed]

12. Section 422.408 is removed.

13. Section 422.410 is amended by adding new paragraph (l) to read as follows:

§ 422.410 Publications for sale.

* * * * *

(l) Social Security Acquiescence Rulings.

§ 422.416 [Amended]

14. Section 422.416 Availability of Records is amended by adding an "and" between the words "policy" and "other" and by removing ", such as Social Security Rulings," in paragraph (a).

15. Section 422.430 is amended by adding a new paragraph (a)(6) to read as follows:

§ 422.430 Materials available at district offices and branch offices.

(a) * * *

(6) Social Security Acquiescence Rulings.

* * * * *

16. Section 422.432 is amended by adding a new paragraph (a)(7) to read as follows:

§ 422.432 Materials in field offices of the Office of Hearings and Appeals.

(a) * * *

(7) Social Security Acquiescence Rulings.

* * * * *

[FR Doc. 90-735 Filed 1-10-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Regarding Administrative Rulings

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is revising the Appendix to 31 CFR part 103 to list a new administrative ruling. Copies of administrative rulings may be obtained by contacting the Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement).

DATE: Bank Secrecy Act Administrative Ruling 89-5 was effective December 21, 1989.

ADDRESS: Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220, 202-566-8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Public Law 91-508 (codified at 12 U.S.C. 1730d, 1829b, 1951-1959, and 31 U.S.C. 5311-5326), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory matters. The regulations implementing the Bank Secrecy Act are at part 103 of title 31 of the Code of Federal Regulations. On September 22, 1987, Treasury issued final regulations implementing an administrative ruling system for interpretations of the Bank Secrecy Act. 52 FR 35545. Administrative rulings are published in the appendix to part 103. The administrative rulings are effective when signed. Publication in the **Federal Register** is merely a method of publicizing their existence.

One ruling is being added to the Appendix by this Final Rule. Bank Secrecy Act Administrative Ruling 89-5 deals with a financial institution's responsibility to provide identifying information about the person on whose behalf a transaction is conducted in Part II of the Currency Transaction Report (Form 4789).

Copies of rulings may be obtained by contacting the Office of Financial Enforcement at the address listed above. Please make all requests for rulings in writing, specifying the relevant number or subject of the ruling.

Applicability of Notice and Effective Date Requirements

This amendment merely revises the appendix to add the text of an issued administrative ruling that interprets the Bank Secrecy Act regulations. The regulations in part 103 are not amended in any way. Therefore, for good cause found, pursuant to 5 U.S.C. 553 (b) and (d), notice and public procedure thereon and a delayed effective date are unnecessary.

Executive Order 12291

As this final rule promulgates a regulation dealing solely with issues of agency management and organization, compliance with Executive Order 12291

and a regulatory impact analysis are not required.

Regulatory Flexibility Act

As no notice of proposed rulemaking is required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document is the Office of Financial Enforcement. However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation of part 103 continues to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5326).

2. The appendix to 31 CFR part 103 is amended by adding at the end of following:

Appendix—Administrative Rulings

* * * * *

89–5 (December 21, 1989)

Issue

How does a financial institution fulfill the requirement that it furnish information about the person on whose behalf a reportable currency transaction is being conducted?

Facts

No. 1. Linda Scott has had an account relationship with the Bank for 15 years. Ms. Scott enters the bank and deposits $15,000 in cash into her personal checking account. The bank knows that Ms. Scott is an artist who on occasions exhibits and sells her art work and that her art work currently is on exhibit at the local gallery. The bank further knows that cash deposits in the amount of $15,000 are commensurate with Ms. Scott's art sales.

No. 2. Dick Wallace has recently opened a personal account at the Bank. Although the bank verified his identity when the account was opened, the bank has no additional information about Mr. Wallace. Mr. Wallace enters the bank with $18,000 in currency and asks that it be wire transferred to a bank in a foreign country.

No. 3. Dorothy Green, a partner at a law firm, makes a $50,000 cash deposit into the firm's trust account.[1] The bank knows that this is a trust account. The $50,000 represents cash received from three clients.

No. 4. Carlos Gomez enters a Currency Dealer and asks to buy $12,000 in traveler's checks with cash.

No. 5. Gail Julian, a trusted employee of Q-mart, a large retail chain, enters the bank three times during one business day and makes three large cash deposits totalling $48,000 into Q-mart's account. The Bank knows that Ms. Julian is responsible for making the deposits on behalf of Q-mart. Q-mart has an exemption limit of $45,000.

Law and Analysis

Under § 103.28 of the Bank Secrecy Act ("BSA") regulations, 31 CFR part 103, a financial institution must report on a Currency Transaction Report ("CTR") the name and address of the individual conducting the transaction, and the identity, account number, and the social security or taxpayer identification number of any person on whose behalf the transaction was conducted. See 31 U.S.C. 5313. "A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made." Identifying information about the person on whose behalf the transaction is conducted must always be furnished if the transaction is reportable under the BSA, regardless of whether the transaction involves an account.

Because the BSA requires financial institutions to file complete and accurate CTR's, it is the financial institution's responsibility to ascertain the real party in interest. 31 U.S.C. 5313. One way that a financial institution can obtain information about the identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong "know your customer" or other internal control policies, the financial institution is satisfied that its records contain information concerning the true identity of the person on whose behalf the transaction is conducted, may the financial institution rely on those records to complete the CTR.

No. 1. Linda Scott, an artist, is a known customer of the bank. The bank is aware that she is exhibiting her work at a local gallery and that cash deposits in the amount of $15,000 would not be unusual or inconsistent with Ms. Scott's business practices. Therefore, if the bank through its stringent "know your customer" policies is satisfied that the money being deposited by Ms. Scott into her personal account is for her benefit, the bank need not ask Ms. Scott whether she is acting on behalf of someone else.

No. 2. Because Dick Wallace is a new customer of the bank and because the bank has no additional information about him or his business activity, the bank should ask Mr. Wallace whether he is acting on his own behalf or on behalf of someone else. This is particularly true given the nature of the transaction—a wire transfer with cash for an individual to a foreign country.

No. 3. Dorothy Green's cash deposit of $50,000 into the law firm's trust account clearly is being done on behalf of someone else. The bank should ask Ms. Green to identify the clients on whose behalf the transaction is being conducted. Because Ms. Green is acting both on behalf of her employer and the clients, the names of the three clients and the law firm should be included on the CTR filed by the bank.

No. 4. The currency dealer, having no account relationship with Carlos Gomez, should ask Mr. Gomez if he is acting on behalf of someone else.

No. 5. Gail Julian is known to the bank as a trusted employee of Q-mart, who often deposits cash into Q-mart's account. If the bank, through its strong "know your customer" policies is satisfied that Ms. Julian makes these deposits on behalf of Q-mart, the bank need not ask her if she is acting on behalf of someone other than Q-mart.

Holding

It is the responsibility of a financial institution to file complete and accurate CTRs. This includes providing identifying information about the person on whose behalf the transaction is conducted in Part II of the CTR. One way that a financial institution can obtain information about the true identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong "know your customer" or other internal control policies, the financial institution is satisfied that its record contain the necessary information concerning the true identity of the person on whose behalf the transaction is being conducted, may the financial institutions rely on those records in completing the CTR.

Dated: December 21, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 90–758 Filed 1–10–90; 8:45 am]

BILLING CODE 4810–25–M

[1] This type of account is sometimes called a trust account, attorney account or special account. It is an account established by an attorney into which commingled funds of clients may be deposited. It is not necessarily a "trust" in the legal sense of the term.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3703-7]

Approval and Promulgation of Implementation Plans; Louisiana; Attainment Dates for PM_{10} Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice amends a table at 40 CFR 52.979 that identifies the attainment dates for the criteria pollutants established under section 108 of the Clean Air Act. This table reflects that all areas in the State of Louisiana are in attainment with the PM_{10} standard established by EPA at 52 FR 24634 (July 1, 1987). For information about the Louisiana PM_{10} State Implementation Plan (SIP), please see the final rule published at 54 FR 25451 (June 15, 1989) and the correction at 54 FR 29895 (July 17, 1989).

DATES: This action will become effective on March 12, 1990, unless notice is received within 30 days of publication that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Notice of adverse comment should be mailed to Mr. Thomas H. Diggs, Chief, SIP/New Source Section, at the address given below for EPA Region 6.

U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue (6T-AN), Dallas, TX 75202-2733.

Louisiana Department of Environmental Quality, P.O. Box 44096, 625 N. 4th Street, 8th Floor, Baton Rouge, LA 70804-4096.

If you plan to visit either of these offices to view documents related to this notice, please contact the person named below to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara Durso, FTS 255-7214, or (214) 655-7214.

SUPPLEMENTARY INFORMATION: .

Final Action: The table at 40 CFR 52.979 is amended to show that all areas in the State of Louisiana are presently in attainment with the PM_{10} standard established by EPA on July 1, 1987.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Particulate matter.

Dated: December 27, 1989.

Robert E. Layton Jr,

Regional Administrator (6A).

PART 52—[AMENDED]

40 CFR part 25, subpart T, is amended as follows:

Subpart T—Louisiana

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

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

2. Section 52.979 is revised to read as follows:

§ 52.979 Attainment dates for national standards.

The table below presents the latest dates by which national standards are to be attained. The dates reflect the information presented in Louisiana's plan except where noted.

Air quality control region	Pollutants								
	Particulate matter		Sulfur oxides		Nitrogen oxides	Carbon monoxide	Ozone	PM_{10}	Lead
	Primary	Secondary	Primary	Secondary					
Monroe-El Dorado Interstate Shreveport-Texarkana-Tyler Interstate.	a	a	b	b	.....	b	b	b	b
a. Caddo and Bossier Parishes	a	a	b	b	b	b	c	b	b
b. Remainder of AQCR	a	a	b	b	b	b	b	b	b
Southern Louisiana-Southeast Texas Interstate:									
a. Ascension, Iberville, St. James, St. John the Baptist, Calcasieu, Orleans, Jefferson, St. Bernard, St. Charles, Grant, Beauregard, Lafourche, Pointe Coupee, Lafayette, and St. Mary Parishes.	a	a	a	a	b	b	c	b	c
b. West Baton Rouge and East Baton Rouge Parishes.	a	a	a	a	b	b	5/31/75	b	d
c. Remainder of AQCR	a	a	a	a	b	b	5/31/75	b	b

a. July 1975.
b. Air quality levels presently below secondary standards.
c. December 1982.
d. September 1, 1986.

NOTE: Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) of the Act prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.979 (1978).

[FR Doc. 90-751 Filed 1-10-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3700-5]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today designates eight dredged material disposal sites located offshore of New Jersey and Long Island, New York for the disposal of dredged material removed from Rockaway Inlet, East Rockaway Inlet, Jones Inlet, and Fire Island Inlet, in New York and Shark River Inlet, Manasquan Inlet, Absecon Inlet, and Cold Spring Inlet in New Jersey. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material. This final site designation is for an indefinite period of time, but the site is subject to continued monitoring in order to ensure that unacceptable adverse environmental impacts do not occur.

DATE: This designation shall become effective February 12, 1990.

ADDRESSES: The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (Rear), 401 M Street Southwest, Washington, DC 20460

EPA Region II Library, Room 402, 26 Federal Plaza, New York, New York 10278

New York District Corps of Engineers, Regulatory Branch, 26 Federal Plaza, New York, New York 10278

Philadelphia District Corps of Engineers, Regulatory Branch, Custom House, 2nd and Chestnut Streets, Philadelphia, PA 19106-2991

FOR FURTHER INFORMATION CONTACT: Mario P. Del Vicario, (212) 264-5170.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et. seq.* ("The Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et. seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this. (39 FR 16186 (May 7, 1974))

EPA has prepared a final EIS entitled "Final Environmental Impact Statement for the Designation of Ocean Dredged Material Disposal Sites for Long Island, New York and New Jersey". A notice of availability of the EIS for public review and comment was published in the **Federal Register** (54 FR 40177 (September 29, 1989)). The public comment period for this EIS closed on November 13, 1989. No comments were received during the comment period. Coordination and certification of this designation action with regard to the Coastal Zone Management Act is discussed in the following section. Coordination with the U.S. National Marine Fisheries Service and U.S. Fish and Wildlife has led to the finding by these agencies that no adverse impacts to threatened and endangered species, in accordance with the Endangered Species Act, would result from the designations. As a result of historical and archeological surveys carried out for the areas, it was determined that the designations would not have an effect on resources on or eligible for nomination to the National Register of Historic Places under the National Historic Preservation Act.

The action discussed in the EIS is designation for continuing use of eight ocean disposal sites for dredged material located in the Atlantic Ocean, offshore of New Jersey and Long Island, New York. The purpose of the designation is to provide environmentally acceptable locations for ocean disposal. The appropriateness of ocean disposal is determined by the Federal review agencies on a case-by-case basis during the permit review process for ocean disposal projects.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Non-ocean disposal alternatives are not evaluated or presented in this EIS since the designation of an environmentally acceptable ocean disposal site is independent of individual project disposal requirements. Non-ocean disposal alternatives must be considered during the permitting process for non-Federal projects and during the EIS period for Federal projects. The need for and environmental acceptance of ocean disposal must be demonstrated on a case-by-case basis in order to receive an ocean disposal permit.

As part of the permitting process, land-based disposal alternatives must be evaluated by both the EPA Regional Office and the CE District, as specified in the Ocean Dumping Regulations (40 CFR part 227) In addition, the CE, in conjunction with the EPA Regional Office, must evaluate the environmental effects associated with the alternative disposal methods (ocean or land-based) for every project.

Other ocean disposal alternatives investigated include deep water sites, mid-shelf sites, and nearshore sites other than the proposed sites. Designation of a deep water site for the inlets dredged material would require extensive pre-disposal and monitoring surveys, as well as substantially increased disposal costs. The predominantly sandy content of typical dredged material from the inlet sites did not warrant further consideration of deep water sites from a sediment compatibility basis. Also, the containment capability of dredged material has not been demonstrated for deep water sites. Other shelf sites were eliminated because of potential conflicts with site use, environmental acceptability, and high transportation costs. There were no clear advantages found in designating alternative nearshore disposal sites. Previous disposal of dredged material at the existing sites has not caused significant adverse environmental impacts.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The environmental study and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping

Regulations, and other applicable Federal environmental legislation.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On June 1, 1988, EPA proposed designation of this site for the continuing use of dredged materials from Rockaway Inlet, East Rockaway Inlet, Jones Inlet, and Fire Island Inlet, in New York and Shark River Inlet, Manasquan Inlet, Absecon Inlet, and Cold Spring Inlet in New Jersey. The public comment period on this proposed action closed on July 15, 1988.

The primary commenters on the proposed rule were the New Jersey Department of Environmental Protection (NJDEP), the New York State Department of Environmental Conservation (NYDEC), the U.S. Department of the Interior (DOI), the Committee on Merchant Marine and Fisheries of the U.S. House of Representatives, Coastal States Organization, and the Oceanic Society. The Department of the Interior was concerned that the disposal activities may have an adverse effect on water quality at the Rockaway site, but acknowledged that there have been no reports of water quality problems from previous disposal activities, and that the material to be disposed would be primarily clean sand. Also, while acknowledging that EPA carries out monitoring of disposal sites to ensure that unacceptable levels of toxic constitutents are not transported away from the site, DOI expressed concern that possible contamination of discharged dredged material may affect the nearby Gateway National Recreation Area. Material which will "significantly degrade the waters of the United States" will not be permitted to be ocean disposed at any site. EPA, in conjunction with the U.S. Army Corps of Engineers (CE), will monitor ambient water quality trends at the site and in adjacent areas to ensure that unacceptable levels of toxic constituents are not transported outside of the site. Should monitoring surveys indicate that transport outside of the site is occurring, appropriate measures to modify or withdraw site designation are available to the Agency.

DOI also commented that the National Park Service plans to consider the feasibility of using some dredged material that may be destined for the Rockaway site to redress beach erosion problems at Gateway National Recreation Area. Beach nourishment is the EPA's preferred method of disposal, and it is recommended wherever needed, economically feasible, and the dredged material is suitable. Use of the dredged material for beach nourishment at any site is not precluded by the designation of an ocean disposal site. The feasibility of beach nourishment must be examined for all dredging projects and is examined on a case-by-case basis during the permitting process. At that time, a grain size analysis is performed and the quality of the dredged material is analyzed to ensure the suitability of the material proposed for disposal as beach nourishment.

The NJDEP, NYDEC, the Committee on Merchant Marine and Fisheries, Coastal States Organization and the Oceanic Society commented that the final designation of the dredged material disposal sites are subject to the consistency provisions of the Coastal Zone Management Act. EPA reviewed this comment when originally received in response to the draft EIS and determined that site designation is not subject to the CZMA. In that determination, EPA inadvertently stated that, in the case *Chemical Waste Management* v. *U.S. Department of Commerce, et al., Civil Action No. 86-624*, (United States District Court for the District of Columbia, 1986), the court determined that neither the Coastal Zone Management Act (CZMA) nor the National Oceanic and Atmospheric Administration (NOAA) regulations implementing the CZMA authorize a State to impose conditions unilaterally on EPA as part of the consistency certification. In fact, no decision was rendered in the case because it was ultimately dismissed by stipulation of the parties without any court determination. EPA, in re-evaluating this issue and in response to the above commenters, prepared and forwarded consistency determinations to the States of New York, on June 16, 1989, and New Jersey, on July 3, 1989, and informed them that final action regarding the site designations would not be taken until 90 days after the issuance of the respective determinations. EPA issued a Notice of Correction of the Proposed Rule in the **Federal Register** on August 15, 1989 (54 FR 33585) regarding this action and extended the comment period until September 15, 1989. New York State concurred with the consistency determination and recommended that beach nourishment of the material be encouraged when feasible. New Jersey did not respond to the consistency determination. Under 15 CFR 930.41(a), nonresponse to a federal agency consistency determination within 45 days of issuance may be considered as state agreement with the determination.

The first site, Rockaway, is located approximately 2 nautical miles southeast of Rockaway Inlet, Long Island, New York and occupies an area of approximately 0.38 square nautical miles. Water depths within the site range from 8–11 meters. The corner coordinates of the site are as follows:

40°32'30"N, 73°55'00"W
40°32'30"N, 73°54'00"W
40°32'00"N, 73°54'00"W
40°32'00"N, 73°55'00"W.

The second site, East Rockaway, is located approximately 1.3 nautical miles southwest of East Rockaway Inlet, Long Island, New York and occupies an area of approximately 0.81 square nautical miles. Water depths within the site range from 6 to 9 meters. The corner coordinates are as follows:

40°34'36"N, 73°49'00"W
40°35'06"N, 73°47'06"W
40°34'10"N, 73°48'36"W
40°34'12"N, 73°47'17"W.

The third site, Jones, is located approximately 1.5 nautical miles southwest of Jones Inlet, Long Island, New York and occupies an area of approximately 1.19 square nautical miles. Water depths within the site range from 7 to 10 meters. The corner coordinates of the site are as follows:

40°34'32"N, 73°39'14"W
40°34'32"N, 73°37'06"W
40°33'46"N, 73°37'06"W
40°33'48"N, 73°39'14"W.

The fourth site, Fire Island, is located approximately 1.7 nautical miles southwest of Fire Island Inlet, Long Island, New York and occupies an area of approximately 1.09 square nautical miles. Water depths within the site range from 7 to 10 meters. The corner coordinates of the site are as follows:

40°36'49"N, 73°23'50"W
40°37'12"N, 73°21'30"W
40°36'41"N, 73°21'20"W
40°36'10"N, 73°23'40"W

The fifth site, Shark River, is located approximately 0.4 nautical miles northeast of Shark River Inlet, New Jersey and occupies an area of approximately 0.6 square nautical miles. Water depth within the site is approximately 12 meters. The corner coordinates of the site are as follows:

40°12'48"N, 73°59'45"W
40°12'44"N, 73°59'06"W
40°11'36"N, 73°59'28"W
40°11'42"N, 74°00'12"W

The sixth site, Manasquan, is located approximately 0.3 nautical miles northeast of Manasquan Inlet, New Jersey and occupies an area of

approximately 0.11 square nautical miles. Water depths within the site are approximately 18 meters. The corner coordinates are as follows:

40°06'36"N, 74°01'34"W
40°06'19"N, 74°01'39"W
40°06'18"N, 74°01'53"W
40°06'41"N, 74°01'51"W

The seventh site, Absecon, is located approximately 0.5 nautical miles southeast of Absecon Inlet, New Jersey and occupies an area of approximately 0.28 square nautical miles. Water depth within the site is approximately 7 meters. The corner coordinates are as follows:

39°20'39"N, 74°18'43"W
39°20'30"N, 74°18'25"W
39°20'03"N, 74°18'43"W
39°20'12"N, 74°19'01"W

The eighth site, Cold Spring, is located approximately 1 nautical mile southwest of Cold Spring Inlet, New Jersey and occupies an area of approximately 0.13 nautical miles. Water depth within the site is approximately 9 meters. The corner coordinates are as follows:

38°55'52"N, 74°53'04"W
38°55'37"N, 74°52'55"W
38°55'23"N, 74°53'27"W
38°55'36"N, 74°53'36"W

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effecting monitoring to detect any adverse impacts at an early stage. Where feasible locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as a suitable alternate disposal site can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to ensure that the general criteria are met.

The eight sites, as discussed below under the eleven specific factors, are acceptable under the five general criteria except for the preference of sites located off the Continental Shelf. EPA has determined, based on the information presented in the final EIS, that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of the sites proposed in this action. As a result of technical and economical constraints associated with the selection of a site off the Continental Shelf, the environmental benefits associated with relocating the disposal sites to a site off the Continental Shelf would not sufficiently outweigh the safety problems and increased costs that would result from increasing distance of the disposal site from the Inlets. Historical use at all eight sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The location of the disposal sites has been chosen to minimize the interference of disposal activities with other activities in the marine environment. All sites are located inshore of the major shipping lanes, with the exception of Rockaway which is located within a precautionary zone. Temporary perturbations in water quality from dredged material disposal may occur, but conditions can be expected to return to ambient levels before reaching any beach, shoreline or known geographically limited fishery or shellfishery (§ 228.5(b)). Based upon disposal site evaluation studies presented in the EIS, the sites proposed for designation satisfy the criteria for site selection set forth in §§ 228.5–228.6 (§ 228.5(c)). EPA established the 11 specific factors (§ 228.6) to constitute an environmental assessment of the impact of disposal at a site. The characteristics of the sites are reviewed below in terms of these eleven factors.

D.1. ROCKAWAY

D.1.1. *Geographical position, depth of water, bottom topography, and distance from coast.* (40 CFR 228.6(a)(1))

The proposed site is approximately 0.38 square nautical miles in size. Its corner coordinates are given above. Water depth ranges from 8 to 11 meters. The site is located approximately 2 nautical miles southeast of Rockaway Inlet, Long Island, New York, and is approximately 0.4 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 93.5% sand, 1.1% silt, 3.6% clay, and 1.8% gravel.

D.1.2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2).)

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight for any of these species. Furthermore, both the proposed site and rockaway Inlet are located within shellfish closure zones.

D.1.3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3).)

The proposed site is approximately 0.4 nautical miles offshore. Rockaway Inlet and the nearby beach do provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shorelines, public health or aesthetics. Furthermore, the amount of material to be disposed of at this site is not significant. The New York District of the Army Corps of Engineers has in the past scheduled its dredging projects during periods of low recreational activity (September to January) so as not to interfere with recreation activities.

D.1.4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4)).

Past dredging of this inlet has resulted in removal of approximately 200,000 cubic yards of material every 50 years. Much of this material has been deposited along the adjoining beaches or as offshore berms. The dumping occurs primarily by hopper dredge. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet disposed of at this site in the past has been approximately 96% sand.

D.1.5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5)).

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used.

Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.1.6. *Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Rockaway Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.1.7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)).

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. An EPA contractor's survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.1.8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

Rockaway is not located within a major shipping lane; however, it is within a precautionary zone. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.1.9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.1.10. *Potentially for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10)).

Previous disposal at the proposed Rockaway site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.1.11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* (40 CFR 228.6(a)(11)).

No such areas have been identified at the proposed Rockaway site or in areas likely to be affected by dredged material disposal at the site.

D.2 EAST ROCKAWAY

D.2.1. *Geographical position, depth of water, bottom topography, and distance from coast.* (40 CFR 228.6(a)(1)).

The proposed site, East Rockaway, is approximately 0.81 square nautical miles in size. Its corner coordinates are given above. Water depths range from 6 to 9 meters with an average of 6.9 meters. The site is located approximately 1.3 nautical miles southwest of East Rockaway Inlet, Long Island, New York, and is approximately 0.4 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 96.1% sand, 1.4% silt, 1.6% clay, and 0.9% gravel.

D.2.2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2)).

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight for any of these species. Furthermore, both the proposed site and East Rockaway Inlet are located within shellfish closure zones.

D.2.3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3)).

The proposed site is approximately 0.4 nautical miles offshore. East Rockaway Inlet and the nearby beach do provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shoreline, public health, or aesthetics.

D.2.4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4)).

Past dredging activities in this inlet has resulted in removal of up to 100,000 cubic yards of material every year. Much of this material has been disposed along the adjoining beaches. The dumping occurs primarily by hopper dredge. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been 98% sand.

D.2.5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5)).

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found,

EPA will take appropriate steps to limit or terminate dumping at the site.

D.2.6. *Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from East Rockaway Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.2.7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)).

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.2.8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

East Rockaway is not located within a major shipping lane. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.2.9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.2.10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10)).

Previous disposal at the proposed East Rockaway site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.2.11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* (40 CFR 228.6(a)(11)).

No such areas have been identified at the proposed East Rockaway site or in areas likely to be affected by dredged material disposal at the site.

D.3 JONES

D.3.1. *Geographical position, depth of water, bottom topography, and distance from coast.* (40 CFR 228.6(a)(1)).

The proposed site, Jones, is approximately 1.19 square nautical miles in size. Its corner coordinates are given above. Water depths range from 7 to 10 meters. The site is located approximately 1.5 nautical miles southwest of Jones Inlet, Long Island, New York, and is approximately 0.5 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 88.1% sand, 5.5% silt, 6.1% clay, and 0.3% gravel.

D.3.2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2)).

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.3.3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3)).

The proposed site is approximately 0.5 nautical miles offshore. Jones Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shoreline, public health, or aesthetics.

D.3.4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4)).

Past dredging of this inlet has resulted in removal of approximately 175,000 cubic yards of material every year. Much of this material is deposited along the adjoing beaches or as offshore beach/berms. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet disposed of at this site in the past has been 99% sand.

D.3.5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5)).

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.3.6. *Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Jones Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing

the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.3.7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)).

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.3.8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

The proposed site, Jones, is not located within a major shipping lane. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.3.9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.3.10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10)).

Previous disposal at the proposed Jones site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.3.11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* (40 CFR 228.6(a)(11)).

No such areas have been identified at the proposed Jones site or in areas likely to be affected by dredged material disposal at the site.

D.4 FIRE ISLAND

D.4.1. *Geographical position, depth of water, bottom topography, and distance from coast.* (40 CFR 228.6(a)(1)).

The proposed site, Fire Island, is approximately 1.09 square nautical miles in size. Its corner coordinates are given above. Water depths range from 7 to 10 meters. The site is located approximately 1.7 nautical miles southwest from Fire Island Inlet, Long Island, New York, and is approximately 0.5 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 89.8% sand, 5.9% silt, and 4.3% clay.

D.4.2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2)).

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.4.3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3)).

The proposed site is approximately 0.5 nautical miles offshore. Fire Island Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shorelines, public health, or aesthetics.

D.4.4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4)).

Past dredging of this inlet has resulted in removal of approximately 1.5 million cubic yards of material every year. Most of this material is deposited along the adjoining beaches. The dumping occurs primarily by pumping onto the beach from hydraulic pipeline. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been 99% sand.

D.4.5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5)).

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.4.6. *Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Fire Island Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.4.7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)).

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.4.8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

The proposed Fire Island site is not located within a major shipping lane. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.4.9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristics of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.4.10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10).

Previous disposal at the proposed Fire Island site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.4.11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* (40 CFR 228.6(a)(11)).

No such areas have been identified at the proposed Fire Island site or in areas likely to be affected by dredged material disposal at the site.

D.5 SHARK RIVER

D.5.1. *Geographical position, depth of water, bottom topography, and distance from coast.* (40 CFR 228.6(a)(1)).

The proposed site, Shark River, is approximately 0.6 square nautical miles in size. Its corner coordinates are given above. Water depths are approximately 12 meters. The site is located approximately 0.4 nautical miles northeast of Shark River Inlet, New Jersey, and is approximately 0.25 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 60.9% sand, 27.7% silt and clay, and 11.4% gravel.

D.5.2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2)).

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.5.3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3))

The proposed site is approximately 0.25 nautical miles offshore. Shark River Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shorelines public health or aesthetics. Furthermore, Shark River Inlet and the proposed site are located within shellfish closure areas.

D.5.4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4)).

Past dredging of this inlet has resulted in removal of approximately 42,000 cubic yards of material every five years. The dumping occurs primarily by pumping onto the adjoining beaches with hydraulic pipeline equipment. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been 88 to 96% sand.

D.5.5. *Feasiblity of surveillance and monitoring.* (40 CFR 228.6(a)(5)).

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to assure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.5.6. *Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Shark River Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.5.7 *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)).

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no

significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.5.8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

The proposed Shark River site is not located within a major shipping lane. Because of the low overall use of this site, there is little probability of interference with shipping traffic. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.5.9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.5.10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10)).

Previous disposal at the proposed Shark River site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.5.11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* (40 CFR 228.6(a)(11)).

No such areas have been identified at the proposed Shark River site or in areas likely to be affected by dredged material disposal at the site.

D.6 MANASQUAN

D.6.1. *Geographical position, depth of water, bottom topography, and distance from coast.* (40 CFR 228.6(a)(1)).

The proposed site, Manasquan, is approximatey 0.11 square nautical miles in size. Its corner coordinates are given above. Water depth is approximately 7 meters. The site is located approximately 0.3 nautical miles northeast of Manasquan Inlet, New Jersey, and is approximately 0.25 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site average 89.9% sand, 8.5% silt and clay, and 1.6% gravel.

D.6.2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2)).

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or for any of these species.

D.6.3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3)).

The proposed site is approximately 0.25 nautical miles offshore. Manasquan Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shorelines, public health or aesthetics. Furthermore, Manasquan Inlet and the proposed site are located within shellfish closure areas.

D.6.4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4)).

In the past, this site received approximately 80,000 cubic yards of material bi-annually. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been at least 80% sand.

D.6.5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5)).

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material are changed significantly to assure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.6.6. *Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Manasquan Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.6.7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)).

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the site.

D.6.8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

The proposed Manasquan site is not located within a major shipping lane. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.6.9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.6.10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10)).

Previous disposal at the proposed Manasquan site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.6.11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* (40 CFR 228.6(a)(11)).

No such areas have been identified at the proposed Manasquan site or in areas likely to be affected by dredged material disposal at the site.

D.7 ABSECON

D.7.1. *Geographical position, depth of water, bottom topography, and distance from coast.* (40 CFR 228.6(a)(1)).

The proposed site, Absecon, is approximately 0.28 square nautical mile in size. Its corner coordinates are given above. Water depth is approximately 18 meters. The site is located approximately 0.5 nautical mile southeast of Absecon Inlet, New Jersey, and is approximately 5.5 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 92.8% land, 7.0% silt and clay, and 0.2% gravel.

D.7.2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2)).

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commercial and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commercial and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.7.3. *Location in relation to beaches and other amenity areas.* (40 CFR 228.6(a)(3)).

The proposed site is approximately 5.5 nautical miles offshore. Absecon Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shoreline, public health, or aesthetics.

D.7.4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4)).

In the past, this site has received approximately 100,000 cubic yards of material every year. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been at least 80% sand.

D.7.5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5)).

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.7.6. *Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Absecon Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards and southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend upon the speed and direction of the wind and upon the direction of tidal currents.

D.7.7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)).

Chemical and biological data suggest that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal or dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the Site.

D.7.8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

The proposed Absecon site is not located within a major shipping lane. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the

site. There are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.7.9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal areas of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.7.10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10)).

Previous disposal at the proposed Absecon site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.7.11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* (40 CFR 228.6(a)(11)).

No such areas have been identified at the proposed Absecon site or in areas likely to be affected by dredged material disposal at the site.

D.8 COLD SPRING

D.8.1. *Geographical position, depth of water, bottom topography and distance from coast.* (40 CFR 228.6(a)(1)).

The proposed site, Cold Spring, is approximately 0.13 square nautical miles in size. Its corner coordinates are given above. Water depth is approximately 9 meters. The site is located approximately 1.0 nautical miles southwest of Cold Spring Inlet, New Jersey, and is approximately 0.7 nautical miles offshore. The bottom topography is characterized by ridges and swales. The sediment composition at the site averages 96.5% sand, 2.7% silt and clay, and 0.8% gravel. Furthermore, Cold Spring Inlet and the proposed site are located within shellfish closure zones.

D.8.2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* (40 CFR 228.6(a)(2)).

The site does not encompass any known unique breeding, spawning, nursery, or passage areas of nekton, marine mammals, or birds. Marine mammals including whales, dolphins, and sea turtles frequent the New York Bight on a seasonal basis, and shellfish grounds including clams, quahogs, scallops, and lobsters can be found throughout the Bight. The Bight also supports large commerical and recreational fisheries. The proposed dredged material disposal site was selected because of its location outside of major commerical and recreational fishing areas, and does not constitute a unique site within the Bight or any of these species.

D.8.3. *Location in relation to beaches and other amenity areas.*

The proposed site is approximately 0.7 nautical miles offshore. Cold Spring Inlet and nearby beaches provide important recreational areas and many tourists utilize these areas during the summer months. However, the release of material at the site is not expected to adversely affect the shoreline, public health, or aesthetics. Furthermore, Cold Spring Inlet and the proposed site are within shellfish closure areas.

D.8.4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* (40 CFR 228.6(a)(4)).

In the past, this site has received approximately 50,000 cubic yards of material bi-annually, with intermittent periods of no disposal. Only dredged material consisting of sands, silts, and clays will be disposed of at the site. All dredged materials must satisfy EPA criteria before any permits for ocean dumping are granted. None of the material will be packaged in any way. The dredged material from the Inlet, disposed of at this site in the past has been primarily sand.

D.8.5. *Feasibility of surveillance and monitoring.* (40 CFR 228.6(a)(5)).

Surveillance of disposal operations at the proposed site could be achieved from shore, helicopter, or shiprider. Periodic monitoring by EPA, the Corps of Engineers, and permittees will continue for as long as the site is used. Additional monitoring will be required if dredging volumes and/or characteristics of the dredged material change significantly to ensure that adverse impacts do not develop. Periodic reports of monitoring operations will be made available to interested persons upon request. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

D.8.6. *Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* (40 CFR 228.6(a)(6)).

Dredged materials characteristically exhibit dispersion of fine material and subsequent elevated levels of suspended sediment and turbidity when they are disposed. The material to be dredged from Cold Spring Inlet is similar in composition to the disposal site and is composed primarily of sand, minimizing the degree of resuspension and increase in turbidity. Generally, nearshore current flows are towards the southwest and onshore. In general, transport of suspended solids from dredged material disposal will depend primarily upon the speed and direction of the wind and upon the direction of tidal currents.

D.8.7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* (40 CFR 228.6(a)(7)).

Chemical and biological data suggests that previous dumping of dredged material at the site has produced no significant adverse impacts on the water quality at the proposed site. EPA contracted survey data did not indicate any trends attributable to previous or current disposal of dredged material. No major differences in finfish and shellfish species or numbers were found in the surveys within and adjacent to the site.

D.8.8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* (40 CFR 228.6(a)(8)).

The proposed Cold Spring site is not located within a major shipping lane. No navigational problems related to dredged material disposal at this site have been reported to date. No mineral extraction or fish and shellfish culture exist or are planned near the dumpsite. Desalination does not occur near the site. These are no unique resources of special scientific importance in the disposal area due to the small size of the disposal area in relation to the New York Bight.

D.8.9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* (40 CFR 228.6(a)(9)).

Environmental surveys of the site were conducted in 1979 by an EPA contractor. The study revealed coastal water similar in water quality and thermohaline structure to other coastal area of New York and New Jersey. The benthic community was dominated by deposit-feeders, ubiquitous throughout the study area, but very patchily distributed. These species are opportunistic and characteristic of sandy, dynamic environments. The fauna at the proposed site are thus well adapted to survive future disposal operations.

D.8.10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* (40 CFR 228.6(a)(10)).

Previous disposal at the proposed Cold Spring site has not caused any development of nuisance species at the site. There are no components in the dredged material which would attract or recruit nuisance species to the site.

D.8.11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance.* (40 CFR 228.6(a)(11)).

No such areas have been identified at the proposed Cold Spring site or in areas likely to be affected by dredged material disposal at the site.

E. Action

The EIS concludes that the proposed sites may appropriately be designated for use. The sites are compatible with the general criteria and specific factors used for site evaluation.

The designation of the Rockaway, East Rockaway, Jones, Fire Island, Shark River, Manasquan, Absecon, and Cold Spring sites as EPA approved ocean dumping sites is being published as final rulemaking. Management of these sites will be designated to the Regional Administrator of Region II.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at a site may commence, the U.S. Army Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, the rule does not necessitate the preparation of a Regulatory Impact Analysis.

The final rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Constantine Sidamon-Eristoff,
Regional Administrator, Region II.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. Secs. 1412 and 1418.

2. Section 228.12 is amended by removing paragraph (a)(1)(i)(G) and paragraph (a)(3) is amended by removing from the "Dredged Material Sites" listing the entries for Rockaway Inlet; East Rockaway; Jones Inlet; Fire Island; Shark River; Manasquan Inlet; Absecon Inlet; Cold Spring Inlet; and adding paragraphs (b) (60) through (67) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(60) Rockaway Inlet, Long Island, New York Dredged Material Disposal Site—Region II
Location: 40°32'30" N; 73°55'00" W; 40°32'30" N; 73°54'00" W; 40°32'30" N; 73°54'00" W; 40°32'30" N; 73°55'00" W.
Size: Approximately 0.38 square nautical miles
Depth: Ranges from 8 to 11 meters
Primary use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Rockaway Inlet, Long Island, New York.

(61) East Rockaway Inlet, Long Island, New York Dredged Material Disposal Site—Region II
Location: 40°34'36" N; 73°49'00" W; 40°35'06" N; 73°47'06" W; 40°34'10" N; 73°48'36" W; 40°34'12" N; 73°47'17" W.
Size: Approximately 0.81 square nautical miles
Depth: Ranges from 6 to 9 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from East Rockaway Inlet, Long Island, New York.

(62) Jones Inlet, Long Island, New York Dredged Material Disposal Site—Region II
Location: 40°34'32" N; 73°39'14" W; 40°34'32" N; 73°37'06" W; 40°33'48" N; 73°37'06" W; 40°33'48" N; 73°39'14" W.
Size: Approximately 1.19 square nautical miles
Depth: Ranges from 7 to 10 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Jones Inlet, Long Island, New York.

(63) Fire Island Inlet, Long Island, New York Dredged Material Disposal Site—Region II
Location: 40°36'49" N; 73°23'50" W; 40°37'12" N; 73°21'30" W; 40°36'41" N; 73°21'20" W; 40°36'10" N; 73°23'40" W.
Size: Approximately 1.09 square nautical miles
Depth: Ranges from 7 to 10 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Fire Island Inlet, Long Island, New York.

(64) Shark River, New Jersey Dredged Material Disposal Site—Region II
Location: 40°12'48" N; 73°59'45" W; 40°12'44" N; 73°59'06" W; 40°11'36" N; 73°59'28" W; 40°11'42" N; 74°00'12" W.
Size: Approximately 0.6 square nautical miles
Depth: Approximately 12 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Shark River Inlet, New Jersey.

(65) Manasquan, New Jersey Dredged Material Disposal Site—Region II
Location: 40°06'36" N; 74°01'34" W; 40°06'19" N; 74°01'39" W; 40°06'18" N; 74°01'53" W; 40°06'41" N; 74°01'51" W.
Size: Approximately 0.11 square nautical miles
Depth: Approximately 7 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use

Restrictions: Disposal shall be limited to dredged material from Manasquan Inlet, New Jersey.

(66) Absecon Inlet, New Jersey Dredged Material Disposal Site—Region II
Location: 39°20'39" N; 74°18'43" W; 39°20'30" N; 74°18'25" W; 39°20'03" N; 74°18'43" W; 39°20'12" N; 74°19'01" W.
Size: Approximately 0.28 square nautical miles
Depth: Approximately 18 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Absecon Inlet, New Jersey.

(67) Cold Spring Inlet, New Jersey Dredged Material Disposal Site—Region II
Location: 38°55'52" N; 74°53'04" W; 38°55'37" N; 74°52'55" W; 38°55'23" N; 74°53'27" W; 38°55'36" N; 74°53'36" W.
Size: Approximately 0.13 square nautical miles
Depth: Approximately 9 meters
Primary Use: Dredged material disposal
Period of Use: Continuing Use
Restrictions: Disposal shall be limited to dredged material from Cold Spring Inlet, New Jersey.

[FR Doc. 90-750 Filed 1-10-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-595; RM-5857]

Radio Broadcasting Services; Beloit, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 288C2 for Channel 288A at Beloit, Kansas, in response to a petition filed by Solomon Valley Broadcasting, Inc. We shall also modify the license of Station KVSV-FM to specify operation on Channel 288C2. The channel can be allotted at the current site of Station KVSV-FM. The coordinates used for Channel 288C2 are 39-26-53 and 98-04-44. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 20, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-595. adopted December 13, 1989 and released January 4, 1990. 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 Kansas by removing Channel 228A and adding Channel 288C2 at Beloit.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 90-638 Filed 1-10-90; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC-193 (Sub 1)]

Three Day Notice Period on Fuel-Related Tariff Increases

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of interim rule.

SUMMARY: In response to an emergency increase in fuel costs experienced by motor carriers across the country, the Commission is adopting an interim rule permitting independently filed tariff increases related to increases in fuel costs to be filed with the Commission at least three working days before the effective date. The new rule is set forth below.

DATES: *Effective Date:* January 8, 1990.
Expiration Date: February 26, 1990.
Comments are due January 22, 1990.

ADDRESSES: Send comments (an original and 10 copies) referring Ex Parte No. MC-193 (Sub-No. 1) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley, (202) 275-7292 or Richard B. Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the Hearing impaired is available through TDD services (202) 275-1721).

Energy and Environmental Considerations

The rule adopted here will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The rule adopted here will not have significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1312

Motor Carriers, Tariffs.

Decided: January 5, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Chairman Gradison would have granted the relief sought by the Interstate Truckload Carriers Conference and the American Trucking Associations to provide for three days' notice rather than three working days' notice. She also would not have required cost justification to be submitted with a tariff filing.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1312 of the Code of Federal Regulations is amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for 49 CFR part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

2. In § 1312.39 a new paragraph (j) is added to read as follows:

§ 1312.39 Miscellaneous provisions which may be filed on less than statutory notice.

* * * * *

(j) *Fuel related increases.* Tariff increases requested by motor carriers of property related to increases in fuel costs shall be filed with the Commission in Washington, DC at least three (3) working days before the date upon which they are to become effective. Requests for fuel-related tariff increases shall be accompanied by cost justification (i.e., a statement detailing fuel cost increases experienced by the carrier). Fuel-related tariff increases adopted under this section shall be

limited to a period of 45 days. After 45 days if an increase is still needed, a carrier can renew the existing tariff increase or publish a new tariff.

[FR Doc. 90-736 Filed 1-10-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 90899-9253]

RIN 0648-AC72

Foreign Fishing; General Provisions for Domestic Fisheries; Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Corrections

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

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the regulatory text of the final rule to implement Amendment 13 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 18 to the FMP for Groundfish of the Gulf of Alaska (GOA) published December 6, 1989 (54 FR 50386).

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg or Susan J. Salveson (Fishery Management Biologists, NMFS), 907-586-7230.

In FR Doc. 89-28388, in the issue of December 6, 1989, beginning on page 50386, make the following corrections:

PART 672—[CORRECTED]

1. On page 50395, in the first column, after the authority citation, in instruction paragraph 7, the last word in line 8, "reported" should read "reporting".

§ 672.2 [Corrected]

2. On the same page, in the third column, in § 672.2(4), in the definition of "Regulatory district", in paragraph (4), *Shelikof Strait district*, in line 3 after "points" insert "in Figure 1".

§ 672.5 [Corrected]

3. On page 50400, in the second column, in § 672.5(c)(2)(i), in line 6, after "during" insert "a".

4. On the same page, in the second column, immediately after § 672.5(c)(2)(i) insert the following paragraph:

(ii) *Weekly production reports; requirements for shoreside processors.* The manager of a shoreside processing facility must submit weekly production reports beginning with the first week of the year when the facility receives any groundfish from a Gulf of Alaska reporting area and continuing until the end of the year or until the facility ceases groundfish production for the year. Weekly production reports are required during this period even if no groundfish is received or processed during a particular week and these weekly production reports should specify "zero" with respect to the amounts harvested, received or produced.

5. On the same page, in the second column, in § 672.5(c)(2)(iii)(B), in the second line "or" should read "for".

PART 675—[CORRECTED]

§ 675.7 [Corrected]

6. On page 50408, in the first column, in item 19 of the amendatory language, the second line should read "adding paragraph (e) as follows:"

7. On the same page, in the first column, in § 675.7, the paragraph designation "(d)" is correctly revised to read "(e)".

Dated: January 4, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-732 Filed 1-10-90; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 663

[Docket No. 91160-0003]

Foreign Fishing; Pacific Coast Groundfish Fishery

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

ACTION: Notice of 1990 groundfish fishery specifications and management measures.

SUMMARY: NOAA announces the 1990 specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California. The specifications include the level of the acceptable biological catch, the optimum yield, and the distribution of the optimum yield between domestic and foreign fishing operations for groundfish species and species groups. The management measures establish fishing restrictions to keep landings within specified levels. These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of these actions is to establish allowable harvest levels of Pacific coast groundfish and to implement management measures designed to achieve but not exceed those harvest levels.

EFFECTIVE DATE: January 1, 1990, until modified, superseded, or rescinded.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206-526-6140; or Rodney R. McInnis (Southwest Region, NMFS) 213-514-6199.

SUPPLEMENTARY INFORMATION: At its September 1989 meeting, the Pacific Fishery Management Council (Council) proposed preliminary specifications and management measures for the 1990 groundfish fishery off Washington, Oregon, and California. These proposed actions were published in the **Federal Register** on November 16, 1989 (54 FR 47694) and written public comments were requested by December 1, 1989. The Council also received public comment at its November 15-17, 1989 meeting before recommending final specifications and management measures to be effective on January 1, 1990. The Council also considered advice from its Groundfish Advisory Subpanel, Groundfish Management Team (GMT), Scientific and Statistical Committee, and Groundfish Select Group in recommending these specifications and management measures to NMFS. A number of comments were received subsequent to the November Council meeting and publication of the proposed management measures; all were critical of the Council's allocation recommendations for management of sablefish in 1990. The Secretary of Commerce (Secretary) subsequently disapproved the Council's recommendations for sablefish and the restrictions currently in effect will continue pending review by the Council at its January 10, 1990, meeting. This **Federal Register** notice announces the final specifications and management measures recommended by the Council and approved by the Secretary for implementation, or continuation, on January 1, 1990. The specifications and management measures announced herein may be modified during the year.

Specifications of ABC and OY

Under the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR part 663.24, the management specifications for groundfish must be evaluated each calendar year, the preliminary specifications for the upcoming year must be published in the **Federal**

Register inviting public comment, and the final specifications must be published in the Federal Register following public comment. The management specifications include the acceptable biological catch (ABC), the optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and the total allowable level of foreign fishing (TALFF).

The ABC is the annual catch, for the more than 80 groundfish species managed by the FMP, that can be taken without jeopardizing a resource's productivity.

The OY is based on the ABC as modified by socioeconomic factors, and thus is not necessarily equal to the ABC. The FMP uses two types of OYs, numerical OYs which are quotas, and a nonnumerical OY which is all the fish which can be legally caught under the gear, area, and catch restrictions imposed by the FMP.

Each numerical OY is a quota, the maximum amount of fish (in round weight) that may be retained or landed each year from the exclusive economic zone (EEZ) (3–200 nautical miles) and the state territorial waters (0–3 nautical miles) off the coast of Washington, Oregon, and California. A numerical OY is specified only for each of six species: Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel. The OY for each of these six species includes determinations of the amounts available for domestic and foreign fishing. The DAH consists of estimates of DAP and JVP which are determined by surveys in September and June to assess the industry's planned utilization. The TALFF is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established for each species in case the domestic industry needs more fish than was initially estimated.

The more than 70 remaining species managed under the FMP are included in the nonnumerical OY. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been regulated by quotas (although harvest guidelines sometimes have been used as an annual harvest goal). Full utilization by domestic processors of some species in this multispecies complex precludes joint venture or foreign targeting on underexploited species in this complex because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because joint venture and foreign fishing are not available for any species in this multispecies complex. However, ABCs are specified for the major species or species groups.

The OYs may be changed during the year, within limits, under the procedures outlined in the regulations at 50 CFR 663.22. The estimates of DAP, DAH, JVP, and TALFF also may be modified in season according to the procedures outlined in the foreign fishing regulations at 50 CFR 611.70.

The Council recommended changes, which are explained below, to the preliminary specifications for Dover sole, widow rockfish, Pacific whiting, and sablefish in 1990. All other specifications remain as proposed at 54 FR 47694, November 16, 1989. The final 1990 ABCs and OYs for all species or species groups appear below in Tables 1 and 2. The specifications of ABC are based on the best available scientific information.

TABLE 1.—FINAL SPECIFICATIONS OF ABC FOR 1990 FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

[In thousands of metric tons]

Species	AREA					
	Vancouver[1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific Cod						[2] 3.2
Pacific Whiting						[2] 196.0
Sablefish						[2] 8.9
Rockfish:						
Pacific Ocean Perch	0.0	0.0	[3]	[3]	[3]	0.0
Shortbelly						[2] 13.0
Widow						[2] 8.9
Other Rockfish: [4]						
Bocaccio	[3]	[3]	[3]	4.1	2.0	6.1
Canary	0.8	2.1	0.6	[3]	[3]	3.5
Chilipepper						[2] 3.6
Yellowtail	1.1	2.9	0.3	[3]	[3]	4.3
Remaining Rockfish	0.8	3.7	1.9	4.3	3.3	14.0
Flatfish:						
Dover Sole	2.4	11.5	8.0	5.0	1.0	27.9
English Sole						[2] 1.9
Petrale Sole	0.6	1.1	0.5	0.8	0.2	3.2
Other Flatfish	0.7	3.0	1.7	1.8	0.5	7.7
Other Fish:[5]						
Jack Mackerel [6]						12.0
Others	2.5	7.0	1.2	2.0	2.0	14.7

[1] U.S. portion.
[2] Total all areas.
[3] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted and rockfish species are included in the "remaining rockfish" category for the areas footnoted only.
[4] "Other rockfish" means rockfish species at 50 CFR 663.2, as amended, which do not have a numerical OY.
[5] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed at 50 CFR 663.2.
[6] North of 39° N. latitude.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1990

[in thousands of metric tons]

Species	Total OY	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific Whiting	196.0	35.0	161.0	196.0	0.0	0.0
Sablefish	8.9	8.9	0.0	8.9	0.0	0.0
Pacific Ocean Perch	[2] 1.54	[2] 1.54	0.0	[2] 1.54	0.0	0.0
Shortbelly Rockfish	13.0	0.5	12.5	13.0	0.0	0.0
Widow Rockfish	9.8–10.0	9.8–10.0	0.0	9.8–10.0	0.0	0.0
Jack Mackerel	12.0	0.0	5.0	5.0	2.4	4.6
Other Species [3]	[3]					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See 50 CFR 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[2] Of this 1 540 metric tons (mt), 500 mt is for the Vancouver area and 1,040 mt is for the Columbia area. Pacific ocean perch from other areas are included in the OY for "other species." See 50 CFR 663.21(a)(3).

[3] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under 50 CFR 611.70 and Part 663. See 50 CFR 663.2 for species listing.

Change to Proposed ABC for Nonnumerical OY Species

The final ABCs for all species included in the nonnumerical OY are the same as in 1989; the preliminary ABCs for Dover sole have been changed back to their 1989 levels. The preliminary ABCs for Dover sole were based on the presumption that a new stock assessment would be completed and the ABCs would be reduced in three subareas and increased in another. Because of difficulties in ageing Dover sole, however, the stock assessment was not completed and the Council recommended maintaining the subarea ABCs that were in place in 1989. Consequently, the final coastwide ABC is 27,900 mt, 8,600 mt higher than proposed at 19,300 mt.

Changes to proposed Specifications for Numerical OY Species

Pacific whiting. Pacific whiting is a transboundary species which annually migrates between U.S. and Canadian waters. The total yield for 1990 from the U.S. and Canadian fisheries combined is estimated to be in the range of 180,000–245,000 mt. The basis for this estimate is summarized in the notice proposing the preliminary specifications at 54 FR 47694, November 16, 1989. The ABC in U.S. waters is based on the portion of the stock estimated to be in U.S. waters at the time of the fishery and the age structure of the stock in 1990. The preliminary ABC was proposed to range from 160,000 to 196,000 mt, 29 to 13 percent below the 225,000 mt ABC in 1989. In subsequent analyses, the Groundfish Management Team (GMT) revised the lower end of the range to 172,000 mt. The Council adopted a 1990 ABC for U.S. waters at the high end of the range, 196,000 mt. The stock is expected to decline further in 1991 due to poor recruitment, and catches exceeding the 245,000 mt U.S.-Canada ABC will exascerbate that decline.

In 1990, as in previous years, OY is proposed to equal ABC. The 1990 DAP is 35,000 mt, which is higher than the proposed range of 14,000 mt to 23,000 mt because of increased interest from the domestic processing industry. Because preliminary joint venture requests are higher than the final OY, the 1990 JVP is 161,000 mt, the entire difference between OY and DAP. Accordingly, as proposed, DAH in 1990 is equal to OY and there is no surplus for TALFF and no reserve.

Sablefish. The final 1990 ABC for sablefish is 8,900 mt, within the proposed range of 5,500 mt to 9,000 mt, and 100 mt below the 9,000 mt ABC in 1989. The Council recommended that the OY be set equal to ABC in 1990, 14 to 19 percent lower than the 10,400 to 11,000 mt OY range in 1989. Because domestic processors will process all available sablefish, none are available for joint venture or foreign fishing in 1990 except for minimal allowances for unavoidable incidental catches.

Widow rockfish. The final 1990 ABC is 8,900 mt, the high end of the proposed ABC range of 6,900 to 8,900 mt, and 28 percent lower than the 12,400 mt ABC in 1989. The Council recommended that the 1990 OY be a range of 9,800 mt to 10,000 mt, higher than both the proposed OY (6,900 to 8,900 mt) and the final ABC for 1990, and about 20 percent below the 12,400 mt OY in 1989. The Council announced its intent to manage for 9,800 mt with the remaining 200 mt used as a buffer to account for uncertainties in landings estimates and to accommodate unavoidable incidental catch of widow rockfish in other groundfish fisheries.

In the past, the widow rockfish stock was larger than necessary to produce its longterm sustainable level, and for this reason was fished above the ABC without jeopardizing future productivity. In 1990, widow rockfish is believed to be at the level that produces the longterm sustainable yield. Consequently, fishing above the ABC level in 1990 is likely to result in lower ABC's in the future. Despite this possibility, the Council concluded that severe economic disruption would result from a 28 percent decline in OY in a single year. Therefore, the Council recommended a phase-in of this reduction and recommended that the OY be set higher than the ABC in 1990. Setting the OY 900–1, 100 mt above ABC is not expected to result in overfishing. It is possible, however, that lower ABCs will result in the future which may be required to rebuild the stock back to the level that can produce the longterm sustainable yield.

Because this species is fully utilized by domestic processors, no widow rockfish are available for JVP or TALFF in 1990 except for minimal allowances for unavoidable incidental catches.

Harvest Guidelines

NOAA proposes to designate a harvest guideline, as it has since 1983, for the *Sebastes* complex of rockfish (of which yellowtail rockfish is a dominant component) north of Coos Bay, Oregon (43°21'34" N. latitude). The harvest guideline is the amount of fish that the Council determines should be landed in a given year, and management measures may be imposed to keep landings close to that level. However, unlike a quota, there is not a requirement to close the fishery when a harvest guideline is reached.

The harvest guideline for the *Sebastes* complex is derived by summing the prorated portions of the ABCs for the

species in the area north of Coos Bay (Table 3). As in 1989, the harvest guideline is set at 10,500 mt. If the ABCs are changed for any species in the *Sebastes* complex north of Coos Bay, the harvest guideline will reflect that change. Similarly, the harvest guideline for yellowtail rockfish also has been based on its ABC and prorated for the area north of Coos Bay, Oregon. As in 1989, the harvest guideline for yellowtail rockfish is 3,900 mt in 1990.

TABLE 3.—DERIVATION OF THE 1990 HARVEST GUIDELINE FOR THE SEBASTES COMPLEX (AND YELLOWTAIL ROCKFISH) NORTH OF COOS BAY, OREGON

[In thousands of metric tons]

Species	Vancouver subarea	Columbia subarea north of Coos Bay	Total
Canary rockfish	0.8	1.7	2.5
Yellowtail rockfish	1.1	2.8	3.9
Remaining rockfish	0.8	3.3	4.1
Sebastes complex	2.7	7.8	10.5

Sebastes complex harvest guideline north of Coos Bay = 10,500 mt.

Management Measures

NOAA is implementing certain management measures that are intended to reduce the rate of landings in 1990 for several species or species groups. Management measures which restrict fishing levels are implemented under the "points of concern" authority in the FMP (sections 1.2 and 9.3.1; 50 CFR 663.22). Any such actions are designed to prevent or reduce biological stress on the stock. Secondarily, they are designed to minimize disruption of current domestic fishing practices, marketing procedures and the environment.

Widow Rockfish. The OY for widow rockfish in 1989 was 12,400 mt. A weekly trip limit of 30,000 pounds was implemented on January 1, 1989. The weekly limit was reduced to 10,000 pounds on April 26, 1989 and a biweekly option was added. The weekly and biweekly limits applied only when there were more than 3,000 pounds of widow rockfish in a landing. The trip limit was reduced to 3,000 pounds and trip frequency restrictions were removed on October 11, 1989. The OY was reached on November 25, and the fishery was closed on December 13, the earliest possible date. Therefore, landings are protected to exceed the OY slightly in 1989, and will be at least 15 percent higher than in 1988.

In order to achieve the much lower 1990 OY range of 9,800 to 10,000 mt, more restrictive trip limits are imposed at the beginning of 1990 than in 1989. The Council recommended a weekly trip limit of 15,000 pounds, with a biweekly option of 25,000 pounds. The biweekly limit is less than twice the weekly limit to compensate for the increased probability of taking the trip limit under the biweekly option. (Fishermen choosing the biweekly option have a longer period of time to compensate for lost fishing time due to bad weather, mechanical failures, and other contingencies, and so have a greater likelihood of achieving their trip limit. It should be noted that trip limits are not guaranteed amounts, and that the occasional lost opportunity to fish has been offset by setting more liberal limits than if they were guaranteed amounts.) As in the past, the trip frequency limit applies only when more than 3,000 pounds of widow rockfish are landed, and notification procedures for chosing the biweekly option remain in effect. Because the widow rockfish OY was reached in 1989, fishermen are reminded it is unlawful to retain or land widow rockfish until 0001 hours, local time, January 1, 1990. Only one landing above 3,000 pounds of widow rockfish may be made during the period January 1–2, 1990.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein announces:

(1) *Weekly trip limit.* No more than 15,000 pounds (round weight) of widow rockfish may be taken and retained, possessed, or landed per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(2) *Biweekly trip limit option.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), no more than 25,000 pounds (round weight) of widow rockfish may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period. After notification is given, and while it remains in effect, only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that two-week period. "Two-week period" means 14 consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time. Notification procedures for biweekly landings of widow rockfish appear near the end of this Federal Register notice.

(3) There is no limit on the number of landings of widow rockfish under 3,000 pounds.

(4) Unless retention or landing of widow rockfish has been prohibited, a vessel that has landed its weekly (or biweekly) limit may continue to fish on the next week's (or two weeks') limit so long as the fish are not landed (offloaded) until the next legal one week (or two week) period.

(5) The fishery management area for this species is the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All widow rockfish possessed 0–200 nautical miles offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 3–200 nautical miles offshore Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sebastes Complex (Including Yellowtail Rockfish)

North of Coos Bay, Oregon, the harvest guideline for the *Sebastes* complex in 1989 was 10,500 mt. A weekly trip limit of 25,000 pounds (containing no more than 7,500 pounds of yellowtail rockfish) was implemented on January 1, 1989, and biweekly and

twice-weekly trip limit options were available. The weekly limit for the *Sebastes* complex remained the same throughout the year, but the weekly limit for yellowtail rockfish was reduced to 3,000 pounds or 20 percent of the *Sebastes* complex, whichever was greater, on July 26, 1989, and proportional changes were made to the biweekly and twice-weekly options. In 1989, the trip frequency limits were applied only when more than 3,000 pounds of the *Sebastes* complex were landed. At the November Council meeting, landings of the *Sebastes* complex caught north of Coos Bay were projected at 11,198 mt in 1989, seven percent above the harvest guideline, and 19 percent lower than in 1988. Landings of yellowtail rockfish caught north of Coos Bay are projected at 4,558 mt in 1989, 17 percent above the harvest guideline, and 19 percent lower than in 1988.

The harvest guideline for the *Sebastes* complex and the ABC for yellowtail rockfish are the same in 1990 as in 1989. Because the *Sebastes* complex is managed in order to protect yellowtail rockfish, the only species in the complex believed to need protection, the Council was not concerned that landings were projected to slightly exceed the harvest guideline in 1989. In the meantime, the Council recommended that the harvest guidelines and trip limits implemented at the beginning of 1990 be the same as those implemented in January 1989.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein announces:

(1) *Definitions.* (a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (thornyheads or idiot rockfish).

(b) *One-week period* means seven consecutive days beginning 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(c) *Two-week period* means 14 consecutive days beginning at 0001 hours Wednesday and ending 2400 hours Tuesday, local time.

(d) All weights are round weights or round weight equivalents.

(2) *General.* (a) The fishery management area for this species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All fish in the *Sebastes* complex possessed 0–200 nautical miles offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 3–200 nautical miles offshore Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

(b) There is no limit on the number of landings of the *Sebastes* complex under 3,000 pounds.

(c) Coos Bay means 43°21'34" N. latitude, which is the latitude of the north jetty at Coos Bay, Oregon.

(3) Restrictions on the *Sebastes* Complex Caught North of Coos Bay.

(a) *Weekly trip limit.* Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 25,000 pounds of the *Sebastes* complex, including no more than 7,500 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed per vessel per fishing trip in a one-week period north of Coos Bay. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one-week period.

Note: If fishing under the weekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made during the week of December 27, 1989-January 2, 1990.

(b) *Bi-weekly trip limit.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), up to 50,000 pounds of the *Sebastes* complex, including no more than 15,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed per vessel per fishing trip in a two-week period north of Coos Bay. After notification is given, and while it remains in effect, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in each two-week period. Notification procedures appear near the end of this **Federal Register** notice.

Note: If fishing under the biweekly trip limit, one landing above 3,000 pounds of the *Sebastes* complex may be made December 20, 1989-January 2, 1990, or December 27, 1989-January 9, 1990. Biweekly trip limit options in effect on December 27, 1989 will continue until revoked as provided in this paragraph.

(c) *Twice-weekly trip limit.* If the fishery management agency of the state where the fish will be landed is notified as required by state law (WAC 220–44–050: OAR 635–04–033: CF&GCA 7652), up to 12,500 pounds of the *Sebastes* complex, including no more than 3,750 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed per vessel per fishing trip north of Coos Bay. After notification is given, and while it remains in effect, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period. Notification procedures appear near the end of this **Federal Register** notice.

Note: If fishing under the twice-weekly trip limit, only two landings above the 3,000 pounds of the *Sebastes* complex may be made during the week of December 27, 1989-January 2, 1990. Twice-weekly trip limit options in effect on December 27, 1989, will continue until revoked as provided in this paragraph.

(d) Unless retention or landing of the *Sebastes* complex or yellowtail rockfish has been prohibited, a vessel which has landed a weekly (or biweekly or twice-weekly) limit may continue to fish on the limit for the next fishing period (weekly, biweekly, or twice-weekly) so long as the fish are not landed (offloaded) until the next fishing period.

(4) Restrictions on the *Sebastes* Complex Caught South of Coos Bay.

No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed south of Coos Bay per vessel per fishing trip. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Coos Bay.

(5) Operating both North and South of Coos Bay on a Fishing Trip.

(a) Unless the owner or operator of the fishing vessel has notified the State of Oregon as required by paragraph (5)(b), no person fishing for any groundfish species during a single fishing trip may fish both north and south of Coos Cay, or fish in one area and possess or land fish in the other area, if more than 3,000 pounds of the *Sebastes* complex is landed from that fishing trip. If fishing is conducted both north and south of Coos Bay, or if fish are caught north of Coos Bay and possessed or landed south of Coos Bay during the fishing trip, then the restrictions on the *Sebastes* complex caught north of Coos Bay apply. If fishing is conducted south of Coos Bay only, and fish are possessed or landed north of Coos Bay, then the restrictions on the *Sebastes* complex caught south of Coos Bay apply.

(b) Except as provided in paragraph (5)(c), notification must be submitted to one of the following offices of the Oregon Department of Fish and Wildlife, by telephone or in writing, prior to leaving port on a fishing trip: Marine Regional Office, Marine Science Drive,

Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(c) A vessel owner or operator at sea who has not made notification under this paragraph and who wishes to do so, or who wants to change the notification for the current fishing trip, may do so by radiotelephone. (This radio telephone message must be confirmed in writing by the vessel owner or operator to the address in subparagraph (b) above immediately on return to port; corrections and confirmations must be sent to the same address as the original message.) In this event, the provisions in paragraph (3) for the *Sebastes* complex caught north of Coos Bay will apply to all of the *Sebastes* complex taken in that trip, no matter where the fish are caught.

Pacific Ocean Perch. The OY for Pacific ocean perch in 1989 was 500 mt in the Vancouver area, and 1,040 mt in the Columbia area (increased from 800 mt on July 26, 1989), for a total OY of 1,540 mt. On January 1, 1989, the trip limit for Pacific ocean perch was 5,000 pounds or 20 percent of all fish on board, whichever is less. This trip limit also was in effect in 1987 and 1988. In 1989 the number of landings containing Pacific ocean perch increased, and the trip limit, which was intended to allow only incidental landings, was reduced further to 2,000 pounds or 20 percent of all fish on board, whichever is less, on July 26, 1989. The Columbia subarea OY was increased at the same time to accommodate the incidental catches that otherwise would have been discarded after the quota was reached. The Columbia subarea OY of 1,040 mt was reached and further landings were prohibited on November 13, 1989. At the November Council meeting, landings of Pacific ocean perch in the Vancouver subarea in 1989 were projected to be 318 mt, 64 percent of the 500 mt OY and six percent lower than in 1988.

The OYs for Pacific ocean perch in 1990 remain the same as at the end of 1989. Nonetheless, further review of Washington and Oregon trip tickets indicates a coastwide trip limit of 3,000 pounds or 20 percent of all fish on board, whichever is less, would be more appropriate than the 1989 limits. This trip limit would apply only when more than 1,000 pounds of Pacific ocean perch are on board. The Council recommended this trip limit because it should keep landings at incidental levels without encouraging targeting or discards. Fishermen are reminded that, because the OY in the Columbia area was reached in 1989, it is unlawful to retain or land Pacific ocean perch caught in the Columbia subarea until 0001 hours, local time, January 1, 1990.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein announces:

(1) For Pacific ocean perch coastwide (Washington, Oregon, and California), no more than 3,000 pounds or 20 percent (round weights) of all legal fish on board, whichever is less, may be taken and retained, possessed, or landed per vessel per fishing trip. This provision applies only when more than 1,000 pounds (round weight) of Pacific ocean perch are on board.

Note: Twenty percent of all legal fish on board including Pacific ocean perch is equivalent to 25 percent of all legal fish on board other than Pacific ocean perch.

(2) Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR Part 663, the Magnuson Act, any notice issued under subpart B of Part 663, or any other regulation or permit promulgated under the Magnuson Act.

(3) The fishery management area for this species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All Pacific ocean perch possessed 0–200 nautical miles offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from 3–200 nautical miles offshore Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

Sablefish. As discussed earlier, the 1990 ABC and OY for sablefish are 8,900 mt, which means the 1990 OY is 14 to 19 percent lower than the OY range in 1989. At its November 1989 meeting, the Council recommended a different allocation proportion for trawl and nontrawl gears in 1990 than the 58:42 ratio currently in effect in 1989. For 1990, the Council recommended that, after subtracting 300 mt for the Indian tribal fisheries from the 8,900 mt OY, the remaining 8,600 mt should be allocated 62 percent (5,332 mt) to the trawl fleet and 38 percent (3,268 mt) to the nontrawl fleet. Management measures for the 1990 sablefish fishery also were recommended. For the trawl fishery, the Council recommended a sablefish trip limit of 25 percent of all fish on board between January and March 1990, that would apply only to landings of more than 1,000 pounds of sablefish. After April 1, the 25 percent limit would be applied to the deepwater complex rather than all fish on board. The deepwater complex consists of sablefish, Dover sole, arrowtooth flounder, and thornyheads. The Council's recommendations for trip limits on trawl landings were intended to stretch the duration of the fishery throughout most of the year while not exceeding the trawl allocation.

The Council also recommended restriction of the nontrawl fishery by imposing a 2,000 pound trip limit at the beginning and end of the year, whereas in 1988 and 1989, trip limits were imposed only at the end of the year or to reduce landings of sablefish smaller than 22 inches. The 2,000 pound trip limit would be removed on April 1, 1990, enabling the target fishery to begin, but later in the year when only 400 mt of the nontrawl quota remains, it would again be imposed to eliminate most target fishing while providing for bycatch in other fisheries. Subsequently, a trip limit of 100 pounds could be imposed if necessary to stretch the nontrawl fishery closer to the end of the year. A trip limit for sablefish smaller than 22 inches (1,500 pounds or 3 percent of all sablefish on board, whichever is greater), as was in effect January 1–July 26, 1989, was intended to apply only between April 1 and the projected date that 400 mt of the nontrawl quota remains.

The Council's recommendations for the allocation and management of sablefish in 1990 were not approved by the Director, Northwest Region, NMFS. The Regional Director informed the Council in writing on December 8, 1989 that "the documentation and analysis do not substantiate either the need to reallocate between fixed and trawl gear groups in 1990 or the superiority of the Council's recommendations over the status quo or other reasonable options in its ability to alleviate biological stress on sablefish."

The Regional Director requested that the Council review the current management measures and recommend adjustments as necessary to achieve the current allocation between trawl and nontrawl gears, and review the biological necessity for continuing the current trip limit for nontrawl gear. The Council will reconsider these issues on January 10, 1990. Therefore, management measures for sablefish in

1990 will be announced in a separate **Federal Register** notice after January 10, 1990. Until such time, current management measures remain effective.

Notifications for Biweekly and Twice-Weekly Trip Limit Options

As of January 1, 1990, notifications are required for widow rockfish (for the biweekly option) and for the *Sebastes* complex (including yellowtail rockfish) (for biweekly and twice-weekly options). The species subject to these notifications may change during the year, depending on whether or not biweekly or twice-weekly trip limit options are made available. Notifications for biweekly and twice-weekly trip limit options appear below, as required by state law.

Biweekly trip limit options. As required by state law, the fishery management agency of the state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the biweekly limits before the first day of the first two-week period in which such landings are to occur. The notice is binding for subsequent consecutive two-week periods until revoked in writing, addressed to the appropriate state agency, prior to the two-week period in which the rescission is to occur.

Twice-weekly trip limit options. As required by state law, the fishery management agency of the state where the fish will be landed (Washington, Oregon, or California) must receive a written notice declaring intent of the vessel owner or operator to use the twice-weekly limits before the first day of the first one-week period in which such landings are to occur. The notice is binding for subsequent consecutive one-week periods until revoked in writing, addressed to the appropriate state agency, prior to the one-week period in which the rescission is to occur.

Addresses. Notification must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503-867-4741; P.O. Box 5430, Charleston, OR 97420, telephone 503-888-5515; 53 Portway Street, Astoria, OR 97103, telephone 503-325-2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504, telephone 206-753-6623; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501, telephone 707-445-6499.

Inseason Adjustments

At subsequent meetings, the Council will review the best data available and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to extend the fisheries as long as possible throughout the year.

Other Fisheries

Receipt or retention of widow rockfish, Pacific ocean perch, and the *Sebastes* complex by foreign fishing or foreign processing vessels is limited by incidental percentage allowances established under 50 CFR 611.70, and published annually with the final specifications.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The specifications are made under the authority of and in accordance with 50 CFR 663.24 (a) and (b). The management measures are made under the authority of 50 CFR 663.22(a) and 663.23.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this notice are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02-10 because the alternatives and their impacts have not changed significantly.

This action does not contain new collection of information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This action is in compliance with Executive Order 12291. This action is covered by the Regulatory Flexibility Analysis (RFA) prepared for the authorizing regulations. A copy of that RFA may be obtained at the addresses listed above.

Section 663.23 of the groundfish regulations states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. Prompt action to limit fishing rates is necessary to protect the widow rockfish, *Sebastes* complex, and Pacific ocean perch and alleviate the necessity for fishery closures before the end of 1990. If fisheries for these species close much before the end of the year, the incidental catch in other fisheries must be discarded, resulting in unquantifiable unrecorded fishing mortality in excess of the ABC or OY. If unrestricted, landings unquestionably will result in several ABCs being exceeded in 1990, increasing the likelihood of biological stress on those stocks. Consequently, further delay of these actions is impracticable and contrary to the public interest, and there is good cause to waive the 30-day delay in effectiveness.

The public has had the opportunity to comment on this action. The public participated in Groundfish Select Group, Groundfish Management Team, and Council meetings in August and September 1989 that resulted in the proposed actions published at 54 FR 47694, November 16, 1989, and during the October and November meetings during which the final recommendations were developed.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries, Fishing.

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

Dated: January 5, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-731 Filed 1-8-90; 12:39 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 8
Thursday, January 11, 1990

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-249-AD]

Airworthiness Directives: Boeing Model 737-300 and 737-400 Series Airplanes Equipped With Kidde Fire and Overheat Detection Systems

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 737-300 and -400 series airplanes, which would require modifications to the engine fire and overheat detection system. This proposal is prompted by numerous reports of false fire and overheat warnings that have resulted in engine in-flight shutdowns and airplane diversions. This condition, if not corrected, could result in additional unnecessary engine in-flight shutdowns and airplane diversions that unduly jeopardize continued safe operation of the airplane.

DATES: Comments must be received no later than February 28, 1990.

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-249-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 Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. 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 which the following statement is made: "Comments to Docket Number 89-NM-249-AD." The post card will be date/time stamped and returned to the commenters.

Discussion

The FAA has received numerous reports of false engine fire and overheat warnings on Boeing Model 737-300 and -400 series airplanes equipped with Kidde engine fire and overheat detection systems. Many of these occurrences resulted in engine in-flight shutdowns. The FAA has determined that a major cause of many of these false fire and overheat warnings is corroded connectors or broken connector wires. The connector corrosion has been attributed to the improper installation, or the presence of contaminants at the time of installation, of the hermetically sealed connectors. Breakage of connector wires has been attributed to fatigue caused by high frequency low amplitude flexing. False engine fire and overheat warnings, if not corrected, could result in unnecessary engine in-flight shutdowns and airplane diversions that unduly jeopardize continued safe operation of the airplane.

The FAA has reviewed and approved Boeing Service Bulletins 737-26-1051, Revision 1, dated March 30, 1989, and 737-26-1055, Revision 1, dated September 14, 1989, which describes procedures for modifying the Kidde engine fire and overheat detection system to prevent false warnings. These modifications include the replacement of the existing fire detector assemblies, which use electrical connectors, with terminal lugs and the installation of modified support brackets and heavier gauge wire to increase fatigue resistance.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would require modification of the engine fire and overheat detection system in accordance with the service bulletins previously described.

There are approximately 640 Model 737-300 and -400 series airplanes of the affected design in the worldwide fleet. It is estimated that 350 airplanes of U.S. registry would be affected by this AD, that it would take approximately 70 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are available at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $980,000.

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 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

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:

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 737–300 and –400 series airplanes, equipped with Kidde engine fire and overheat detection systems, as listed in Boeing Service Bulletins 737–26–1051, Revision 1, dated March 30, 1989, and 737–26–1055, Revision 1, dated September 14, 1989, certificated in any category. Compliance is required within 6 months after the effective date of the AD, unless previously accomplished.

To reduce false engine fire and overheat warnings, which could result in unnecessary engine in-flight shutdowns and airplane diversions that unduly jeopardize continued safe operation of the airplane, accomplish the following:

A. Modify the engine fire and overheat detection system on each engine in accordance with Boeing Service Bulletins 737–26–1051, Revision 1, dated March 30, 1989, and 737–26–1055, Revision 1, dated September 14, 1989.

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.Q02

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 December 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90–671 Filed 1–10–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–200–AD]

Airworthiness Directives: Boeing Model 747 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 747 series airplanes, which would required replacement of an aluminum Auxiliary Power Unit (APU) firewall patch plate with a new patch plate made of fireproof material. This proposal is prompted by the determination that the manufacturer used a material which is not fireproof to cover an opening in the APU firewall. This condition, if not corrected, could allow a fire in the APU compartment to extend forward of the APU firewall.

DATES: Comments must be received no later than February 28, 1990.

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–200–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 Seatle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Dostert, Propulsion Branch, ANM–140S; telephone (206) 431–1974. Mailing adress: 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 msut submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–200–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

It was recently determined that, on certain Boeing Model 747 series airplanes, the manufacturer used a material which is not fireproof to cover an opening in the APU firewall. This condition, if not corrected, could allow a fire in the APU compartment to extend forward of the APU firewall.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2317, dated December 21, 1989, which describes procedures for replacement of the existing aluminum patch plate assembly with a new fireproof assembly made of titanium.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require replacement of an aluminum

Auxiliary Power Unit (APU) firewall patch plate with a new patch plate made of fireproof material, in accordance with the service bulletin previously described.

There are approximately 727 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 218 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airline to accomplish the required actions, and that the average labor cost would be $40 per manhour. Replacement parts are estimated to be $306 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $136,468.

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 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

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 747 series airplanes, listed in Boeing Alert Service Bulletin 747-53A2317 dated December 21, 1989, certificated in any category. Compliance required within the next 180 days after the effective date of this AD, unless previously accomplished.

To prevent an APU fire from penetrating the APU firewall, accomplish the following:

A. Replace the existing aluminum APU firewall patch plate assembly located near Buttock Line zero and Walter Line 355 with a new fireproof patch plate assembly, in accordance with Boeing Alert Service Bulletin 747-53A2317, dated December 21, 1989.

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.

Issued in Seattle, Washington, on December 28, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-672 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-136-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-10 and -15 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); correction; reopening of comment period.

SUMMARY: This notice corrects an earlier proposal to adopt a new airworthiness directive (AD), applicable to Model DC-10-10 and -15 series airplanes, which would require reducing the wear limit of the main landing gear brakes to 0.60 inch. This proposal is prompted by dynamometer testing and analysis which revealed that the current wear limit is inadequate to provide enough brake mass to accomplish a maximum energy rejected takeoff (RTO) stop. This action corrects a brake part number in the proposed rule published in the **Federal Register** and grants an extension of the comment period.

DATE: Comments must be received no later than February 5, 1990.

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-136-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

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 which the following statement is made: "Comments to Docket Number 89-NM-136-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations by adopting a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10-10 and -15 series airplanes, which requires reducing the wear limit of the main landing gear brakes to 0.60 inch, was published as a Notice of Proposed Rule Making (NPRM) in the **Federal Register** on September 20, 1989 (54 FR 38691). The proposal was prompted by dynamometer testing and analysis which revealed that the current wear limit is inadequate to provide enough brake mass to accomplish a maximum energy rejected takeoff (RTO) Stop.

The original proposal submitted to the **Federal Register** for publication specified, in paragraph A., that the affected Goodyear/Loral Systems brake part numbers are 5000709-1, -3, -7, -8, and -9. However, the FAA has now determined that the affected brake part numbers are 5000709-1, -3, -5, -7, and -8. There is no -9 part number, and the -5 part number was not included in the NPRM.

Since the operators using the brake part number 5000709-5 have not been given notice to comment on the proposed rule, it is necessary to make this correction to the proposal and to reopen the comment period to allow public comment on the proposed AD as corrected.

Additionally, Loral Systems has changed its name to Aircraft Braking Systems. The name change is reflected in this Suppemental NPRM.

There are approximately 134 Model DC-10-10 and -15 series airplanes of the affected design in the worldwide fleet. It is estimated that 115 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 $9,200.

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 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

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:

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 correcting the Notice of Proposed Rulemaking, Docket Number 89-NM-136-AD, published in the **Federal Register** on September 20, 1989 (54 FR 38691), as follows:

McDonnell Douglas: Applies to Model DC-10-10 and -15 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of the main landing gear brakes, accomplish the following:

A. Within 30 days after the effective date of this amendment, inspect Aircraft Braking Systems (formerly Loral, formerly Goodyear) brakes, part numbers 5000709-1, -3, -5, -7, and -8, for wear. Any brake worn more than 0.60 inch must be replaced, prior to further flight, with one within this limit.

B. Within 30 days after the effective date of this amendment, incorporate the 0.60 inch brake limit into the FAA-approved maintenance inspection program.

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 Angles Aircraft Certification Office, FAA, Northwest Mountain Region.

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.

Issued in Seattle, Washington, on December 29, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-674 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-4]

Airworthiness Directives; Sikorsky Model S-76B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an airworthiness directive (AD) that presently requires an initial and repetitive visual inspection to detect cracking of the forward engine support cross beam on Sikorsky Model S-76B helicopters. The proposed amendment to the AD would require inspections only for those helicopters which have been operating with overweight horizontal stabilizers or with certain lights on the horizontal stabilizer tips and have not had the cross beam replaced since operating under these conditions. These particular helicopters are likely to experience cracks in the engine support beams which, if not corrected, may result in loss of proper engine support.

DATES: Comments must be received on or before February 26, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007, or delivered in duplicate to Room 158, Building 3B, of the Regional Rules Docket at the above address.

Comments must be marked: Docket No. 88-ASW-4. Comments may be inspected at the above location in Room 158 between the hours of 8 a.m. and 4 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

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 FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of 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 Regional Rules Docket, Office of Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas, 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. 88-ASW-4. The postcard will be date/time stamped and returned to the commenter.

This action proposes to amend Amendment 39-5856 (53 FR 5366; February 24, 1988), AD 88-05-01, which currently requires initial and repetitive visual inspections to detect cracking of the forward engine support cross beam on Sikorsky Model S-76B helicopters. After issuing Amendment 39-5856, the FAA has determined that the cracking in the cross beam was caused by a dynamic response condition in which excessive stresses in the cross beam were induced by vibratory loads on an overweight horizontal stabilizer. The overweight condition changed the frequency response characteristics of the horizontal stabilizer, thereby causing increased response to main rotor vibratory inputs. The increased stabilizer vibratory loads in turn, resulted in increased loads in the cross beam. It was further determined that the horizontal stabilizer weight needs to be limited to preclude excessive loads. It was also determined that changes in mass distribution of the horizontal stabilizer caused by the addition of lights at the stabilizer tips can also result in increased response to main rotor vibratory input. The FAA has learned that all overweight horizontal stabilizers and stabilizers with tip light installations that were not part of the S-76 type design have been identified and removed from service.

As a result of these findings, the FAA has concluded that the repetitive inspections are necessary only for those cross beams on S-76B helicopters that were operated with either overweight horizontal stabilizers or stabilizers with certain tip lights installed. Therefore, the FAA proposes to amend the applicability statement to limit the AD to 10 specific S-76B helicopters that were subjected to the vibratory stresses caused by either an overweight horizontal stabilizer or a stabilizer with certain tip lights installed and that have the original cross beam cap angle and web installed. To preclude further occurrences, a NOTE has also been added to the Airworthiness Limitations Section of the S-76B Maintenance Manual to limit the weight of the horizontal stabilizer.

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 is relieving in nature and imposes no additional burden on any person. 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, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

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 (FAR) (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.

2. Section 39.13 is amended by amending Amendment 39-5856 (53 FR 5366; February 24, 1988), AD 88-05-01, by revising the applicability statement as follows:

§ 39.13 [Amended]

Sikorsky Aircraft: Applies to Sikorsky Aircraft Model S-76B helicopters, Serial Numbers (S/N) 760312, 760314, 760316, 760317, 760318, 760319, 760327, 760330, 760331, and 760337, certificated in any category, equipped with the original cross beam cap angle, Part Number (P/N) 76070-20526-102, and the original cross beam web, P/N 76070-20526-139, -149, or -158.

For helicopters with 300 or more hours' time in service, compliance is required within the next 50 hours' time in service after the effective date of this amended AD, and thereafter at intervals not to exceed 50 hours' time in service from the last inspection.

* * * * *

Issued in Fort Worth, Texas, on December 27, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-673 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 155

Proposed Rule Concerning Restriction on Dual Trading by Floor Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing Regulation 155.5, which would prohibit a floor broker from (i) trading or placing an order for a futures or option contract for his own account, an account over which he had trading discretion, or an account in which he had a significant interest and (ii) holding or executing an order for a futures or option contract in the same commodity for a customer, during the same trading session, except to the extent permitted by contract market rules. Proposed Regulation 155.5 would be phased in on an incremental basis in accordance with a 12-month

Dual Trading Restriction Implementation Plan.

DATE: Comments on the proposed rule must be received by April 11, 1990.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Michael B. Sundel, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

The total public reporting burden for the collection of information which includes this proposed regulation is estimated to average 80.83 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and mintaining the data needed, and completing and reviewing the entire 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 Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0022), Washington, DC 20503.

II. Background

Dual trading [1] commonly is understood to refer to the practice of trading by a floor member in two capacities—that of a "trader" (or a principal) and that of a "floor broker" (or an agent) [2]—within a specified time period.[3] A dual-trading broker therefore is one who trades for his own account as a principal and for the account of a customer as an agent.[4]

The benefits most often attributed to dual trading are that the practice improves market liquidity, narrows bid-ask spreads, and lowers trading costs for all participants. It often is suggested that these benefits are particularly important in low-volume markets.[5] It also is claimed that customers of dual-trading brokers receive better fills than such customers would receive if those brokers were not able to trade for their own accounts. One argument made in this connection is that dual traders may have superior trading skills and better access to market information.

The principal problem generally attributed to dual trading is that there is an inherent conflict of interest in a situation in which a member is able to trade as both a principal and an agent. It is argued that dual trading makes possible or facilitates the commission of certain types of trading abuses involving customer orders. These abuses might be reduced in frequency if dual trading were restricted.

Another alleged problem with the practice of dual trading sometimes cited is the apparent informational advantage of dual traders. Under this view, non-dual trading brokers and locals are at a disadvantage when trading opposite dual traders, who potentially can use information communicated by customer orders when trading for their own accounts.

In the past, although permitting the practice of dual trading, the Commission has acknowledged a concern that persons acting as both a principal and an agent could abuse their fiduciary responsibilities with regard to customer orders. The Commission's view, however, has been that notwithstanding this concern:

(1) Dual trading was necessary to achieve adequate market liquidity and accompanying market efficiencies; and

(2) The potential for abuse could be addressed adequately by rules making those abuses illegal, combined with audit trail systems capable of detecting such abuses. Section 4j(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6j(1), specifically requires the Commission to consider the extent to which dual trading by floor brokers contributes to market liquidity in assessing from time to time the continued permissibility and the appropriate regulation of dual trading by floor brokers on futures exchanges. The Commission also is required to take into consideration the effect on liquidity in setting any "terms, conditions, and circumstances under which [dual] trades and executions shall be conducted."

Pursuant to the mandate of section 4j(1), which became effective in April 1975, the Commission initiated its first extensive study of the practice of dual trading when it appointed an Advisory Committee on the Regulation of Contract Markets and Self-Regulatory Associations ("Advisory Committee") to consider, among other issues, dual trading by floor brokers. In its report issued on December 23, 1976, the Advisory Committee recommended that the Commission continue to permit dual trading because the practice provided liquidity and promoted expertise among floor brokers.[6] The Advisory Committee also recommended that all contract markets be required to promulgate rules to protect customers from potential trading abuses which may result from

[1] As discussed in detail in Section IV. below, the Commission would specifically define "dual trading" for purposes of the proposed regulation.

[2] The customer type indicator ("CTI") is a numerical code required by Commission Regulation 1.35(e), 17 CFR 1.35(e), to be recorded with respect to each trade, that identifies the account category for which the floor member was trading: CTI 1 designates a trade by a floor member for his personal account; CTI 2 designates a trade for his clearing member's house account; CTI 3 designates a trade for another member present on the floor, or for an account controlled by such other member; and CTI 4 designates a trade for any other type of customer. Since CTI 4 trades include trades executed for other members not present on the floor and trades for house accounts other than for the executing broker's clearing member, only certain trades designated CTI 4 are for public customers.

A trader, also known as a "local," generally can trade only for his own account. A trader, therefore, generally can execute only CTI 1 trades. By contrast, a "floor broker" can trade not only for his own account but also for the accounts of others, including his clearing member's house account (CTI 2), the account of another member present on the trading floor (CTI 3), or the account of any other type of customer (CTI 4).

[3] To the extent that the system of financial regulation and self-regulation in the United States has sought to restrict the practice of dual trading, the period of the restriction generally has been limited to a single trading session. *See, e.g.,* New York Stock Exchange Rules 90, 92, 111, 112, and 410(b); Chicago Board Options Exchange Rules 6.22 and 8.8.

[4] At present, three futures exchanges restrict dual trading: the Amex Commodities Corporation ("ACC"), the Philadelphia Board of Trade ("PBOT"), and the Chicago Mercantile Exchange ("CME"). ACC Rule 641(a) prohibits, with certain limited exceptions, a floor borker from executing a trade for an account in which he or his firm has interest and also executing an order received from off the floor or an order received from another floor broker in the same commodity interest during the same session. PBOT Rule 342(a) contains identical provisions prohibiting dual trading. CME Rule 541 ("Top Step Rule") restricts dual trading in the Standard & Poors 500 Stock Price Index ("S&P 500") futures contract. That rule limits access to the top step of the CME S&P 500 futures pit to floor brokers and prohibits brokers standing on the top step from trading for their own accounts.

[5] On March 8, 1989, the Commission's Division of Trading and Markets ("Division") sent a letter to each exchange soliciting the exchange's views on the current need for dual trading in its markets and requesting data on the extent and nature of dual trading at the exchange. With the exception of the CME, the ACC, and the PBOT, all of the exchanges stated that the ability of floor brokers to trade both for themselves and for their customers provides futures markets with important benefits which would be diminished—or even lost—if the practice were restricted. In this regard, the CME stated that dual trading is necessary to provide adequate liquidity, but only in less actively traded contracts or under special circumstances. The Commission has considered carefully the exchanges' responses to this letter, as well as other comments about dual trading made by interested parties in response to Congressional inquiries.

[6] Advisory Committee, *Report of the Chairman of the Commodity Futures Trading Commission Advisory Committee on Market Regulation* (December 23, 1976) at 6-18.

dual trading. In making these recommendations, the Advisory Committee indicated that the record generating systems then used by the exchanges were inadequate to permit meaningful studies of the need for dual trading to provide market liquidity, or of the extent to which dual trading-related abuses had occurred or were occurring. The Advisory Committee concluded that more information was needed on the effect of dual trading on liquidity and on systems that would permit more accurate timing of trades.

On December 23, 1976, the Commission promulgated Regulation 155.2, which sets forth trading standards for floor brokers.[7] Regulation 155.2 requires each contract market to adopt and submit to the Commission for approval a set of rules which, among other things, prohibits a floor broker from trading for his own account or for any account in which he has an interest ahead of an executable customer order.[8] The Commission made clear in adopting Regulation 155.2 that although it had determined to permit dual trading by floor brokers to continue subject to the new standards required by that regulation, experience and new information could affect its position on the practice.[9]

In September 1984, the Commission issued a report entitled *A Study of the Nature, Extent and Effects of Futures Trading by Persons Possessing Material Nonpublic Information* ("1984 Study") which examined various types of trading that may involve material, nonpublic information, including trading by floor brokers. The Commission concluded that to the extent dual trading by floor brokers was to be permitted, an improved audit trail was needed to ensure that surveillance of potential trade practice abuses was more effective.[10]

Improvement of exchange audit trails has been a continuing concern of the Commission. In implementing the 1984 Study's recommendation, the Commission proposed significant amendments to its regulations to require that exchange audit trails include one-minute execution times. The Commission adopted these amendments on January 15, 1986.[11] Prior to this time, the Commission had required that trades be timed within 30-minute brackets. By July 1988, each exchange had implemented a one-minute timing system and by November 1989, Commission staff had reviewed audit trail systems covering 100 percent of futures trading.[12] The Commission believes that, although the current one-minute trade timing systems are an improvement over 30-minute bracketing systems, the current systems are not capable of detecting all abuses related to dual trading.

A recent study by the Division of Economic Analysis ("Economic Analysis") tested certain commonly-held assumptions about dual trading. Economic Analysis found, among other things, that dual traders do not, on average, provide their customers with better quality executions than do non-dual-trading brokers and that dual traders' performance in providing market liquidity is not superior to that of non-dual traders.[13] In addition, according to the report of the CME Special Committee to Review Trading Practices, the Top Step Rule, which prohibits members standing on the top step from dual trading, has affected approximately 98 percent of all public customer transactions in S&P 500 futures because most S&P customer business must be conducted from the top step. The Report found that the Top Step Rule had no appreciable impact on that contract's average daily range, average daily volume, or liquidity "despite the fact that the percentage of volume done by dual traders fell from over 50 percent to approximately 10 percent because of the rule change."[14]

Finally, public information resulting from an undercover investigation of floor trading practices at the CME and the Chicago Board of Trade ("CBT") indicates that some trading abuses may be facilitated by the ability to trade in a dual capacity.[15] Notably, certain of these abuses may not be detected readily or deterred as a result of audit trail improvements.

Based upon the data examined by Economic Analysis, experience under the CME's Top Step Rule, and information received from Commission enforcement actions, indictments, and plea agreements resulting from the Chicago undercover investigation concerning the means by which certain alleged trading abuses are committed, the Commission believes that the benefits of dual trading may have been overstated and that existing regulations and exchange rules may not effectively deter abuses made possible or facilitated by dual trading. Therefore, the Commission is proposing an implementation plan to phase in a restriction on dual trading subject to certain exceptions. The application of the plan would be extended based upon an ongoing review of the proposed restriction's effects and a continuing analysis of the markets.

III. Study of Dual Trading Made by Economic Analysis

On November 17, 1989, the Commission issued a study prepared by Economic Analysis on the market effects of dual trading by floor brokers ("Dual Trading Study"). Economic Analysis examined an extensive record of trading activity through a variety of statistical and econometric methods in an effort to identify empirical regularities consistent with the claims commonly made with respect to dual

[7] Commission Regulation 155.2 was designed to prevent floor brokers from abusing their relationships with customers. The Commission believed that this regulation would reduce sufficiently the opportunity to take advantage of a customer order contrary to the floor broker's fiduciary responsibility so that prohibiting the broker from trading for his own account was unnecessary. 41 FR 56134 (December 23, 1976).

[8] At this time, according to the Advisory Committee, only three futures exchanges specifically prohibited a floor broker from executing orders for his own account until he had filled similar orders for his customers.

[9] *Id.* at 56135.

[10] Commodity Futures Trading Commission, *A Study of the Nature, Extent and Effects of Futures Trading by Persons Possessing Material Nonpublic Information* (September 1984) at 85–108.

[11] 51 FR 2684 (January 21, 1986).

[12] Division of Trading and Markets, *Audit Trail Rule Enforcement Review of the New York Mercantile Exchange* (September 25, 1987); Division of Trading and Markets, *Audit Trail Rule Enforcement Review of the Kansas City Board of Trade* (September 30, 1987); Division of Trading and Markets, *Rule Enforcement Review of the MidAmerican Commodity Exchange and the Chicago Rice and Cotton Exchange* (December 22, 1987); Division of Trading and Markets, *Rule Enforcement Review of the Minneapolis Grain Exchange* (March 22, 1988); Division of Trading and Markets, *Rule Enforcement Review of the New York Cotton Exchange* (July 8, 1988); Division of Trading and Markets, *Audit Trail Rule Enforcement Review of the Commodity Exchange, Inc.* (August 25, 1988); Division of Trading and Markets, *Rule Enforcement Review of the Chicago Mercantile Exchange* (September 27, 1988); Division of Trading and Markets, *Rule Enforcement Review of the Chicago Board of Trade* (February 7, 1989); Division of Trading and Markets, *Rule Enforcement Review of the Coffee, Sugar & Cocoa Exchange, Inc.* (October 24, 1989). Commission staff will issue its review of the audit trail system at the New York Futures Exchange, Inc. ("NYFE") in the near future.

[13] Division of Economic Analysis, Economic Analysis of Dual Trading in Commodity Exchanges (November 1989). *See* section III below for a full discussion of this study.

[14] See Chicago Mercantile Exchange Special Committee To Review Trading Practices Report to the Board of Governors ("CME Special Committee Report") (April 19, 1989) at 8. As noted above in footnote 4, the ACC and PBOT also restrict dual trading. Those exchanges, however, currently have no volume, so it is impossible to test their restrictions' relative effects on liquidity.

[15] *See* section IV below for a full discussion of the Chicago investigation.

trading. The activity reviewed included all transactions in all contracts executed on ten exchanges on 15 trading days during the fourth quarter of 1988, including approximately 4.2 million futures transactions and 400,000 option transactions.[16] The Dual Trading Study was more systematic and comprehensive than any previous treatment of the subject.[17] For purposes of the Dual Trading Study, a dual trader was defined as a floor member who executed trades for both a customer and his own account in the same contract during the same trading session.[18]

The Dual Trading Study reached four major conclusions:

1. Dual Traders Tend To Be Highly Specialized

A dual trader is, by definition, one who trades for his own account as well as customers' accounts. The study showed, however, that the vast majority of floor members specialize. As such, these members are primarily engaged either in customer trading or personal trading. For dual traders whose primary business is trading for their own accounts, their secondary trading (for customers) is relatively small. Similarly, for dual traders whose primary business is trading for customers, their secondary business (personal trading) is also small. As a result, about 90 percent of all floor traders or brokers either do no dual trading (as defined in the Dual Trading Study) or do dual trading such that their secondary volume is ten percent or less of their total volume. In total, only 7.4 percent of total market volume is the secondary volume of dual traders. The degree of specialization observed for option markets is even higher.

2. The Incidence of Dual Trading Is Not Higher in Low Volume Markets or More Distant Trading Months

The incidence of dual trading varies across individual futures markets and trading months. However, there is no systematic statistical support for the notion that the incidence of dual trading is higher in low-volume markets or more distant trading months. In fact, on average, dual traders are more likely to trade in markets which already have considerable trading volume.

3. Dual Traders Do Not, on Average, Secure Better Trades for Their Customers Than Do Exclusive (Non-dual) Brokers

The analysis indicates that personal floor trading—both dual and non-dual—facilitates low-cost trade executions for customers. It does not indicate, however, that persons engaged in dual trading provide their customers with better quality executions than do exclusive brokers.

4. Dual Traders' Performance in Providing Market Liquidity Is Not Superior to That of Exclusive Traders

Both dual traders and exclusive traders provide liquidity when they engage in personal trading. There is, however, nothing unique or especially efficient about the manner in which dual traders provide liquidity.

Based upon these conclusions regarding the presumed benefits of dual trading, the Commission believes that dual trading may not be necessary for adequate market liquidity and may not result in superior quality trade executions for customers.

IV. Trade Practice Concerns

A. Introduction

Contemporaneously with the study made by Economic Analysis of the potential advantages of dual trading, the Commission has reexamined the potential disadvantages of the practice to the futures markets. The information developed warrants a reassessment of the efficacy of existing rules and audit trail improvements to address the potential for trading abuses attributable to dual trading.

Dual trading is not itself an abuse. However, the practice creates an opportunity for floor brokers to take advantage of customer orders and, as a consequence, renders certain illegal trading activity possible or easier to commit and more difficult to detect. For example, dual trading may facilitate illegal conduct by making it relatively easy to transfer from one floor member to another the income earned from trades in which customers are defrauded. In addition, some have argued that the appearance of impropriety which may be created by the practice of dual trading lessens the public's confidence in the integrity of futures markets.[19] Although restricting dual trading might not eliminate all dual capacity-related trading abuses, such action should deter those abuses and could provide an additional surveillance tool.[20]

The extent of actual trading abuses in which dual trading is a factor is indeterminate. However, the enforcement actions, indictments, and plea agreements resulting from the Chicago undercover investigation of floor trading practices indicate that some brokers have used their dual status to facilitate abuses of customer orders; these abuses suggest a manner in which illegal conduct which goes undetected may occur. Moreover, the substance of the indictments and plea agreements indicate that audit trail systems, however effective, cannot address all types of illegal activity facilitated by dual trading. Such systems, in certain instances, can detect trading patterns involving abuse of customer orders. However, customer abuses may occur in isolation or otherwise may not be easily detectable from such record evidence.

B. Trading Abuses Made Possible by Dual Trading

Certain illegal activity can be committed only by dual traders. These trading abuses should be eliminated if the Commission restricted dual trading.

The current ability of a dual-trading floor broker to trade as both a principal and an agent during a single trading session provides that floor broker with opportunities to commit direct forms of abuse of a customer order which are not shared by a floor member trading in a single capacity. Specifically, such a floor broker can directly trade ahead of a customer order, directly trade against a customer order,[21] or directly set off a customer stop or limit order.[22] In

[16] With the exception of the NYFE, the market activity reviewed included data from all exchanges which had any trading activity during the fourth quarter of 1988.

[17] In addition to the broad scope of the data and the analytical techniques used, Economic Analysis was able to take advantage of its access to audit trail data based on one-minute times required by Commission Regulation 1.35(g). Economic Analysis could not have undertaken a similarly-comprehensive study using audit trail data based on the 30-minute bracketing previously required.

[18] Except for those few contracts with an evening session, the Dual Trading Study examined trading occurring during those specified hours which constitute regular trading hours, *i.e.*, a trading session.

[19] The CME has recognized the adverse effect that dual trading has had on the public image of futures markets. *See* CME Special Committee Report at 8.

[20] Trading abuses which are facilitated by dual trading also may be accomplished by non-dual traders. However, it may be more difficult for a non-dual-trading broker or a local to commit or benefit from such abuses.

[21] Pursuant to Commission Regulation 1.39, 17 CFR 1.39, certain contract markets permit a floor broker to execute a trade for the broker's own account against a customer order if done in accordance with specified procedures set forth in contract market rules. Trading consistent with such procedures would not be improper.

[22] For instance, a dual-trading broker holding an unexecutable customer stop order might execute a trade for his own account at the stop price, at which time the customer order would become a market order. The broker then could execute the customer order against an accommodating trader at a price favorable to that trader.

contrast, a non-dual-trading broker can commit these abuses only indirectly, generally through prearranged trades with an accommodating trader. Also, such a dual-trading floor broker can misallocate a trade executed to fill a customer order either to his own account or to another customer's account, but a non-dual-trading broker can misallocate a trade only to a customer account.[23]

C. Trading Abuses Facilitated by Dual Trading

Dual trading also may facilitate illegal conduct by making it relatively easy to transfer from one member to another on the floor the income earned from trades in which customers are defrauded. These trading abuses could be rendered more difficult to commit if the Commission restricted dual trading. A restriction also could provide an additional surveillance tool.

A dual trader can participate in all trading activity through which floor members can be compensated for assisting in the commission of earlier or subsequent trading abuses. A dual-trading floor broker is the only type of floor member who can participate on either side during the same session in any such scheme because each necessarily involves a customer order and a personal trade. Since a non-dual-trading broker does not trade for his own account, he cannot be compensated, during the same session in which he abused a customer order to the benefit of another member, through a noncompetitive trade for his own account executed at a favorable price against such other member's customer. Further, since a local does not have access to customer orders, he cannot compensate another floor member through trades executed at a favorable price against a customer.

D. Indictments and Plea Agreements Resulting From the Chicago Investigation

The indictments and plea agreements resulting from the Chicago investigation describe a number of instances in which floor brokers committed trading abuses that were facilitated by the broker's ability to trade in a dual capacity. The 14 plea agreements resulting to date from the Chicago investigation describe both generally and through specific trades the practice of brokers' using their personal accounts to receive profits through noncompetitive trades. Notably, the 14 plea agreements describe only two specific instances where, instead of being compensated through an illegal trade, brokers received such payments in cash.

1. Indirect Trading Against Customer Orders

The most common abuse in these cases is indirect trading against customer orders. In such cases, the dual-trading broker buys (or sells) for the customer account opposite the accommodating trader, then sells (or buys) the same number of contracts for his own account opposite the same accommodating trader. Such a transaction leaves the accommodating trader with no open position and a profit which may be passed back to the dual-trading broker through other illegal trades. For example, broker "E" sells to trader "O" 25 soybean futures contracts for customers at $7.88 per bushel. "E" then purchases for his own account from "O" 25 contracts at $7.88½. O's profits later can be passed to E. *See* "Plea Agreement," *United States* v. *Eggum*, 89 CR 666–7 (N.D. Ill. Oct. 2, 1989) at 2. In this plea agreement the broker admitted that he participated in a scheme whereby the local would "kick back" a portion of the profits from other illegal trades. *See also* "Plea Agreement," *United States* v. *Kosar*, 89 CR 667–2 (N.D. Ill. Dec. 1, 1989); "Plea Agreement," *United States* v. *Patten*, 89 CR 666–10 (N.D. Ill. Sept. 7, 1989); "Plea Agreement," *United States* v. *Skrodzki*, 89 CR 666–12 (N.D. Ill. Aug. 25, 1989).

2. Offsetting Customer Orders

The indictments and one plea agreement also describe an abuse in which a dual-trading floor broker crosses customer orders by matching or "offsetting" a customer buy with a separate customer sell and executing them noncompetitively opposite an accommodating trader. For example, a broker purchases for a customer two Japanese yen contracts from a local at a designated price of 6874 and simultaneously sold two contracts for a customer to the local at a designated price of 6872. *See* "Plea Agreement," *United States* v. *Braniff*, 89 CR 668 (N.D. Ill. Aug. 8, 1989) at 3. Those trades were arranged in order to pass money to a local. Profits such as these could be passed back to the broker through other illegal trades for the broker's personal account. Indeed, the broker acknowledged in this plea agreement his participation in an ongoing scheme in which brokers deliberately converted customer funds and market opportunities to their own use and the use of others, often in an effort to avoid broker liability to clearing firms or customers for out-trades, trading losses, or other trading errors. *See also* "Plea Agreement," *United States* v. *Kosar* 89 CR 667–2 (N.D. Ill. Dec. 1, 1989); *United States* v. *Patten*, 89 CR 667–10 (N.D. Ill. Sept. 7, 1989); *United States* v. *Skrodzki*, 89 CR 667–12 (N.D. Ill. Aug. 25, 1989).

3. Misallocation of Customer Orders

The indictments and plea agreements also describe trades in which dual traders simply misallocated customer orders or changed the price on customer orders already executed in order to benefit an accommodating trader. In one example, a broker admitted that he changed the price on an eight-contract customer fill of Swiss francs from 7300 to 7350, resulting in an additional profit of approximately $5,000 to the opposite trader and an equal loss to the customer. The broker further admitted that he did so in order to receive a portion of the profit back from the opposite trader through trades for the broker's personal account. *See "Plea Agreement," United States* v. *Fuhrman*, 89 CR 669 (N.D. Ill. Aug. 10, 1989) at 2. *See also* "Plea Agreement, *United States* v. *Callahan*, 89 CR 668–5 (N.D. Ill. Aug. 25, 1989) at 2.

4. Withholding Customer Orders

The indictments and plea agreements demonstrate instances where dual-trading brokers simply withheld customer stop orders so as to execute those orders noncompetitively with accommodating traders, often after the close of tradig. The orders were executed at prices calculated to provide a profit for the accommodating traders, part of which was passed back to the broker's personal account through other illegal trades. *See, e.g.*, "Plea Agreement," *United States* v. *Brainiff*, 89 CR 668 (N.D. Ill. Aug. 8, 1989) at 2; "Plea Agreement," *United States* v. *Skrodzki*, 89 CR 666–12 (N.D. Ill. Aug. 25, 1989) at 2–3.

5. Disclosure of Customer Orders

In a number of the plea agreements, brokers admit generally to instances of what they refer to as "frontrunning," which, in these instances, involves the illegal disclosure of customer orders. The plea agreements do not describe specific orders abused in this manner, but describe the practice of "secretly advising a local of various customer orders held by the broker, thereby enabling the local to assume a market position that becomes profitable when traded against the secretly disclosed customer orders * * *." *See* "Plea Agreement," *United States* v. *Callahan*,

[23] For instance, after executing a customer order at a price which was better than the current market price, a dual-trading broker could alter his trading card to give himself that trade and then execute another transaction, at a worse price, to fill the customer order.

89 CR 668–5 (N.D. Ill. Aug. 25, 1989) at 3; "Plea Agreement," *United States* v. *Skrodzki*, 89 CR 666–12 (N.D. Ill. Aug. 25, 1989) at 4; "Plea Agreement," *United States* v. *Eggum*, 89 CR 66–7 (N.D. Ill. Oct. 2, 1989) at 4. Each of these plea agreements indicates that dual trading permits the broker who disclosed the orders to receive a portion of the profits resulting from "conversion of customer * * * fair market opportunities," through later trades for the broker's personal trading account. *Id.* at 3.

V. Proposed Regulation 155.5

A. Introduction

Based on the foregoing assessment of the relative advantages and disadvantages of unrestricted dual trading, the Commission is proposing Regulation 155.5. The proposed regulation would restrict dual trading, as defined therein, subject to certain exceptions, on a phased-in basis beginning with an implementation plan.

Proposed Regulation 155.5 is intended to curb dual trading-related abuses, taking into account the results of the Dual Trading Study but permitting such results to be tested in practice on a limited basis before the restriction is extended to all markets. Proposed Regulation 155.5 would prohibit a floor broker, during the same trading session, from (i) trading or placing an order for a futures or option contract for his own account, an account over which he had trading discretion, or an account in which he had a significant financial interest and (ii) holding or executing an order for a futures or option contract in the same commodity for any account of any customer. This restriction would be subject to certain permitted exceptions set forth in contract market rules. The proposed regulation would be enforceable directly by the Commission and would require exchanges to adopt and enforce rules restricting dual trading, as defined therein, by floor brokers.

Each of the proposed regulation's provisions and the rationale therefor is more particularly described below.

B. Proposed Regulation 155.5(b): Dual Trading Restriction Implementation Plan

1. Implementation Plan

In accordance with a 12-month phase-in plan ("Dual Trading Restriction Implementation Plan") proposed Regulation 155.5's restriction on dual trading initially would apply to one or two of the most actively traded commodities on each of the seven largest exchanges. The Dual Trading Restriction Implementation Plan would commence on the effective date of the proposed regulation.[24] During that plan, the Commission would continue to collect and analyze data on the effect of the restriction and to expand and refine its examination of historical data. The amount of affected activity is intended to be sufficient to permit an adequate assessment of the advantages and disadvantages of the proposed restriction.

2. Selection of Contracts

The Dual Trading Study found no indication that dual trading, as defined therein, is a critical ingredient in providing liquidity and low-cost trade execution. However, rather than restricting dual trading in all futures and option contracts traded on all exchanges, the Commission would require certain exchanges, depending on relative trading volume and the number of different futures and option contracts traded, to select no more than one or two commodities in which to restrict dual trading during the Dual Trading Restriction Implementation Plan. The restriction would encompass all expiration months in both futures and option contracts in a particular commodity.

The Dual Trading Study, which found no systematic statistical support for the notion that the incidence of dual trading is higher in low volume markets, suggests that the effect of a restriction on dual trading may not be a function of a market's relative volume. Nonetheless, the Commission believes that in general and based on the refinements in the proposed definition of dual trading discussed below, it is prudent to obtain additional data resulting from the actual application of the proposed dual trading restriction before applying the restriction to all markets. For that purpose, the restriction initially would apply to a limited number of high-volume commodities under circumstances that would affect both high- and low-volume contract markets and contract months within those commodities. Distant and lower volume contract months and certain option contracts would provide data as to the effect of the proposed restriction on less active markets.

The CBT and the CME each would be required to select one of its three most actively traded agricultural commodities [25] and one of its two most actively traded financial commodities.[26] For this purpose, proposed Regulation 155.5(b) sets forth the manner in which the affected exchanges are to compare the trading volumes of different commodities.[27] The Commission would restrict dual trading in two high-volume commodities on each of these exchanges because the CBT and the CME together account for approximately 76% of total futures and option trading volume on United States futures exchanges and both trade a wide variety of commodities. In this regard, as of September 1989, the CBT and the CME had trading volume in a total of, respectivley, 28 and 32 different futures and option contracts.

Under proposed Regulation 155.5(b), the New York Mercantile Exchange ("NYMEX"), the Commodity Exchange, Inc. ("COMEX"), the Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE"), the MidAmerica Commodity Exchange ("MACE"), and the New York Cotton Exchange ("NYCE") each would be required to select one of its two most actively traded commodities.[28] During

[24] The effective date would be a date after publication of a final regulation to be set by the Commission so as to provide ample time for implementation of the dual trading restriction.

[25] As of September 1989, the CBT's three most actively traded agricultural commodities were soybean, corn, and soybean meal futures and options, and the CME's three most actively traded agricultural commodities were live cattle, live hog, and pork belly futures and options.

[26] As of September 1989, the CBT's two most actively traded financial commodities were T-bond and long term T-note futures and options, and the CME's two most actively traded financial commodities were Eurodollar and S&P 500 index futures and options. In this connection, the Commission recognizes that the CME could select its S&P 500 index contracts as its financial restricted commodity. Given that the CME already has dual trading restrictions in place for that commodity, the Commission specifically invites comment on this point.

[27] The proposed regulation would require the following analysis. First, for each commodity in which it traded futures and/or option contracts, the exchange would calculate the average monthly trading volume in futures (if traded) and in options (if traded) during the six-month period immediately preceding the issuance of Regulation 155.5. For each commodity in which the exchange traded both futures and option contracts, the exchange would combine their respective average monthly trading volumes: This figure would be that commodity's average monthly trading volume. For each commodity in which the exchange traded only futures or option contracts, but not both, the average monthly trading volume would be equal to either the average monthly futures trading volume or the average monthly options trading volume. Finally, the exchange would compare each commodity's average monthly trading volume.

[28] As of September 1989, NYMEX's two most actively traded commodities were crude oil and heating oil futures and options, COMEX's two most actively traded commodities were gold and silver futures and options, the CSCE's two most actively-traded commodities were sugar and cocoa futures and options, the MACE's two most actively traded commodities were soybean futures and options and T-bond futures, and the NYCE's two most actively traded commodities were cotton and U.S. dollar index futures and options.

the Dual Trading Restriction Implementation Plan, dual trading would be restricted in only one commodity on each of these five exchanges because each exchange has moderately heavy trading volume in only two or three different commodities.[29] These five exchanges together account for approximately 23 percent of total futures and option trading volume on United States futures exchanges.

During the Dual Trading Restriction Implementation Plan, dual trading would not be restricted in any futures or option contract traded on the four other active exchanges, the Kansas City Board of Trade ("KCBT"), the Minneapolis Grain Exchange ("MGE"), the New York Futures Exchange ("NYFE"), and the Chicago Rice and Cotton Exchange ("CRCE").[30] Each of these exchanges has relatively light trading volume, with a single contract accounting for almost all of the exchange's trading activity.[31]

The Commission requests comments regarding the design of the Dual Trading Restriction Implementation Plan. In particular, the Commission requests comments regarding the commodities that would be selected for the plan and the appropriateness of not including the KCBT, MGE, NYFE, and CRCE. Also, should low-volume commodities be included in the plan?

C. Restriction on Dual Trading by Floor Brokers

Proposed Regulation 155.5 would prohibit a floor broker from dual trading, as more particularly defined in the proposed regulation and discussed below. Exchanges would be permitted to adopt certain specified exceptions to the proposed restriction. The prohibition is intended to be sufficiently broad to cover the accounts and transactions with respect to which a floor broker may have the ability or the financial incentive to commit the trading abuses made possible or facilitated by the broker's trading as both an agent and a principal. A broker trading for an account over which he has trading discretion has the means to abuse a customer order. A broker trading for an account from which he is entitled to receive a significant share of trading profits may have an economic incentive to abuse a customer order.

The Commission proposes to define dual trading so as to identify the activity that would be restricted as the result of adoption of proposed Regulation 155.5. As proposed, the definition of dual trading has four elements which together would determine the scope of the restriction. These elements set forth the "personal" trading activity ("account interest"), the brokerage activity ("customer"), the markets (commodity), and the period of time ("trading session") covered by the restriction.[32]

The proposed dual trading restriction would prohibit a floor broker, during any trading session in which he held or executed a customer order, from trading in the same commodity for the broker's own account, an account over which he had trading discretion, or an account in which his ownership interest or share of trading profits was ten percent or more. The broker would be prohibited from trading for such accounts either directly (*i.e.*, by executing a transaction) or indirectly (*i.e.*, by placing, modifying, or canceling an order). The same broker, however, could trade for such accounts and for customers in different commodities. The same broker also could trade for such accounts and for customers in the same commodity during different trading sessions.

D. Elements of Dual Trading Definition

The Commission specifically requests comments concerning each of the elements of the proposed definition of dual trading discussed in this section. In particular, commenters should discuss whether the scope of such elements is too broad or too narrow to address the potential abuses at which the restriction is directed. Commenters should also address the enforceability of the restriction in terms of each element.

1. Trading Activity Included ("Account Interest")

The "personal" trading activity which would be included within the scope of the proposed definition of dual trading would be any trading in a particular commodity for any "account interest." "Account interest" is intended to include both a floor broker's own account and accounts over which the broker has trading discretion or in which the broker has a significant financial interest. Specifically, "account interest" would be defined, with respect to a particular floor broker, as (i) the broker's own account; (ii) any account for which the broker by power of attorney or otherwise actually directs the trading; (iii) any account from which the broker is entitled to receive ten percent or more of the profits resulting from such account's trading; (iv) any account of a partnership if the broker is a general partner of the partnership; (v) any account of a corporation or an association if the broker owns ten percent or more of the capital stock or has contributed ten percent or more of the capital; or (vi) any account owned by a spouse or minor dependent of the broker living in the same household.

Under the proposed regulation, an account owned by an individual, partnership, corporation, or association would be considered to be an account interest of a particular floor broker if the floor broker had the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the account. For instance, if the broker were the sole proprietor or an officer or employee with trading discretion for an FCM's proprietary account, that account would be an account interest of the broker with such discretion. Similarly, if the broker were the general partner of a trading partnership, as each general partner as a matter of law has managerial responsibility for such partnership, the partnership account would be an account interest of the broker. Similarly, a joint account would be an account interest of each owner to the exent such owner could control the account.

As proposed, an account owned by an individual, partnership, corporation, or association also would be considered to be an account interest of a particular floor broker if his share of the account's trading profits were ten percent or more. For instance, an account owned by a commodity pool would be the broker's account interest if the broker were entitled to half of the account's trading profits, regardless of whether the broker had trading discretion over that account. However, an account from which the broker received only commissions or was entitled to less than ten percent of trading profits would not be an account interest of such broker.

The definition of account interest is intended to cover those accounts that are similar to a floor broker's own account and to prevent a floor broker

[29] As of September 1989, NYMEX, COMEX, the CSCE, the MACE, and the NYCE had trading volume in a total of, respectively, nine, eight, 21, and ten different futures and option contracts.

[30] During the Dual Trading Restriction Implementation Plan, the Commission would continue to monitor all exchanges' compliance programs with respect to dual trading-related and other trade practice abuses.

[31] The contracts accounting for almost all of the trading volume of the KCBT, MGE, NYFE, and CRCE are, respectively, wheat futures, wheat futures, New York Stock Exchange Composite Index futures, and rice futures. As of September 1989, the KCBT, MGE, NYFE, and CRCE had trading volume in a total of, respectively, five, five, five, and one different futures and option contracts.

[32] The terms "account interest," "customer," "trading session," and "dual trading" are defined in the proposed regulation. In general, dual trading restrictions applicable to securities markets also contain similar elements. *See, e.g.*, section 11(a)(1) of the Securities Exchange Act of 1934; New York Stock Exchange Rules 90, 92, 111, 112, and 410(b); Chicago Board Options Exchange Rules 6.22 and 8.8.

from circumventing the proposed dual trading restriction. For example, a personal trading restriction limited to the broker's own account would not prevent the broker from abusing a customer order through a trade originated by the broker for an account over which the broker had trading discretion, nor would it prevent the broker from personally benefitting by executing an abusive trade for an account from which he received a significant share of trading profits. The scope of trading that would be restricted by the definition of account interest also should prevent a broker from circumventing the proposed restriction through trading for an account nominally owned by another person (*e.g.*, the broker's spouse) but actually owned by the broker.

The proposed definition of dual trading would include not only the trades executed directly by the broker, but also the orders for the benefit of such broker placed by that broker for execution by other members. Such orders would be included regardless of whether they were filled during the same trading session. Proposed Regulation 155.5(a)'s definition of dual trading would not include a broker's placing an order for an account interest before the start of the trading session, unless the broker executed, modified, or cancelled that order during the trading session. This is because, to the extent that a floor broker modifies or cancels an order, the broker has control over that order's execution. Therefore, before the opening, a broker could place an order for his own account (*e.g.*, a stop order to protect an existing position) with another member, notwithstanding the broker's determination to handle customer orders during the session. The Commission specifically requests comment regarding the appropriateness of construing the placing of an order as including the modification or cancellation of that order.

Applying the proposed restriction to a broker's trading for his own account should eliminate those direct forms of abuse of a customer order which can be committed only by a dual-trading floor broker through such trading. Specifically, the proposed restriction should eliminate direct trading ahead of a customer order, direct trading against a customer order, direct setting off of a customer stop or limit order, and misallocating a trade executed to fill a customer order to the filling broker's personal account. The proposed restriction also should render more difficult certain indirect abuses of customer orders.

Additionally, the proposed restriction would cover certain other trading which had the same potential for abuse as a broker's trading for his own account. As a result, the proposed restriction on dual trading should prevent the broker from abusing a customer order through a trade executed or an order placed for an account over which the broker had trading discretion, or from using such an account to participate in an illegal money pass during the same trading session in which the broker was handling customer orders. Further, by restricting the broker's trading for an account from which the broker was entitled to ten percent or more of trading profits, the broker should be precluded from favoring that account at a customer's expense when handling the customer's order. For example, the broker would not be able to execute an order for his partnership's account ahead of an executable customer order.

The scope of trading activity covered by virtue of the proposed definition of account interest is an important refinement of the definition of dual trading used by Economic Analysis for purposes of the Dual Trading Study. The proposed definition nonetheless would be similar in principle to Economic Analysis' definition, since both definitions are intended to differentiate a broker's activity which is in the nature of proprietary trading or trading as a principal from that which is in the nature of trading as an agent. As proposed, the definition of account interest contains both the concepts of control and financial interest. This is a more particularized treatment of existing principles governing floor brokers' activity.[33] The Commission requests comment generally regarding the scope of this definition. As to financial interest, should the definition of account interest include a different share of profits from the minimum level specified in the rule? To what extent should trading discretion be covered? Currently, in order to protect a public customer who has given a floor broker trading discretion over the customer's account, Commission regulations and contract market rules place certain restrictions on the broker's executing an order for that customer. Would considering such a customer account to be an account interest of the broker having trading discretion diminish the level of protection otherwise afforded to that customer?

In order for any dual trading restriction to protect customers effectively, the Commission and the exchanges must have the capacity to enforce the restriction. Applying the proposed restriction to "account interests" would require the Commission or an exchange to be able to identify those interests with respect to a particular floor broker. Currently, CTIs provide the information necessary to identify trades executed by a broker for his own account and other basic categories of accounts to facilitate trade practice, market, and financial surveillance. Consistent with their obligation to maintain an affirmative compliance program, the exchanges must be able to identify persons with a controlling or proprietary interest to monitor speculative limits, segregation, and capital requirements.[34]

The Commission and the exchanges also routinely collect information for certain traders identifying controlled accounts and accounts in which the reporting trader has certain financial interests.[35] Account documents (*e.g.*, account applications and powers of attorney), although not routinely reviewed or collected, also contain information which can be used to identify account interests. The foregoing information is used by the Commission and the exchanges in the course of trade practice and market surveillance, to

[33] For instance, Commission Regulation 155.2(c), 17 CFR 155.2(c), requires a contract market to prohibit floor brokers, with certain exceptions, from executing orders for accounts over which they have discretionary authority where that discretionary authority is such that the floor broker may originate orders for those accounts. Instead, floor brokers must hand off such orders to another member for execution. It should be noted that Commission Regulation 155.2(c) is intended to protect a public customer who has granted a floor broker full trading discretion over the customer's account. Therefore, contract market rules implementing this regulation generally do not apply to transactions originated by a floor broker on behalf of the broker's relatives, other members of the contract market, or house accounts of member firms. (*See, e.g.*, CBT Rule 350.05(c)). In contrast, proposed Regulation 155.5 is intended to protect other public customers from abuses accomplished through a floor broker's trading for a customer who has granted the broker trading discretion.

[34] *See, e.g.*, Commission Regulation 1.3(y), 17 CFR 1.3(y), which sets forth the definition of "proprietary account," and Commission Regulation 1.17, 17 CFR 1.17, which sets forth minimum financial requirements for futures commission merchants.

[35] Accounts carrying reportable positions currently can be readily identified by the Commission and the exchanges because such positions are required to be reported pursuant to Parts 17 and 18 of the Commission's regulations, 17 CFR Parts 17 and 18, and relevant exchange rules. Commission series '01 reports are filed with the Commission and the exchanges by futures commission merchants, members of contract markets, and foreign brokers, indicating reportable positions. In addition, Commission Form 102 is required to be filed with the Commission and the exchanges the first time a trader becomes reportable. The Form 102 contains information which identifies the reportable trader and any accounts which he owns or controls.

investigate complaints, and otherwise to monitor trading activity.[36]

The Commission requests comment on the practicability of using the foregoing information to conduct an effective surveilance program to detect violations of the restriction on dual trading. In this connection, commenters should address whether the current CTI requirements under Commission Regulations 1.35(e) should be augmented to include subcategories to designate a trade for an account over which the executing broker had trading discretion and for an account in which the executing broker had a significant financial interest.[37]

2. Brokerage Activity Included ("Customer")

Subject to certain exceptions which may be permitted by exchange rule as discussed below, the brokerage activity which would be restricted by the definition of dual trading would be any activity by a floor broker as an agent for the account of any "customer" as defined in the rule.[38] Such activity would include not only the execution of a customer order, but also the holding of a customer order. The definition, therefore, should address whatever opportunity handling a customer order may give a broker to commit customer abuses through trading for an account interest.

The proposed definition of customer is intended to make clear that CTI 4 trades would be the only trades considered to be customer trades. Therefore, as used to describe the scope of the proposed restriction, the term "customer" would not refer to accounts of other exchange members present on the floor or the house account of the broker's clearing member. Orders for such accounts could be held or executed during any trading session, regardless of whether the broker otherwise was acting as a principal or agent. However, if such an account were an account interest of the broker his activity for that account would be considered to be restricted trading activity rather than activity on behalf of a customer.

Proposed Regultion 155.5(a)'s definition of dual trading would encompass all of a floor broker's activity with respect to a customer order which the broker held at any time from the opening of a trading session until it ended, regardless of whether the broker eventually executed that order. Holding a customer order can provide a floor broker with as significant an opportunity for abuse through illegal trading for an account interest as can the execution of that order. For example, a broker could trade for a controlled account ahead of an executable customer order. A restriction based on this definition should curtail such activity.

The definition would not encompass the broker's receipt of a customer order before the start of the trading session, unless the broker still held that order at the opening of trading. Although the brokers may have knowledge of the contents of a customer order received and handed-off before the start of a trading session, the broker cannot directly affect that order's execution.

This definition of restricted brokerage activity therefore is similar to that used by Economic Analysis for purposes of the Dual Trading Study, although Economic Analysis did not include a floor broker's merely holding a customer order. Since, however, holding a customer order is a necessary predicate to the execution of that order, using the proposed regulation's definition should not be considered to be inconsistent with the Dual Trading Study's design. In fact, due to the available exceptions for member and consenting customers discussed below, the proposed definition might affect less brokerage activity than did Economic Analysis' definition.[39]

The Commission requests comment regarding defining dual trading to include both holding and executing a customer order. The Commission also requests comment regarding the opportunity for abuse of a customer order before the start of a trading session. For example, should a broker be prohibited from trading for his own account once he becomes aware of customer orders prior to the opening of trading?

3. Application to Futures and Options in Same Commodity

The proposed regulation would define dual trading to encompass all of a floor broker's trading and brokerage activity in all expiration months of both futures and option contracts in a restricted commodity.[40] This element of the definition is intended to ensure that sufficient activity is covered by the restriction to curtail abuses made possible or facilitated by the ability to trade in a dual capacity.

A contract month-based restriction would not eliminate direct trading ahead of a customer order. The Commission previously has recognized that trading ahead may involve more than one contract month, or both futures and options, in the same commodity.[41] In the case of a contract month-based restriction, a floor broker holding an executable customer order still could directly trade ahead of that customer order either (i) by first executing a trade for his personal account in the same futures or option contract as the customer wanted to trade but in a different contract month or (ii) by first executing a trade for his personal account in options on the futures the customer wanted to trade (or, if the customer order was for options, by first executing a trade for his personal account in the underlying futures). As discernible price relationships exist between different contract months, and between futures and options, in the same commodity, in general, a restriction based on contract months would be less effective.

Similarly, a contract-based restriction generally would less effectively curtail dual trading-related abuses. For

[36] For instance, exchanges currently use such information to enforce rules promulgated under Commission Regulations 155.2 (a) and (b), which prohibit a floor broker from trading for his own account or any account in which he has an interest ahead of an executable customer order.

[37] For example, in addition to the currently-required CTI, a floor broker could be required to designate a trade for an account over which he had trading discretion with a "D" and for an account as to which he had a significant financial interest with a "P." Thus, the broker would designate a trade for a customer account as to which he shared in ten percent or more of the trading profits (*e.g.*, resulting from an order for a partnership account in which the broker was a partner) as a CTI 4P trade. *Compare* American Stock Exchange Information Circular 79-3 (January 11, 1979).

Commenters also should address other possible surveillance methods, such as collection of account interest identifying data (*e.g.*, account numbers and the nature of interest), for inclusion in existing automated systems. In this regard, the trade registers of the CBT and the CME currently contain account numbers.

[38] As discussed below, proposed Regulation 155.5(d)(2) would allow a floor broker to trade for an account interest and to act as a broker for member and consenting customers pursuant to contract market rules.

[39] *See* Section V.E. below.

[40] The Commission recognizes that certain exchanges are designated as contract markets in more than one futures and/or option contract based on the same underlying commodity where the different contract markets have materially different specifications for the commodity. *E.g.*, with respect to British pounds, the CME has been designated as a contract market in futures, options on the futures, and options on the physical currency. In those instances, the Commission would consider, on a case-by-case basis, exemption requests that would permit the contract markets to be treated for purposes of the proposed regulation as separate commodities. The Commission requests comment on this issue.

[41] Commission Regulations 155.2 (a) and (b), which require each contract market to implement a rule prohibiting a floor broker from directly or indirectly trading ahead of an executable customer order, encompass all of a floor broker's trading activity in a particular commodity, including personal trades and customer orders in all contract months in both futures and options.

instance, a contract-based restriction would not prevent a floor broker holding an executable customer futures order from directly trading ahead of that customer order by first executing a trade for his personal account in options on the futures the customer wanted to trade.

The proposal to apply a commodity- as opposed to a contract-based definition to determine the activity that would be restricted also is a refinement of the definition of dual trading used by Economic Analysis for purposes of the Dual Trading Study. Economic Analysis' analysis included trading and brokerage activity in all expiration months of the same contract, but not futures and options in the same commodity. Nonetheless, by inference, the proposed definition might not result in the restriction of materially more trading and brokerage activity than was captured by Economic Analysis' definition. Generally, a broker trading as a principal in futures (options) transmits a personal order for the related options (futures) to create a futures-options spread. Both definitions would restrict such activity if the broker also were trading as an agent in either futures or options in the same commodity. The proposed definition, to address the opportunities for abuse discussed above, also would encompass a broker's trading exclusively as a principal in futures (options) and an agent in options (futures) in the same commodity.

4. Trading Session

For purposes of proposed Regulation 155.5(a), "trading session" would be defined, with respect to a particular futures or option contract, as the hours during which that contract was scheduled to trade continuously during a trading day, as set forth in contract market rules.[42] As noted above, to the extent that the system of financial regulation and self-regulation in the United States has sought to restrict the practice of dual trading, the period of the restriction generally has been limited to a single trading session. Therefore, the temporal component of the proposed regulation's definition of dual trading would be consistent with existing regulatory practice. Economic Analysis also used the same time constraint in defining dual trading for purposes of the Dual Trading Study.

It is true that dual capacity abuses could occur over more than one trading session. The only way to eliminate abuses facilitated by a broker's ability to trade in a dual capacity would be to require members to elect a single capacity on a permanent basis. However, a session-based restriction should render such abuses more difficult to commit and permit surveillance related to session shifts. Further, the proposed restriction would be consistent with related restrictions in other markets which, coupled with other surveillance measures, have been considered sufficient to address abusive trading activity in those markets.[43]

Under a restriction based on the proposed definition, a floor broker's status would be determined by whether the broker's initial activity in a restricted commodity was trading or brokerage. Thus, a floor broker would need to elect before the start of trading in a restricted commodity whether to trade for account interests or to act as a broker for customers during a trading session. For example, if the broker were holding a customer order at the opening, the broker would be prohibited from executing a transaction or placing an order for any account interest for the remainder of that trading session. Similarly, upon executing a transaction or placing an order during a trading session for any account interest, the broker would be prohibited from holding or executing a customer order for the remainder of that session. The Commission believes that requiring a floor broker to make this election on a session-by-session basis, rather than for a more extended period, would provide futures markets with the trade practice-related benefits discussed above without imposing any undue costs on individual floor brokers or materially affecting overall competition among floor brokers for customer business.

The proposed regulation's trading session-based restriction would enable the Commission and the exchanges to design surveillance programs to look for unusual inter-session shifts in a floor broker's activity, and could improve the detection of trading abuses with respect to those members who alternated between trading and brokerage. On the other hand, depending on their degree of specialization, certain floor brokers might elect to trade exclusively either for account interests or for customers during most or all trading sessions. As a result, the ability of these floor brokers to participate in the types of abuses described in the indictments and plea agreements resulting from the Chicago undercover investigation should be diminished.

However, in that certain of these abuses did or could occur over more than one trading session, the Commission specifically requests comments regarding the duration of the proposed restriction. For example, would the improvement in customer protection that might be obtained warrant requiring a broker to make an election as to his status for a more extended period? The Commission also requests comment regarding the ability of a broker trading for account interests to abuse a customer order which was not executable (*e.g.*, a limit order away from the market) when held by that broker during a previous trading session.

E. Proposed Regulation 155.5(d): Contract Market Rules Restricting Dual Trading by Floor Brokers

Proposed Regulation 155.5(d) would require each contract market to maintain in effect rules prohibiting a floor broker from dual trading in a restricted commodity, subject to permitted exceptions. A contract market would be required to submit all of its rules implementing the proposed regulation to the Commission and to have such rules in place immediately prior to the application of the restriction on dual trading to the contract market.[44]

A contract market would be permitted to adopt certain specified exceptions to the dual trading restriction. For each exception, proposed Regulation 155.59(d)(2) would establish minimum requirements. Any permissible exception set forth in contract market rules would also apply to the Commission's restriction on dual trading with respect to members of that contract market.

1. Brokerage for Customers that are Members of the Contract Market

The proposed restriction, in the absence of contract market rules providing for an exception, would not distinguish between member and non-member customers. This is because such a distinction would reduce the scope of the restriction and, using current CTI data, monitoring brokers' compliance

[42] A contract market may have more than one trading session for a particular futures or option contract during a single trading day. For instance, the CBT currently has two trading sessions for T-bond futures contracts, the regular session and the evening session.

[43] *See* footnote 32.

[44] In the event that a contract market did not submit implementing rules, the Commission would select the commodities, consistent with the proposed regulation, which would be affected, and proposed Regulation 155.5(c) would apply to members of that contract market without any of the exceptions which may be implemented by contract market rule. Additionally, the contract market could be subject to other appropriate action.

with a restriction that distinguished between these two categories of customers would be difficult. Currently, it is not generally necessary for regulatory or self-regulatory purposes to differentiate between a floor broker's brokerage activity for member customers and that for public customers. Accordingly, under Commission Regulation 1.35(e), a transaction executed for the account of any type of customer, including a member customer, is designated as a CTI 4 trade.

The primary purpose of the proposed regulation is to protect public customers. The Commission recognizes that, in general, members are better able than public customers to assure the proper handling of their orders. Therefore, if a contract market maintained or caused to be maintained by its clearing organization within the single record required by Commission Regulation 1.35(e) a separate customer type indicator designating trades executed for all customers which were members of the contract market, it would be permitted to distinguish between member and public customers for purposes of the proposed regulation. A floor broker who was a member of that contract market could trade for account interests during the same session in which he held or executed orders in the same commodity for any other member, including one not present on the floor. The Commission specifically requests comments regarding the appropriateness of this exception and the conditions upon which it would be granted.

2. Customer Opt-Out

The Commission believes that any customer, including a public customer, who is aware of the potential conflicts associated with dual trading should be free to maintain business relationships with dual-trading brokers. It has been claimed that customers of dual-trading brokers receive better fills than such customers would receive if those brokers were not able to trade for their own accounts. Although the Dual Trading Study found that, on average, this is not the case, customers of dual-trading brokers may in fact receive better fills in particular instances. Therefore, under the proposed regulation, a contract market could adopt rules pursuant to which a customer could consent to receiving brokerage services from a broker during the same trading session in which the broker was trading in the same commodity for an account interest.

Specifically, under proposed Regulation 155.5(d)(2)(ii), a contract market could allow a floor broker who traded for an account interest to trade for those customers who previously had consented to the floor broker's trading for an account interest while handling their orders. For such consent to be effective, it would have to be in writing, identify the broker by name, and have been executed within the previous 12-month period. It is intended that the giving of such consent would be the result of individual decision-making. The Commission requests comment as to how this exception's intended purpose could best be achieved. The Commission also invites comment as to how this opt-out feature would affect the protection of public customer orders from possible abuse of dual traders. Are additional safeguards necessary to assure that customers are not effectively denied the protection of the restriction as a result of this feature?

3. Exception for Error Accounts

Under proposed Regulation 155.5(d)(2)(iii), an exchange could allow a floor broker to place trades executed to fill customer orders which resulted in errors into the broker's personal error account.[45] However, the Commission is concerned that a floor broker might attempt to circumvent the proposed regulation's restriction by allocating to his error account transactions actually executed for his personal account. Therefore, consistent with current practice, the Commission would limit the period of time for which a broker could hold a position in an error account so as to reduce the potential use of that account for personal trading.[46] Specifically, a floor broker would be required to liquidate a position resulting from an error discovered during a trading session as soon as possible during that session and an error discovered after the end of a trading session at the opening of the next session. The Commission also expects each contract market submitting rules providing for the error account exception to maintain an accurate and verifiable audit trail for error trades to ensure that error accounts were not being used to accomplish abuses precluded by other restrictions.[47] The Commission specifically invites comments on the effectuation of this exception.

4. Other Exceptions Considered

The approach taken by the Commission in the proposed regulation is similar in principle to those taken by Congress in pending legislation to reauthorize appropriations for the Act.[48] The pending legislation, however, would provide for certain exceptions to a restriction on dual trading by floor brokers not included in proposed Regulation 155.5. Those exceptions would include one for contract markets with audit trails which, in general, had a demonstrated capacity to detect dual trading-related abuses.

Certain direct forms of abuse of a customer order, such as trading ahead of or against a customer order, may readily lend themselves to surveillance with effective audit trail systems. However, certain other forms of customer order abuse, such as the withholding of customer orders, are not as easily isolated by even the most accurate of audit trail systems.

Nonetheless, more precise audit trails which are verifiable can make it more difficult to alter records without detection. Certain reports, therefore, have suggested that independent trade timing would provide a sufficient audit trail to reduce materially the opportunity for certain abuses related to the ability of floor brokers to trade in a dual capacity. Such systems, however, regardless of their potential, cannot be implemented in the near term. The Commission now believes that to address trade practice abuses effectively it is necessary to have both enhanced audit trails and a restriction on that dual-capacity trading activity which makes possible or facilitates illegal conduct that may not be readily identified even by enhanced audit trails.[49] The Commission requests further comment on this issue.

Although the anonymous trade matching and enhanced audit trail features of electronic trading systems, such as the CME's Globex system, would improve an exchange's ability to monitor for trade practice abuses, they would not necessarily eliminate the potential for abuse of customer orders by traders entering orders in a dual capacity. For example, under the Globex system, terminal operators performing

[45] As a matter of practice, floor brokers maintain personal accounts, designated as error accounts, into which they place positions resulting from errors committed in trading for customers. In so doing, brokers take responsibility for such errors.

[46] *See, e.g.*, COMEX Rules 4.28–4.30; CME Rules 526 and 527.

[47] In this connection, the Commission notes that it recently issued an interpretation setting forth the minimum standards that an exchange must meet with respect to the surveillance of error trades. *See* 54 FR 37004 (September 6, 1989). Consistent with that interpretation, the Commission intends to scrutinize the use of error accounts.

[48] *See* H.R. 2869 and S. 1729.

[49] In this regard, the Commission notes that application of the restriction would further enhance the ability of improved audit trails to be used in surveillance for abuses by, for example, generating data reflecting inter-session shifts in trading status.

similar functions to floor brokers might be able to enter both personal and customer discretionary and non-discretionary orders. Accordingly, the Commission requests comment generally regarding whether the proposed regulation should apply to such systems. If dual trading restrictions should apply to electronic trading systems, should the Commission modify its current proposal in any manner to prevent abuses of customer orders which may be accomplished through such systems? Should the proposed restriction cover terminal operators who are not registered as floor brokers but who may perform similar functions?

F. Extension of Restriction on Dual Trading by Floor Brokers

As previously discussed, during the Dual Trading Restriction Implementation Plan, the Commission would continue to collect and analyze data on the effect of the proposed dual trading restriction and to expand and refine its examination of hisotrical data. Based upon an examination of this and other relevant information, the Commission would publish a notice in the **Federal Register** no later than 11 months after the commencement of the plan, announcing whether the plan would be continued and upon what schedule the proposed restriction would be extended to other contract markets. Except to the extent that the Commission determined that materially different or additional dual trading restrictions were appropriate, the schedule would become effective 30 days after publication. The Commission requests comment as to whether such schedule should balance customer protection and any special considerations related to a newly-designated futures or option contract. Specifically, should the Commission permit a contract market not to restrict dual trading in such a contract for some specified start-up period?

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of the rules on small businesses. Proposed Regulation 155.5 would prohibit a floor broker, during any trading session in which he held or executed a customer order, from trading in the same commodity for the broker's personal account, an account over which he had trading discretion, or an account in which his ownership interest or share in profits was ten percent or more. The proposed regulation is intended to promote the integrity of futures markets by limiting illegal conduct resulting from the ability to tarde in two capacities. Specifically, the proposed regulation should make it more difficult for floor brokers to abuse their fidiciary responsibilities with regard to customer orders. The Commission believes that restricting dual trading not only should render certain abuses more difficult to commit, but also should improve the ability of contract markets to meet their compliance and surveillance responsibilities. Public confidence in the integrity of the markets is necessary if the futures exchanges are to fulfill their price discovery and hedging functions.

Proposed Regulation 155.5 would affect contract markets. The Commission previously has determined that contract markets are not "small entities" for the purposes of the RFA, and that the Commission, therefore, need not consider the effect of a proposed regulation on contract markets in relation to the RFA. 47 FR 18618, 18619, April 30, 1982.

Proposed Regulation 155.5 also might affect clearing members and other futures commission merchants ("FCMs").[50] However, the Commission previously has determined that FCMs should be excluded from the definition of "small entity" based upon the fiduciary nature of the FCM/customer relationship as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619, April 30, 1982. The Commission has determined that clearing members, by exchange or clearing house rule, are subject to a minimum capital requirement which is at least as great as that imposed on FCMs, and, therefore, are not small entities for purposes of the RFA. Further, many clearing members are also FCMs. As a result, the Commission need not consider the effect of the proposed regulation on clearing members and other FCMs.

With respect to contract market members, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all members that would be affected by the rule should be considered small entities and, if so, to analyze the economic impact on such entities at that time. 47 FR 18618, 18620, April 30, 1982. The contract market members affected by the proposed regulation, other than clearing members and other FCM's, would be floor brokers. The Commission recognizes that certain floor brokers could be considered to be small entities for purposes of the RFA. The Commission believes, however, that the proposed regulation is designed so that it can be implemented without imposing a significant economic burden on a substantial number of small entities.

Proposed Regulation 155.5 would be phased in during a 12-month Dual Trading Restriction Implementation Plan. This plan is intended to permit implementation of the dual trading restriction on an incremental basis while testing the effect of the regulation and of the exemptions thereto. During the Dual Trading Restriction Implementation Plan, the restriction would apply only to a limited number of floor brokers. Rather than restricting dual trading in all futures and option contracts traded on all exchanges, the Commission would require certain exchanges, depending on relative trading volume and the number of different futures and option contracts traded, to select no more than one or two commodities in which to restrict dual trading during the Dual Trading Restriction Implementation Plan. Therefore, the only floor brokers who might be affected during the Dual Trading Restriction Implementation Plan would be those who traded a restricted commodity.

At the conclusion of the Dual Trading Restriction Implementation Plan, the Commission would determine how to extend the restriction to other contract markets. In making that determination, the Commission would consider carefully its observations as to the impact on floor brokers of the proposed regulation during the Dual Trading Restriction Implementation Plan and take such observations into account in extending the plan.

The Commission has defined the scope of Proposed Regulation 155.5 so as to limit the number of floor brokers that might be affected. The proposed regulation would apply only to certain floor brokers active in a restricted commodity: Those who traded for both account interests and customers during the same trading session.[51] Further, if a

[50] For instance, the proposed regulation would prohibit a floor broker employed by an FCM from trading for both the FCM's house account and customers in the same commodity during the same trading session if the house account were an account interest (*e.g.*, the broker had trading discretion over such house account). As a result, an FCM might have to hire additional brokers or otherwise change the manner in which it conducted business.

[51] Floor brokers employed by an FCM are part of the FCM's business and, therefore, generally should not be considered separate business entities for purposes of the RFA. Further, the Commission notes that a number of FCMs already do not permit the

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contract market implemented by rule the permissible exceptions available under the proposed regulation, floor brokers who were members of that contract market would not be restricted from trading in a dual capacity under circumstances covered by the exceptions.[52]

Any economic burden imposed on the floor brokers who might be affected by the proposed regulation might not be significant because, as noted above, Economic Analysis found that dual-trading floor brokers already exhibit a high degree of specialization in their trading activity. Thus, in general, floor brokers should be required to give up only a small portion of their trading activity (*i.e.*, their secondary business). Moreover, those floor brokers who chose to concentrate on providing brokerage services should be in a position to take on the customer business of those floor brokers who chose to trade for their account interests.

In addition, the Commission has defined the scope of the proposed regulation so as to limit any economic burden imposed on the floor brokers who might be affected. Under the proposed regulation, a floor broker's trading for non-customer accounts (*e.g.*, accounts of other members present on the floor or the house account of the broker's clearing member) would not be restricted as long as such accounts were not account interests. The proposed restriction also would be session- and commodity-specific. Therefore, a floor broker could trade for account interests and for customers in different commodities during the same trading session. A floor broker also could trade for account interests and for customers in the same commodity during different trading sessions.

If a contract market implemented by rule the permissible exceptions available under proposed Regulation 155.5(d)(2), a floor broker who was a member of that contract market and who traded for account interests also would be able to trade for member and consenting customers in the same commodity during the same trading session. In this regard, the Commission believes that a customer with an established business relationship with a specific floor broker might decide to maintain that relationship. As a result, the floor broker's ability to trade for his personal benefit and for such a customer would be unaffected by the proposed regulation.

Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1168 (5 U.S.C. 605(b)), based on its initial reviews of the available data, the Chairman certifies the belief that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission will evaluate any additional data provided to the record to suggest that this proposal would have a significant impact on small entities in determining whether to complete a regulatory flexibility analysis with the final rulemaking. The Commission invites specific comment regarding the potential cost of this proposal for small entities and alternative less burdensome means to achieve the Commission's objectives.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule is as follows:

Average burden hours per response.	80.83
Number of respondents	339
Frequency of response	On occasion

The total annual public burden related to proposed Regulation 155.5 is estimated to be 2120 hours. The Commission would consider carefully its observations as to the information collection burden of the proposed regulation during the Dual Trading Restriction Implementation Plan and take such observations into account in extending the plan. Proposed Regulation 155.5 would impose an information collection burden on certain contract markets, FCMs, independent floor brokers, and customers.

Although an exchange would have to be able to identify floor brokers' account interests in order to detect violations of the resteiction, much of the necessary identifying information already is being collected. Further, the Commission has not mandated a specific means of enforcement. In this regard, surveillance related to inter-session shifts in status should not result in any additional specific information collection burden. An exchange would have to maintain certain records, however, if it elected to implement the permitted exceptions available under proposed Regulation 155.5(d)(2). Specifically, the exchange would have to collect information with respect to brokers' personal error accounts and customer consents. In this regard, the portion of the above-referenced public reporting burden specifically related to the collection of information pursuant to the proposed regulation is estimated to average 160 hours annually ((24 hours per quarter for processing consents + 16 hours per quarter for collecting information regarding error accounts × 4 quarters per year) for each exchange required to restrict dual trading, for a total of 1,120 hours for the exchange (160 hours × 7 affected exchanges).

The proposed regulation also would impose an information collection burden on FCMs and independent floor brokers that chose to take advangage of the exception for customer consents. Such contract market members would need to produce such consents and arrange for their execution in accordance with contract market rules. In this regard, the portion of the above-referenced public reporting burden specifically related to the collection of information pursuant to the proposed regulation is estimated to average 5 hours annually for each of the 100 contract market members expected to use this exception, for a total of 500 hours. (Each of the estimated 100 members is expected to receive approximately 5 customer consents, each of which should require around one hour to draft, mail, receive from the customers, and file.) Finally, the Commission anticipates that a limited number of customers would voluntarily execute a consent in the interest of maintaining an established business relationship with a particular exchange member. Each of these approximately 500 customers is expected to devote one hour annually to reading and executing such document.

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Mannagement and Budget, Room 3228, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Office, 2033 K Street, NW., Washington, DC 20581 (202) 254–9735.

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floor brokers whom they employ to trade in a dual capacity Therefore, the proposed regulations would not affect floor brokers employed by those FCMs.

[52] For example, a floor broker might be permitted to place a transaction executed to fill a customer order into the broker's personal error account.

List of Subjects in 17 CFR Part 155

Commodity futures, Commodity options, Contract Markets, Customers, Dual trading, Floor brokers, Futures commission merchants, Members of contract markets.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4b, 4c, 4e, 4g, 4j, 5, 5a, 8, and 8a, thereof, 7 U.S.C. 6, 6b, 6c, 6e, 6g, 6j, 7, 7a, 12 and 12a, the Commission hereby proposes to amend chapter 155 of title 17 of the Code of Federal Regulations as follows:

PART 155—TRADING STANDARDS

1. The authority citation for part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6j and 12a, unless otherwise noted.

2. Section 155.5 is added to read as follows:

§ 155.5 Restriction on Dual Trading by Floor Brokers.

(a) *Definitions.* For purposes of this section:

(1) "Dual Trading Restriction Implementation Plan" means the 12-month period commencing on the effective date of this regulation.

(2) "Trading session" means, with respect to a particular futures or option contract, the hours during which that contract is scheduled to trade continuously during a trading day, as set forth in contract market rules. A contract market may have more than one trading session for a particular futures or option contract during a single trading day.

(3) "Account interest" means, with respect to a particular floor broker, any of the following accounts:

(i) The floor broker's own account;

(ii) Any account for which the floor broker by power of attorney or otherwise actually directs the trading;

(iii) Any account from which the floor broker is entitled to receive ten percent or more of the profits resulting from such account's trading;

(iv) Any account of a partnership if the floor broker is a general partner of the partnership;

(v) Any account of a corporation or an association if the floor broker owns ten percent or more of the capital stock, or has contributed ten percent or more of the capital, of the corporation or association;

(vi) An account owned by a spouse or minor dependent of the floor broker living in the same household.

(4) "Customer" means, an account owner for which a trade is designated with customer type indicator 4 under Commission Regulation 1.35(e) and is not for an account interest as defined in paragraph (a)(3) of this section.

(5) "Dual trading" means the purchase or sale, or the placing of an order to purchase or sell, by a member of a contract market acting as a floor broker, of a commodity for future delivery or an option, for any account interest, during the same trading session in which the member holds an order or executes a transaction for any account of any customer for the purchase or sale of any future or option in the same commodity.

(6) "Most actively traded commodity" means, with respect to all commodities traded on a particular board of trade, that commodity which had the greatest combined average monthly trading volume in futures and options during the six-month period immediately preceding the issuance of this regulation.

(b) *Dual Trading Restriction Implementation Plan.* During the Dual Trading Restriction Implementation Plan, paragraphs (c) and (d) of this section shall apply as follows:

(1) At each of the Board of Trade of the City of Chicago and the Chicago Mercantile Exchange, to one of the three most actively traded agricultural commodities, and to one of the two most actively traded financial commodities, selected by the board of trade.

(2) At each of the New York Mercantile Exchange, the Commodity Exchange, Inc., the Coffee, Sugar & Cocoa Exchange, Inc., the MidAmerica Commodity Exchange, and the New York Cotton Exchange, to one of the two most actively traded commodities selected by the board of trade.

(c) *Members of Contract Markets.* No member of a contract market which is required by this regulation to restrict dual trading shall engage in dual trading except as provided in contract market rules consistent with this regulation.

(d) *Contract Markets.* (1) Each contract market must maintain in effect rules, which have been submitted to the Commission pursuant to Section 5a(12) of the Act and Commission Regulation 1.41, that prohibit each member of the contract market from dual trading.

(2) Each contract market may adopt rules, which have been submitted to the Commission pursuant to Section 5a(12) of the Act and Commission Regulation 1.41, which set forth the following circumstances under which a member of the contract market may engage in dual trading:

(i) A member of the contract market engaged in trading or placing orders for an account interest may hold or execute orders for the accounts of customers which are members of the contract market, *Provided, that* the contract market maintains or causes to be maintained by its clearing organization within the single record required by Commission Regulation 1.35(e) a separate customer type indicator designating trades executed for all customers which are members of the contract market; and

(ii) A customer may consent to having a member engaged in trading or placing orders for an account interest hold or execute orders for the customer's account, *Provided, that* the contract market requires the following for customer consent to be effective:

(A) The consent must be in writing and specifically identify the member; and

(B) The consent must have been executed within the previous 12 months.

(iii) A member may place a transaction executed to fill an order for a customer into such member's personal error account, *Provided, that* the contract market requires the following with respect to that account:

(A) In the event that the member discovers an error during a trading session, the member must liquidate the position in his personal error account resulting from that error as soon as possible, but in no event later than the close of that trading session; or

(B) In the event that the member discovers an error after the close of a trading session, the member must liquidate the position in his personal error account resulting from that error at the opening of the next trading session.

(e) *Extension of Restriction on Dual Trading.* The Commission will publish a notice in the **Federal Register** no later than 11 months after the commencement of the Dual Trading Restriction Implementation Plan indicating whether the plan will be continued and setting forth a schedule according to which the restriction provided for in this regulation will be extended to other contract markets. Except to the extent the Commission may determine that materially different or additional restrictions on dual trading are appropriate, the foregoing schedule will become effective 30 days after publication.

Any person interested in submitting written data, views, or arguments on proposed Regulation 155.5 should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on January 4, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-676 Filed 1-10-90; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[T.D. ATF-292; Ref: Notice Nos. 658, 668, 676, 686]

RIN 1512-AA81

Label Disclosure for Brandy and Whisky Treated With Wood (87F212P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the regulations in 27 CFR part 5 by authorizing the use of an oak chip infusion (Boise) in the treatment of Cognac brandy without label disclosure. ATF has also determined that an infusion of oak chips, when prepared in accordance with prescribed standards, is a harmless coloring, flavoring, or blending material and, as such, may be used in the production of French brandy (including Cognac) without label disclosure. As with caramel and sugar, ATF believes that in the case of French brandy, an infusion of such oak chips is a "harmless" coloring, flavoring, or blending material, which may be added to French brandy without changing the class or type of the product if the infusion does not total more than 2.5 percent by volume of the finished product. Additionally, since the infusion of oak chips does not contribute any character (i.e., flavor, aroma) to the finished product, its disclosure on the label is unnecessary.

EFFECTIVE DATE: The final regulations are effective July 10, 1990.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

Recently, it was brought to the Bureau's attention that confusion existed among some brandy producers, both domestic and foreign, regarding the application of 27 CFR 5.39(c) requiring the label disclosure of brandy and whisky treated with wood. In response to industry's concerns, ATF issued ATF Rul. 87-3, A.T.F. Q.B. 1987-3, 12, and corresponding Industry Circular 87-6 (dated September 4, 1987). The Bureau held that brandy (including Cognac, Armagnac, etc.) treated with wood in any manner or form, either directly or indirectly, at any point in the production process, up to and including the time of bottling, must comply with the requirements of § 5.39(c).

Further, the Bureau apprised industry members that existing certificates of label approval for brandies which did not meet the requirements of the ruling would expire at midnight, December 31, 1987.

ATF Rul. 87-3 was prompted, in part, by the request of a domestic brandy producer to use an infusion of oak chips in brandy without label disclosure. The producer submitted literature concerning the use of oak chip infusions to ATF, as well as several samples of oak chip infusions. ATF advised the domestic brandy producer that use of oak chip infusions would require label disclosure pursuant to 27 CFR 5.39(c).

As a result of ATF Rul. 87-4, A.T.F. Q.B. 1987-4, 59 and corresponding Industry Circular 87-8 (dated November 13, 1987), the use-up period was extended until December 31, 1988. It was subsequently extended again until July 31, 1989, with the publication of Notice No. 668 (August 16, 1988, 53 FR 30848). As provided for in Notice No. 686 July 14, 1989, 54 FR 29701), the use-up period for compliance with ATF Rul. 87-3 will terminate upon the effective date of this Treasury decision.

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product.

Regulations which implement the provisions of section 105(e), as they relate to distilled spirits, are set forth in title 27, Code of Federal Regulations (CFR), part 5. Section 5.39(c) requires label disclosure for brandy and whisky treated with wood. Specifically, § 5.39(c) read as follows:

Treatment with wood. The words "colored and flavored with wood _____ (insert chips, slabs, etc., as appropriate)" shall be stated as a part of the class and type designation for whisky and brandy treated, in whole or in part, with wood through percolation, or otherwise, during distillation or storage, other than through contact with the oak container.

Since § 5.39(c) is included as mandatory information under § 5.32 (§ 5.32(b)(4)), the statement "colored and flavored with wood _____" must comply with the requirements of § 5.33 as to location, size of type, etc.

In addition to the requirements of § 5.39(c), § 5.23(a)(2)(ii) permits the addition of harmless coloring, flavoring, or blending materials, such as caramel, sugar, and wine, which are not an essential component of the particular distilled spirit to which added, but which are customarily employed therein in accordance with established trade usage, provided those materials do not total more than 2½ percent by volume of the finished product. However, an exception to this rule is set forth in § 5.23(a)(3)(iii), which provides that harmless coloring, flavoring, or blending materials shall not include "any material, other than caramel and sugar, in the case of Cognac brandy." The addition of coloring, flavoring, or blending materials which are not harmless requires redesignation of the product in accordance with § 5.23(a)(1).

In accordance with the requirements of these provisions, ATF has held that, unlike caramel, wood chips, slabs, infusions, etc. used in brandy and whisky are not "harmless coloring and flavoring materials" within the meaning of § 5.23(a). As it relates to caramel, FA-143 (June 9, 1938) stated that caramel was considered to be "harmless" coloring, since it did not "contribute a character [i.e., flavor, aroma, etc.] to the product that should be derived from its basic ingredients and not from such added ingredient[s]."

Accordingly, ATF has held that since wood (oak) chips, slabs, etc. impart character to the product, label disclosure is required pursuant to § 5.39(c) to inform the consumer that not all of the brandy's (whisky's) character is derived from aging in the oak barrel.

Petition

Subsequent to the issuance of ATF Rul. 87-3, the Bureau received a petition, dated October 8, 1987, filed jointly by the Federation des Exportateurs de Vins et Spiritueux (FEVS) and the National Association of Beverage Importers, Inc. (NABI). The petition was filed on behalf of certain French brandy, Cognac, Armagnac and Calvados producers who are members of the FEVS, and on behalf of certain U.S. importers who are members of NABI. It was generated "because of the use for centuries by some producers of brandies, Cognacs, Armagnacs or Calvados of a traditional

practice in the production of these spirits. This practice, sometimes referred to as the 'Boise method,' relates to the use of an infusion of oak chips for the purpose of ensuring consistency of the final product."

According to the petitioners, the Boise method consists of adding to the brandy an infusion of oak chips prepared as follows:

> Oak chips, made of the same wood as the barrels, are placed in water. The oak chip-water mixture is heated. The oak chips are then removed from the infusion. Then the infusion is stabilized by adding brandy of the same type and origin as the one to which the 'Boise method' will be applied. The oak chip infusion resulting from the above process is then added, when necessary, to the brandy in order to ensure consistency to the final product.

As discussed in ATF Rul. 87-3, brandy (Cognac, etc.) treated with wood in any form, including infusions (the Boise method), must comply with the provisions of § 5.39(c). The petitioners have requested that the provisions of both §§ 5.23(a) and 5.39(c) be amended, to recognize that an infusion of oak chips does not affect the character of the brandy to which it is added and is a harmless coloring, flavoring, or blending material. Brandies so treated would not be required to be redesignated in accordance with § 5.23(a), and such usage would not require label disclosure in accordance with § 5.39(c).

Subsequent to the filing of the FEVS/NABI petition, the Bureau received a letter (dated November 9, 1987) written on behalf of several U.S. brandy producers, supporting the FEVS/NABI petition. In addition, it was requested that the regulations be further amended to allow for the Boise method to be used by domestic brandy producers as well as foreign producers.

Notice No. 658

On May 24, 1988, ATF published Notice No. 658 in the **Federal Register** (53 FR 18574) proposing to amend § 5.39(c) concerning the wording and placement of the disclosure statement for brandy and whisky treated with wood.

In the notice it was stated that ATF did not agree with the petitioner's claim that Boise is a harmless coloring, flavoring, or blending material which should be included in § 5.23(a)(2) along with caramel, sugar, and wine. Unlike these materials, the Bureau believed that the Boise method *does* impart flavor, aroma, etc. (i.e., character) to the finished brandy, and its disclosure on the label was appropriate. This conclusion was based on ATF's review of the literature available at the time (e.g., articles submitted by a producer of domestic brandy who wished to use Boise), and samples represented as Boise (also submitted by the same producer of domestic brandy) analyzed by the ATF National Laboratory. Thus, the amendments to §§ 5.39(c) and 5.23(a), as requested in the FEVS/NABI petition, were not proposed in Notice No. 658, although comments were solicited on the petition.

As an alternative to the proposals made in the petition, the Bureau proposed that the wording in § 5.39(c) be amended to read, "treated with wood," in lieu of the present statement, "colored and flavored with wood _____." Further, the proposed new wording need not appear on the brand (front) label in direct conjunction with the class and type designation. Rather, it may appear on a front or back label. However, the statement would still have to comply with the requirements of § 5.33 as to location, size of type, etc. The Bureau also noted that any proposed changes to § 5.39(c) should apply to whisky as well as brandy.

ATF believed that the alternative proposal would adequately protect and alert the consumer to the fact that the product had been treated with wood. The Bureau also believed that the modified statement, and its placement on a front or back label, would provide industry memebers additional flexibility in designing their labels.

The comment period for Notice No. 658, initially scheduled to close on August 22, 1988, was extended until November 22, 1988, (Notice No. 668, August 16, 1988; 53 FR 30848). It was subsequently extended again until January 6, 1989, with the publication of Notice No. 676 (November 22, 1988; 53 FR 47224).

Analysis of Comments

In response to Notice Nos. 658, 668, and 676, the Bureau received 20 comments which were submitted by industry members (on behalf of domestic and foreign interests), the French Embassy (on behalf of the French Government) and the Commission of the European Communities (EC).

Of the 14 commenters that addressed the proposals made in Notice No. 658, none supported the amendments proposed by the Bureau. Two commenters agreed with the Bureau's rationale for requiring front label disclosure for brandy and whisky treated with wood, particularly as it relates to brandy treated with Boise, and thus opposed any modification to the existing regulation, including any changes to the wording of the disclosure statement.

In that regard, one of the two commenters noted that as part of a focus group study it conducted on brandy, consumers were asked to comment on the meaning imparted by the phrase "treated with wood," as proposed by the Bureau in Notice No. 658. According to the commenter, the majority response was that the phrase meant the same as "barrel-aged." Thus, the commenter believed that the proposed wording "treated with wood" was deceptive, and should not be adopted in the final rule.

The remaining 12 commenters also opposed the Bureau's proposals, but not for the same reasons noted above. Instead, they supported the FEVS/NABI petition which would amend the existing regulations to allow for the Boise method to be used in brandy as a harmless coloring, flavoring, or blending material, without label disclosure. Several commenters alleged that Boise, similar to caramel and sugar, does not impart any character to the finished product. Rather, it is used solely to adjust the tannin level to insure consistency of the finished product. As one commenter stated, the Boise method "does not provide the important aromatic compounds which result from aging in oak barrels (phenolic aldehydes in particular)."

In their comment, the French Embassy noted that French regulations, pursuant to the administrative ruling of November 15, 1921, authorize the use of sugar, caramel, and infusion of oak chips (Boise) in distilled spirits. According to the French Embassy, "[t]he French set of regulations have always taken the view that the addition of sugar, caramel or 'boise' was part of the traditional manufacturing process of certain brandies, was not intended to mislead the consumers on the specific qualities, origin, variety or age of the product and did not therefore need to be disclosed on the label."

The petitioners maintained that due to the variability of the age and type of oak barrels used in the aging process of brandy, both caramel and the Boise method are used to ensure consistency of the final product. However, unlike caramel, use of the Boise method would require label disclosure in accordance with § 5.39(c).

Discussion

Interrelationship of 27 CFR §§ 5.23(a) and 5.39(c). Examination of the regulatory history for § 5.39(c) establishes that the initial regulation requiring the statement "colored and flavored with wood chips" was issued in

1938. FA–133, issued February 28, 1938, amended section 34 of Article III, Regulations No. 5, by adding a new subsection (d). This regulation required that whisky treated with wood be labeled with the phrase "colored and flavored with wood chips" in direct conjunction with the class and type designation. In 1939, hearings were held on a proposal to extend the provisions of this regulation to all spirits treated with wood. The hearing transcript indicates that wood chips were being used at that time to simulate the effects of barrel aging and that the chips imparted color and flavor in a shorter time than barrel aging.

As a result of the 1939 hearings, T.D. 5050, 1941–1, C.B. 482, amended section 34(d) [27 CFR 5.34(d)] by extending its requirements to brandy. The regulation was changed to § 5.39(c) and was amended to read substantially as it now appears in the regulations by T.D. 7020, 1970–1, C.B. 335, issued December 30, 1969. No substantive changes to the regulation have been made since that time.

In addition, an examination of the regulatory history for § 5.23(a)(3)(iii) establishes that the regulation, originally promulgated in Amendment No. 6 to Regulations No. 5, as Article II, Sec. 22 (filed with the **Federal Register** on June 9, 1938), was based upon testimony given at a public hearing of November 15, 1937. At that hearing, testimony was given indicating that under French law, only caramel coloring and sugar were permissible additions to Cognac. Testimony also indicated that no other materials, including flavoring substances such as concentrates or vegetable extracts, could be used. As a result, when the final regulation was promulgated, the only permissible additions to Cognac were caramel and sugar.

ATF has now determined, pursuant to information provided during the present rulemaking proceeding, that caramel and sugar were not the only materials authorized for use in Cognac under French law. The French Embassy's comment in response to Notice No. 658 states as follows:

> "The administrative ruling #57 of November 22 [sic], 1921 * * *, taken in application of a French ministerial decree of August 19, 1921, published in the 'Journal Officiel' of August 21, 1921, prohibits the addition of any substance to distilled spirits bearing an appellation of origin [e.g., Cognac], with the exception of sugar, caramel and oak chip infusion."

The French Embassy has further clarified the above mentioned administrative ruling by advising ATF that it is the French Government's view that sugar, caramel, and an infusion of oak chips are authorized for use in *all* French brandies, whether or not the particular brandy bears an appellation of origin.

In light of the above, ATF requested another sample of Boise, along with a list of ingredients and statement of process, in order to further evaluate whether the addition of certain oak chip infusions to brandy results in a change of character. A sample and accompanying documents were prepared by the Bureau National Interprofessionnel du Cognac (BNIC). In their letter of May 15, 1989, the French Embassy noted that the BNIC is a quasi-governmental agency organized under the authority of the French Ministries of Finance and Agriculture, and is responsible for ensuring that the laws and regulations regarding the production of Cognac are enforced. Thus, "the making and use of the oak chip infusion [Boise] is placed under the direct jurisdiction of the BNIC." The BNIC subsequently advised that the sample of Boise submitted to ATF is representative of the Boise process currently in use in France.

The ATF Laboratory analyzed the Boise sample submitted by NABI and compared it with the two samples represented as Boise previously submitted by a domestic brandy producer. All of the samples were diluted to 2.5 percent by volume in 80 proof spirits. The samples were analyzed for total color, total tannin and acid content, potassium and sodium levels, and absence of indicators of caramelization due to charring or burning, such as 5HMF (5 hydroxy methyl furfural). The samples were also examined organoleptically.

The laboratory report indicates that the samples were tested for total color, sodium, and indicators of caramelization due to charring or burning because the presence of these materials is indicative of harsh chemical and physical treatment of the wood chips used to make the infusion. In the opinion of the ATF laboratory, a product which is manufactured with minimal harsh chemical and physical treatment of the wood chips results in a product which is less likely to give character to the spirits to which it is added. Conversely, a process of manufacture which utilizes harsh chemical and physical treatment of wood chips is likely to result in a more concentrated product which will give character to the spirits to which it is added. The laboratory also tested for potassium and total acid content because such materials are indicative of vegetable and fruit products added to the infusion which would not naturally be present in an infusion made solely from wood chips, brandy, and water. Finally, the samples were tested for total tannin content to determine the levels of wood products in the infusion.

The two samples submitted by the domestic brandy producer had a measurable total color exceeding that of the NABI sample by a factor of ten. The total tannin content expressed in mg/liter of gallic acid for the two samples was 23,743 and 16,160, compared with 4,400 for the NABI sample. The total content (citric) for the two samples was 5.5 g./l and 11.3 g/l. In comparison, the NABI sample contained 1.0 g/1 total acid. The two samples had measurable sodium levels not present in the NABI sample. The potassium levels of all of the samples were comparable and were not significant. One of the samples submitted by the domestic brandy producer also contained measurable levels of 5HMF which would indicate either the addition of caramel to the infusion or the charring of the wood used in its preparation. The NABI sample had no measurable levels of 5HMF.

The samples were also organoleptically examined by a panel of experts at the ATF Laboratory. The samples were diluted to 2.5 percent by volume and added to 80 proof neutral spirits. The panel was then asked to evaluate the extent of the character, i.e., flavor and aroma, of the preparations. The panel was in agreement that the two samples submitted by the domestic brandy producer contributed character to the spirits, while the NABI sample did not.

The results of the organoleptic examination are supported by the laboratory analyses of the samples. The high total tannin levels are total acid content in the two samples submitted by the domestic brandy producer are indicative of the highly concentrated character of the samples. Acid and tannin are major components of the flavor and aroma of the oak chip infusions. In addition, the total color, sodium, and 5HMF levels in the two samples are indicative of a product manufactured with harsh chemical and physical treatment of the wood chips, which accounts for the concentrated character of those samples. The NABI sample was far less concentrated, and the laboratory examination indicated that the wood chips had been subjected to minimal harsh physical or chemical treatment in the preparation of the infusion.

Based upon the considerations and the results of the laboratory analyses

discussed above, it has been determined that an infusion of oak chips prepared in accordance with the "Boise" method is a "harmless" material which does not impart any character to the finished product. Additionally, it has been clearly demonstrated that an infusion of oak chips (Boise) is, and has been since 1921, officially authorized by the French Government for use in the treatment of French brandy, including Cognac. Accordingly, the Bureau is amending § 5.23(a)(3)(iii) to specifically authorize an infusion of oak chips in the case of Cognac, along with sugar and caramel, within the 2.5 percent limitation prescribed by the regulation.

In light of the above, ATF is also amending § 5.23(a)(2)(ii) to include "infusion of oak chips, when approved by the Director," as harmless coloring, flavoring, or blending materials which are not an essential part of the spirits to which added, but which are customarily employed therein in accordance with established trade usage. This amendment will permit the Director to determine on a case-by-case basis, whether a particular infusion of oak chips is "harmless" within the 2.5 percent limitation of the regulation and is customarily employed therein in accordance with established trade usage. Given the wide variation of oak chips, ATF cannot give "blanket" approval to all such infusions. Anyone wishing to use an infusion of oak chips pursuant to § 5.23(a)(2)(ii) may submit a statement of process, a list of ingredients, and a sample of the infusion to the Director.

Based upon the statement of process from the BNIC and the sample of Boise submitted by NABI, ATF has determined that an infusion of oak chips prepared in accordance with the BNIC when added to French brandy (including Cognac, Armagnac, etc.) is a harmless coloring or flavoring material. Accordingly, use of "Boise" within the 2.5 percent limitation will not require redesignation of the French brandy to which it is added.

ATF is also amending § 5.39(c) to exempt brandy, including Cognac, treated with wood in accordance with § 5.23(a)(2) from the disclosure requirements of § 5.39(c). It is apparent from the rulemaking record leading up to § 5.39(c) that the purpose of § 5.39(c) is to inform the consumer that not all of the brandy's character is derived from aging in the barrel. ATF believes that if an infusion of oak chips does not impart character to the brandy to which it is added, § 5.39(c) should not apply.

Similarly, ATF recognizes the possibility that, in the case of whisky, the use of an oak chip infusion might not be a harmless coloring, flavoring, or blending material. As indicated, almost all of the data the Bureau has compiled thus far concerning Boise, including samples, has been in regard to its use in French brandy. Thus, before an oak chip infusion can be approved as a harmless material for use in whisky (and exempt from the provisions of § 5.39(c)). ATF believes additional information (i.e., samples, statements of process, etc.) is necessary. In addition, as specified in § 5.23(a)(2)(ii), it must be shown that in the case of whisky, an infusion of oak chips is "customarily employed * * * in accordance with established trade usage."

Proposals in Notice No. 658

As previously mentioned, all commenters objected to the amendments proposed by ATF in Notice No. 658. One commenter noted that many consumers (incorrectly) perceived the phrase "treated with wood" as referring to a product that has been barrel-aged. Another commenter stated that the phrase "does not clearly tell the consumer that the product is actually flavored with wood chips as it could be construed to be from barrel aging." The commenter also believed that the disclosure statement should appear prominently on the brand (front) label, as curently specified in § 5.39(c), to inform the consumer that the product has undergone treatment that affects the finished product, other than just barrel aging.

ATF believes that the concerns expressed by the two commenters mentioned above are valid and the Bureau is, therefore, not adopting the amendments to § 5.39(c) proposed in Notice No. 658.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

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

(c) 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there is no requirement to collect information.

Disclosure

Copies of the petition, the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection. Imports, Labeling, Liquors, and Packaging and containers.

Authority and Issuance

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS IS AMENDED AS FOLLOWS

Par. 1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 5.23(a)(2)(ii) is revised to read as follows:

§ 5.23 Alteration of class and type.

(a) * * *

(2) * * *

(ii) Harmless coloring, flavoring, or blending materials such as caramel, straight malt or straight rye malt

whiskies, fruit juices, sugar, infusion of oak chips when approved by the Director, or wine, which are not an essential component part of the particular distilled spirits to which added, but which are customarily employed therein in accordance with established trade usage, if such coloring, flavoring, or blending materials do not total more than 2½ percent by volume of the finished product.

* * * * *

Par. 3. Section 5.23(a)(3)(iii) is revised to read as follows:

§ 5.23 Alteration of class and type.

(a) * * *

(3) * * *

(iii) Any material, other than caramel, infusion of oak chips, and sugar, in the case of Cognac brandy.

Par. 4. Section 5.39(c) is revised to read as follows:

§ 5.39 Presence of neutral spirits and coloring, flavoring and blending materials.

* * * * *

(c) *Treatment with wood.* The words "colored and flavored with wood _____ (insert chips, slabs, etc., as appropriate)" shall be stated as a part of the class and type designation for whisky and brandy treated, in whole or in part, with wood through percolation, or otherwise, during distillation or storage, other than through contact with the oak container: *Provided,* that the above statement shall not apply to brandy treated with an infusion of oak chips in accordance with § 5.23(a).

Signed: December 7, 1989.

Stephen E. Higgins,

Director.

Approved: December 27, 1989.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 90-640 Filed 1-10-90; 8:45 am]

BILLING CODE 4810-31-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-618, RM-7060]

Radio Broadcasting Services; Friona, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lois B. Crain, permittee of Station KGRW(FM), Channel 236A, Friona, Texas, proposing the substitution of Channel 234C2 for Channel 236A at Friona and the modification of its construction permit to specify the new channel. A site restriction of 21.6 kilometers (13.4 miles) west of the community is required. The coordinates are 34-41-17 and 102-56-53.

DATES: Comments must be filed on or before February 26, 1990, and reply comments on or before March 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Estella Salvatierra, Esq., Fletcher, Heald & Hildreth, Suite 400, 1225 Connecticut Avenue, NW., Washington, DC 20036-2679 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-618, adopted December 14, 1989, and released January 4, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 90-633 Filed 1-10-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-621, RM-7063]

Radio Broadcasting Services; Kerrville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Guadalupe Communications, Inc., permittee of Station KITE(FM), Channel 221A, Kerrville, Texas, proposing the substitution of Channel 222C2 for Channel 221A at Kerrville and the modification of its construction permit to specify the new channel. A site restriction of 4.8 kilometers (3 miles) northwest of the community is required. The coordinates are 30-05-00 and 99-10-00. The proposal also requires concurrence of the Mexican government.

DATES: Comments must be filed on or before February 26, 1990, and reply comments on or before March 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lawrence Roberts, Esq., Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel. P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-621, adopted December 14, 1989, and released January 4, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

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

[FR Doc. 90-636 Filed 1-10-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-619, RM-7048]

Radio Broadcasting Services; Bridport, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Peter S. Morton seeking the allotment of Channel 229A to Bridport, Vermont, as that community's first local FM service. The proposal complies with § 73-207 of the Commission's Rules at the city reference coordinates which are 43-59-06 and 73-18-47.

DATES: Comments must be filed on or before February 26, 1990, and reply comments on or before March 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Peter S. Morton, P.O. Box 57, Rupert, Vermont 05768 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-619, adopted December 14, 1989, and released January 4, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 90-634 Filed 1-10-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-620, RM-7125]

Radio Broadcasting Services; Hayward, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Pine-Aire Broadcasting Corporation, Inc., licensee of Station WRLS-FM, Channel 221A, Hayward, Wisconsin, proposing the substitution of Channel 222C3 for Channel 221A at Hayward and the modification of its station's license accordingly. The coordinates are 46-06-47 and 91-20-07.

DATES: Comments must be filed on or before February 26, 1990, and reply comments on or before March 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Pine-Aire Broadcasting Corporation, Inc., c/o Lance W. Riley, Esquire, 308 Edina Executive Plaza, Edina, Minnesota, 55424 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-620, adopted December 14, 1989, and released January 4, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1,420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 90-635 Filed 1-10-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-537, RM-6039]

Television Broadcasting Services; Kingston and Oneonta, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission grants the request of WMHT Educational Telecommunications Corporation to dismiss its request to reallot noncommercial educational Channel *42 from Oneonta to Kingston, New York.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-537, adopted December 14, 1989, and released January 4, 1990. 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

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 90-637 Filed 1-10-90; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1151

[Ex Parte No. 395 (Sub-No. 2)]

Revision of Feeder Railroad Development Rules

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend 49 CFR part 1151 to facilitate feeder railroad applications under 49 U.S.C. 10910. The amendments would also remove obsolete provisions. Among other things, the Commission requests comments on whether it should continue its policy of rejecting feeder line applications when an abandonment proceeding involving the same track is pending.

DATES: Comments must be submitted by February 12, 1990.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 395 (Sub-No. 2) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR ADDITIONAL INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202 275-1721.)

Initial Regulatory Flexibility Analysis

We preliminarily conclude that the proposed action will not have a significant economic impact on a substantial number of small entities. The general purpose of the proposed changes is to allow more flexible procedures for applicants, including shippers and community groups, to use the Feeder Railroad Development Program to acquire rail lines.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1151

Administrative practice and procedure, and Railroads.

Decided: January 4, 1990.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett. Commissioner Lamboley commented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1151 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

1. The authority citation for part 1151 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10910.

§ 1151.1 [Amended]

2. In § 1151.1, the last sentence is proposed to be removed.

3. Section 1151.2 is proposed to be revised to read as follows:

§ 1151.2 Procedures.

(a) *Service.* When the application is filed, applicant must concurrently serve a copy of the application by first class mail on:

(1) The owning railroad;

(2) All rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application is filed;

(3) The designated State agency in the State(s) where the property is located;

(4) County governments where the line is located;

(5) The National Railroad Passenger Corporation (Amtrak) (if Amtrak operates on the line); and

(6) The national offices of rail unions with employees on the line.

(b) *Acceptance or rejection of an application.* (1) The Commission, through the Director of the Office of Proceedings, will accept a complete initial application no later than 30 days after the application is filed by publishing a notice in the **Federal Register.** An application is complete if it has been properly served and contains substantially all information required by § 1151.3, except as modified by advance waiver. The notice will also announce the schedule for filing of competing applications and responses.

(2) The Commission, through the Director of the Office of Proceedings, will reject an incomplete application by serving a decision no later than 30 days after the application is filed. The decision will explain specifically why the application was incomplete. A revised application may be submitted, incorporating portions of the prior application be reference.

(c) *Competing applications.* (1) Unless otherwise scheduled in the notice, competing applications by other parties seeking to acquire all or any portion of the line sought in the initial application are due within 30 days after the initial application is accepted.

(2) The Commission, through the Director of the Office of Proceedings, will issue a decision accepting or rejecting a competing application no later than 15 days after the application is filed. A competing application will be rejected if it does not substantially contain the information required by § 1151.3, except as modifed by advance waiver.

(d) *Comments.* Unless otherwise scheduled in the notice, verified statements and comments addressing the initial and competing applications must be filed within 60 days after the initial application is accepted.

(e) *Replies.* Unless otherwise scheduled in the notice, verified replies by applicants and other interested parties must be filed within 80 days after the initial application is accepted.

(f) *Acceptance or rejection.* If the Commission concludes that sale of the line should be required, the applicant(s) must file a notice with the Commission and the owning railroad accepting or rejecting the Commission's determination. The notice must be filed within 10 days of the service date of the decision.

(g) *Selection.* If two or more applicants timely file notices accepting the Commission's determination, the owning railroad must select the applicant to which it will sell the line. Within 15 days of the service date of the Commission decision, the owning railroad must file notice of its selection with the Commission and serve a copy on the applicants.

(h) *Waiver.* Prior to filing an initial or competing application, an applicant may file a petition to waive or clarify specific portions of part 1151. A decision by the Director of the Office of Proceedings granting a denying a petition for waiver or clarification will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision

will be decided by the entire Commission.

(i) *Extensions.* Extensions of filing dates may be granted for good cause.

4. In § 1151.3, paragraphs (a)(14), (a)(16), and (a)(17) are proposed to be revised, paragraph (b) is proposed to be removed and paragraph (c) is proposed to be redesignated as paragraph (b) and revised to read as follows:

§ 1151.3 Contents of application.

(a) * * *

(14) If applicant requests the Commission to prescribe joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement that must be established. The description must contain the following information:

(i) The railroad(s) involved;

(ii) The estimated revenues that will result from the division(s);

(iii) The total costs of operating the line segment purchased (including the trackage rights fees);

(iv) Information sufficient to allow the Commission to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year;[1] and

(v) Any other pertinent information.

* * * * *

(16) A certificate stating that the service requirements of § 1151.2(a) have been met.

(17) A certificate that applicant has complied with the environmental notice requirements of 49 CFR Part 1105 and has provided to the appropriate State Historic Preservation Officer(s) with the identification (including descriptions, maps, and photographs) of sites and structures listed in the *National Register of Historic Places* and those sites and structures 50 years old and older eligible for listing in the *National Register* that will be transferred as a result of the sale.

(b) Applicant must make copies of the application available to interested parties upon request.

§ 1151.5 [Removed]

5. Section 1151.5 is proposed to be removed.

[FR Doc. 90-740 Filed 1-10-90; 8:45 am]

BILLING CODE 7035-01-M

[1] Gross ton-miles are calculated by adding ton-miles of the cargo and the ton-miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton-miles, only those related to the portion of the segment purchased shall be included.

Notices

Federal Register
Vol. 55, No. 8
Thursday, January 11, 1990

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

January 5, 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 list 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 P.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

• Farmers Home Administration; Application to Obtain Additional Funding; None; On occasion; State or local governments; Non-profit institutions; 130 responses; 520 hours; not applicable under 3504(h) Jack Holston (202) 382-9736.

Emergency Collection

• Farmers Home Administration; 7 CFR 1980-I, Community Programs Guaranteed Loans; FmHA 1980-10; On occasion; State or local governments; Non-profit institutions; 2,501 responses; 49,991 hours; not applicable under 3504(h) Jack Holston (202) 382-9736.

Reinstatement

• Farmers Home Administration; 7 CFR 1942-K, Emergency Community Water Assistance Grants; FmHA 1942-31; On occasion; State or local governments; Non-profit institutions; Small businesses or organizations; 1,265 responses; 2,530 hours; not applicable under 3504(h) Jack Holston (202) 382-9736.

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 90-715 Filed 1-10-90; 8:45 am]
BILLING CODE 3410-01-M

Office of the Secretary

[Docket No. 89-032N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods, will be held on Tuesday and Wednesday, January 30-31, 1990, in Atlanta, Georgia, from 9:00 a.m. to 5:00 p.m., at the Atlanta Ramada Renaissance Hotel, 4736 Best Road, College Park, Georgia. The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, includng criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices. Agenda items include draft documents of the Seafood and Meat and Poultry Subcommittees to be presented for Committee approval.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to, or after, the meeting in order that they may be considered and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. In submitting comments, please reference the Docket number appearing in the heading of this Notice. Comments should be filed by March 2, 1990. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-9150.

Done at Washington, DC on January 4, 1990.

Lester M. Crawford,
Chairman.

[FR Doc. 90-657 Filed 1-10-90; 8:45 am]
BILLING CODE 3410-DM-M

Soil Conservation Service

Long Beach Watershed, MS; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: L. Pete Heard, responsible Federal official for projects administered under the provisions of Public Law 83-566, 16 U.S.C. 1001-1008, in the State of Mississippi, is hereby providing notification that a record of decision to proceed with the installation of the Long Beach Watershed project is available. Single copies of this record of decision may be obtained from L. Pete Heard at the address shown below.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 100 West Capitol Street, Suite 1321, Jackson, Mississippi 39269, telephone 601-965-5205.

[This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.]

L. Pete Heard,
State Conservationist.

[FR Doc. 90-763 Filed 1-10-90; 8:45 am]
BILLING CODE 3410-16-M

Star Valley Critical Area Treatment RC&D Measure, Arizona

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service procedures (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Star Valley Critical Area Treatment RC&D Measure, Gila County, Arizona.

FOR FURTHER INFORMATION CONTACT: Charles R. Adams, State Conservationist, Soil Conservation Service, 201 East Indianola, Suite 200, Phoenix, Arizona, 85012, telephone (602) 640-2247.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, *Charles R. Adams*, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The measure concerns streambank stabilization near residential developments on Houston Creek in Star Valley, Arizona. Lateral erosion and downstream sedimentation will be controlled by a combination of gabions and earthfill. There will be 1,440 feet of gabions in three disconnected sections. Trees will be moved if sufficient moisture is available for transplanting.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bart Ambrose.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

("This activity is listed in the catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials").

Charles R. Adams,
State Conservationist.

[FR Doc. 90-679 Filed 1-10-90; 8:45 am]

BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or Access Board) has scheduled a business meeting to take place from 10:00 a.m. to 12:00 noon, on Tuesday, January 23, 1990, at the Radisson Annapolis Hotel Annapolis, Maryland.

DATE: Tuesday, January 23, 1990—10:00 a.m. to 12:00 noon (Business Meeting).

FOR FURTHER INFORMATION CONTACT: For information regarding the Board meeting, contact Barbara A. Gilley, Executive Officer, (202) 653-7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: The Board will hold a planning retreat on Sunday and Monday, January 21 and 22, 1990. The Board's Executive Committee will meet on Monday (time to be announced); and, its Planning and Budget Committee will meet on Tuesday, January 23, 1990—9:00 a.m. to 10:00 a.m.

Lawrence W. Roffee,
Executive Director.

[FR Doc. 90-706 Filed 1-10-90; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF COMMERCE

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

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

Agency: National Oceanic and Atmospheric Administration.

Title: Grant-in-Aid Performance Reports National Marine Fisheries Service.

Form Number: Agency—None; OMB—0648-0102.

Type of Request: Revision of a currently approved collection.

Burden: 102 respondents; 204 reporting hours; average hours per response—5.5 hours.

Needs and Uses: The National Marine Fisheries Service administers grant-in-aid programs under three acts. Recipients of the grants must file semi-annual performance reports describing their accomplishments and progress. The information is used to track program results and to ensure funds are being properly spent.

Affected Public: State or local governments, businesses or other for profit institutions, small businesses or organizations.

Frequency: Semi-annually.

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

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 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: January 5, 1990.

Gerald J. Tache,
Chief, Management Support Division, Office of Management and Organization.

[FR Doc. 90-695 Filed 1-10-90; 8:45 am]

BILLING CODE 3510-CW-M

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

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

Agency: Bureau of Export Administration.

Title: Robots, Controllers, End-Effectors, Related Vision Systems and Software.

Form Number: Export Administration Regulations § 776.17; OMB No. 0694-0049.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 41 respondents; 21 reporting/recordkeeping hours. Average hours per respondent if one-half hour.

Needs and Uses: BXA requires supplemental information to support validated license and reexport requests

for the export of robots to certain prescribed destinations. The information is used to determine if the proposed export has the potential for making significant contributions to the strategic capabilities of the importing country. The information is also used to make commodity classification decisions.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

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

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

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

Dated: January 5, 1990.

Gerald J. Tache,

Chief, Management Support Division, Office of Management and Organization.

[FR Doc. 90-696 Filed 1-10-90; 8:45am]

BILLING CODE 3510-CW-M

Bureau of the Census

[Docket No. 91203-9303]

Annual Wholesale Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

Determination

In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales and purchases for 1989 and inventories for 1988 and 1989. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: John Michael Brown on (301) 763-3916.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on wholesale trade for the period between Economic Censuses. The next Economic Census will be conducted in 1992. The data collected in this survey will be within the general scope and nature of those inquiries covered in the Economic Censuses.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1989 Annual Wholesale Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended, and was cleared under OMB Control No. 0607-0195. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Conclusion

Based upon the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: January 5, 1990.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 90-747 Filed 1-10-90; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-351-605]

Frozen Concentrated Orange Juice From Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners and two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The review covers ten producers and/or exporters of this merchandise to the United States and the period April 29, 1987 through April 30, 1988. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, Andrew N. Bowen, or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5289/5505/5255.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 16426) the antidumping duty order on frozen concentrated orange juice from Brazil. Petitioners and respondents requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review. We published a notice of initiation of the antidumping administrtive review on June 29, 1988 (53 FR24470). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff 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 frozen concentrated orange juice ("FCOJ") from Brazil. During the review period such merchandise was classifiable under item 165.29 of the Tariff Schedules of the United States ("TSUS"). The merchandise is currently classifiable under HTS item 2009.11.00. The TSUS and HTS item numbers are provided for convenience and Customs

purposes. The written description remains dispositive.

The review covers ten producers and/or exporters of FCOJ from Brazil to the United States and the period April 29, 1987 through April 30, 1988. Eight firms, Citrosuco Paulista, Cargill Citrus Ltda., Coopercitrus Industria Frutesp S.A., Branco Peres Citrus, Citrovale S.A., Citro Mojiana Ltda., Frutropic S.A., and Montecitrus Trading S.A., had shipments to the United States. Two firms, Citro Pectina and Quimicas, failed to respond to the Department's antidumping duty questionnaire. For these two firms we used the best information available for assessment and cash deposit purposes. Best information available is the highest rate for a responding firm during the investigation.

Five firms for which we initiated a review, Industrias Alimenticias Maguary, Industrias J.b. Duarte S.A., Central Citrus, Suvalan, and Bascitrus had no shipments to the United States during the period of review.

One firm, for which we initiated a review, Makro Atacadista, reported that it had one sale to the United States for which it acted as an exporting agent for Frutropic. For purposes of this preliminary determination we have treated this sale as Frutropic's sale and hence have preliminarily determined that Makro Atacadista did not have any sales to the United States. We will request further information on this transaction for purposes of the final determination.

United States Price

In calculating the United States price, we used both purchase price and exporter's sales price ("ESP") as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was used for those sales to the United States which were made prior to importation while exporter's sales price was used for those sales which were made after importation.

Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. ESP was based on the packed delivered price to the first unrelated purchaser in the United States. For purchase price sales, where applicable, we made deductions for Brazilian brokerage expenses, export taxes, port fees, foreign inland freight and insurance. For ESP sales, we made additional deductions for discounts, U.S. duty and Customs' fees, harbor maintenance fees, U.S. inland freight and insurance, brokerage and handling expenses, ocean freight and marine insurance, credit expenses, and any other additional expenses normally incurred in selling the merchandise in the United States. Where foreign market value was based on home market prices, we made an addition to U.S. price for taxes which were not collected by reason of exportation of the merchandise to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, third-country price, or constructed value, where appropriate, as defined in section 773 of the Tariff Act. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where appropriate, for foreign inland freight expenses, differences in credit expenses, post-sale warehousing expenses, packing expenses, merchandising expenses, internal taxes, and differences in the physical characteristics of the merchandise. Third country price was based on the f.o.b. packed price to unrelated purchasers in Belgium, the United Kingdom, Holland, or Canada, where appropriate. We made adjustments for inland freight and marine insurance, and export taxes. In the case of ESP sales, we made adjustments to foreign market value for indirect selling expenses, limited to the amount of indirect selling expenses incurred in the United States. No other adjustments were claimed or allowed.

Constructed Value

Branco Peres had no sales of such or similar merchandise in the home market. It did have sales of similar merchandise in Holland, which account for approximately 30 percent of the total reported revenue from sales of FCOJ. However, there were not sufficient contemporaneous sales with which the U.S. sales could be compared. The Department therefore looked to constructed value as the basis for determining foreign market value.

In calculating constructed values, we used the actual material, labor and overhead costs as recorded in Branco Peres' monthly accounting records. These nominal costs were adjusted to reflect the effects of inflation by linking such costs to the Brazilian inflation index (OTN). The annualized actual costs were allocated to the months using both the inflation index and production volumes.

Feed pellets and other products manufactured from the orange rind were considered to be by-products of FCOJ production. Thus, all costs incurred by Branco Peres for manufacturing these products were included in the cost of production. Revenues accruing from the sales of the by-products were credited against the costs.

Interest expense was netted to zero by interest revenue resulting from investments for operations. The ratio of general and administrative expenses to the cost of goods sold was used to calculate monthly SG&A expenses.

The actual net profit as recorded in Branco Peres' profit and loss statement was an unusually high percentage of the net sales revenue. This was a result of the great amount of financial revenue accrued as a result of foreign exchange gains. Consequently, the net profit did not accurately reflect the operating profit. The Department therefore used an industry-wide standard profit figure of $90.00 per metric ton.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we have preliminarily determined that the following margins exist for the period April 29, 1987 through April 30, 1988:

Manufacturer/exporter	Margin (percent)
Citro Pectina	1.96
Quimicas	1.96
Citrosuco Paulista	0.00
Cargill Citrus Ltda.	0.07
Coopercitrus Industria Frutesp, S.A.	0.01
Branco Peres Citrus	0.00
Citrovale, S.A.	0.00
Citro Mojiana, Ltda.	0.00
Frutropic S.A.	0.34
Montecitrus Trading, S.A.	0.00

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication of this notice. 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 the issues raised in the comments, may be filed not later than 37 days after the date of publication. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(3) (1989). The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. Since the margins for Cargill Citrus Ltda., Coopercitrus Industria Frutesp, S.A. and Frutropic, S.A. are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries from those firms. For any future entries of this merchandise from a new exporter, not covered in this administrative review or the original investigation, whose first shipments occurred after April 30, 1988, and who is unrelated to any reviewed firm, no cash deposit will be required. These waivers of the deposit requirement are effective for all shipments of Frozen Concentrated Orange Juice from Brazil 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 19 CFR 353.22 (1989).

Dated: January 4, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-698 Filed 1-10-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-07]

Bricks from Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administrative/Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On January 4, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on bricks from Mexico. We have now completed that review and determine the total bounty or grant to be zero or *de minimis* for 22 firms and 4.44 percent *ad valorem* for all other firms during the period January 1, 1986 through August 23, 1986.

EFFECTIVE DATE: January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Randall Edwards or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 166) the preliminary results of its administrative review of the countervailing duty order on bricks from Mexico (49 FR 19564; May 8, 1984). On December 27, 1989, the Department revoked the countervailing duty order on bricks from Mexico effective August 24, 1986 (54 FR 53163). The Department has now completed its administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of bricks from Mexico, including unglazed solid bricks and unglazed hollow bricks. During the review period, such merchandise was classifiable under items 532.1120 and 532.1140 of the Tariff Schedules of the United States Annotaed. These products are currently classifiable under item number 6904.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

As a result of the revocation of this countervailing duty order, the review covers only the period from January 1, 1986 through August 23, 1986. We reviewed the following programs: (1) FOMEX; (2) FONEI; (3) FOGAIN; (4) State tax incentives; (5) FOMIN; (6) NDP preferential discounts; (7) FIDEIN; (8) Bancomext loans; (9) Delay of payment on loans; (10) Delay of payments to PEMEX of fuel charges; (11) PROFIDE loans; (12) Export credit insurance; (13) CEDI; (14) Accelerated depreciation; (15) Article 15 loans; (16) Preferential state investment incentives; (17) Import duty reductions and exemptions; and (18) CEPROFI fiscal incentives.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. On February 17, 1989, we received written comments from a respondent, Productos de Barro Industrializados, S.A. (Productos).

Comment: Productos argued that the Department should immediately revoke the order with respect to imports of bricks from Mexico effective August 24, 1986, the date Mexico acceded to the General Agreement on Tariffs and Trade, because the Department has no authority to impose countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986. Productos further requested that we recalculate the benefits attributable to entries made for the period January 1 through August 23, 1986, rather than for the entire calendar year.

Department's Position: Since we revoked the order effective August 24, 1986, we adjusted our calculations to reflect the benefits received on exports during the period January 1, 1986 through August 23, 1986.

Firms Not Receiving Benefits

We determine that the following firms received zero or *de minimis* benefits during the period January 1, 1986 through August 23, 1986:

(1) Blanca Salvidar Gonzalez;
(2) Bloques Ladrillos y Materiales de Piedras Negras;
(3) Elias Martinez Ledezma;
(4) Gregorio Moreno;
(5) Jesus Galvan Mesa;
(6) Joaquin Geurra R.;
(7) Ladrillera Arcoiris;
(8) Ladrillera Azteca;
(9) Ladrillera Cantu;
(10) Ladrillera Guadalupana;
(11) Ladrillera La Joya;
(12) Ladrillera Monterrey;
(13) Ladrillera Reynosa;
(14) Ladrillera Rio Bravo;
(15) Ladrillera San Juan;
(16) Ladrillera San Marcos;
(17) Ladrillera Santa Fe;
(18) Ladrillos Reynosa;
(19) Luis de Hoyos Villareal
(20) Materiales Salinas;
(21) Productos de Barro La Zacatosa; and
(22) Ricardo Francisco Garza Vela.

Final Results of Review

We determine the total bounty or grant during the period January 1, 1986 through August 23, 1986 to be zero or *de minimis* for 22 firms, and 4.44 percent *ad valorem* for all other firms.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise from the 22 firms listed above and to assess countervailing duties of 4.44 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for

consumption on or before August 23, 1986.

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 19 CFR 355.22.

Dated: January 4, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-699 Filed 1-10-90; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Maryland et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 3:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket: 89-264. *Applicant:* University of Maryland, College Park, MD 20742. *Instrument:* Electron Microscope, Model JEM-2000FX/SIP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to study various aspects of membrane structure and function of organisms, cells, or organelles from various viral, bacterial, fungal, invertebrate and vertebrate groups. Other studies will involve structural analysis of epitaxially grown semiconductor films, artificial semiconductor or metallic monolayers, and metallic alloys, specifically alpha-beta titanium alloys.

The article will also be used for educational purposes in the courses:

(1) ENMA 698A—Special Problems in Engineering Materials: Determination of Structure of Materials,
(2) ZOOL 612—Biological Electron Microscopy Laboratory,
(3) ZOOL 613—Biological Electron Microscopy Laboratory II,
(4) ENMA/MICB/ZOOL 799—Masters Thesis Research and
(5) ENMA/MICB/ZOOL 899—Doctoral Dissertation Research.

Applicaton Received by Commissioner of Customs: November 1, 1989.

Docket Number: 89-267. *Applicant:* University of Minnesota, Department of Cell Biology & Neuroanatomy, 4-135 Jackson Hall, Minneapolis, MN 55455. *Instrument:* Electron Microscope, Model JEM-1200EXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to examine filamentous protein polymers, including the RecA protein of *E. coli*, actin and microtubules. Experiments will be performed in two main areas: homologuous genetic recombination, using the *E. coli* RecA protein and the cytoskeleton, and its constituent proteins. The instrument is essential for the training and research of doctoral students, postdoctoral fellows and medical students. *Application Received by Commissioner of Customs:* November 3, 1989.

Docket Number: 89-268. *Applicant:* University of Wisconsin-Oshkosh, 800 Algoma Blvd., Oshkosh, WI 54901. *Instrument:* Electron Microscope, Model EM 10 CA/G45 with Integrated Television System. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for educational purposes in the following courses:

(1) Cell Biology—covering the biochemistry and ultrastructure of cells, with mandatory laboratory work.
(2) Developmental Biology—covering the physiology and differentiation of tissues in embryos, with mandatory laboratory work.
(3) Electron Microscopy—covering the major theory and techniques of transmission electron microscopy.
(4) Independent Study—students use the instrument to complete research projects.

Application Received by Commissioner of Customs: November 6, 1989.

Docket Number: 89-269. *Applicant:* State University of New York at Geneseo, Geneseo, NY 14454. *Instrument:* Electron Microscope, Model EM 900 TFP/G45 with components. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* The instrument will be used for diverse research dealing with the ultrastructure of biological organisms and components. These projects will include:

1. Structural and functional analysis of flagella basal components,
2. Identification and localization of magnetic material in a migratory bird, and
3. Determination and pattern formation in Drosophila.

In addition, the instrument will be used by students in BIO 378 and 390, Biological Techniques to conduct research projects. *Application Received by Commissioner of Customs:* November 6, 1989.

Docket Number: 89-270. *Applicant:* FDA, Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892. *Instrument:* Mass Spectrometer, Model BIOION 20. *Manufacturer:* BIOION Nordic AB, Sweden. *Intended Use:* The instrument will be used to study recombinant DNA technology derived proteins including AIDS virus related proteins and other high molecular weight biomolecules, such as polysaccharides and polynucleotides. *Application Received by Commissioner of Customs:* November 6, 1989.

Docket Number: 89-271. *Applicant:* US DOE, Argonne National Laboratory, 9700 So. Cass Avenue, Argonne, IL 60439. *Instrument:* Mass Spectrometer, Model PRISM Series II. *Manufacturer:* VG Isogas, United Kingdom. *Intended Use:* The instrument will be used for the determination of isotopic abundances of light elements in specific organic compounds present in the carbonaceous materials from deep sedimentary basins. Gas chromatograph separation prior to combustion and mass spectrometry will be performed on soluble organics and pyrolytically degraded insoluble organics. The primary goal of the research is the elucidation of the thermal and chemical interactions between magma intrusions and hydrocarbon-bearing rocks in deep sedimentary basins. *Application Received by Commissioner of Customs:* November 6, 1989.

Docket Number: 89-272. *Applicant:* Washington State University, Department of VCAPP, College of Veterinary Medicine, Wegner 205, Pullman, WA 99164-6520. *Instrument:* Rapid Kinetics Instrument (multi-mixing), Model QFM-5. *Manufacturer:* Bio-Logic Co., France. *Intended Use:* Studies will be conducted to add further information concerning the nature of the process of muscular fatigue. This will involve an evaluation of the control of intracellular free calcium by the sarcoplasmic reticulum. The instrument will permit following the rate of release of calcium from the sarcoplasmic reticulum over a time course that is closer to physiological in the millisecond range. *Application Received by Commissioner of Customs:* November 7, 1989.

Docket Number: 89–277. *Applicant:* Mt. Sinai Medical Center, Andre Meyer Department of Physics-Nuclear Medicine, 1 Gustave Levy Place, New York, NY 10029. *Instrument:* Single Photon Emission Computerized Tomographic Brain Scanner, Model Tomomatic 564. *Manufacturer:* Medimatic A/S, Denmark. *Intended Use:* The instrument will be used to study patients with neurologic, neurosurgical and psychiatric disorders. Regional cerebral blood flow and/or pathologies will be determined using 3-dimensional distributions of radionuclide tracers. *Application Received by Commissioner of Customs:* November 15, 1989.

Docket Number: 89–283. *Applicant:* Rutgers University, Smith Hall, Rm. 371, 101 Warren Street, Newark, NJ 07102. *Instrument:* WATSMART 3-dimensional Movement Tracking Device. *Manufacturer:* Northern Digital, Inc., Canada. *Intended Use:* The instrument will be used to study the brain mechanisms that underlie man's higher cognitive functions from two interrelated vantage points: brain function for language, and for motor control. The instrument is essential to 3-dimensional digitization of arm and hand movements and permits subsequent quantitative analysis of movement trajectories. It also allows reconstruction of the 3-dimensional positions of multiple joints of the hand and arm so that the coordination of various segments of the arm can be studied. *Application Received by Commissioner of Customs:* November 28, 1989.

Docket Number: 89–286. *Applicant:* University of Illinois, Urbana-Champaign, Purchasing Division, 207 Henry Administration Bldg., 506 So. Wright Street, Urbana, IL 61801. *Instrument:* Mass Spectrometer System, Model VG 70–VSE. *Manufacturer:* VG Analytical Ltd., United Kingdom. *Intended Use:* The instrument will be used to study organic and inorganic compounds from numerous sources and in a variety of structural classes—terpenes, sterols, and antibiotics; metalloenzymes, products formed by them and their synthetic analogues; DNA bis-intercalators; fluorine-labeled steroids and substituted estrogens; marine natural products, cyanobacterial toxins, and invertebrate and insect neuropeptides; photochemical products from organoboron compounds; novel synthetic intermediates (organometallic and chiral reagents); nucleic acid analogues; cytochrome cleavage peptides; methanogen coenzymes; halogenating enzymes; phospholipids, glycolipids, and glycosphingolipids; transition metal sulfide clusters; low temparature ceramics. Structures will be assigned to the above materials where their structures are not previously known, based on their mass spectrometric fragmentation patterns. Where structures are known or suspected the mass spectral data will be used to confirm the structures. *Application Received by Commissioner of Customs:* December 1, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–701 Filed 1–10–90; 8:45 am]

BILLING CODE 3510-DS-M

The University of Texas at Austin, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Correction

In FR Doc. 89–26509 at page 47254 in the **Federal Register** of November 13, 1989, 0.04°/oo, in column 2 lines 16 and 17, should read 0.4°/oo.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–700 Filed 1–10–90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Environmental Assessment Determination of the Office of Ocean and Coastal Resource Management (OCRM) Section 306A Low-cost Land Acquisition and Construction Projects

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that OCRM has made the final determination that the majority of the projects funded pursuant to section 306A of the Coastal Zone Management Act (CZMA) are small scale (under $100,000) and that any potential environmental impacts associated with these projects are minimal and, therefore, qualify as categorical exclusions (CEs) under the requirements of the NOAA's National Environmental Policy Act (NEPA) Directive 02.10. OCRM maintains the option of reviewing all future section 306A projects that are not typical or not consistent with the kinds of projects described in the environmental assessment and, therefore, are not covered by the categorical exclusion determination. OCRM also maintains overview responsibilities for section 306A NEPA compliance requirements through the conduct of evaluations pursuant to section 312 of the CZMA.

The notice of availability of the environmental assessment for section 306A projects was printed in the **Federal Register** on November 6, 1989, and interested parties had until December 5, 1989, to comment. The environmental assessment was distributed to all Federal agencies and other interested parties. No comments were received except one of concurrence from the State of Mississippi, Department of Wildlife Fisheries and Parks. Interested parties wishing to obtain a copy of the environmental assessment may request copies from: Doris Grimm, Environmental Protection Specialist, Coastal Programs Division, Office of Ocean and Coastal Programs Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673–5181.

(Federal Domestic Assistance Catalog 11.319, Coastal Zone Management Program Administration)

Dated: January 5, 1990.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 90–677 Filed 1–10–90; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Technical Team (STT) has scheduled two public meetings at the Pacific Council's office (address below).

The STT will begin its first meeting on January 29, 1990, at 1 p.m., and will continue meeting through the remainder of the week. It will complete drafting of the annual report entitled "Review of 1989 Ocean Salmon Fisheries", for presentation to the Pacific Council.

The STT's second meeting will be held on February 12–16, 1990, to draft the 1990 salmon stock status report for presentation to the Pacific Council in March 1990.

Oral statements pertaining to the 1989 salmon seasons and salmon abundance projections will be accepted at appropriate times during the above meetings.

For more information contact the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: January 5, 1990.

David S. Crestin,

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

[FR Doc. 90-659 Filed 1-10-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

January 5, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 12, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations held between the Governments of the United States and Bangladesh have not resulted in a mutually satisfactory solution for categories 351/651 and 847, the United States Government has decided to control imports in these categories for the period July 30, 1989 through July 29, 1990.

The United States remains committed to finding a solution concerning Categories 351/651 and 847. Should such a solution be reached in further consultations with the Government of Bangladesh, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 34808, published on August 22, 1989.

Dated: January 5, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 5, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 12, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period which began on July 30, 1989 and extends through July 29, 1990, in excess of the following restraint levels;

Category	Twelve-month restraint level
351/651	206,298 dozen.
847	228,956 dozen.

[1] The limits have not been adjusted to account for any imports exported after July 29, 1989.

Textile products in Categories 351/651 and 847 which have been exported to the United States prior to July 30, 1989 shall not be subject to this directive.

Textile products in Categories 351/651 and 847 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

You are directed to charge the following amounts to the limits established in this directive for Categories 351/651 and 847. These charges are for goods imported during the period July 30, 1989 through October 31, 1989.

Category	Amount to be charged
351	53,408 dozen.
651	9,806 dozen.
847	49,908 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to 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. 90-697 Filed 1-10-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 26, 1989.

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Human Systems Division (HSD) will meet on 26 Feb-2 Mar 90 at Ft Rucker, AL, McDonnell Aircraft Corporation, St. Louis, MO, and Williams AFB, AZ.

The purpose of this meeting will be to discuss selected programs, technologies, and projects relating to the missions of the Human Systems Division. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-761 Filed 1-10-90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.142]

Notice Inviting Applications for New Awards under the College Facilities Loan Program for Fiscal Year 1990

Purpose: The College Facilities Loan program provides low interest loans to eligible undergraduate postsecondary educational institutions for the construction, reconstruction, or renovation of housing facilities, undergraduate academic facilities, and other educational facilities for students and faculties.

Deadline for Transmittal of Applications: April 5, 1990.

Applications Available: February 15, 1990.

Available Funds: $30,000,000.

Estimated Range of Awards: $250,000 to $3,000,000.

Estimated Average Size of Awards: $1,500,000.

Estimated Number of Awards: 20.

Project Period: Until completion.

Priorities: In accordance with the requirements of Sec. 763 of the Higher Education Act, 20 U.S.C. 1132g-2, and 34 CFR 614.3(c), the Secretary gives priority to loans for renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time. In order to accomplish this objective, $15,500,000 will be reserved for loans for the renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time, and $14,500,000 will be reserved for loans for housing facilities. Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet either of these two absolute priorities.

Deadline for Intergovernmental Review Comments: June 4, 1990.

Applicable Regulations: Education Department General Administrative Regulations (EDGAR) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Subpart D of 34 CFR part 75 (Direct Grant Programs) §§ 75.105, 75.600-75.616; 34 CFR part 77 (Definitions that Apply to Department Regulations); 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities), and 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide requirements for Drug-Free Workplace (Grants)). Final regulations governing the College Facilities Loan Program, as codified in 34 CFR part 614, were published in the **Federal Register**. 52 FR 30560, on August 14, 1987.

Technical Assistance Workshop: Applicants are invited to participate in a technical assistance workshop to assist applicants in application preparation. The workshop will take place in Washington, DC on March 6, 1990. For specific information on the workshop, please contact the Division of Higher Education Incentive Programs on (202) 732-4394.

For Applications or Information Contact: Joseph P. Ferguson, U.S. Department of Education, 400 Maryland Ave., SW., Room 3022, ROB-3, Washington, DC 20202-5339. Telephone: (202) 732-4401.

Program Authority: 20 U.S.C. 1132g-1132g-3.

Dated: December 27, 1989.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education

[FR Doc. 90-660 Filed 1-10-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Urban Energy and Transportation Corp.

AGENCY: U.S. Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: In the **Federal Register** dated October 19, 1989, the DOE Richland Operations Office, provided notice in accordance with 10 CFR 600.7(b)(2), of its plan to solicit for award a noncompetitive cooperative agreement to the Energy Task Force Management Corporation. Subsequent to that notice, the proposed recipient organization has changed its name to the Urban Energy and Transportation Corporation and has separated from the Energy Task Force for the Urban Consortium. The purpose of this notice is to revise that notice to indicate these changes.

Scope: Under an existing cooperative agreement, the Urban Energy and Transportation Corporation has been providing assistant to the DOE and the Energy Task Force for the Urban Consortium in assessing and resolving issues related to transportation of hazardous and nuclear materials through large urban areas. The purpose of the current cooperative agreement is to obtain local officials' participation and expertise in transportation activities including collection and dissemination of information, conducting regional and national workshops, providing technical assistance, and identification and analyses of issues related to transportation of hazardous materials through large urban areas.

Although the Urban Energy and Transportation Corporation is no longer affiliated with the Energy Task Force of the Urban Consortium, the proposed awad will continue with this effort, as the Urban Energy and Transportation Corporation will be representing urban areas, in addition to those serving on the Energy Task for the Urban Consortium, targeted by this program. The duration of the project is expected to cover five (5) years, with funding supplied on an annual basis. The estimated cost of this project for the first year is expected to be approximately $200,000. The DOE may continue funding of the cooperative agreement for the remaining four (4) years, pending availability of funding and/or need.

Pursuant to 10 CFR 600.7(b)(2)(i)(A), the DOE has determined that the award on a noncompetitive basis is appropriate because the applicant is already conducting this activity; has an existing network with the local urban officials targeted by this program; is experienced in prior technology transfer activities for energy issues; has the relationship and credibility with local officials on energy-related projects; and has the constituent members experience related to transportation issues. As continuity of the program is necessary for the continued development of this established network of urban officials, competition of this activity could adversely impact the ability of DOE and officials representing large urban areas to maintain and build on the accomplishments already achieved in the past several years.

FOR FURTHER INFORMATION CONTACT: Inquires must be submitted to the person listed below within fourteen (14) calendar days of this notice. Julie A. Riel, U.S. Department of Energy, Richland Operations Office, Procurement Division, A7-80, P.O. Box 550, Richland, WA 99352, telephone: (509) 376-9790.

Dated: December 21, 1989.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 90-759 Filed 1-10-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 4204-014, et al.]

Hydroelectric Applications (White River Lock & Dam No. 1, et al.); Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1.a. Type of Filing: Requests for Extensions of Time to Commence Project Construction.

b. Project No.: P-4204-014, White River Lock & Dam No. 1, located on the White River near the City of Batesville, Independence County, Arkansas. Licensee: City of Batesville.

c. Project No.: P-4660-018, White River Lock & Dam No. 2, located on the White River in the Cities of Locust Grove and Batesville, Independence

County, Arkansas. Licensee: Independence County.

d. Project No.: P-4659-016, White River Lock & Dam No. 3, located on the White River in the City of Marcella, Stone County, Arkansas. Licensee: Independence County.

e. Date Filed, November 22, 1989.

f. Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r) and Public Law No. 101-155, 103 Stat. 935 (1989).

g. Applicants Contact: Wilkinson, Barker, Knauer & Quinn Law Offices, 1735 New York Avenue, NW., Washington, DC 20006, (202) 783-4141. Attention: Donald H. Clarke, Joel L. Greene, and Barbara S. Jost.

h. FERC Contact: Mr. Lynn R. Miles, (202) 357-0671.

i. Comment Date: January 22, 1990.

j. Description of the Request: The licensees for the subject projects have requested that the deadlines for commencement of construction at FERC Project Nos. 4204, 4660, and 4659 be extended for an additional two-year period. The licensees state that revenue bonds in the amount of $85,775,000 for the projects have been issued and are being held in escrow. An engineering consultant has been retained and preliminary engineering design has been prepared. The consulting engineer is under contract to provide continuing professional services for the final design and management of project construction. Independence County has awarded the contract for the manufacturing of the turbine-generators for Project No. 4660 and is currently in the process of finalizing contractual arrangements with the contractor selected for the construction of the project. The licensees are also actively engaged in power purchase negotiations involving the power to be generated by the projects.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

2. a. Type of Application: Declaration of Intention.

b. Project No.: EL90-7-000.

c. Date Filed: December 4, 1989.

d. Applicant: Gerald and Glenda Ohs.

e. Name of Project: Catarack Creek Project (MT).

f. Location: Catarack Creek, Madison County, Montana.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

h. Applicant Contact: Gerald and Glenda Ohs, Box 152, Harrison, Montana 59735, 406-685-3343.

i. FERC Contact: Hank Ecton, (202) 357-0678.

j. Comment Date: February 5, 1990.

k. Description of Project: The proposed Catarack Creek Project, a run-of-river project, would consist of: (1) A reservoir of undetermined capacity; (2) a proposed 6,440-foot-long steel penstock; (3) a 400-kilowatt generator coupled to a Pelton impulse turbine, with a still discharge into North Willow Creek; (4) a proposed one-half-mile-long transmission line; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: Applicant intends to use the energy produced on-site. No energy will be sold.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

3. a. Type of Application: New Major License.

b. Project No.: 4685-002.

c. Date filed: September 16, 1987.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Varick Dam Project.

f. Location: On the Oswego River in Oswego County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Donald Hamer, Long Lake Energy Corporation, 420 Lexington Avenue, Suite 440, New York, NY 03862, (212) 986-0440.

i. FERC Contact: Robert Bell (202) 357-0806.

j. Comment Date: January 29, 1990.

k. Description of Project: The proposed project would consist of: (1) An existing 483-foot-long, 14 foot-high concrete gravity dam with a 250-foot-long, side channel spillway section; (2) 2.3-foot-high flashboards; (3) an impoundment having a surface area of 32 acres with a storage capacity of 436 acre-feet and a normal water surface elevation of 269.8 feet NGVD; (4) an 830-foot-long, 100-foot-wide intake approach channel; (5) a new integral intake structure; (6) a new powerhouse containing two generating units having a total installed capacity of 13,760 kW; (7) the existing tailrace channel; (8) an existing 34.5-kV transmission line; and (9) appurtenant facilities. The existing project facilities are owned and operated by the Niagara Mohawk Power Corporation and the New York State Department of Transportation. The applicant estimates the average annual generation would be 55,600,000 kWh. All project energy generated would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

4. a. Type of Filing: Surrender of License.

b. Project No.: 8390-003.

c. Date Filed: April 12, 1989.

d. Applicant: Prodek, Inc.

e. Name of Project: Panonia Dam Water Power Project.

f. Location: On Muddy Creek, a tributary to the North Fork Gunnison River, in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Richard O. Newman, 3314 E. 51st., Suite B, Tulsa, OK 74135, (918) 749-7749.

i. Commission Contact: Nanzo T. Coley, (202) 357-0840.

j. Comment Date: January 24, 1990.

k. Description of Proposed Action: The license to be surrendered would have included a project consisting of: (1) A 72-inch-diameter, 370-foot-long steel pipe installed inside the existing 10.5-foot-diameter outlet tunnel; (2) a 72-inch-diameter, 50-foot-long steel pipe exiting the tunnel and connecting to a 72-inch by 54-inch reducing lateral; (3) a 54-inch-diameter, 14-foot-long penstock; (4) a 24-inch-diameter, 100-foot-long and a 48-inch-diameter, 100-foot-long bypass line; (5) a 25-foot by 105-foot powerhouse containing eight generating units rated at 300 kW each; (6) a tailrace; (7) a 12.47-kV, 1,200-foot-long transmission line; and (8) appurtenant facilities. The applicant estimates the average annual energy output at 8.2. GWh. Energy produced at the project would have been sold to Colorado-Ute Electric Association.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5. a. Type of Application: Minor License.

b. Project No.: 9452-001.

c. Date Filed: February 3, 1989.

d. Applicant: Anita Kay Hardy, Barbara J. Harker and Earl M. Hardy.

e. Name of Project: Hardy Box Canyon.

f. Location: On Box Canyon Creek, a tributary of the Snake River, in Sec. 27 and 28, T8S, R14E, Boise Meridian near Wendell in Gooding County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 781(a)–825(r).

h. Applicant Contact: Mr. Vernon F. Ravenscroft, 1843 Broadway Avenue, Suite 102, Boise, Id 83705, (208) 345–2670.

i. FERC Contact: Julie Bernt, (202) 357–0839.

j. Comment Date: February 12, 1990.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) A 5-foot-high, concrete diversion structure at elevation 2.961 feet; (2) a 1,250-foot-long, 76-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 645 kW; and (4) a 3,000-foot-long transmission line. The average annual energy production is estimated to be 5,000,000 KWh and the estimated cost of the project is $1,420,000.

l. Purpose of Project: The power produced will be sold to area power companies.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6a. Type of Filing: Surrender of License.

b. Project No.: 9839–007.

c. Date Filed: June 16, 1989.

d. Applicant: Prodek, Inc./Conejos Water Conservancy District.

e. Name of Project: Platoro Dam Water Power Project.

f. Location: On the Conejos River in Conejos County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Richard O. Newman, 3314 E. 51st Street, Suite B, Tulsa, OK 74136, (918) 749–7749.

i. Commission Contact: Nanzo T. Coley (202) 357–0840.

j. Comment Date: January 24, 1990.

k. Description of Proposed Action: The licensee has requested that its license be surrendered because the terms and conditions of its power sales agreement with the Colorado Public Service Company prevent it from obtaining the needed financing to construct the project. The license to be surrendered would have included a project, located at the Bureau of Reclamation's Platoro dam, consisting of a powerhouse containing one generating unit rated at 225 KW, a 14.4-kV transmission line, and appurtenant facilities.

l. This notice also consists of the following standard paragraphs: B, C, & D2.

7a. Type of Application: Constructed Minor License.

b. Project No.: 10102–000.

c. Date Filed: September 29, 1986; revised August 1, 1988.

d. Applicant: Franklin Springer.

e. Name of Project: Springer No. 1.

f. Location: On McFadden and Morrison Creeks in Chaffee County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Karl F. Kumli III, 1911 Eleventh Street, Suite 201, P. O. Box 2279, Boulder, CO 80306, (303) 440–0075.

i. Commission Contact: Mr. James Hunter (202) 357–0843.

j. Comment Date: February 15, 1990.

k. Description of Proposed Action: The existing project consists of: (1) A 14-foot-long, 44-inch-high concrete diversion weir and a 4-foot by 8-foot intake filter at elevation 8,676 feet msl on Morrison Creek; (2) an 866-foot-long, 10-inch-diameter penstock, (3) a 12-foot-high, 148-foot-long earthfill dam on McFadden Creek, with a 48-foot-square spillway and a 10-inch-diameter, perforated pipe intake, impounding the Waupaca Reservoir No. 2 with a surface area of 2.4 acres at elevation 8,672 feet msl, (4) a 10-inch-diameter, 387-foot-long penstock from the reservoir, joining the downstream end of the penstock in item 2 above; (5) a 10-inch-diameter, 1,553-foot-long penstock; (6) a 20-foot by 10-foot by 8-foot-high powerhouse containing a 45-kilowatt generating unit; (7) a 24-inch-diameter, 24-foot-long tailrace pipe discharging into Morrison Creek; and (8) a 450-foot-long, 7.2-kilovolt transmission line connecting to an existing Sangre de Cristo Electric Association, Inc. line. The project generates an average of 103,680 kilowatthours per year; power is sold to the Colorado Ute Electric Association, Inc.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

m. This notice supplements the notice issued August 11, 1987, in light of the Applicant's statement that no use will be made of the Anderson Ditch to convey (Pine Creek) water to this project.

8a. Type of Application: New Major License.

b. Project No.: 10470–000.

c. Date filed: September 8, 1987.

d. Applicant: Long Lake Energy Corporation.

e. Name of Project: Minetto Dam Project.

f. Location: On the Oswego River in Oswego County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Donald Hamer, Long Lake Energy Corporation, 420 Lexington Avenue, Suite 440, New York, NY 03862, (212) 986–0440.

i. FERC Contact: Robert Bell (202) 357–0806.

j. Comment Date: January 29, 1990.

k. Description of Project: The proposed project would consist of: (1) An existing 370-foot-long, 22.5 foot-high curved concrete gravity dam; (2) 10-inch-high flashboards; (3) the 38-foot-high, 35-foot-wide and 340-foot-long Lock No. 5 structures; (4) an impoundment with a water surface area of 465 acres having a storage capacity of 5350 acre-feet and a normal water surface elevation of 307.8 feet NGVD; (5) a proposed 100-foot-long, 100-foot-wide intake approach channel; (6) a proposed integral intake structure; (7) a proposed powerhouse containing 2 generating units having a total installed capacity of 14,400 kW; (8) a proposed tailrace channel; (9) an existing 34.5–kV transmission line; and (10) appurtenant facilities. The existing facilities are owned and operated by Niagara Mohawk Power Corporation and the New York State Department of Transportation. The applicant estimates the average annual generation would be 60,800,000 kWh. All energy generated would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

9a. Type of Application: Preliminary Permit.

b. Project No.: 10815–000.

c. Date Filed: August 21, 1989.

d. Applicant: The City of Milton-Freewater.

e. Name of Project: Elk Creek Lake Hydroelectric Project.

f. Location: The project would be located at the U.S. Army Corps of Engineers Elk Creek Lake Dam on Elk Creek in Jackson County, Oregon near the town of Trail.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. Applicant Contact: Mr. James Swayne, City Manager, City Hall, Milton-Freewater, OR 97862, (503) 938–5531. Mr. Curtis L. Bagnall, CH2M Hill, Inc., 2020 S.W. Fourth Avenue, Portland, OR 97201, (503) 224–9190.

i. Commission Contact: Ms. Deborah Frazier-Stutely, (202) 357–0842.

j. Comment Date: February 12, 1990.

k. Description of Project: The proposed project would consist of: (1) Two 7-foot-diameter penstocks; (3) a powerhouse containing two generating units with a combined installed capacity of 7000 kW, producing an average annual energy output of 21,700,000 kWh;

(4) a 20.8-kV transmission line tying into an existing Pacific Power and Light line; and (5) a tailrace.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit at $200,000.

l. Purpose of Project: Project would be utilized by the City of Milton-Freewater to meet the electricity demands of its customers.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10a. Type of Application: Preliminary Permit.

b. Project No.: 10824-000.

c. Date filed: September 22, 1989.

d. Applicant: Sumas Mountain Power Company.

e. Name of Project: Heisler's Creek Water Power Project.

f. Location: On the Middle Fork Nooksack River in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Robert B. and Rosalind C. Shipp, 1807 Lakeway Drive, Bellingham, WA 98226, (206) 671-7850.

i. FERC Contact: Mr. Nanzo Coley—(202) 357-0840.

j. Comment Date: February 12, 1990.

k. Description of Project: The applicant proposes to utilize the City of Bellingham's (City) existing water supply system and diversion dam which diverts 60 cubic feet per second (cfs) of water. The applicant proposes to increase the water intake by 190 cfs for its proposed project. The proposed project would consist of: (1) A 25-foot-high, 125-foot-long diversion dam; (2) a 7.5-foot-diameter, 8,800-foot-long concrete tunnel; (3) an existing valvehouse, located at the end of the tunnel, containing two sluice gates, one of which services the water supply pipeline and the other for servicing a future pipeline; (4) a proposed 5-foot-diameter, 6,000-foot-long penstock, which would run from the valvehouse to the powerhouse; (5) a proposed powerhouse containing one generating unit rated at 4.2 MW; (6) a proposed tailrace; (7) a proposed 0.2-mile-long access road; (8) a proposed 34.5-kV, 8-mile-long transmission line; and (9) appurtenant facilities. The estimated average annual energy output for the project is 23,700,000 kWh.

The applicant estimates the cost of the work to be performed under the preliminary permit at $250,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11a. Type of Application: Preliminary permit.

b. Project No.: 10831-000.

c. Date filed: October 10, 1989.

d. Applicant: Hot Springs Valley Irrigation District.

e. Name of Project: Irrigators' Pumped Storaged Project.

f. Location: On Tule Lake Reservoir (Moon Lake) and West Valley Reservoir in Modoc and Lassen Counties California, near the town of Likely. The project would occupy lands administered by the Modoc National Forest and the Bureau of Land Management. T39N R14E, T38N R13E and R14E, T37N R13E and R14E, Mount Diablo Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. Applicant Contact: Gordan Dick, Director, Hot Springs Valley Irrigation District, 619 North Main Street, Alturas, CA 96101.

i. Commission Contact; Ms. Deborah, Frazier-Stutely, (202) 357-0842

j. Comment Date: January 24, 1990.

k. Competing Applications: Project No. 10786-000, Date Filed: June 1, 1989, Public Comment Deadline: September 9, 1989. Project No. 10789-000, Date Filed: June 2, 1989, Public Comment Deadline: October 16, 1989.

1. Description of Project: The proposed pumped storage project would consist of: (1) The existing 2,650 acre Tule Lake Reservoir (Moon Lake) with a storage capacity of 39,500 acre-feet at elevation 5,516.5 feet msl to be utilized as the upper reservoir; (2) an intake structure containing fish screens; (3) a 22-foot-diameter, 3,500-foot-long tunnel; (4) a 22-foot-diameter, 22,500-foot-long pipeline branching into (5) three 10-foot-diameter, 2,000-foot-long penstocks; (6) a powerhouse-pump station containing three vertical pump turbines with a combined installed capacity of 175,000 kW producing an average annual energy output of 350 GWh discharging into; (7) the 1,025 acre West Valley reservoir with a storage capacity of 22,000 acre-feet at elevation 4,766.67 feet msl to be utilized as the lower reservoir formed by; (8) the existing 65-foot-high earthfill West Valley Dam; (9) a spillway with a crest length of 50 feet and a capacity of 3,200 cubic-feet-per-second; (10) a 3-mile-long, 230-kV transmission line tying into an existing line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $1,000,000.

m. Purpose of Project: Project power would be sold to a utility in project area.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 10837-000.

c. Date filed: October 20, 1989.

d. Applicant: NEWCO.

e. Name of Project: Coon Rapids Dam.

f. Location: On the Mississippi River, Near Coon Rapids in Anoka and Hennepin Counties, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Douglas A. Spaulding, Vice President, NEWCO, 715 Florida Avenue, Suite 306, Minneapolis, MN 55426, (612) 593-5650.

i. FERC Contact: Mary Nowak—(202) 357-0804.

j. Comment Date: February 12, 1990.

k. Competing Application: Coon Rapids Dam Project, Project No.: 10835-000, Date Filed: October 16, 1989.

l. Description of Project: The proposed project would consist of the following facilities: (1) An existing dam comprising two earthen dikes, one 75 feet long and the other 450 feet long, a 1,005-foot-long gated spillway section with 28 bays, each 33 feet wide and an 85-foot-long non overflow section; (2) an existing reservoir that has a surface area of 600 acres, an approximate storage capacity of 700-acre-feet, and a named elevation of 830.1 feet mean sea level; (3) a new powerhouse containing two operating units with a total rated capacity of about 10 megawatts; (4) a transmission line 1,000 feet long; and (5) appurtenant facilities. The existing dam is owned by Hennepin County Park Reserve District. The applicant estimates that the cost of the studies is $150,000. The applicant estimates that the average annual generation is approximately 40 to 60 gigawatthours.

m. This notice also consists of the following standard paragraphs: A8, A10, A9, B, C, and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: 10841-000.

c. Date filed: November 6, 1989.

d. Applicant: Jason M. Hines.

e. Name of Project: Lower Henniker Dam Project.

f. Location: On the Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Jason M. Hines, P.O. Box 76, Amherst, NH 03031, (603) 654-2678.

i. FERC Contact: Ed Lee (202) 357-0809.

j. Comment Date: February 12, 1990.

k. Description of Project: The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A 250-foot-long penstock; (2) a powerhouse containing two generating units having a total installed capacity of 975-kW; (3) an 800-foot-long, 34.5-kV transmission line; and (4) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the terms of the permit would be $5000 and that the project average annual energy output would be 4,100,000 kWh. Energy produced at the project would be sold to Public Service of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14a. Type of Application: Preliminary Permit.

b. Project No.: 10847-000.

c. Date filed: November 20, 1989.

d. Applicant: Creamer and Noble Energy, Inc.

e. Name of Project: Crystal Creek.

f. Location: In San Bernardino National Forest, in San Bernardino County, California, Township 3N, Range 1W.

g. Filed Pursuant to: Federal Power Act 16 USC 791(a)—825(r).

h. Applicant Contract: Mr. R. Steve Creamer, Creamer and Noble Energy, Inc., 435 East Tabernacle, St. George, UT 84770, (801) 673-4677.

i. FERC Contact: Michael Spencer at (202) 357-0846.

j. Comment Date: February 28, 1990.

k. Description of Project: This project is not located on a natural water system. The applicant proposes to buy water and transport it to the site in order to operate. The proposed pump storage project would consist of: (1) A forebay storage pond at elevation 7,540 feet msl with 50 acres of surface area and a storage capacity of 1,375 acre-feet; (2) a 30-foot-diameter, 2,850-foot-long vertical penstock and a 12,500-foot-long penstock of the same diameter conveying water to; (3) an afterbay storage pond at elevation 4,920 feet msl with 50 acres surface area and a storage capacity of 1,375 acre-feet; (4) a powerhouse containing a generating unit with capacity of 500 MW and an average annual generation of 1,095,000 MWh; and (5) a 30-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $100,000.

1. Purpose of Project: Project power would be sold to Los Angeles Water and Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit woud be 36 months. The work proposed under the preliminiary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory

Commisison, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statues listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 4, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-650 Filed 1-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER90-126-000, et al.]

Entergy Services, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 2, 1990.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER90-126-000]

Take notice that Entergy Services, Inc. (Entergy Services), as agent for Mississippi Power & Light Company (MP&L), on December 28, 1989 tendered for filing an interchange Agreement between MP&L and Cajun Electric Power Cooperative, Inc. (Cajun) (Interchange Agreement).

Entergy Services requests an effective date for the Interchange Agreement of December 1, 1989. Entergy Services requests waiver of the Commission notice requirements under Section 35.11 of the Commission's regulations.

Comment date: January 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Electric Power

[Docket No. ER90-127-000]

Take notice that on December 28, 1989, Southwestern Electric Power Company ("SWEPCO") tendered for filing a letter agreement ("Letter Agreement"), dated December 5, 1989, between SWEPCO and Central Louisiana Electric Company ("CLECO"). Under the Letter Agreement, SWEPCO will furnish transmission service through its system for up to 40 megawatts of power and associated energy from its interconnection with the Oklahoma Gas and Electric Company ("OG&E") to its interconnection with CLECO, for CLECO's benefit.

SWEPCO requests an effective date of January 1, 1990 and, accordingly, requests waiver of the Commission's notice requirements. Copies of the filing were served upon CLECO, OG&E and the Louisiana Public Service Commission.

Comment date: January 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Cincinnati Gas & Electric Co.

[Docket No. ER90-128-000]

Take notice that the Cincinnati Gas & Electric Company (Cincinnati) tendered for filing December 28, 1989 Addendum No. 1 dated as of January 1, 1990 to the Interconnection Agreement dated as of December 12, 1949, between Cincinnati, Indiana and Michigan Electric Company and Ohio Power Company.

Addendum No. 1 modifies existing service schedules A, B, C and D by updating the language and pricing provisions thereof. There is no estimate of increased revenues since transactions will occur only as load and capacity conditions dictate. A January 1, 1990 effective date has been requested.

A copy of the filing was served upon Indiana and Michigan Electric Company, Ohio Power Company, the Indiana Utility Regulatory Commission and the Public Utilities Commission of Ohio.

Comment date: January 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-649 Filed 1-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST90-0345-000 through ST90-0860-000]

United Gas Pipe Line Co.; Self-Implementing Transactions

January 5, 1990.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA)

and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before January 26, 1990.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines—pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's Regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines—pursuant to § 284.303 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date	Transportation rate (c/NMBTU)
ST90–0345 United Gas Pipe Line Co	Laser Marketing Co	11-01-89	G-S		
ST90–0346 Natural Gas Pipeline Co. of America	Entrade Corp	11-02-89	G-S		
ST90–0347 Delhi Gas Pipeline Corp	K N Energy, Inc	11-02-89	C		
ST90–0348 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-02-89	B		
ST90–0349 United Gas Pipe Line Co	Associated Intrastate Pipeline Co	11-02-89	B		
ST90–0350 Midwestern Gas Transmission Co	Providence Gas Co	11-02-89	B		
ST90–0351 Midwestern Gas Transmission Co	Community Natural Gas Co	11-02-89	B		
ST90–0352 Midwestern Gas Transmission Co	Community Natural Gas Co	11-02-89	B		
ST90–0353 Midwestern Gas Transmission Co	Commonwealth Gas Co	11-02-89	B		
ST90–0354 Midwestern Gas Transmission Co	Enmark Corp	11-02-89	B		
ST90–0355 United Gas Pipe Line Co	Baltimore Gas & Electric., Et Al	11-01-89	B		
ST90–0356 El Paso Natural Gas Co	Phillips Gas Marketing Co	11-01-89	G-S		
ST90–0357 Midwestern Gas Transmission Co	HGX Gas Transmission Corp	11-01-89	B		
ST90–0358 Midwestern Gas Transmission Co	Polaris Corp	11-01-89	B		
ST90–0359 Transok, Inc		11-03-89	C	04-02-90	518.00/10.42/27.44
ST90–0360 Transok, Inc	Williams Natural Gas Co	11-01-89	C	03-31-90	32.50
ST90–0361 Transok, Inc	Williams Natural Gas Co	11-01-89	C	03-31-90	32.50
ST90–0362 Midwestern Gas Transmission Co	Union Gas Limited	11-01-89	B		
ST90–0363 Midwestern Gas Transmission Co	Delhi Gas Pipeline Corp	11-01-89	B		
ST90–0364 K N Energy, Inc	Apache Transmission Corp	11-01-89	B		
ST90–0365 Colorado Interstate Gas Co	Questar Energy Co	11-01-89	G-S		
ST90–0366 Colorado Interstate Gas Co	Vesgas Co	11-01-89	B		
ST90–0367 Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-01-89	C		
ST90–0368 Tejas Gas Corp	Mississippi River Transmission Corp	11-01-89	C		
ST90–0369 Tejas Gas Corp	Texas Eastern Transmission Corp	11-01-89	C		
ST90–0370 Seagull Shoreline System	Northern Natural Gas Co	11-02-89	C	04-01-90	08.50
ST90–0371 Midwestern Gas Transmission Co	Woodward Pipeline, Inc	11-03-89	B		
ST90–0372 ANR Pipeline Co	Wisconsin Gas Co	11-03-89	B		
ST90–0373 ANR Pipeline Co	Northwestern Mutual Life Insurance Co	11-03-89	B		
ST90–0374 Texas Gas Transmission Corp	Western Kentucky Gas Co	11-03-89	B		
ST90–0375 ANR Pipeline Co	ELF Aquitaine Operating, Inc	11-03-89	G-S		
ST90–0376 ANR Pipeline Co	Catamount Natural Gas, Inc	11-03-89	G-S		
ST90–0377 ANR Pipeline Co	Northern Illinois Gas Co	11-03-89	B		
ST90–0378 ANR Pipeline Co	Northern Illinois Gas Co	11-03-89	B		
ST90–0379 ANR Pipeline Co	Northern Illinois Gas Co	11-03-89	B		
ST90–0380 Texas Gas Transmission Corp	Access Energy Corp	11-03-89	G-S		
ST90–0381 ANR Pipeline Co	Northern Illinois Gas Co	11-03-89	B		
ST90–0382 ANR Pipeline Co	Coastal States Gas Transmission Co	11-03-89	B		
ST90–0383 Texas Gas Transmission Corp	Eli Lilly	11-03-89	G-S		

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date	Transportation rate (c/NMBTU)
ST90-0384 Sea Robin Pipeline Co	Cornerstone Production Corp	11-03-89	G-S		
ST90-0385 Natural Gas Pipeline Co. of America	PSI, Inc	11-03-89	G-S		
ST90-0386 Columbia Gulf Transmission Co	Elf Aquitaine, Inc	11-06-89	G-S		
ST90-0387 Columbia Gulf Transmission Co	PSI, Inc	11-06-89	G-S		
ST90-0388 Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	11-06-89	G		
ST90-0389 Midwestern Gas Transmission Co	Channel Industries Gas Co	11-06-89	B		
ST90-0390 Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc	11-06-89	B		
ST90-0391 Tennessee Gas Pipeline Co	Louisiana Gas System, Inc	11-06-89	B		
ST90-0392 Columbia Gulf Transmission Co	Coastal Gas Marketing, Co	11-07-89	G-S		
ST90-0393 Columbia Gulf Transmission Co	Orange and Rockland Utilities, Inc	11-07-89	B		
ST90-0394 Colorado Interstate Gas Co	Vesgas Co	11-06-89	B		
ST90-0395 Gulf Energy Pipeline Co	Transwestern Pipeline Co	11-06-89	C		
ST90-0396 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	11-06-89	C		
ST90-0397 Pacific Gas Transmission Co	Southwest Gas Corp	11-06-89	B		
ST90-0398 Pacific Gas Transmission Co	Intermountain Gas Co	11-06-89	B		
ST90-0399 Pacific Gas Transmission Co	Pacific Gas and Electric Co	11-06-89	B		
ST90-0400 Pacific Gas Transmission Co	Pacific Gas and Electric Co	11-06-89	B		
ST90-0401 Trunkline Gas Co	Illinois Power Co	11-07-89	B		
ST90-0402 Trunkline Gas Co	Seagull Marketing Services, Inc	11-07-89	G-S		
ST90-0403 Trunkline Gas Co	Amgas, Inc	11-07-89	G-S		
ST90-0404 United Gas Pipe Line Co	Texaco Gas Marketing, Inc	11-07-89	G-S		
ST90-0405 United Gas Pipeline Co	Midcon Marketing Corp	11-07-89	G-S		
ST90-0406 Transcontinental Gas Pipe Line Corp	Texican Natural Gas Inc	11-07-89	G-S		
ST90-0407 Transcontinental Gas Pipe Line Corp	PSI, Inc	11-07-89	G-S		
ST90-0408 Sabine Pipeline Co	Transamerican Gas Transmission Corp	11-07-89	B		
ST90-0409 Sabine Pipe Line Co	Transco Energy Marketing Co	11-07-89	B		
ST90-0410 Natural Gas Pipeline Co. of America	Phillips Petroleum Co.	11-07-89	G-S		
ST90-0411 Natural Gas Pipeline Co. of America	Anthem Energy Co	11-07-89	G-S		
ST90-0412 Midwestern Gas Transmission Co	BP Gas Transmission Co	11-07-89	B		
ST90-0413 Black Marlin Pipeline Co	Amoco Gas Co	11-08-89	B		
ST90-0414 Midwestern Gas Transmission Co	Colonial Gas Company	11-08-89	B		
ST90-0415 CNG Transmission Corp	Stand Energy Corp	11-08-89	G-S		
ST90-0416 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-08-89	B		
ST90-0417 Midwestern Gas Transmission Co	Boston Gas Co	11-08-89	B		
ST90-0418 CNG Transmission Corp	Belden & Blake Oil Productions	11-08-89	G-S		
ST90-0419 CNG Transmission Corp	Texas-Ohio Gas, Inc	11-08-89	G-S		
ST90-0420 CNG Transmission Corp	Mobay Corp	11-08-89	G-S		
ST90-0421 CNG Transmission Corp	CNG Development Co	11-08-89	G-S		
ST90-0422 CNG Transmission Corp	Goetz Energy Corp	11-08-89	G-S		
ST90-0423 CNG Transmission Corp	Rochester Gas & Electric Corp	11-08-89	B		
ST90-0424 CNG Transmission Corp	Westvaco Corp	11-08-89	G-S		
ST90-0425 CNG Transmission Corp	IESCO	11-08-89	G-S		
ST90-0426 CNG Transmission Corp	Energy Marketing Services, Inc	11-08-89	G-S		
ST90-0427 CNG Transmission Corp	Unicorp Energy, Inc	11-08-89	G-S		
ST90-0428 CNG Transmission Corp	Tevco Power Co	11-08-89	G-S		
ST90-0429 Transwestern Pipeline Co	Cibola Corp	11-08-89	G-S		
ST90-0430 Texas Eastern Transmission Corp	Public Service Electric and Gas Co	11-08-89	B		
ST90-0431 Texas Eastern Transmission Corp	AMOCO Gas Co	11-08-89	B		
ST90-0432 Texas Eastern Transmission Corp	HGX Gas Transmission Corp	11-08-89	B		
ST90-0433 Texas Eastern Transmission Corp	Allied Gas Co.	11-08-89	B		
ST90-0434 Northern Natural Gas Co	Petrus Oil Co	11-08-89	G-S		
ST90-0435 Northern Natural Gas Co	United Texas Transmission	11-08-89	B		
ST90-0436 Northern Natural Gas Co	Enron Gas Marketing, Inc	11-08-89	G-S		
ST90-0437 Northern Natural Gas Co	City of Duluth, Dept. of Water & Gas	11-08-89	B		
ST90-0438 Northern Natural Gas Co	Northwestern Public Service Co	11-08-89	B		
ST90-0439 Northern Natural Gas Co	Joseph Energy, Inc	11-08-89	G-S		
ST90-0440 Northern Natural Gas Co	Enron Gas Marketing, Inc	11-08-89	G-S		
ST90-0441 Ten Oaks Pipeline Co	Transcontinental Gas Pipe Line Co	11-08-89	C	04-07-90	457.00/05.40/25.36
ST90-0442 ONG Transmission Co	Northern Natural Gas Co	11-09-89	C	04-08-90	24.32
ST90-0443 Texas Gas Transmission Corp	Cincinnati Gas and Electric Co	11-09-89	B		
ST90-0444 Texas Gas Transmission Corp	Citizens Gas and Coke Utility	11-09-89	B		
ST90-0445 Texas Gas Transmission Corp	Dayton Power and Light Co	11-09-89	B		
ST90-0446 Texas Gas Transmission Corp	Soldiers and Sailors Memorial Hospital	11-09-89	G-S		
ST90-0447 Texas Gas Transmission Corp	Union Light, Heat & Power	11-09-89	B		
ST90-0448 Midwestern Gas Transmission Co	Channel Industries Gas Co	11-09-89	B		
ST90-0449 Midwestern Gas Transmission Co	Valero Transmission, L.P	11-09-89	B		
ST90-0450 Tennessee Gas Pipeline Co	Transworld Oil USA, Inc	11-09-89	G-S		
ST90-0451 Enogex Inc	Natural Gas Pipeline Co. of America	11-07-89	C	04-06-90	43.57
ST90-0452 Enogex Inc	Phillips Gas Pipeline Co	11-07-89	C	04-06-90	43.57
ST90-0453 Enogex Inc	Williams Natural Gas Co	11-09-89	C	04-08-90	43.57
ST90-0454 Enogex Inc	Williams Natural Gas Co	11-09-89	C	04-08-90	43.57
ST90-0455 Natural Gas Pipeline Co. of America	BP Gas Transmission Co	11-13-89	B		
ST90-0456 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	11-13-89	C		
ST90-0457 Delhi Gas Pipeline Corp	Nycotex Gas Transport	11-13-89	C		
ST90-0458 Transok, Inc	Panhandle Eastern Pipe Line Co	11-13-89	C	04-12-90	518.00/10.42/27.44
ST90-0459 Transok, Inc	Minnegasco, Inc	11-13-89	C	04-12-90	518.00/10.42/27.44
ST90-0460 Transok, Inc	Arkla Energy Resources	11-13-89	C	04-12-90	518.00/10.42/27.44
ST90-0461 Transok, Inc	Iowa Electric Light & Power Co	11-13-89	C	04-12-90	518.00/10.42/27.44
ST90-0462 Williams Natural Gas Co	Texaco Gas Marketing, Inc	11-13-89	G-S		
ST90-0463 Williams Natural Gas Co	Reliance Pipeline Co	11-13-89	B		
ST90-0464 Williams Natural Gas Co	Mountain Iron & Supply Co	11-13-89	G-S		

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date	Transportation rate (c/NMBTU)
ST90-0465 Williams Natural Gas Co	Gastrak Corp	11-13-89	G-S		
ST90-0466 CNG Transmission Corp	Hope Gas, Inc	11-13-89	B		
ST90-0467 CNG Transmission Corp	Soldiers and Sailors Memorial Hospital	11-13-89	G-S		
ST90-0468 CNG Transmission Corp	NGC Transportation, Inc	11-13-89	G-S		
ST90-0469 Midwestern Gas Transmission Co	Enron Industrial Natural Gas Co	11-13-89	B		
ST90-0470 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-13-89	B		
ST90-0471 Tennessee Gas Pipeline Co	Pruet Production Co	11-13-89	G-S		
ST90-0472 Tennessee Gas Pipeline Co	SNG Intrastate Pipeline, Inc	11-13-89	B		
ST90-0473 Northern Natural Gas Co	Northern States Power Co	11-14-89	B		
ST90-0474 Transcontinental Gas Pipe Line Corp	BP Gas Inc	11-14-89	G-S		
ST90-0475 Texas Gas Transmission Corp	Bishop Pipeline Corp	11-14-89	G-S		
ST90-0476 Texas Gas Transmission Corp	Wintershall Pipeline Corp	11-14-89	B		
ST90-0477 Arkla Energy Resources	Exxon Corp	11-14-89	G-S		
ST90-0478 Midwestern Gas Transmission Co	Stellar Gas Co	11-14-89	B		
ST90-0479 Natural Gas Pipeline Co. of America	Continental Natural Gas, Inc	11-15-89	G-S		
ST90-0480 Tennessee Gas Pipeline Co	Transcontinental Gas Pipe Line Corp	11-15-89	G		
ST90-0481 Midwestern Gas Transmission Co	Western Kentucky Gas Co	11-15-89	B		
ST90-0482 Midwestern Gas Transmission Co	Valero Transmission, L.P	11-15-89	B		
ST90-0483 Midwestern Gas Transmission Co	TPC Pipeline Inc	11-15-89	B		
ST90-0484 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-15-89	B		
ST90-0485 Southern Natural Gas Co	Elf Aquitaine, Inc	11-15-89	G-S		
ST90-0486 Southern Natural Gas Co	FRM, Inc	11-15-89	B		
ST90-0487 Southern Natural Gas Co	American Central Gas Marketing Co	11-15-89	G-S		
ST90-0488 Tennessee Gas Pipeline Co	Peabody Municipal Light Plant	11-15-89	B		
ST90-0489 Natural Gas Pipeline Co. of America	Entex, Inc	11-16-89	B		
ST90-0490 United Gas Pipe Line Co	Amoco Production Co	11-16-89	G-S		
ST90-0491 Midwestern Gas Transmission Co	Niagara Mohawk Power Corp	11-16-89	B		
ST90-0492 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-16-89	B		
ST90-0493 Midwestern Gas Transmission Co	Texas Industrial Energy Co	11-16-89	B		
ST90-0494 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-16-89	B		
ST90-0495 Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-17-89	C		
ST90-0496 K N Energy, Inc	Good Samaritan Health Care Corp	11-17-89	G-S		
ST90-0497 K N Energy, Inc	J.A. Baldwin Mfg. Co	11-17-89	G-S		
ST90-0498 K N Energy, Inc	Eaton Corp	11-17-89	G-S		
ST90-0499 Tennessee Gas Pipeline Co	Union Light, Heat & Power	11-17-89	B		
ST90-0500 Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	11-17-89	B		
ST90-0501 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-17-89	B		
ST90-0502 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-17-89	B		
ST90-0503 Panhandle Eastern Pipe Line Co	United Cities Gas Co	11-17-89	B		
ST90-0504 Trunkline Gas Co	NGC Transportation, Inc	11-17-89	G-S		
ST90-0505 Columbia Gulf Transmission Co	Polaris Pipeline Corp., et al	11-17-89	B		
ST90-0506 Louisiana Resources Co		11-17-89	C	04-16-90	27.56
ST90-0507 Columbia Gulf Transmission Co	East Tennessee Natural Gas Co	11-17-89	G		
ST90-0508 Columbia Gulf Transmission Co	Union Texas Petroleum Corp	11-17-89	G-S		
ST90-0509 Columbia Gulf Transmission Co	Pennsylvania Gas and Water Co	11-17-89	B		
ST90-0510 Columbia Gulf Transmission Co	Texaco Gas Marketing, Inc	11-17-89	G-S		
ST90-0511 Columbia Gulf Transmission Co	Orange and Rockland Utilities, Inc	11-17-89	B		
ST90-0512 Columbia Gulf Transmission Co	City of Richmond Dept. of Public Util	11-17-89	B		
ST90-0513 Columbia Gulf Transmission Co	Peoples Natural Gas Co	11-17-89	B		
ST90-0514 Transok, Inc	Williams Natural Gas Co	11-17-89	C	04-16-90	518.00/10.42/27.44
ST90-0515 Cavallo Pipeline Co	Texas Eastern Transmission Corp.	11-17-89	C		
ST90-0516 United Gas Pipe Line Co	Citizens Gas Supply Corp	11-17-89	G-S		
ST90-0517 ANR Pipeline Co	Semco Energy Services, Inc	11-17-89	G-S		
ST90-0518 ANR Pipeline Co	Entrade Corp	11-17-89	G-S		
ST90-0519 ANR Pipeline Co	Northern Illinois Gas Co	11-17-89	B		
ST90-0520 ANR Pipeline Co	Hadson Gas Systems, Inc.	11-17-89	G-S		
ST90-0521 Colorado Interstate Gas Co	MGTC, Inc	11-17-89	B		
ST90-0522 Colorado Interstate Gas Co	Cheyenne Light, Fuel & Power Co	11-17-89	B		
ST90-0523 Colorado Interstate Gas Co	Public Service Co. of Colorado	11-17-89	B		
ST90-0524 Colorado Interstate Gas Co	Western Gas Supply Co	11-17-89	B		
ST90-0525 Colorado Interstate Gas Co	Energy Pipeline Co	11-17-89	B		
ST90-0526 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-20-89	B		
ST90-0527 Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	11-20-89	B		
ST90-0528 Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	11-20-89	B		
ST90-0529 Seagull Interstate Corp	HGX Gas Transmission Corp	11-20-89	B		
ST90-0530 Transcontinental Gas Pipe Line Corp	North Carolina Gas Service Co	11-20-89	B		
ST90-0531 Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	11-20-89	B		
ST90-0532 Transcontinental Gas Pipe Line Corp	City of Lexington	11-20-89	B		
ST90-0533 Transcontinental Gas Pipe Line Corp	Commission of Public Works	11-20-89	B		
ST90-0534 Transcontinental Gas Pipe Line Corp	Commission of Public Works	11-20-89	B		
ST90-0535 Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	11-20-89	B		
ST90-0536 Transcontinental Gas Pipe Line Corp	Clinton Newberry Nat. Gas Authority	11-20-89	B		
ST90-0537 Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-20-89	B		
ST90-0538 Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	11-20-89	B		
ST90-0539 Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp.	11-20-89	B		
ST90-0540 Transcontinental Gas Pipe Line Corp	City of Shelby	11-20-89	B		
ST90-0541 Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	11-20-89	B		
ST90-0542 Transcontinental Gas Pipe Line Corp	Owens-Corning Fiberglass Corp	11-20-89	G-S		
ST90-0543 Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	11-20-89	B		
ST90-0544 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-20-89	B		
ST90-0545 Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	11-20-89	B		

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date	Transportation rate (c/NMBTU)
ST90-0546 Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	11-20-89	B		
ST90-0547 Transcontinental Gas Pipe Line Corp	Consolicated Edison Co. of NY, Inc	11-20-89	B		
ST90-0548 Columbia Gulf Transmission Co	South Jersey Gas Co	11-20-89	B		
ST90-0549 Columbia Gulf Transmission Co	Dayton Power and Light Co	11-20-89	B		
ST90-0550 Columbia Gulf Transmission Co	South Jersey Gas Co	11-20-89	B		
ST90-0551 Columbia Gulf Transmission Co	Citizens Gas and Coke Utility	11-20-89	B		
ST90-0552 United Gas Pipe Line Co	Phibro Distributors Corp	11-21-89	G-S		
ST90-0553 United Gas Pipe Line Co	Chevron U.S.A., Inc	11-21-89	G-S		
ST90-0554 El Paso Natural Gas Co	Texaco Gas Marketing, Inc	11-21-89	G-S		
ST90-0555 Tennessee Gas Pipeline Co	National Steel Corp	11-21-89	G-S		
ST90-0556 Tennessee Gas Pipeline Co	Mobil Natural Gas, Inc	11-21-89	G-S		
ST90-0557 Tennessee Gas Pipeline Co	Shell Gas Treading Co	11-21-89	G-S		
ST90-0558 Midwestern Gas Transmission Co	Access Energy Pipeline Corp	11-21-89	B		
ST90-0559 Midwestern Gas Transmission Co	Mobil Vanderbilt-Beaumont Pipeline Co	11-21-89	B		
ST90-0560 Panhandle Eastern Pipe Line Co	Mississippi River Transmission Corp	11-21-89	G		
ST90-0561 Panhandle Eastern Pipe Line Co	Bishop Pipeline Corp	11-21-89	B		
ST90-0562 Panhandle Eastern Pipe Line Co	Union Pacific Resources Co	11-21-89	G-S		
ST90-0563 Panhandle Eastern Pipe Line Co	Kraft, Inc	11-21-89	G-S		
ST90-0564 Panhandle Eastern Pipe Line Co	Manville Sales Corp	11-21-89	G-S		
ST90-0565 Panhandle Eastern Pipe Line Co	Dyco Gas Marketing	11-21-89	G-S		
ST90-0566 Panhandle Eastern Pipe Line Co	Gastrak Corp	11-21-89	G-S		
ST90-0567 Consumers Power Co		11-21-89	G-HT	04-20-90	15.01
ST90-0568 Transwestern Pipeline Co	Enron Gas Marketing, Inc	11-22-89	G-S		
ST90-0569 Midwestern Gas Transmission Co	Northern Indiana Public Service Co	11-22-89	B		
ST90-0570 Midwestern Gas Transmission Co	Eastex Gas Transmission Co	11-22-89	B		
ST90-0571 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-22-89	B		
ST90-0572 Algonquin Gas Transmission Co	Bay State Gas Co	11-22-89	B		
ST90-0573 Natural Gas Pipeline Co. of America	Lone Star Gas Co	11-22-89	B		
ST90-0574 Natural Gas Pipeline Co. of America	Wintershall Pipeline Corp	11-22-89	B		
ST90-0575 Natural Gas Pipeline Co. of America	PSI, Inc	11-22-89	G-S		
ST90-0576 Arkla Energy Resources	Transok, Inc	11-22-89	B		
ST90-0577 Arkla Energy Resources	Colony Pipeline Corp	11-22-89	B		
ST90-0578 Enogex Inc	Panhandle Eastern Pipe Line Co	11-22-89	C	04-21-90	43.57
ST90-0579 Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	11-22-89	B		
ST90-0580 Questar Pipeline Co	Marathon Oil Co	11-24-89	G-S		
ST90-0581 Questar Pipeline Co	Northwest Natural Gas Co	11-24-89	B		
ST90-0582 J-W Gathering Co	Louisiana-Navada Transit Co	11-24-89	C		
ST90-0583 El Paso Natural Gas Co	Phibro Distributors Corp	11-27-89	G-S		
ST90-0584 El Paso Natural Gas Co	Hadson Gas Systems, Inc	11-27-89	G-S		
ST90-0585 Midwestern Gas Transmission Co	Bay State Gas Co	11-27-89	B		
ST90-0586 Midwestern Gas Transmission Co	Bay State Gas Co	11-27-89	B		
ST90-0587 Midwestern Gas Transmission Co	B & A Pipeline Co	11-27-89	B		
ST90-0588 Midwestern Gas Transmission Co	Bayou Industrial Gas Co	11-27-89	B		
ST90-0589 Midwestern Gas Transmission Co	Louisiana State Gas Corp	11-27-89	B		
ST90-0590 Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	11-27-89	B		
ST90-0591 Northern Natural Gas Co	Mississippi Fuel Co	11-27-89	B		
ST90-0592 Northern Natural Gas Co	NGP Pipeline Co	11-27-89	B		
ST90-0593 Northern Natural Gas Co	ELF Aquitaine, Inc	11-27-89	G-S		
ST90-0594 Louisiana-Nevada Transit Co	Polaris Pipeline Co	11-27-89	G-S		
ST90-0595 ANR Pipeline Co	American Central Gas Marketing Co	11-27-89	G-S		
ST90-0596 ANR Pipeline Co	NGC Intrastate Pipeline Co	11-27-89	B		
ST90-0597 ANR Pipeline Co	Peoples Gas Light & Coke Co	11-27-89	B		
ST90-0598 ANR Pipeline Co	NGC Intrastate Pipeline Co	11-27-89	B		
ST90-0599 ANR Pipeline Co	Wisconsin Gas Co	11-27-89	B		
ST90-0600 ANR Pipeline Co	Texline Gas Co	11-27-89	B		
ST90-0601 Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co	11-27-89	G-S		
ST90-0602 Transcontinental Gas Pipe Line Corp	City of Monroe Water, Gas & Light Comm.	11-27-89	B		
ST90-0603 Transcontinental Gas Pipe Line Corp	City of Kings Mountain	11-27-89	B		
ST90-0604 Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Authority	11-27-89	B		
ST90-0605 Transcontinental Gas Pipe Line Corp	City of Toccoa	11-27-89	B		
ST90-0606 Transcontinental Gas Pipe Line Corp	City of Covington	11-27-89	B		
ST90-0607 Transcontinental Gas Pipe Line Corp	City of Bowman	11-27-89	B		
ST90-0608 Transcontinental Gas Pipe Line Corp	City of Winder	11-27-89	B		
ST90-0609 Transcontinental Gas Pipe Line Corp	City of Buford	11-27-89	B		
ST90-0610 Transcontinental Gas Pipe Line Corp	City of Union	11-27-89	B		
ST90-0611 Transcontinental Gas Pipe Line Corp	City of Elberton Natural Gas System	11-27-89	B		
ST90-0612 Transcontinental Gas Pipe Line Corp	City of Hartwell	11-27-89	B		
ST90-0613 Transcontinental Gas Pipe Line Corp	City of Sugar Hill	11-27-89	B		
ST90-0614 Transcontinental Gas Pipe Line Corp	City of Lawrenceville	11-27-89	B		
ST90-0615 Transcontinental Gas Pipe Line Corp	Fountain Inn Natural Gas Authority	11-27-89	B		
ST90-0616 Transcontinental Gas Pipe Line Corp	City of Madison	11-27-89	B		
ST90-0617 Transcontinental Gas Pipe Line Corp	City of Commerce	11-27-89	B		
ST90-0618 Transcontinental Gas Pipe Line Corp	United Cities Gas Co	11-27-89	B		
ST90-0619 Transcontinental Gas Pipe Line Corp	East Central Alabama Gas District	11-27-89	B		
ST90-0620 Transcontinental Gas Pipe Line Corp	City of Royston	11-27-89	B		
ST90-0621 Transcontinental Gas Pipe Line Corp	City of Social Circle	11-27-89	B		
ST90-0622 CNG Transmission Corp	River Gas Co	11-27-89	B		
ST90-0623 CNG Transmission Corp	Hope Gas, Inc	11-27-89	B		
ST90-0624 CNG Transmission Corp	Direct Gas	11-27-89	G-S		
ST90-0625 CNG Transmission Corp	Entrade Corp	11-27-89	G-S		

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ST90-0626 CNG Transmission Corp	Public Service Electric and Gas Co	11-27-89	B		
ST90-0627 Colorado Interstate Gas Co	Chevron U.S.A., Inc	11-27-89	G-S		
ST90-0628 Colorado Interstate Gas Co	Energy Pipeline Co	11-27-89	B		
ST90-0629 Colorado Interstate Gas Co	MGTC, Inc	11-27-89	B		
ST90-0630 Colorado Interstate Gas Co	MGTC, Inc	11-27-89	B		
ST90-0631 Colorado Interstate Gas Co	MGTC, Inc	11-27-89	B		
ST90-0632 Colorado Interstate Gas Co	Cominco American, Inc	11-27-89	G-S		
ST90-0633 Colorado Interstate Gas Co	Trigen Resources Corp	11-27-89	G-S		
ST90-0634 Colorado Interstate Gas Co	Chevron U.S.A., Inc	11-27-89	G-S		
ST90-0635 Colorado Interstate Gas Co	Peoples Natural Gas Co	11-27-89	B		
ST90-0636 Colorado Interstate Gas Co	Southern California Gas Co., et al	11-27-89	B		
ST90-0637 Colorado Interstate Gas Co	Gastrak Corp	11-27-89	G-S		
ST90-0638 Colorado Interstate Gas Co	Mega Natural Gas Co	11-27-89	G-S		
ST90-0639 Colorado Interstate Gas Co	Northern Intrastate P/L et al	11-27-89	B		
ST90-0640 El Paso Natural Gas Co	Peoples Natural Gas Co	11-28-89	B		
ST90-0641 Webb/Duval Gatherers	Tennessee Gas Pipeline Co	11-28-89	C		
ST90-0642 Stingray Pipeline Co	Acadian Gas Pipeline System	11-28-89	B		
ST90-0643 Stingray Pipeline Co	Kimball Resources, Inc	11-28-89	K-S		
ST90-0644 Texas Gas Transmission Corp	Phibro Energy, Inc	11-28-89	G-S		
ST90-0645 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-28-89	B		
ST90-0646 Midwestern Gas Transmission Co	Northern Illinois Gas Co	11-28-89	B		
ST90-0647 Midwestern Gas Transmission Co	Peoples Gas Light & COke Co	11-28-89	B		
ST90-0648 Midwestern Gas Transmission Co	Community Natural Gas Co	11-28-89	B		
ST90-0649 Midwestern Gas Transmission Co	Quivira Gas Co	11-28-89	B		
ST90-0650 Transcontinental Gas Pipe Line Corp	City of Buford	11-28-89	B		
ST90-0651 Transcontinental Gas Pipe Line Corp	City of Bowman	11-28-89	B		
ST90-0652 Transcontinental Gas Pipe Line Corp	Columbia Gas Trasmission Corp	11-28-89	G		
ST90-0653 Transcontinental Gas Pipe Line Corp	City of Hartwell	11-28-89	B		
ST90-0654 United Gas Pipe Line Co	Phoenix Gas Pipeline Co	11-28-89	G-S		
ST90-0655 Transcontinental Gas Pipe Line Corp	Southwestern Virginia Gas Co	11-28-89	B		
ST90-0656 Transcontinental Gas Pipe Line Corp	City of Union	11-28-89	B		
ST90-0657 Transcontinental Gas Pipe Line Corp	Blacksburg Natural Gas System	11-28-89	B		
ST90-0658 Transcontinental Gas Pipe Line Corp	Blacksburg Natural Gas System	11-28-89	B		
ST90-0659 Transcontinental Gas Pipe Line Corp	Fountain Inn Natural Gas Authority	11-28-89	B		
ST90-0660 Transcontinental Gas Pipe Line Corp	City of Rockford	11-28-89	B		
ST90-0661 Transcontinental Gas Pipe Line Corp	City of Commerce	11-28-89	B		
ST90-0662 Transcontinental Gas Pipe Line Corp	City of Social Circle	11-28-89	B		
ST90-0663 Transcontinental Gas Pipe Line Corp	City of Royston	11-28-89	B		
ST90-0664 Transcontinental Gas Pipe Line Corp	City of Elberton Natural Gas System	11-28-89	B		
ST90-0665 Transcontinental Gas Pipe Line Corp	City of Kings Mountain	11-28-89	B		
ST90-0666 Transcontinental Gas Pipe Line Corp	City of Covington	11-28-89	B		
ST90-0667 Transcontinental Gas Pipe Line Corp	City of Alexander City	11-28-89	B		
ST90-0668 Transcontinental Gas Pipe Line Corp	City of Lawrenceville	11-28-89	B		
ST90-0669 Tarpon Transmission Co	LL & Gas Marketing, Inc	11-28-89	G-S		
ST90-0670 United Gas Pipe Line Co	Mobil Natural Gas, Inc	11-28-89	G-S		
ST90-0672 Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	11-28-89	B		
ST90-0673 Williston Basin Interstate P/L Co	MGTC, Inc	11-28-89	B		
ST90-0674 Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	11-28-89	B		
ST90-0675 Williston Basin Interstate P/L Co	Associated Intrastate Pipeline Co	11-28-89	B		
ST90-0676 Williston Basin Interstate P/L Co	Quivira Gas Co	11-28-89	B		
ST90-0677 Williston Basin Interstate P/L Co	Northern Illinois Gas Co	11-28-89	B		
ST90-0678 Williston Basin Interstate P/L Co	Quivira Gas Co	11-28-89	B		
ST90-0679 Williston Basin Interstate P/L Co	Quivira Gas Co	11-28-89	B		
ST90-0680 Williston Basin Interstate P/L Co	Quivira Gas Co	11-28-89	B		
ST90-0681 Williston Basin Interstate P/L Co	Associated Intrastate Pipeline Co	11-28-89	B		
ST90-0682 Williston Basin Interstate P/L Co	MGTC, Inc.	11-28-89	B		
ST90-0683 Williston Basin Interstate P/L Co	Cody Gas Co	11-28-89	B		
ST90-0684 Williston Basin Interstate P/L Co	Coastal States Gas Transmission Co	11-28-89	B		
ST90-0685 Northern Border Pipeline Co	Amoco Gas Co	11-28-89	B		
ST90-0686 Northern Border Pipeline Co	Amoco Gas Co	11-28-89	B		
ST90-0687 Canyon Creek Compression Co	Union Pacific Fuels, Inc.	11-29-89	G-S		
ST90-0688 Natural Gas Pipeline Co. of America	Illinois Power Co.	11-29-89	B		
ST90-0689 Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	11-29-89	B		
ST90-0690 Exxon Gas System, Inc.	Phillips Gas Pipeline Co.	11-29-89	C	04-28-90	12.80
ST90-0691 BP Gas Transmission Co.	ANR Pipeline Co., et al.	11-29-89	C	04-28-90	13.70
ST90-0692 BP Gas Transmission Co.	ANR Pipeline Co., et al.	11-29-89	C	04-28-90	13.70
ST90-0693 Northern Natural Gas Co.	Transcontinental Gas Pipe Line Corp.	11-29-89	G		
ST90-0694 Rhone-Poulenc Pipeline Co.	Colorado Interstate Gas Co., et al	11-29-89	C		
ST90-0695 Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	11-29-89	B		
ST90-0696 ONG Transmission Co.	Natural Gas Pipeline Co. of America	11-29-89	C	04-28-90	24.32
ST90-0697 ONG Transmission Co.	Northern Natural Gas Co.	11-29-89	C	04-28-90	24.32
ST90-0698 Black Marlin Pipeline Co.	Houston Pipe Line Co.	11-29-89	B		
ST90-0699 Transwestern Pipeline Co.	Texaco Gas Marketing, Inc.	11-29-89	G-S		
ST90-0700 Transwestern Pipeline Co.	Southern California Gas Co.	11-29-89	B		
ST90-0701 Transwestern Pipeline Co.	Williams Gas Marketing Co.	11-29-89	G-S		
ST90-0702 United Gas Pipe Line Co.	American Central Gas Cos., Inc.	11-29-89	G-S		
ST90-0703 United Gas Pipe Line Co.	Air Products & Chemicals, Inc.	11-29-89	G-S		
ST90-0704 United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	11-29-89	G-S		
ST90-0705 United Gas Pipe Line Co.	Texaco, Inc.	11-29-89	G-S		
ST90-0706 United Gas Pipe Line Co.	Sun Operating Limited Partnership	11-29-89	G-S		
ST90-0707 United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	11-29-89	G-S		

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date	Transportation rate (c/NMBTU)
ST90-0708 Williams Natural Gas Co.	Missouri Public Service Co.	11-29-89	B		
ST90-0709 Williams Natural Gas Co.	Kansas Public Service Co.	11-29-89	B		
ST90-0710 Williams Natural Gas Co.	Greeley Gas Co.	11-29-89	B		
ST90-0711 Williams Natural Gas Co.	Superior, Nebraska	11-29-89	B		
ST90-0712 Williams Natural Gas Co.	Peoples Natural Gas Co.	11-29-89	B		
ST90-0713 Williams Natural Gas Co.	Union Gas System, Inc.	11-29-89	B		
ST90-0714 Arkla Energy Resources	Louisiana Intrastate Gas Pipeline Corp.	11-29-89	B		
ST90-0715 Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	11-29-89	B		
ST90-0716 Midwestern Gas Transmission Co.	Associated Intrastate Pipeline Co.	11-29-89	B		
ST90-0717 Tennessee Gas Pipeline Co.	NGC Intrastate Pipeline Co.	11-29-89	B		
ST90-0718 Tennessee Gas Pipeline Co.	Northern Indiana Public Service Co.	11-29-89	B		
ST90-0719 Tennessee Gas Pipeline Co.	Texas Industrial Energy Co.	11-29-89	B		
ST90-0720 Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	11-29-89	B		
ST90-0721 Columbia Gas Transmission Corp.	Ohio Intrastate Gas Transmission Co.	11-29-89	B		
ST90-0722 Columbia Gas Transmission Corp.	Energy Marketing Exchange, Inc.	11-29-89	G-S		
ST90-0723 Columbia Gas Transmission Corp.	Industrial Energy Services Co.	11-29-89	G-S		
ST90-0724 ANR Pipeline Co	Coastal Gas Marketing Co.	11-29-89	G-S		
ST90-0725 ANR Pipeline Co	Access Energy Pipeline Corp.	11-29-89	B		
ST90-0726 ANR Pipeline Co	Paulstra CRC Corp	11-29-89	G-S		
ST90-0727 ANR Pipeline Co	Wisconsin Fuel and Light Co	11-29-89	B		
ST90-0728 ANR Pipeline Co.	Mobil Vanderbilt-Beaumont Pipeline Co	11-29-89	B		
ST90-0729 ANR Pipeline Co	Santanna Natural Gas Corp.	11-29-89	G-S		
ST90-0730 Northern Natural Gas Co	Meridian Oil Trading, Inc.	11-29-89	G-S		
ST90-0731 Northern Natural Gas Co.	Texaco Gas Marketing, Inc.	11-29-89	G-S		
ST90-0732 Northern Natural Gas Co	AG Processing, Inc.	11-29-89	G-S		
ST90-0733 Northern Natural Gas Co	Texaco Gas Marketing, Inc.	11-29-89	G-S		
ST90-0734 Transcontinental Gas Pipe Line Corp.	Frederick Gas Co.	11-29-89	B		
ST90-0735 Transcontinental Gas Pipe Line Corp.	City of Rockford	11-29-89	B		
ST90-0736 Transcontinental Gas Pipe Line Corp.	City of Linden	11-29-89	B		
ST90-0737 Transcontinental Gas Pipe Line Corp.	Southwestern Virginia Gas Co.	11-29-89	B		
ST90-0738 Transcontinental Gas Pipe Line Corp.	United Cities Gas Co.	11-29-89	B		
ST90-0739 Transcontinental Gas Pipe Line Corp.	City of Alexander City	11-29-89	B		
ST90-0740 Transcontinental Gas Pipe Line Corp.	Greer Commission of Public Works	11-29-89	B		
ST90-0741 Transcontinental Gas Pipe Line Corp.	Maplesville Water & Gas Board	11-29-89	B		
ST90-0742 Transcontinental Gas Pipe Line Corp.	City of Linden	11-29-89	B		
ST90-0743 Transcontinental Gas Pipe Line Corp.	City of Madison	11-29-89	B		
ST90-0744 Transcontinental Gas Pipe Line Corp.	City of Roanoke	11-29-89	B		
ST90-0745 Transcontinental Gas Pipe Line Corp.	Frederick Gas Co.	11-29-89	B		
ST90-0746 Transcontinental Gas Pipe Line Corp.	City of Bessemer City	11-29-89	B		
ST90-0747 Transcontinental Gas Pipe Line Corp.	Maplesville Water & Gas Board	11-29-89	B		
ST90-0748 Transcontinental Gas Pipe Line Corp.	City of Roanoke	11-29-89	B		
ST90-0749 Transcontinental Gas Pipe Line Corp.	United Cities Gas Co.	11-29-89	B		
ST90-0750 Transcontinental Gas Pipe Line Corp.	Columbia Gas Transmission Corp.	11-29-89	G		
ST90-0751 Transcontinental Gas Pipe Line Corp.	City of Toccoa	11-29-89	B		
ST90-0752 Transcontinental Gas Pipe Line Corp.	United Cities Gas Co.	11-29-89	B		
ST90-0753 Transcontinental Gas Pipe Line Corp.	Tri-County Gas Co., Inc.	11-29-89	B		
ST90-0754 Transcontinental Gas Pipe Line Corp.	City of Winder	11-29-89	B		
ST90-0755 Transcontinental Gas Pipe Line Corp.	East Central Alabama Gas District	11-29-89	B		
ST90-0756 Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	11-30-89	B		
ST90-0757 Natural Gas Pipeline Co. of America	Colony Pipeline Corp.	11-30-89	B		
ST90-0758 Natural Gas Pipeline Co. of America	ENRON Industrial Natural Gas Co.	11-30-89	B		
ST90-0759 Exxon Gas System, Inc.	Phillips Gas Pipeline Co.	11-30-89	C	04-29-90	12.80
ST90-0760 Enserch Gas Transmission Co.	Trunkline Gas Co.	11-30-89	C		
ST90-0761 Panhandle Eastern Pipe Line Co.	Michigan Gas Utilities Co.	11-30-89	B		
ST90-0762 Panhandle Eastern Pipe Line Co.	Michigan Gas Utilities Co.	11-30-89	B		
ST90-0763 Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	11-30-89	G		
ST90-0764 Midwestern Gas Transmission Co	Peoples Gas Light & Coke Co	11-30-89	B		
ST90-0765 Midwestern Gas Transmission Co	Reliance Pipeline Co	11-30-89	B		
ST90-0766 Midwestern Gas Transmission Co	Hydrocarbon Development Corp	11-30-89	B		
ST90-0767 K N Energy, Inc	Sar Vic Gas Co	11-30-89	B		
ST90-0768 K N Energy, Inc	Phenix Transmission Co	11-30-89	B		
ST90-0769 K N Energy, Inc	Plains Petroleum Operating Co.	11-30-89	G-S		
ST90-0770 K N Energy, Inc	Coastal States Gas Transmission Co	11-30-89	B		
ST90-0771 Transcontinental Gas Pipe Line Corp.	Commission of Public Works	11-30-89	B		
ST90-0772 Transcontinental Gas Pipe Line Corp.	City of Danville	11-30-89	B		
ST90-0773 Transcontinental Gas Pipe Line Corp.	Commission of Public Works	11-30-89	B		
ST90-0774 Transcontinental Gas Pipe Line Corp.	Clinton-Newberry Nat. Gas Authority	11-30-89	B		
ST90-0775 Transcontinental Gas Pipe Line Corp.	City of Shelby	11-30-89	B		
ST90-0776 Transcontinental Gas Pipe Line Corp.	North Carolina Natural Gas Corp	11-30-89	B		
ST90-0777 Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	11-30-89	B		
ST90-0778 Transcontinental Gas Pipe Line Corp.	Public Service Co. of North Carolina	11-30-89	B		
ST90-0779 Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co	11-30-89	B		
ST90-0780 Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.	11-30-89	B		
ST90-0781 Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co	11-30-89	B		
ST90-0782 Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co	11-30-89	B		
ST90-0783 Transcontinental Gas Pipe Line Corp.	Philadelphia Gas Works, Inc	11-30-89	B		
ST90-0784 Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co	11-30-89	B		
ST90-0785 Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.	11-30-89	B		
ST90-0786 Transcontinental Gas Pipe Line Corp.	City of Lexington	11-30-89	B		
ST90-0787 Transcontinental Gas Pipe Line Corp.	Lynchburg Gas Co.	11-30-89	B		
ST90-0788 Transcontinental Gas Pipe Line Corp.	South Carolina Gas Pipeline Corp.	11-30-89	B		

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date	Transportation rate (c/NMBTU)
ST90-0789 Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	11-30-89	B		
ST90-0790 Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	11-30-89	B		
ST90-0791 Transcontinental Gas Pipe Line Corp	Clinton-Newberry Nat. Gas Authority	11-30-89	B		
ST90-0792 Transcontinental Gas Pipe Line Corp	Owens-Corning Fiberglass Corp	11-30-89	G-S		
ST90-0793 Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	11-30-89	B		
ST90-0794 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-30-89	B		
ST90-0795 Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	11-30-89	B		
ST90-0796 Transcontinental Gas Pipe Line Corp	Commission of Public Works	11-30-89	B		
ST90-0797 Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	11-30-89	G		
ST90-0798 Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	11-30-89	B		
ST90-0799 Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	11-30-89	B		
ST90-0800 Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	11-30-89	G		
ST90-0801 Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	11-30-89	B		
ST90-0802 Transok, Inc	Natural Gas Pipeline Co. of America	11-30-89	C	04-29-90	518.00/10.42/27.44
ST90-0803 Arkla Energy Resources	Golden Gas Energies, Inc	11-30-89	B		
ST90-0804 Williams Natural Gas Co	Reliance Pipeline Co	11-30-89	B		
ST90-0805 Williams Natural Gas Co	Reliance Pipeline Co	11-30-89	B		
ST90-0806 Williams Natural Gas Co	Reliance Piepline Co	11-30-89	B		
ST90-0807 Williams Natural Gas Co	Reliance Pipeline Co	11-30-89	B		
ST90-0808 Williams Natural Gas Co	Reliance Pipeline Co	11-30-89	B		
ST90-0809 Williams Natural Gas Co	City Utilities of Springfield	11-30-89	B		
ST90-0810 Superior Offshore Pipeline Co	Mobil Vanderbilt-Beaumont Pipeline Co	11-30-89	B		
ST90-0811 Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	11-30-89	B		
ST90-0812 Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	11-30-89	B		
ST90-0813 Transcontinental Gas Pipe Line Corp	Union Gas Co	11-30-89	B		
ST90-0914 Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works, Inc	11-30-89	B		
ST90-0815 Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-30-89	B		
ST90-0816 Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	11-30-89	B		
ST90-0817 Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	11-30-89	B		
ST90-0818 Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	11-30-89	B		
ST90-0819 Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	11-30-89	B		
ST90-0820 Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	11-30-89	B		
ST90-0821 Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	11-30-89	B		
ST90-0822 Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	11-30-89	B		
ST90-0823 Transcontinental Gas Pipe Line Corp	City of Danville Gas Dept	11-30-89	B		
ST90-0824 Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	11-30-89	B		
ST90-0825 Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	11-30-89	B		
ST90-0826 Transcontinental Gas Pipe Line Corp	Public Service Co. of North Carolina	11-30-89	B		
ST90-0827 Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	11-30-89	B		
ST90-0828 Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	11-30-89	B		
ST90-0829 Transcontinental Gas Pipe Line Corp	Union Gas Co	11-30-89	B		
ST90-0830 Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	11-30-89	B		
ST90-0831 Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	11-30-89	G		
ST90-0832 Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	11-30-89	B		
ST90-0833 Transcontinental Gas Pipe Line Corp	Alabama Gas Corp	11-30-89	B		
ST90-0834 Transcontinental Gas Pipe Line Corp	Alabama Gas Corp	11-30-89	B		
ST90-0835 Transcontinental Gas Pipe Line Corp	Alabama Gas Corp	11-30-89	B		
ST90-0836 Transcontinental Gas Pipe Line Corp	Greer Commission of Public Works	11-30-89	B		
ST90-0837 Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	11-30-89	B		
ST90-0838 Transcontinental Gas Pipe Line Corp	Alabama Gas Corp	11-30-89	B		
ST90-0839 Columbia Gas Transmission Corp	Appalachian Gas Sales, Inc	11-30-89	G-S		
ST90-0840 Columbia Gas Transmission Corp	Atlas Energy Group	11-30-89	G-S		
ST90-0841 Columbia Gas Transmission Corp	Blackwater Natural Gas Corp	11-30-89	G-S		
ST90-0842 Columbia Gas Transmission Corp	Clinton Gas Marketing	11-30-89	G-S		
ST90-0843 Columbia Gas Transmission Corp	CNG Development Co	11-30-89	G-S		
ST90-0844 Columbia Gas Transmission Corp	Columbia Gas Development Corp	11-30-89	G-S		
ST90-0845 Columbia Gas Transmission Corp	Consolidated Fuel Corp	11-30-89	G-S		
ST90-0846 Columbia Gas Transmission Corp	Dome Energy Corp	11-30-89	G-S		
ST90-0847 Columbia Gas Transmission Corp	Eastern Marketing Corp	11-30-89	G-S		
ST90-0848 Columbia Gas Transmission Corp	Energy Marketing Services, Inc	11-30-89	G-S		
ST90-0849 Columbia Gas Transmission Corp	Equitable Resources Energy Co	11-30-89	G-S		
ST90-0850 Columbia Gas Transmission Corp	Gulf Ohio Corp	11-30-89	G-S		
ST90-0851 Columbia Gas Transmission Corp	Haddad and Brooks, Inc	11-30-89	G-S		
ST90-0852 Columbia Gas Transmission Corp	Interstate Gas Marketing, Inc	11-30-89	G-S		
ST90-0853 Columbia Gas Transmission Corp	Ledco, Inc	11-30-89	G-S		
ST90-0854 Columbia Gas Transmission Corp	Manufacturing Fuel Co	11-30-89	G-S		
ST90-0855 Columbia Gas Transmission Corp	O & R Energy Development, Inc	11-30-89	G-S		
ST90-0856 Columbia Gas Transmission Corp	Peak Operating Co	11-30-89	G-S		
ST90-0857 Columbia Gas Transmission Corp	Quaker State Corp	11-30-89	G-S		
ST90-0858 Columbia Gas Transmission Corp	Stone Resource and Energy Corp	11-30-89	G-S		
ST90-0859 Columbia Gas Transmission Corp	Texas-Ohio Gas, Inc	11-30-89	G-S		
ST90-0860 Columbia Gas Transmission Corp	Transport Gas Corp	11-30-89	G-S		

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission Approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 90-652 Filed 1-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-452-000, et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipeline Co.

[Docket Nos. CP90-452-000]

January 2, 1990.

Take notice that on December 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1487, Houston, Texas 77251-1478, filed in Docket No. CP90-452-000 a request pursuant to sections 7(b) and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon firm sale service of natural gas by United to First Chemical Corporation (First Chemical) in Jackson County, Mississippi under its blanket certificate issued in Docket No. CP82-430-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the natural gas firm sales service that it proposes to abandon was authorized in Docket No. CP87-260-000, and is provided to First Chemical pursuant to a service agreement that expired on November 1, 1988.

United further states that First Chemical has consented to this proposed request for abandonment, and that the abandonment of service will be accomplished without detriment or disadvantage to its other existing customers.

Comment date: February 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CP90-457-000]

January 2, 1990.

Take notice that on December 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-457-000 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 Texaco Gas Marketing Inc. (Texaco), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, 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.

United states that pursuant to a transportation agreement dated May 6, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 360,500 MMBtu per day equivalent of natural gas for Texaco. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced November 9, 1989, as reported in Docket No. ST90-707 (filed November 29, 1989). United further advises that it would transport 360,500 MMBtu on an average day and 131,582,500 MMBtu annually.

Comment date: February 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. ANR Pipeline Co.

[Docket No. CP90-427-000]

January 2, 1990.

Take notice that on December 20, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-427-000 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 Coastal Gas Marketing Company (Coastal), 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 which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 50,000 dekatherms (dt) of natural gas equivalent per day on an interruptible basis on behalf of Coastal pursuant to a transportation agreement dated January 4, 1989, between ANR and Coastal. ANR would receive the gas at various existing points of receipt in Louisiana, offshore Louisiana, Kansas, Oklahoma, Texas and offshore Texas and deliver equivalent volumes, less fuel used and unaccounted for line loss, at existing points of delivery in Iowa.

ANR states that the estimated daily and annually quantities would be 50,000 dt and 18,250,000 dt, respectively. Service under § 284.223(a) commenced on November 1, 1989, as reported in Docket No. ST90-724-000, it is stated.

Comment date: February 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Questar Pipeline Co.

[Docket No. CP90-455-000]

January 2, 1990.

Take notice that on December 28, 1989, Questar Pipeline Company (Questar), 79 South State Street, P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP90-455-000 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. CP88-650-000 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 to public inspection.

Questar proposes to transport natural gas on an interruptible basis for Marathon Oil Company (Marathon). Questar explains that service commenced November 1, 1989, under § 284.223(a) of the Commission's Regulations. Questar explains that the peak day quantity would be 15,000 MMBtu, the average daily quantity would be 5,800 MMBtu, and the annual quantity would be 2,117,000 MMBtu. Questar explains that it would receive natural gas for Marathon's account at a receipt point located in Lincoln County, Wyoming. United states that it would redeliver the gas at an interconnection with Northwest Pipeline Corporation in Lincoln County, Wyoming.

Comment date: February 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Co.

[Docket No. CP90-447-000]

January 2, 1990.

Take notice that on December 22, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-447-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Elf Aquitaine, Inc. (Elf), a producer, under its 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 on file with the Commission and open to public inspection.

Southern states that the maximum daily, average daily and annual quantities that it would transport for Elf would be 10,000 MMBtu equivalent of natural gas, 3,800 MMBtu equivalent of

natural gas and 1,387,000 MMBtu equivalent of natural gas, respectively.

Southern states that it would transport natural gas for Elf from various receipt points in offshore Louisiana, offshore Texas, Texas, Louisiana, Mississippi and Alabama to a delivery point in Texas.

Southern indicates that in a filing made with the Commission in Docket ST90-485, it reported that transportation service for Elf commenced on November 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: February 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP90-451-000]

January 2, 1990.

Take notice that on December 26, 1989, United Gas Pipe Line Company (United), 600 Travis, Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-451-000 a request pursuant to §§ 157.205 an 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Air Products & Chemicals, Inc. (Air Products), and end-user, under the blanket certificate issued in Docket No. CP88-6-000, 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.

United states that pursuant to a transportation service agreement dated September 15, 1989, it proposes to receive up to 35,000 Mcf per day at specified points located in Texas and Louisiana and redeliver the gas to Air Products at its plant located in Santa Rosa County, Florida. United estimates peak day and average day volumes of 36,050 million Btu and annual volumes of 13,158,250 million Btu. It is stated that on November 1, 1989, United a 120-day transportation service for Air Products under § 284-223(a), as reported in Docket No. ST90-703-000.

United further states that no facilities need be constructed to implement the service. United states that the primary term of the agreement would expire one year from the date of initial transportation but that the service would continue on a monthly basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: February 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP90-300-000]

January 3, 1990.

Take notice that on December 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-300-000, as supplemented on December 13, 1989, 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 American Central Gas Companies, Inc. (American Central), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, 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.

Notice of the instant proposal was issued on December 5, 1989. By its supplement filed on December 13, 1989, United has corrected the volumes of gas to be transported. United states that the correct volume equivalents are as follows.

(a) Peak day—154,500 MMBtu.

(b) Average day—154,500 MMBtu.

(c) Annual basis—56,392,500 MMBtu.

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Algonquin Gas Transmission

[Docket No. CP90-395-000]

January 3, 1990.

Take notice that on December 15, 1989, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP90-395-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for autorization to transport natural gas for Distrigas of Massachusetts Corporation (Distrigas), a shipper and marketer of natural gas, pursuant to Algonquin's blanket certificate issued in Docket No. CP89-948-000 and 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 for public inspection.

Specifically, Algonquin requests authority to transport up to 52,000 MMBtu per day on a firm basis on behalf of Distrigas pursuant to a Transportation Agreement dated November 1, 1989, between Algonquin and Distrigas (Transportation Agreement). The Transportation Agreement provides for Algonquin to receive gas from two existing points of receipt located in Mahwah, New Jersey, and Everett, Massachusetts. Algonquin will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to certain local distribution companies (LDC) in New York, Connecticut and Massachusetts.

Algonquin lists for each LDC the receipt and delivery points, the maximum daily, average daily and annual volumes, as well as the docket number related to the 120-day transportation service (see attached appendix).

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

The receipt and delivery point, the maximum daily, average daily and annual volumes, as well as the docket number related to the 120-day transportation service are listed below:

Docket number	Shipper/customer	Commence date	Max. daily aver. daily est. annual (MMBtu)	Receipt point	Del. point
ST90-878	Central Hudson Gas & Electric Corporation	11/1/89	15,000 15,000 5,475,000	Everett, MA	A
ST90-973	North Attleboro Company	11/1/89	500 500 182,500	do	A
ST90-974	Yankee Gas Services Company	11/1/89	15,000 15,000 5,475,000	do	A
ST90-975	The Southern Connecticut Gas Company	11/1/89	11,750 11,750	do	A

Docket number	Shipper/customer	Commence date	Max. daily aver. daily est. annual (MMBtu)	Receipt point	Del. point
ST90-977	Fall River Gas Company	11/1/89	4,288,750 4,000 4,000 1,460,000	do	A
ST90-921	Town of Middleborough, MA	11/2/89	750 750 273,750	do	A
ST90-922	Colonial Gas Company	11/3/89	5,000 5,000 1,825,000	do	A

Legend of Delivery Points
A—Various points between Shipper and Algonquin.

9. United Gas Pipe Line Co.

January 3, 1990.

[Docket No. CP90-449-000

Take notice that on December 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-449-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate a sales tap for the delivery of natural gas to a local distribution company for resale to an end user, under United's blanket certificate issued in Docket No. CP82-430-000 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.

United requests authorization to install a sales tap in order to deliver gas to Entex, Inc. (Entex) for resale to Eubanks Manufacturing Company (Eubanks) in Gregg County, Texas. United proposes to install a one-inch tap onto its existing 8-inch Longview-Palestine line located near Longview, Gregg County, Texas. United estimates that it would deliver 5 Mcf on a peak day to Entex for resale to Eubanks.

United indicates that it was authorized in Docket Nos. G-1158, CP61-167 and CP63-337 to provide all of Entex's natural gas requirements for resale and distribution through Entex's system serving the Longview Billing area. United States that it sells gas to Entex pursuant to United's Rate Schedule DG.

United indicates that the proposed sales tap would not result in an increase in Entex's aggregate gas requirements on contract demand. United further states that It has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers. It is stated that United's tariff does not prohibit the addition of delivery points.

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Co.

[Docket No. CP90-333-000]

January 3, 1990.

Take notice that on December 6, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP90-333-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation and exchange of natural gas for United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open for inspection.

Tennessee states that on April 14, 1978, the Commission authorized transportation of natural gas under an agreement between Tennessee and United dated July 14, 1976. Tennessee was authorized to transport up to 300,000 Mcf of natural gas per day for United at a 100 percent load factor transportation charge based upon the distance of haul (3 FERC ¶61,048). Tennessee further states that on January 25, 1979, the Commission authorized Tennessee and United, among other things, to increase the transportation volumes to 380,000 Mcf per day and to permit Tennessee to deliver to United, as exchange gas, up to 150,000 Mcf per day as jointly requested by the parties (6 FERC ¶61,068). Finally, it is indicated, on May 16, 1988, the Commission authorized an additional amendment that, among other things, decreased the certificated volumes back to 300,000 Mcf per day and modified the term "Exchange Quantity" to mean that portion of the total 300,000 Mcf per day of transportation quantity, up to 75,000 Mcf per day, which is in excess of the first 130,000 Mcf per day received by Tennessee from United at the Starks receipt point (43 FERC ¶62,195).

Tennessee requests authorization for abandonment of the services that Tennessee provides for United under Rate Schedule T-63, effective November 1, 1990. Tennessee further states that on October 23, 1989, it notified United of its election to terminate the contract pursuant to section 17.1 of the service contract and Rate Schedule. Tennessee indicates that if it is determined that United still needs any of the services rendered under Rate Schedule T-63, Tennessee would be willing and able to provide those services in a non-discriminatory manner pursuant to its blanket, open-access transportation certificate and the terms and conditions of its generally applicable transportation rate schedules.

Tennessee states that it is exercising its contractual rights to cancel the underlying transportation agreement under the specified terms. In today's competitive environment, with all parties in the natural gas industry and the Commission concerned with achieving an efficient marketplace for the sale and transportation of natural gas, the T-63 service has become an anachronism, it is stated.

Tennessee states that the contract provides for an unqualified obligation of Tennessee to receive and transport up to 307,000 Dth per day. Tennessee further states that the contract does not specify whether the service is firm or interruptible. Thus, Tennessee indicates, the priority of the service under Tennessee's open access tariff and part 284 of the Commission's Regulations is problematic. Tennessee states that the contract further specifies that certain quantities in excess of 133,250 Dth per day can be received and delivered by no fee "exchange". Again, Tennessee states, there is no specification of the quality of this exchange service. Further, due to changes in the operations of Tennessee's system, this "exchange" has become in reality free transportation for United, it is stated. Tennessee indicates that these peculiar service structures are completely different from

those provided under generally applicable rate schedules. Thus, Tennessee claims, the contract is unduly preferential and discriminatory, particularly in light of the rates charged for other similar services on Tennessee's system.

Tennessee states that the pricing provisions providing for a volumetric transportation charge (for an ostensibly firm transportation service) and a free exchange, without corresponding benefit in return for Tennessee, run counter to the Commission's recently announced Policy Statement Providing Guidance with Respect to the Designing of Rates. 47 FERC ¶61,295 (1989). As the Commission declared:

> Transportation rates (and policies) which inhibit efficient operation of markets are themselves inefficient and cannot result in an equitable assignment of the pipeline's costs or revenue responsibility.

Id. at 62,052. Tennessee further states that the transportation rates provided for under Rate Schedule T-63 clearly inhibit the efficient operation of markets and are themselves inequitable.

Tennessee claims that the Rate Schedule T-63 service is underpriced relative to the transportation services Tennessee provides under its Rate Schedule FT. It is stated that this has the effect of distorting the allocation of capacity on the Tennessee system. Tennessee indicates that United receives a service, and reserves capacity, at a lower rate than someone else might be willing to pay for that same capacity. Efficiency requires that the capacity utilized by United pursuant to Rate Schedule T-63 be offered to all those interested in transporting on Tennessee and that the capacity be offered pursuant to Tennessee's interruptible or firm rate schedules, it is stated.

Tennessee indicates that the discriminatory underpricing is more acute for the no-fee exchange provided by Tennessee. Tennessee further indicates that a zero transportation rate for one particular customer is in itself inefficient and fails to assure "that those who value the product or service the most [will] be the ones to have it." *Id.* at 62,053. Tennessee states that allocative efficiency requires that United not be provided discriminatory free access to capacity on the Tennessee system and that United seek service under Tennessee's generally applicable Rate Schedule IT or FT in the same manner as all others requesting interruptible or firm transportation service on Tennessee.

Comment date: January 24, 1990, in accordance with Standard Paragraph F at the end of this notice.

11. El Paso Natural Gas Co.

[Docket No. CP90-440-000]

January 4, 1990.

Take notice that on December 21, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-440-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of NGC Transportation, Inc. (NGC), 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 15,450 MMBtu of natural gas per day for NGC from a receipt point on El Paso's system located in Beaver County, Oklahoma to a delivery point located in the State of Oklahoma. El Paso anticipates transporting, on an average day 15,450 MMBtu and an annual volume of 5,639,250 MMBtu.

El Paso states that the transportation of natural gas for NGC commenced December 3, 1989, as reported in Docket No. ST90-1060-000, 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: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Co.

[Docket No. CP90-450-000]

January 4, 1990.

Take notice that on December 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-450-000 a request pursuant to § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act and the Natural Gas Policy Act for authorization to construct and operate a sales tap on behalf of Willmut Gas and Oil Company (Willmut) under United's blanket certificate issued in Docket No. CP82-430-000, 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.

United states that the construction and operation of a one-inch sales tap, located on United's two-inch Sanatorium lateral line, would supply Willmut, a local distribution company, with an estimated one Mcf of natural gas per day for resale for use to one residential end-user located in Simpson County, Mississippi.

United proposes to install the one-inch tap onto its existing two-inch Sanatorium lateral line located in section 33, Township 1 North, Range 5 East, Simpson County, Mississippi. It is stated that Willmut will reimburse United for all costs resulting from the tap installation.

United states that it is authorized in Docket No. G-478 to provide all of Willmut natural gas requirements for resale and distribution through Willmut distribution system serving the Magee Billing Area. The effective service agreement for such service is dated October 18, 1989, and provides for sales to Willmut under United's G Rate Schedule, it is stated.

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. El Paso Natural Gas Co.

[Docket No. CP90-461-000]

January 4, 1990.

Take notice that on January 2, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-461-000 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 Enron Gas Marketing, Inc. (Enron), a broker, 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 November 30, 1989, under its Rate Schedule T-1, it proposes to transport up to 14,912 MMBtu per day equivalent of natural gas for Enron. El Paso states that it would transport the gas from a receipt point on its system located in Beaver County, Oklahoma, and would deliver the gas to a delivery point also located in Beaver County, Oklahoma.

El Paso advises that service under 284.223(a) commenced December 8, 1989, as reported in Docket No. ST90-1077. El Paso further advises that it would transport 14,912 MMBtu on an average day and 5,442,880 MMBtu annually.

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Northwest Pipeline Corp.

[Docket No. CP90-441-000]

January 5, 1990.

Take notice that on December 21, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-441-000, a prior notice request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for ARCO Petroleum Products Company, A Division of Atlantic Richfield Company (ARCO), and end user of natural gas, under the blanket certificate issued Northwest in Docket No. CP86-578-000 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.

Northwest states that pursuant to a Transportation Agreement dated February 10, 1988, as amended January 9, 1989, under Rate Schedule TI-1, it proposes to transport up to 100,000 MMBtu of natural gas per day for ARCO from various existing receipt points on Northwest's system and redeliver the gas either to El Paso Natural Gas Company at the Ignacio delivery point in La Plata County, Colorado or to Cascade Natural Gas Corporation at the Bellingham and Ferndale Meter Station in Whatcom County, Washington.

Northwest states that no construction of facilities would be required to provide the transportation service. Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 100,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced November 1, 1989, as reported in Docket No. ST90-879-000.

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. Northwest Pipeline Corp.

[Docket No. CP90-458-000]

January 5, 1990.

Take notice that on December 29, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-458-000 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 Development Associates, Inc. (Development Associates), a marketer of natural gas, under its blanket authorization issued in Docket No. CP86-578-000 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.

Northwest would perform the proposed interruptible transportation service for Development Associates, pursuant to an interruptible transportation service agreement dated September 30, 1989, as amended November 3 and December 1, 1989. The transportation agreement is effective for a term continuing until October 31, 2004, and year to year thereafter until terminated by either party on twelve months written notice. Northwest proposes to transport no more than 40,000 MMBtu on a peak and average day; and on an annual basis approximately 14,600,000 MMBtu of natural gas for Development Associates. Northwest proposes to transport the subject gas from various mainline receipt points in Colorado, Wyoming and Canada to various existing mainline delivery points to the distribution systems of Cascade Natural Gas Corporation and Northwest Natural Gas Company in the states of Oregon and Washington. Northwest states that no construction of new facilities will be required to provide this transportation 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. Northwest commenced such self-implementing service on November 1, 1989, as reported in Docket No. ST90-1096-000.

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. United Gas Pipe Line Co.

[Docket No. CP90-374-000]

January 5, 1990.

Take notice that on December 12, 1989, as supplemented December 29, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a request with the Commission in Docket No. CP90-374-000 pursuant to § 157.205 of the Commission's Regulations under the Natural gas Act (NGA) for authorization to transport natural gas on behalf of Texaco, Inc., (Texaco), a natural gas producer, under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

United proposes an interruptible natural gas transportation service of up to 51,500 MMBtu equivalent on peak and average days, and 18,797,500 MMBtu equivalent annually for Texaco. United would receive and deliver Texaco's gas at various existing interconnections on its pipeline system in Texas. United states that it commenced transporting natural gas for Texaco on November 9, 1989, under § 248.223(a) of the Regulations, as report in Docket No. ST90-705.

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Stingray Pipeline Co.

[Docket No. CP90-465-000]

January 5, 1990.

Take notice that on January 2, 1990, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP90-465-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Stingray proposes to transport natural gas on an interruptible basis for Kimball Resources, Inc. (Kimball). Stingray explains that service commenced November 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-643. Stingray explains that the peak day quantity would be 50,000 Dt, the average daily quantity would be 30,000 Dt, and that the annual quantity would be 10,950,000 Dt. Stingray explains that it would receive natural gas for Kimball's account at various receipt points in Louisiana, Offshore Louisiana and Offshore Texas. Stingray states that it would redeliver the gas to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange located Offshore Texas.

Comment date: February 20, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. El Paso Natural Gas Co.

[Docket No. CP90-463-000]

January 5, 1990.

Take notice that on Janualry 2, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-463-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on

behalf of Phillips Petroleum Company (Phillips), a shipper of natural gas, 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 request which is on file with the Commission and open to public inspection.

El Paso proposes to tranport, on an interruptible basis, up to 3,605 MMBtu equivalent of natural gas, 3,605 MMBtu equivalent on an average day, and 1,315,825 MMBtu equivalent on an annual basis for Phillips. It is stated that El Paso would receive the gas for Phillips' account at any receipt point on El Paso's system and would deliver equivalent volumes at a delivery point on El Paso's system in El Paso County, Texas. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced December 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1059.

Comment date: February 20, 1990, 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. 90-651 Filed 1-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-25-003 and TM90-2-42-002]

Federal Energy Regulatory Commission; Compliance Filing

January 5, 1990.

Take note that Transwestern Pipeline Company (Transwestern) on December 29, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective December 1, 1989

Substitute Original Sheet No. 5D(ii)
Substitute Original Sheet No. 5E(i)
Substitute 3rd Revised Sheet No. 88

On October 30, 1989, (as corrected October 31, 1989) Transwestern filed tariff sheets to be effective December 1, 1989, to, among other things, adjust its take-or-pay direct bill charge and volumetric surcharge to reflect settlement dollars paid to producers between March 31, 1989, and November 30, 1989, pursuant to the section 25.2b (Litigation Exception) of the General Terms and Conditions of Transwestern's tariff ("TCR Amount Four"). By a November 29, 1989 Order, in this proceeding, the Commission accepted and suspended Transwestern's tariff sheets, subject to refund and certain conditions. Ordering Paragraph (2) of the November 29 Order required Transwestern to file by December 29, 1989, revised tariff sheets that reflect the elimination of the carry charges from "TCR Amount Four" for the period June 5 through November 30, 1989, as well as supporting documentation for those costs. Transwestern states that it filed the above-listed tariff sheets in compliance with and pursuant to the November 29 order.

Pursuant to Ordering Paragraph (2) of the November 29 Order, Transwestern also submitted, under separate cover, the underlying Settlement Agreement and supporting documentation for the "TCR Amount Four". Transwestern requested that this Settlement Agreement and supporting documentation remain confidential pursuant to § 388.112 of the Commission's Regulations, 18 CFR 388.112.

Transwestern respectfully requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary so as to permit the above listed tariff sheets to become effective December 1, 1989, as provided in the November 29, 1989 Order.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-653 Filed 1-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-4-000]

Transwestern Pipeline Co.; Granting of Late Interventions

January 5, 1990.

Motions to intervene, in the above-captioned docket, were due on October 17, 1989. Motions to intervene out of time were filed on November 6, 1989, by

Southern California Edison Company, and on November 8, 1989, by Southwest Gas Corporation. No answers in opposition to the motions were filed.

The movants appear to have legitimate interests under the law that are not adequately represented by other parties. Granting the interventions will not cause a delay or prejudice any other party. It is in the public interest to allow the movants to appear in this proceeding. Accordingly, good cause exists for granting the late interventions.

Pursuant to section 375.302 of the Commission's regulations (18 CFR 375.302 (1989)), the movants are permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. 717-717(w) (1982). Participation of the intervenors shall be limited to matters set forth in their motions to intervene. The admission of the intervenors shall not be construed as recognition by the Commission that the intervenors might be aggrieved by any order entered in this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 90-654 Filed 1-10-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3703-9]

1987 Chesapeake Bay Agreement; Proposals for Review

The Baywide Waterfowl Management Plan, the Submerged Aquatic Vegetation Policy Implementation Plan, and the Wetlands Policy Implementation Plan are now available for public review and comment. The proposals have been prepared by the Chesapeake Bay Program's Living Resources Subcommittee pursuant to commitments under the 1987 Chesapeake Bay Agreement.

Comments on the proposals will be accepted through February 23, 1990. They should be directed to the appropriate individual listed below:

Waterfowl

Mr. Steve Funderburk, U.S. Fish and Wildlife Service, 900 Bestgate Road, Suite 401, Annapolis, MD 21401, (301) 224-2732.

Submerged Aquatic Vegetation

Ms. Linda Hurley, U.S. Fish and Wildlife Service, 900 Bestgate Road, Suite 401, Annapolis, MD 21401, (301) 224-2732.

Wetlands

Mr. Larry Lower, Corps of Engineers, CENAB/PL/E, P.O. Box 1715, Baltimore, MD 21203-1715, (301) 962-4905.

For additional information, or copies of the proposals, call the appropriate individual at the telephone numbers listed above. Copies of the plans also are available from Mr. David Packer, Chesapeake Bay Liaison Office, (301) 266-6873.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 90-748 Filed 1-10-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3703-8]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Gibraltar Chemical Resources, Inc., Winona, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Gibraltar Chemical Resources, Inc., for the Class I injection well located at Winona, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Gibraltar Chemical Resources, Inc., of the specific restricted hazardous waste, identified in the petition, into the Class I hazardous waste injection well at the Winona facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued August 25, 1989. A public hearing was held September 26, 1989, and a public comment period extended to October 31, 1989. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal process that can be applied to a final petition decision.

DATE: This action is effective as of December 28, 1989.

ADDRESS: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655-7150, (FTS) 255-7150.

Myron O. Knudson, P.E.,

Director, Water Management Division (6W).

[FR Doc. 90-749 Filed 1-10-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 5, 1990.

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, Without Revision, of the Following Reports

1. *Report title:* Request for Proposal; Request for Price Quotations.

Agency form number: N.A.

OMB Docket number: 7100-0180.

Reporters: Venders, suppliers.

Annual reporting hours: 6,580.

Report	Number of respondents	Frequency	Avg. hours per response
Request for Proposal.	140	One-time	20

Report	Number of respondents	Frequency	Avg. hours per response
Request for Price Quotation.	7,560	One-time	0.5

Small businesses are affected.

General description of report: This information collection is required to obtain a benefit (12 U.S.C. 244) and is not given confidential treatment, unless requested otherwise by the respondent.

The Federal Reserve Board utilizes these two procurement forms in obtaining competitive proposals and contracts. Depending upon the product or services for which the Federal Reserve Board is seeking competitive bids, the vendor or supplier is requested to provide either basic price information for providing the good and/or service (Request for Price Quotation) or a document covering not only price information, but the means of performing a particular service and a description of the qualification of the contractor's staff who will perform the service (Request for Proposal).

2. *Report title:* Application for Employment with the Board of Governors of the Federal Reserve System.

Agency form number: N.A.

OMB Docket number: 7100-0181.

Frequency: On occasion.

Reporters: Individuals.

Annual reporting hours: 3,500.

Estimated average hours per response: 0.5.

Number of respondents: 7,000.

Small businesses are not affected.

General description of report: This information collection is required to obtain a benefit (12 U.S.C. 244 and 248(1)) and is given confidential treatment (5 U.S.C. 552(a) and 552(b) (2) and (6).)

The Application for Employment with the Board of Governors of the Federal Reserve System collects information needed to determine the qualifications, suitability, and availability of applications for employment with the Board and of current Board employees for reassignment, reinstatement, transfer, or promotion. The completed form may also be used to examine, rate, or assess the applicant's qualifications and to determine if the applicant is entitled to rights or benefits under certain laws and regulations.

Board of Governors of the Federal Reserve System, January 5, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-688 Filed 1-10-90; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp. Norfolk, VA; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Sovran Financial Corporation, Norfolk, Virginia ("Sovran"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, Sovran Investment Corporation, Richmond, Virginia, in the activities of underwriting and dealing in, to a limited extent, commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but are not eligible for banks to underwrite and deal in.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Sovran has applied to underwrite and deal in ineligible securities substantially in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. See, *e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation,* 73 Federal Reserve Bulletin 473 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation, and Security Pacific Corporation,* 73 Federal Reserve Bulletin 731 (1987), *as modified by Order Approving Modifications to section 20 Orders* (Order dated September 21, 1989).

Sovran contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Sovran Bank, N.A., Norfolk, Virginia, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed ineligible securities underwriting and dealing activity, Sovran states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 1, 1990.

Board of Governors of the Federal Reserve System, January 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-689 Filed 1-10-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 53 FR 43773, October 28, 1988, and 54 FR 5153, February 1, 1989) is amended to revise the mission and organization and functions statement of ADAMHA, to delete the Office for Substance Abuse Prevention (OSAP) in the Office of the Administrator, and to establish an Office for Substance Abuse Prevention equivalent to an Institute level within the Alcohol, Drug Abuse, and Mental Health Administration in accordance with the Anti-Drug Abuse Act of 1988, P.L. 100-690. The Office for Substance Abuse Prevention will provide guidance and leadership in the area of substance abuse prevention.

Under Section *HM-A, MISSION,* in the first paragraph, first sentence after the word "to" add the following words "find scientifically based solutions to

alcohol, drug abuse, and mental health problems and," and at the end of the mission statement delete "and the Emergency Substance Abuse Treatment and Rehabilitation allotment program," and add a period.

Under Section HM-B, Organization and Functions, Alcohol, Drug Abuse, and Mental Health Administration (HM); delete item (6).

Under Office of the Administrator (HMA), delete in its entirety the title and statement for the *Office for Substance Abuse Prevention (HMA9).*

After the statement for the *Division of Extramural Activities (HMMD)* add the *following:*

Office for Substance Abuse Prevention (HMP):

(1) Develops, implements, and reviews prevention and health promotion policy related to alcohol and drug abuse, analyzing impact of Federal activities on State and local government and private program activities;

(2) Provides a national focus for the Federal effort to demonstrate and promote effective strategies to prevent the abuse of alcohol and other drugs;

(3) Supports comprehensive, collaborative, community-based innovative prevention demonstration programs;

(4) Operates a grant program for projects to demonstrate effective models for the prevention, early intervention and treatment of drug and alcohol use/abuse among high risk youth and other specific target populations;

(5) Sponsors regional and national workshops/conferences on the prevention of drug and alcohol abuse;

(6) Supports the training for substance abuse counselors and other health professionals involved in drug and alcohol abuse education, prevention, and intervention;

(7) Provides technical assistance to States and local authorities and other national organizations and groups in the planning, establishment and maintenance of substance abuse prevention efforts;

(8) Collects and compiles drug and alcohol abuse prevention literature and other materials and supports a clearinghouse to disseminate such materials among states, political subdivisions, educational agencies and institutions, health and drug treatment/rehabilitation networks, and the general public;

(9) Serves as a national authority and resource for the development and analysis of information and findings relating to the prevention of abuse of alcohol and other drugs;

(10) Participates in the dissemination and implementation of research findings by PHS agencies and other research institutes on the prevention of the abuse of alcohol and other drugs;

(11) Collaborates with and encourages other Federal agencies, national, foreign, State, and local organizations to promote substance abuse prevention activities;

(12) Provides and promotes the evaluation of individual projects as well as overall programs; and

(13) Carries out administrative and financial management, policy and program development, planning and evaluation, and public information functions which are required to implement such programs.

Office of the Director (HMP1):

(1) Provides leadership, coordination, and direction in the development and implementation of OSAP policies, goals, and priorities and serves as the focal point for the Department's efforts of alcohol and other drug abuse prevention;

(2) Plans, directs, and provides overall administration of the program and management activities of OSAP;

(3) Conducts and coordinates interagency, intergovernmental, and international activities of OSAP;

(4) Monitors the conduct of the equal employment opportunity activities of OSAP; and

(5) Provides correspondence control services for OSAP.

Dated: January 3, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-644 Filed 1-10-90; 8:45am]

BILLING CODE 4160-20-M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (AD-AMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 53 FR 43773, October 28, 1988, and 54 FR 5153, February 1, 1989) is amended to reflect the reorganization of the Office of the Administrator in order to provide a focus for the drug abuse treatment activities of ADAMHA in the Office of the Administrator by:

(1) Establishing the Office for Treatment Improvement and

(2) Modifying the functional statement of the Office of Communications and External Affairs. The reorganization also reflects the transfer of the technical assistance function relating to drug treatment improvement from the National Institute on Drug Abuse to the Office for Treatment Improvement.

Section HM-B, Organization and Functions, is amended as follows:

After the statement for the *Office of Extramural Program (HMA5),* insert the following:

Office for Treatment Improvement (HMAB): The principal function of the Office is to provide national leadership for the Federal effort to enhance approaches and programs focusing on the treatment of drug abusers as well as associated problems of alcoholism and mental illness among this population. In carrying out this responsibility, the Office for Treatment Improvement:

(1) Collaborates with States, communities, health care providers and national organizations to upgrade the quality of drug treatment, to improve the effectiveness of drug treatment programs, and to expand drug treatment capacity;

(2) Provides financial assistance to targeted geographic areas to strengthen treatment programs for drug abuse and other related disorders treatment modalities (with emphasis on assistance for pregnant and postpartum women and their infants, minorities, adolescents and residents of public housing projects), and to strengthen the collaboration among the members of the drug treatment community;

(3) Provides a focus for addressing the treatment needs of individuals with multiple drug, alcohol, and mental problems;

(4) Collaborates with the National Institute on Drug Abuse and the States to promote development of treatment outcome standards;

(5) Collaborates with the Institutes and the Office for Substance Abuse Prevention in treatment data collection and training of health care providers;

(6) Promotes mainstreaming of alcohol, drug abuse and mental health treatment into the health care system; and

(7) Administers the Alcohol, Drug Abuse, and Mental Health Services block grant program and the Homeless Block Grant program, including compliance reviews, technical assistance to States, Territories, and Indian Tribes, and application and reporting requirements related to the block grant programs.

Under the heading Office of Communications and External Affairs (HMA4), delete the title and functional statement and substitute the following statement:

Office of Communications and External Affairs (HMA4), (1) Plans, implements, and oversees a

comprehensive public information program on behalf of the Administrator, including dissemination of news and information to the media, general public, Federal departments, State and local governments, professional organizations, and public interest groups on ADAMHA's mission, goals, and accomplishments;

(2) Advises the Administrator, ADAMHA, on policy matters related to ADAMHA communications, external activities (intergovernmental, interdepartmental, constituent groups, organizations, foundations, and educational/research institutions of concern to the alcohol, drug abuse, and mental health fields) and public information activities;

(3) Maintains proactive involvement with the media and related organizations to facilitate coverage and interpretation of ADAMHA's programs and objectives, including preparation of editorials, news releases, articles, speeches, and other public information material;

(4) Serves as central liaison, clearance, and coordinating point for Institute and ADAMHA-wide communication, education, and information projects and related activities, including dissemination of public and professional materials;

(5) Oversees and coordinates the public information activities of ADAMHA to assure collaboration on cross-cutting activities and that all public information activities are in accord with DHHS and ADAMHA goals;

(6) Reviews and approves all ADAMHA publications, press releases, audiovisuals, and other materials intended for public dissemination and serves as clearance liaison with the Office of the Assistant Secretary for Health and Department public information offices; and

(7) Serves as the ADAMHA Freedom of Information Office and oversees all ADAMHA Freedom of Information activities to assure appropriate responses to requests for agency documents and records.

Under the statement for the *National Institute on Drug Abuse (HMH),* delete the title and functional statement and substitute the following statement:

National Institute on Drug Abuse (HMH): Provides a national focus for the Federal effort to increase knowledge and promote effective strategies to deal with health problems and issues associated with drug abuse and addiction. In carrying out these responsibilities, the Institute:

(1) Conducts and supports research on the biological, psychological, and psychosocial aspects, epidemiology, treatment, and prevention of drug abuse and addiction;

(2) Supports research training and career development of individuals and institutions that are training individuals for participation in drug abuse research programs and activities;

(3) Works with States to provide technical assistance and National leadership in the area of data collection, treatment outcome/effectiveness, and health services research;

(4) Collaborates with the Office for Substance Abuse Prevention and the Office for Treatment Improvement to encourage other Federal agencies, national, foreign, State and local organizations, hospitals, and volunteer groups to facilitate and extend programs for the prevention of drug abuse and addiction, and the care, treatment, and rehabilitation of drug abusers; and

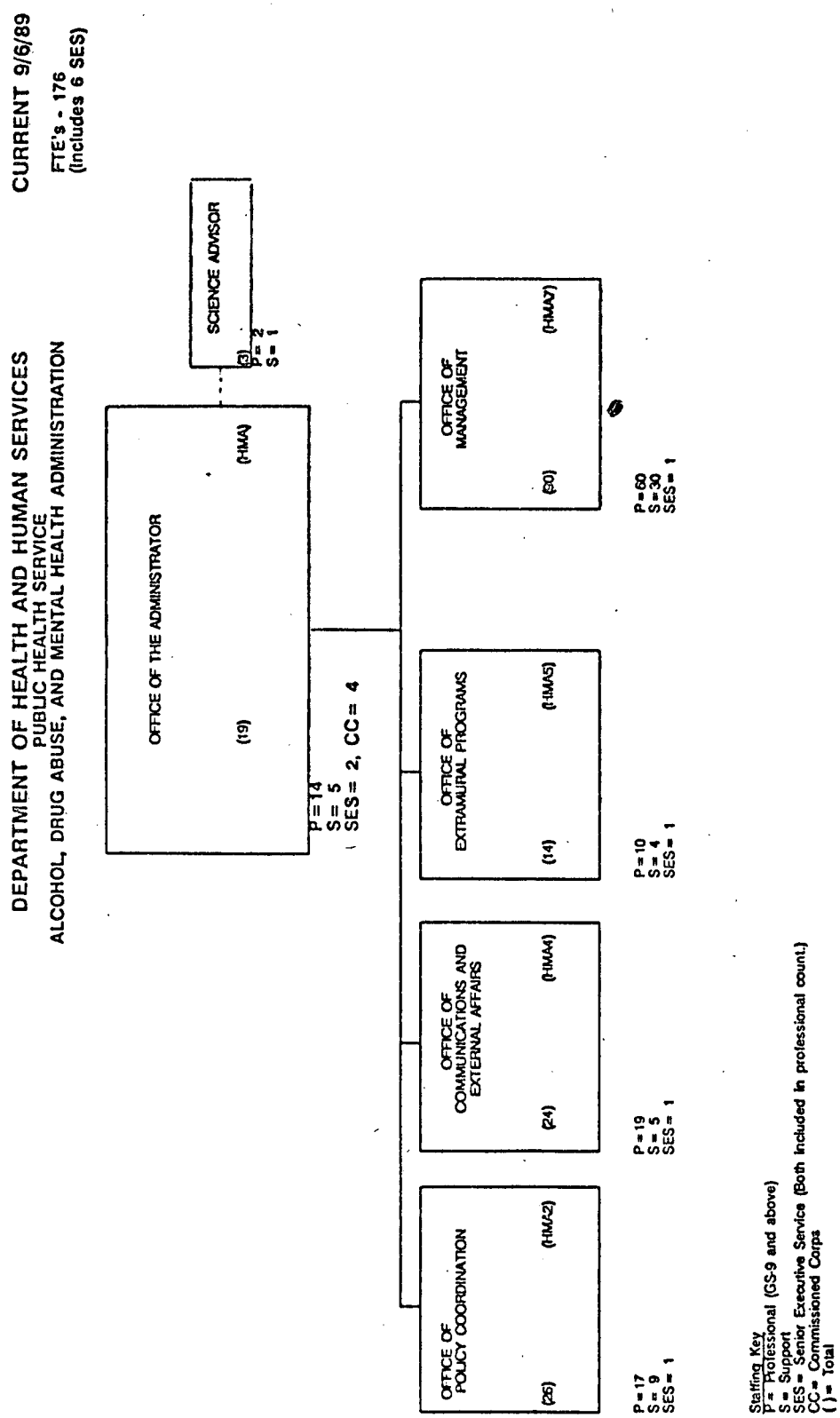
(5) Carries out administrative and financial management, policy, and program development, planning and evaluation, and public information functions which are required to implement such programs.

Dated: January 3, 1990.

Louis E. Sullivan,

Secretary.

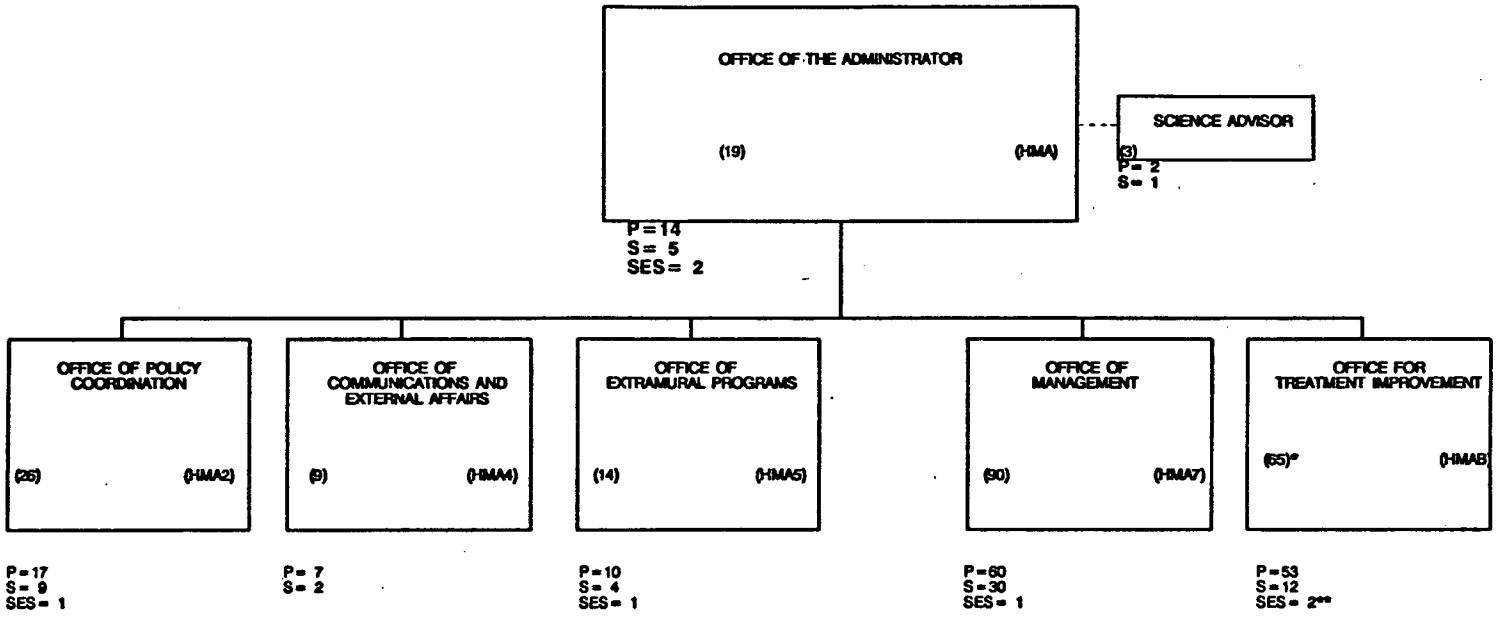
BILLING CODE 4160-20-M


DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION
CURRENT 9/6/89
FTE's - 176
(Includes 6 SES)
OFFICE OF THE ADMINISTRATOR
(19)
(HMA)
P = 14
S = 5
SES = 2, CC = 4
SCIENCE ADVISOR
(3)
P = 2
S = 1
OFFICE OF POLICY COORDINATION
(26)
(HMA2)
P = 17
S = 9
SES = 1
OFFICE OF COMMUNICATIONS AND EXTERNAL AFFAIRS
(24)
(HMA4)
P = 19
S = 5
SES = 1
OFFICE OF EXTRAMURAL PROGRAMS
(14)
(HMA5)
P = 10
S = 4
SES = 1
OFFICE OF MANAGEMENT
(90)
(HMA7)
P = 60
S = 30
SES = 1
Staffing Key
P = Professional (GS-9 and above)
S = Support
SES = Senior Executive Service (Both included in professional count.)
CC = Commissioned Corps
( ) = Total

DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

PROPOSED 9/29/89

FTE's - 176
(Includes 7 SES)



* We are expecting 50 additional FTE's for FY 1990 as a result of the President's Drug Budget Amendments as provided to the Congress on September 5, 1989, and the subsequent Emergency Drug Fund provisions in the supplemental appropriations for ADAMHA.
** One SES (Director, OTI) to be filled through Intergovernmental Personnel Assignment.

Staffing Key
P= Professional (GS-9 and above)
S= Support
SES= Senior Executive Service (Both included in professional count.)
CC= Commissioned Corps; ( )= Total

FR Doc 90-645 Filed 1-10-90; 8:45 am]

BILLING CODE 4160-20-C

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 52, No. 9, pp. 1530–1531, dated Wednesday, January 14, 1987) is amended to include revisions to the functional statement for the Bureau of Quality Control (BQC). The Medicaid utilization control (UC) program is transferring from BQC to the Health Standards and Quality Bureau. The transfer will improve program continuity and consistency in the application of long-term care regulations by placing all related long-term care functions in one organization. Accordingly, references to UC program activities are being deleted from the BQC functional statement.

The specific amendment to Part F. is described below:

• Section FP.20.B., Bureau of Quality Control (FPC), is deleted in its entirety and replaced by an updated functional statement to read as follows:

B. Bureau of Quality Control (FPC)

Operates statistically based quality control programs and conducts problem focused assessments in the areas of claims payment, institutional reimbursement, eligibility, and third-party liability and develops similar additional quality control programs which measure the financial integrity of Medicare and Medicaid. Following coordination with pertinent HCFA components, notifies carriers, fiscal intermediaries, and State agencies of findings resulting from quality control programs. Makes recommendations to the Associate Administrator for Operations regarding financial penalties authorized and determined appropriate under regulations. Assists State Medicaid fiscal agents and Medicare contractors in improving the management of federally required quality control programs. Plans and oversees Medicaid financial management systems and national budgets for States. Develops requirements, standards, procedures, guidelines, and methodologies pertaining to the review and evaluation of state agencies' automated systems. Develops, operates, and manages a program for the performance evaluation of Medicaid State agencies and fiscal agencies. Identifies significant trends and priority problems through comprehensive analyses of program operations and performance and evaluates findings surfaced through various assessment programs. Develops and conducts comprehensive analyses and studies of selected areas of policy and operations to evaluate the appropriateness, cost effectiveness, or other impact resulting from the implementation of law, regulations, policies, or operational procedures and systems. Develops recommendations for specific policy or operational improvements based on assessment findings. Coordinates, monitors, and evaluates all corrective action initiatives resulting from program assessment findings. Develops program-wide policies, regulations, procedures, guidelines, and studies dealing with program effectiveness, oversight, and improvement.

Dated: January 2, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–646 Filed 1–10–90; 8:45 am]

BILLING CODE 4120–01–M

Alcohol, Drug Abuse, and Mental Health Administration; Advisory Committee Meetings for the Month of February

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

NOTICE: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's initial review committees and national advisory councils in the month of February 1990. These committees will be performing review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92–463.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism, NIAAA

Date and Time: February 1–2: 10:15 a.m.

Place: NIH Campus, Building #1, 3rd Floor, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892

Status of Meeting: OPEN—February 1: 10:15 a.m.–5:00 p.m.
CLOSED—Otherwise

Contact: James Vaughan, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: February 1–2: 9:00 a.m.

Place: The Savoy Suites Hotel, 2505 Wisconsin Avenue, N.W., Washington, DC 20007

Status of Meeting: OPEN—February 1: 9:00–10:00 a.m.
CLOSED—Otherwise

Contact: Phyllis Zusman, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: February 1–3: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814

Status of Meeting: OPEN—February 1: 9:00–9:30 a.m.
CLOSED—Otherwise

Contact: Victoria Levin, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to understanding the impact of the social environment on the mental health of children and adults, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH
Date and Time: February 1–3: 9:00 a.m.
Place: The River Inn, 924 Twenty-fifth Street NW., Washington, DC 20037
Status of Meeting: OPEN—February 1: 9:00–10:00 a.m.
CLOSED—Otherwise
Contact: Shirley Maltz, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH
Date and Time: February 1–3: 9:00 a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814
Status of Meeting: OPEN—February 1: 9:00–10:00 a.m.
CLOSED—Otherwise
Contact: Gloria Yockelson, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 433–1367
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Mental Health Council, NIMH
Date and Time: February 5–6: 9:00 a.m.
Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857 on February 5; NIH Campus, Building 31C, Conference Room #10, 9000 Rockville Pike, Bethesda, MD 20892 on February 6
Status of Meeting: OPEN—February 6: 9:00 a.m.–5:00 p.m.
CLOSED—Otherwise
Contact: Eleanor C. Friedenberg, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3367
Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Psychopathology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH
Date and Time: February 7–9: 9:00 a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814
Status of Meeting: OPEN—February 7: 9:00–10:00 a.m.
CLOSED—Otherwise
Contact: Larnetta Gray, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Research Scientist Development Review Committee, NIMH
Date and Time: February 7–9: 9:00 a.m.
Place: The River Inn, 924 Twenth-fifth Street, NW., Washington, DC 20037
Status of Meeting: OPEN—February 7: 9:00–10:00 a.m.
CLOSED—Otherwise
Contact: Phyllis D. Artis, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full-time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cellular Neurobiology and Psychopharmacology Subcommittee of the Neurosciences Research Review Committee, NIMH
Date and Time: February 8–9: 8:30 a.m.
Place: Days Inn Congressional Park, 1775 Rockville Pike, Rockville, MD 20852
Status of Meeting: OPEN—February 8: 8:30–9:30 a.m.
CLOSED—Otherwise
Contact: Barbara Campbell, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to cellular neurobiology and psychopharmacology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychological and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH
Date and Time: February 8–9: 9:00 a.m.
Place: Governors House Holiday Inn, 1615 Rhode Island Avenue, Washington, DC 20036
Status of Meeting: OPEN—February 8: 9:00–10:00 a.m.
CLOSED—Otherwise
Contact: Frances Smith, Room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4868
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH
Date and Time: February 8–10: 8:30 a.m.
Place: Days Inn Congressional Park, 1775 Rockville Pike, Rockville, MD 20852
Status of Meeting: OPEN—February 8: 8:30–9:30 a.m.
CLOSED—Otherwise
Contact: Gerry Perlman, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral

neurobiology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychobiology and Behavior Research Review Committee, NIMH

Date and Time: February 8–10: 9:00 a.m.

Place: The State Plaza Hotel, 2117 E Street N.W., Washington, DC 20037

Status of Meeting: OPEN—February 8: 9:00–10:00 a.m.
CLOSED—Otherwise

Contact: Doris East, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA

Date and Time: February 12–14: 9:00 a.m.

Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814

Status of Meeting: OPEN—February 12: 9:00–9:30 a.m.
CLOSED—Otherwise

Contact: Ronald Suddendorf, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review

Committee Name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA

Date and Time: Feburary 12–14: 9:00 a.m.

Place: The River Inn, 924 Twenty-fifth Street NW., Washington, DC 20037

Status of Meeting: OPEN—February 12: 9:00–10:00 a.m.
CLOSED—Otherwise

Contact: Lenore Sawyer Radloff, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA

Date and Time: February 12–14: 9:00 a.m.

Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814

Status of Meeting: OPEN—February 12: 9:00–10:00 a.m.
CLOSED—Otherwise

Contact: Samir Zakhari, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Pharmacology I Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA

Date and Time: February 13–15: 8:30 a.m.

Place: Crowne Plaza Holiday Inn, Montrose Room, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: OPEN—February 13: 8:30–9:00 a.m.
CLOSED—Otherwise

Contact: Heinz Sorer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology II Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA

Date and Time: February 13–16: 8:30 a.m.

Place: Crowne Plaza Holiday Inn, Randolph Room, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: OPEN—February 13: 8:30–9:00 a.m.
CLOSED—Otherwise

Contact: Gamil Debbas, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA

Date and Time: February 13–16: 8:30 a.m.

Place: Crowne Plaza Holiday Inn, Twinbrook Room, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: OPEN—February 13: 8:30–9:00 a.m.
CLOSED—Otherwise

Contact: Rita Liu, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA

Date and Time: February 13–16: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, Woodmont Room, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: OPEN—February 13: 9:00–9:30 a.m.
CLOSED—Otherwise

Contact: Daniel Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee, NIDA

Date and Time: February 13–16: 8:30 a.m.

Place: Days Inn, Congressional Park, Montrose I & II, 1775 Rockville Pike, Rockville, MD 20852

Status of Meeting: OPEN—February 13: 8:30–9:00 a.m.
CLOSED—Otherwise

Contact: Raquel Crider, Room 10–42, Parklawn Building, Rockville, MD 20857, (301) 43–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH

Date and Time: February 14–16: 9:00 a.m.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008

Status of Meeting: OPEN—February 15: 9:00–10:00 a.m.
CLOSED—Otherwise

Contact: Monica Woodfork, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH

Date and Time: February 14–16: 9:00 a.m.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008

Status of Meeting: OPEN—February 15: 9:00–10:00 a.m.
CLOSED—Otherwise

Contact: Kimberly Crown, Room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: Criminal and Violent Behavior Research Review Commitee, NIMH

Date and Time: February 14–16: 9:00 a.m.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008

Status of Meeting: OPEN—February 14: 9:00–10:15 a.m.
CLOSED—Otherwise

Contact: Peg Lyons, Room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the mental health aspects of antisocial, criminal, and individual violent behavior, including sexual assault and victimization, and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH

Date and Time: February 15–16: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20014

Status of Meeting: OPEN—February 15: 9:00–10:00 a.m.
CLOSED—Otherwise

Contact: Helen Craig, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA '

Date and Time: February 19–21: 8:30 a.m.

Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814

Status of Meeting: OPEN—February 19: 8:30–9:30 a.m.
CLOSED—Otherwise

Contact: Thomas D. Sevy, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: National Advisory Council on Drug Abuse, NIDA '

Date and Time: February 20–21: 8:30 a.m.

Place: NIH Campus, Building 31C, 9000 Rockville Pike, Bethesda, MD 20892

Status of Meeting: OPEN—February 20: 8:30 a.m.–3:00 p.m.
February 21: 9:00 a.m.–11:00 a.m.
CLOSED—Otherwise

Contact: Sheila Gardner, Room 10–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6480

Purpose: The National Advisory Council on Drug Abuse advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse on the development of new initiatives and priorities and the efficient administration of drug abuse research including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Committee Name: Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH

Date and Time: February 21–23: 9:00 a.m.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036

Status of Meeting: OPEN—February 21: 9:00–10:00 A.M.
CLOSED—Otherwise

Contact: Maureen Eister, Room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH

Date and Time: February 22–23: 9:00 a.m.

Place: Governors House Holiday Inn, 1615 Rhode Island Avenue, NW., Washington, DC 20036

Status of Meeting: OPEN—February 22: 9:00–10:00 a.m.
CLOSED—Otherwise

Contact: Frances Smith, Room 9C-02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4868

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of mental health clinic research centers, clinical program projects, and other large-scale multidisciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA

Date and Time: February 22-23: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: OPEN—February 22: 9:00-10:00 a.m.
CLOSED—Otherwise

Contact: Barbara Smothers, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4375

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol and Alcoholism for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committe, NIMH

Date and Time: February 22-24: 9:00 a.m.

Place: The River Inn, 924 Twenty-fifth Street, N.W., Washington, DC 20037

Status of Meeting: OPEN—February 22: 9:00-10:00 a.m.
CLOSED—Otherwise

Contact: Sheila O'Malley, Room 9C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Small Business Research Review Committee, NIMH

Date and Time: February 26-27: 9:00 a.m.

Place: Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036

Status of Meeting: OPEN—February 26: 9:00-10:30 a.m.
CLOSED—Otherwise

Contact: Gloria Levin, Room 9C-14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1367

Purpose: The Committee is charged with the initial review of applications requesting support from the National Institute of Mental Health for small businesses involved in mental health research. Final review and recommendations are made from the National Advisory Mental Health Council.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C-20, 443-4375; Ms. Camilla Holland, NIDA Committee Management Officer, Room 10-42, (301) 443-2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, (301) 443-4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Dated: January 5, 1990.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-692 Filed 1-10-90; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Drug Abuse Advisory Committee

Date, time, and place. January 22 and 23, 1990, 9 a.m., Versailles Rm. III and IV, Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, January 22, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; January 23, 1990, open committee discussion, 9 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs which possess stimulant, depressant, or analgesic properties, including those aspects of safety related to the potential of these drugs to produce dependence and to be abused.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 16, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) A petition from the Drug Enforcement Administration to reschedule glutethimide from Schedule III to Schedule II under the Controlled Substances Act; (2) a followup report on the scheduling of dezocine; (3) a Drug Abuse Advisory Committee (DAAC)-generated report on the agonist-antagonist opioid analgesics; and (4) the work of the DAAC subcommittees on the development of Guidelines for the Clinical Evaluation of Medications for the Treatment of Drug Addiction and Guidelines for Animal and Human Abuse Liability Testing.

FDA is giving less than 15 days' public notice of this Drug Abuse Advisory Committee meeting because of the need to follow through on scheduling actions for two products in a timely manner. The next regularly scheduled meeting of the committee is tentatively set for May 7 and 8, 1990. FDA does not believe it appropriate to wait that long. Attempts were made to schedule a committee meeting in February or early March to permit sufficient time for at least a 15-day public notice of the meeting. However, it was not possible to find a date during that period on which a quorum of committee members could meet with responsible staff from the agency and other affected parties. The agency decided that it was in the public interest to hold this scientific discussion on January 22 and 23, 1990, even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 5, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-694 Filed 1-10-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS. The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published on November 16, 1989.

1. *Type of Request:* New; *Title of Information Collection:* Tax Equity and Fiscal Responsibility Act Health Maintenance Organization and Certified Medical Plan Program Evaluation Beneficiary Survey; *Form Number:* HCFA-R-133; *Frequency:* On occasion; *Respondents:* Individuals/ households; *Estimated Number of Responses:* 12,428; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 6,214.

2. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements—Itemized Statement of Hospital Charges; *Form Number:* HCFA-R-134; *Frequency:* On occasion; *Respondents:* Small businesses/organizations; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 1.

3. *Type of Request:* New; *Title of Information Collection:* Preclearance for Implementation and Evaluation of the Home Health Agency Prospective Payment Demonstration; *Form Number:* HCFA-P-14; *Frequency:* Not applicable; *Respondents:* Individuals/households; *Estimated Number of Responses:* Not applicable; *Average hours per Response:* Not applicable; *Total Estimated Burden Hours:* 1.

4. *Type of Request:* New; *Title of Information Collection:* Study to Develop Outcome-based Quality Measures for Home Health Services; *Form Number:* HCFA-2660A-D; *Frequency:* One time; *Respondents:* Individuals/households, businesses or other for profit, non-profit organizations; and small businesses/organizations; *Estimated Number of Responses:* 79,589; *Average Hours per Response:* .53; *Total Estimated Burden Hours:* 42,182.

5. *Type of Request:* New; *Title of Information Collection:* Uniform Cost Report Demonstration—Validation Questionnaire; *Form Number:* HCFA-39; *Frequency:* One time; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 634; *Average Hours per Response:* 8; *Total Estimated Burden Hours:* 5,072.

6. *Type of Request:* Extension; *Title of Information Collection;* Information Collection Requirements—Peer Review Organizations Reconsideration and Appeals; *Form Number:* HCFA-R-72; *Frequency:* On occasion, *Respondents:* Small businesses/organizations, individuals/households, and businesses/other for profit; *Estimated Number of Responses:* 51,523; *Average Hours per Response:* 1.25; *Total Estimated Burden Hours:* 64,404.

7. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirement—Conditions of Participation for Rehabilitation Agencies and Conditions of Coverage for Physical Therapists in Independent Practice; *Form Number:* HCFA-R-44; *Frequency:* On occasion; *Respondents:* Small businesses/

organizations and businesses/other for profit; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 10,848 (recordkeeping).

8. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements—Medicaid Eligibility Quality Control; *Form Number:* HCFA-R-37; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 3,970; *Average Hours per Response:* .35; *Total Estimated Burden Hours:* 1,390 (reporting) and 926 (recordkeeping) for a total of 2,316 hours.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Survey Report Form for Intermediate Care Facility for the Mentally Retarded or Persons with Related Conditions; *Form Number:* HCFA-3070G—I; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 4,315; *Average Hours per Response:* 3; *Total Estimated Burden Hours:* 12,945.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address:

OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: January 4, 1990.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 90-643 Filed 1-10-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of January-February 1990:

Name: Advisory Commission on Childhood Vaccines.

Date and Time: January 31-February 1, 1990, 9:00 a.m.-5:00 p.m.

Place: Parklawn Building, Third Floor-Conference Room C, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the meeting will include but not be limited to: status report on the Vaccine Injury Compensation Program (VICP); update on VICP technical amendments by representatives of the U.S. Claims Court, Department of Justice and HHS: status report and discussion on Vaccine Injury Material Distribution; IOM Studies; Adverse Events Reporting System; and Publicity Plan for the availability of the Vaccine Injury Compensation Program.

Public comment will be permitted at the end of each meeting day. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by January 19 to Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, Room 7-90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room C before 10:00 a.m., January 31 and February 1. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Council should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, Room 7-90, Parklaw Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6593.

Agenda Items are subject to change as priorities dictate.

Date: January 5, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-693 Filed 1-10-90; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection for Financial Status Report—Basic State Grant (BSG) Supplemental Information Form for the Administration on Development Disabilities.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Financial Status Report—Basic State Grant (BSG) Supplemental Information Form.

OMB No. N/A.

Description: Basic State Grant (BSG) funds are awarded to State agencies

contingent on fiscal requirements in the Developmental Disabilities Assistance and Bill of Rights Act as amended in 1987 (Pub. L. 100-246). The Financial Status Report (SF-269), mandated in the revised Office of Management and Budget (OMB) Circular A-102, provides no accounting breakouts necessary for proper stewardship, as was previously provided. The proposed Supplemental Information Form will allow compliance monitoring and proactive compliance maintenance.

Annual Number of Respondents: 56
Annual Frequency: 12
Average Burden Hours Per Response: 4.33
Total Burden Hours: 2,912

Dated: January 2, 1990.

Donna N. Givens,

Deputy Assistant Secretary for Human Development Services.

[FR Doc. 90-733 Filed 1-10-90; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection for the Social Services Block Grant (SSBG) under title XX of the Social Security Act.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Title XX of the Social Security Act, Social Services Block Grant Program.

OMB No.: 0980-0125.

Description: Under title XX of the Social Security Act, a State participating in the Social Services Block Grant (SSBG) program must prepare and submit to the Secretary two separate annual reports; one (pre-expenditure report) is on the intended use of funds (section 2004), and the other is on activities carried out with SSBG funds (section 2006). This latter requirement includes specific new information required by Public Law 100-485.

Annual Number of Respondents: 56
Annual Frequency: 2
Average Burden Hours Per Response: 206.5
Total Burden Hours: 231,000

Dated: January 4, 1990.

Donna N. Givens,

Deputy Assistant Secretary for Human Development Services.

[FR Doc. 90-734 Filed 1-10-90; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

African Elephant Conservation Act

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Information No. 21.

Subject: Import of Sport-Hunted African Elephants

This is a Schedule II Notice: Wildlife subject to this notice may be detained, refused clearance, seized, and forfeited if imported into the United States.

On June 9, 1989, the United States, under the authority of the African Elephant Conservation Act of 1988 (Act), 16 U.S.C. 4201 *et seq.*, established a moratorium on all imports of African elephant ivory (54 FR 24758). However, the Act provides that individuals may import legally-taken, sport-hunted elephants directly from any ivory-producing country (African country having wild elephants) that has submitted an invory export quota.

In October 1989, the 7th Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), meeting in Lausanne, Switzerland, voted to list the African elephant (*Loxodonta africana*) on Appendix I of the Convention. This action, which becomes effective on January 18, 1990, will significantly restrict international trade in ivory and other elephant products. Federal regulations (50 CFR 23.12(a)(1)) provide that species listed on Appendix I of CITES may not be imported into the United States without both a valid CITES export permit *and* an Appendix I import permit from the Fish and Wildlife Service (the Service). The Service is publishing this notice to clarify the conditions under which sport-hunted elephant trophies can be imported into the United States.

An ivory control system was established by the Conference of the Parties to CITES in 1985 to provide additional protection to the elephant while it was listed on Appendix II. Since all populations of the African elephant will be raised to Appendix I of CITES on January 18, 1990, the ivory control system will no longer be in effect for shipments that are primarily commercial in nature, but is still available for voluntary use by CITES parties for other shipments. The CITES Secretariat has agreed to notify the Service of any domestic export quotas established by African countries for sport-hunted elephant trophies after 1989. In accordance with the Act, sport-hunted elephants exported after January 1, 1990, may only be imported from countries that have transmitted domestic export quotas to the CITES Secretariat. Further, beginning on January 18, 1990, no African elephants or parts thereof may be imported into the United States without a CITES Appendix I import permit from the Service and an Appendix I export permit or re-export certificate from the exporting country.

Action by the Fish and Wildlife Service: Sport-hunted African elephants may be imported into the United States *only* in accordance with the following guidelines:

(1) Sport-hunted elephant ivory may only be imported into the United States directly from ivory-producing countries that have submitted ivory export quotas for the year of export to the CITES Secretariat. "Export" includes consignment of a shipment to a common carrier for international transport. Sport-hunted elephant ivory that was exported from an ivory-producing country that did not have an ivory export quota in effect on the date of export will be seized upon arrival in the United States and forfeiture procedures will be initiated.

(2) The importer must have had a valid CITES export permit from the country of origin at the time of export and proof that the elephant was legally taken. Permits must be presented upon importation; however, the Service may allow the importer up to 30 days from the date of import to present the required CITES export permit and proof that the elephant was lawfully taken. Post-dated export permits will not be accepted. Trophies for which the required export permits and other documentation are not presented will be seized and forfeiture procedures will be initiated.

(3) For imports that occur on or after January 18, 1990, the importer must also have a CITES Appendix I import permit issued by the Service's Office of Management Authority. Such permits must be obtained prior to importation. However, the Service will not, as a general rule and until further notice, refuse clearance for any sport-hunted trophy shipment that would otherwise meet all United States and CITES import requirements and that was consigned to a common carrier for export to the United States prior to January 18, 1990. The Service will not issue Appendix I import permits for sport-hunted elephants unless the Office of Management Authority finds that the trophy will not be used for primarily commercial purposes and the Office of Scientific Authority finds that the importation serves a purpose which is not detrimental to the survival of the species. This determination will involve an examination of whether the killing of the animals whose trophies are intended for import would enhance the survival of the species. At present, the Service's Office of Scientific Authority has information on specific elephant populations and management that indicates the Service may be unable to justify (from a biological and/or management standpoint) the issuance of CITES import permits for trophies taken in countries other than Zimbabwe and possibly South Africa on or after January 18, 1990. If an importer is unable to obtain an Appendix I import permit, the shipment will be seized and forfeiture procedures will be initiated.

Effective Date: This notice is effective on January 18, 1990.

Expiration Date: This notice remains in effect until revoked.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to: Senior Special Agents Michael Sutton or Jorge E. Picon, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247, (703) 358–1949, FTS 921–1949.

Questions regarding permits should be directed to: Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203–3507, (703) 358–2093, FTS 921–2093.

Questions regarding Scientific Authority findings should be addressed to: Dr. Charles Dane, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Department of the Interior, Room 750–D, ARLSQ, Washington, DC 20240, (703) 358–1708, FTS 921–1708.

Dated: January 3, 1990.

Richard N. Smith,

Acting Director.

[FR Doc. 90–702 Filed 1–10–90; 8:45 am]

BILLING CODE 4310–55–M

Klamath River Basin Fisheries Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 9 a.m. to 8 p.m. Tuesday, January 30, 1990, and from 8 a.m. to 4 p.m. on Wednesday, January 31, 1990.

Place: The meeting will be held in the conference room of the Best Western Brookings Inn, 1143 Chetco Avenue (N. Hwy 101), Brookings, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the Federal Register on July 8, 1987 (52 FR 25639).

Much of the meeting time will be devoted to a presentation and discussion of contents of a draft long-range plan for the Klamath Fishery Restoration Program. The Task Force will also hear reports on other ongoing projects, and will consider some proposed additions to the work plan for Fiscal Year 1990. Development of the Restoration Program work plan for Fiscal Year 1991 will be initiated.

Dated: December 29, 1989.

David L. McMullen,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–678 Filed 1–10–90; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

Availability of Supplement to Draft Environmental Impact Statement for Castle Mountain Project, California Desert District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplement to Draft Environmental Impact Statement, Castle Mountain Project.

SUMMARY: This Supplement to the Castle Mountain Project Draft Environmental Impact Statement/ Environmental Impact Report (Draft EIS/EIR) (Environmental Solutions, Inc., 1989) has been prepared to address changes in regulations and modifications to the Proposed Action that have occurred since preparation of the Draft EIS/EIR.

The Supplement includes discussion of recent changes in regulations affecting the Proposed Action, including State and Federal recognition of the desert tortoise, *Gopherus agassizii*, as a threatened and endangered species, and changes in the San Bernardino County General Plan. Technical changes in the project design and mitigation measures resulting from public review of the Draft EIS/EIR and from design refinement are also described and evaluated. As a result of Draft EIS/EIR circulation, alternatives to the Proposed Act were suggested, and questions were asked regarding the potential for cumulative impacts. These additional alternatives are explored and additional discussion of the potential for cumulative impacts is provided. In addition, a Draft Mitigation Compliance Program is provided for public review.

DATES: Comments on this Draft EIS/EIR Supplement must be submitted to the Bureau of Land Management at the address below no later than 5 p.m. March 14, 1990.

ADDRESS: Bureau of Land Management, Needles Resource Area, 101 West Spikes Road/PO Box 888, Needles, California 92363. Attention: Elena Daly.

SUPPLEMENTARY INFORMATION: The Castle Mountain Project Draft EIS/EIR was completed in February 1989 and distributed to agencies, organizations, businesses, and individuals for a 60-day review and comment period extending from March 15, 1989 to May 15, 1989. The information provided in this Supplement is to be considered as part of the Draft EIS/EIR. The final EIS/EIR will be prepared following the Draft EIS/EIR Supplement review and comment period.

The proposed action is located in an area of the Castle Mountains known as the Hart Mining District. The 2,735-acre site encompasses about 2,620 acres of Federal land and 115 acres of patented mining claims.

The project would operate as an open pit leach mine, using established methods common to the industry. Overburden would be removed to expose the orebody. Ore would be excavated, crushed to the size of gravel, and deposited in heap piles on impervious liners for leaching. A dilute solution of sodium cyanide would be percolated through the heap, dissolving gold and silver. The gold-bearing solution would be drained from the heap leach pads and stored in ponds for processing in a gold recovery plant. This plant would remove the gold and silver from solution, using a carbon absorption process and return the "barren" solution to a holding pond for reuse at the heap leach pads. In this manner, solution is recycled with no discharge to the environment. The Castle Mountain Project would operate for about 10 years and process about three million tons of ore per year.

FOR FURTHER INFORMATION CONTACT: Elena Daly, (619) 326-3896.

Dated: January 3, 1990.

Ed Hastey,

State Director.

[FR Doc. 90-682 Filed 1-10-90; 8:45 am]

BILLING CODE 4310-40-M

[ID-030-09-4830-12]

Meeting of Idaho Falls District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls District Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Thursday February 15, 1990. Notice of this meeting is in accordance with Pub. L. 92-463. The meeting will begin at 9 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. This meeting is open to the public; public comment will be accepted from 9:30 a.m. to 10:00 a.m.

The agenda for this meeting includes, but it is not limited to: Idaho Falls District Activities Update, Blackfoot River Briefing, Long Term Grazing Nonuse and Project Funding to include both the 8100 projects and Grazing Advisory Board projects.

Detailed minutes of the Board meeting will be maintained in the District office and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m. Monday through Friday) within 30 days following the meeting.

DATE: February 15, 1990.

ADDRESSES: Written comments should be submitted to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Bernie Jansen, A.D.M. Operations, Telephone: (208) 529-1020.

Dated: December 29, 1989.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 90-765 Filed 1-10-90; 8:45 am]

BILLING CODE 4310-GG

[CO-920-90-4111-15; COC44928]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC44928 for lands in Baca County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from July 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective July 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to J.E. Broskey of the Colorado State Office at (303) 236-1772.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section

[FR Doc. 90-772 Filed 1-10-90; 8:45 am]

BILLING CODE 4310-JB-M

[MT-920-90-4111-11; MTM 75440]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 75440, Carbon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: January 3, 1990.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 90-690 Filed 1-10-90; 8:45 am]

BILLING CODE 4310-DN-M

[OR-090-00-4212-13; GPO-098: OROR 45366]

Realty Action; Exchange of Public Lands in Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Exchange of Public Lands in Lane County, Oregon.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 17 S., R. 6 W.,
Sec. 35: SE¼SE¼.
Containing 40.00 acres in Lane County.

In exchange for these lands, the United States will acquire the following described lands from Almeyde Timber Resources, Inc.:

Willamette Meridian, Oregon

T. 19 S., R. 1 E., W.M.,
Sec. 14: That portion of the SE¼ and E½SW¼ lying south of Alder Creek.
T. 21 S., R. 2 W., W.M.,
Sec. 30: E½SE¼, the East 330 feet of the W½SE¼, the South 500 feet of the SE¼NE¼ and the East 330 feet of the South 500 feet of the SW¼NE¼.
Sec. 31: That portion of the S½NE¼ lying East of Mosby Creek.
Containing 358.82 acres in Lane County.

The purpose of the exchange is to enhance the timber and related forest resource management programs of the Bureau of Land Management. The public land to be exchanged is an isolated parcel without legal access. The private lands being offered have important timber and wildlife habitat values.

These lands will be managed for multiple use. The public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal and adjustments in the acreage or timber to be exchanged will be made in order to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred. All mineral rights will be transferred with the surface with the exception of oil and gas rights on the federal tract.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

Publication of this notice in the **Federal Register** segregates the public land, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this exchange is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Date of Issue: January 4, 1990.

Ronald L. Kaufman,

District Manager.

[FR Doc. 90-770 Filed 1-10-90; 8:45 am]

BILLING CODE 4310-33-M

[AZ-942-00-4730-12]

Arizona; Filing of Plats of Survey

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey of Lot 2 in section 10, Township 25 North, Range 19 West, Gila and Salt River Meridian, Arizona, was accepted October 2, 1989, and was officially filed October 3, 1989.

This plat was prepared at the request of the Bureau of Land Management, Kingman Resource Area.

A supplemental plat showing corrections in distance to the north and south lines of lot 6, section 31, Township 19 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted December 5, 1989, and was officially filed December 6, 1989.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey in section 20, Township 14 North, Range 20 West, Gila and Salt River Meridian Arizona, was accepted December 20, 1989, and was officially filed December 21, 1989.

A supplemental plat showing amended lottings created by the cancellation of Rita Placer, M.S. 4278, in sections 31 and 32, Township 23 South, Range 21 East, Gila and Salt River Meridian, Arizona. This plat was accepted November 30, 1989, and was officially filed December 5, 1989.

These plats were prepared at the request of the Bureau of Land Management, Branch of Lands Operations.

A plat representing a dependent resurvey of a portion of Homestead Entry Survey No. 481, and a metes-and-bounds survey of Tract 37 in unsurveyed Township 4½ North, Range 29 East, Gila and Salt River, Meridian, Arizona, was accepted December 20, 1989, and was officially filed December 21, 1989.

A plat representing a dependent resurvey of a portion of Homestead Entry Survey No. 224, and the metes-and-bounds survey of Tract 37 in unsurveyed Township 1 South, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted December 5, 1989, and was officially filed December 8, 1989.

These plats were prepared at the request of the U.S. Forest Service, Apache-Sitgreaves national Forest.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Dean E. MacDonald,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 90-771 Filed 1-10-90; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-00-4214-10; GPO-094; OR-42920(WASH)]

Proposed Withdrawal of Lands and Opportunity for Public Meeting; Correction

The land description in FR Doc. 87-17511, published on page 28765, in the issue of Monday, August 3, 1987, is hereby corrected as follows:

On page 28765, a section in the land description was omitted and is hereby corrected to include Sec. 22 in T. 36 N., R. 19 E.

Dated: January 3, 1990.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-680 Filed 1-10-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-00-4214-10; GPO-095; OR-45225(WASH)]

Proposed Withdrawal and Opportunity for Public Meeting, Washington; Correction

The land description in FR Doc. 89-17342, published on page 30955, in the issue of Tuesday, July 25, 1989, is hereby corrected as follows:

On page 30955, a section in the land description was omitted and is hereby corrected to include Sec. 22 in T. 36 N., R. 19 E.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: January 3, 1990.

[FR Doc. 90-681 Filed 1-10-90; 8:45 am]

BILLING CODE 4310-33-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0095), Washington, DC 20503, telephone 202-395-7340.

Title: Initial Regulatory Program; 30 CFR part 710.
OMB Approval Number: 1029-0095
Abstract: Information collected in part 710 is used to ensure States are conducting mine site inspections under the initial regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The information collected is also used to bring pre-existing, nonconforming structures into compliance during the phase-in of the initial regulatory program under SMCRA, and to grant small operators exemptions from some of the initial regulatory program requirements.
Bureau Form Number: None
Frequency: On occasion
Description of Respondents: State regulatory authorities and surface coal mining operators
Annual Responses: One
Annual Burden Hours: One
Average Burden Hours Per Response: One
Bureau Clearance Officer: Andrew F. DeVito, 202-343-5954.

Dated: November 21, 1990.

Annetta L. Cheek,
Chief, Regulatory Development and Issues Management.

[FR Doc. 90-684 Filed 1-10-90; 8:45 am]
BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0035), Washington, DC 20503, telephone 202-395-7340.

Title: Surface Mining Permit Applications—Minimum Requirements for Environmental Resources, 30 CFR part 779
OMB approval number: 1029-0035
Abstract: Applicants for surface coal mining permits are required to provide an adequate description of the environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.
Bureau Form Number: None
Frequency: On occasion
Description of Respondents: Coal Mine Operators
Annual Responses: 716
Annual Burden Hours: 225,241
Estimated Completion Time: 315 hours
Bureau clearance officer: Andrew F. DeVito, 202-343-5981.

Dated: December 6, 1989.

Andrew F. DeVito,
Acting Chief, Regulatory Development and Issues Management.

[FR Doc. 90-687 Filed 1-10-90; 8:45 am]
BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-308]

Certain Key Blanks for Keys of High Security Cylinder Locks; Designation of Commission Investigative Attorney

Notice is hereby given that, as of this date, John R. Kroeger, Esq., of the Office of Unfair Import Investigations 500 E Street, SW., Washington, DC 20436 is designated as the Commission investigative attorney in the above-cited investigation instead of David A. Guth, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: January 5, 1990.

Respectfully submitted,

Jeffrey R. Whieldon,
Acting Director, Office of Unfair Import Investigations.

[FR Doc. 90-648 Filed 1-10-90; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31588]

The Atchison, Topeka and Santa Fe Railway Co.—Trackage Rights Exemption—Burlington Northern Railroad Co.; Exemption

Burlington Northern Railroad Company has agreed to grant overhead trackage rights to The Atchison, Topeka and Santa Fe Railway Company between Kansas City and St. Joseph, MO, a distance of 60.36 miles, and between Armour, MO, and Atchison, KS, a distance of 3.55 miles. The trackage rights were to have become effective on or after December 29, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Guy Vitello, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 8, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 90-741 Filed 1-10-90; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31589]

The Atchison, Topeka and Santa Fe Railway Co.—Trackage Rights Exemption—Missouri Pacific Railroad Co.; Exemption

Missouri Pacific Railroad Company has agreed to grant overhead trackage rights to the Atchison, Topeka and Santa Fe Railway Company between milepost 343.2, at Algoa, TX, and milepost 284.1, at Bay City, TX, a distance of approximately 59 miles. The

trackage rights were to have become effective on or after December 29, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Guy Vitello, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Blvd., Chicago, IL 60604.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. (1980).

Dated: January 8, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-742 Filed 1-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31583]

Chicago South Shore and South Bend Railroad—Trackage Rights Exemption—Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW)—has agreed to grant overhead trackage rights to Chicago South Shore and South Bend Railroad (CSS) between the connecting tracks to the Grand Trunk Western Railroad Company at Stillwell, IN, and CSS's track at Michigan City, IN, a distance of over 19 miles. The trackage rights will take effect when the written agreement is executed.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John F. De Podesta, Pepper, Hamilton & Scheetz, 1300 Nineteenth Street, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 8, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-737 Filed 1-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31558]

Indiana Hi-Rail Corp.—Petition for Exemption—Acquisition and Operation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505 the Commission exempts from the provisions of 49 U.S.C. 10761, 10762 and 11145, the operations of Indiana Hi-Rail Corporation over a 47.14-mile line of railroad between Richmond, IN and Fernald, OH to be acquired from CSX Transportation, Inc.

DATES: This exemption will be effective on January 18, 1990. Petitions for reconsideration must be filed by January 31, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31558 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Richard A. Allen, Richard P. Schweitzer, Zuckert, Scoutt & Rosenberger, 888 Seventeenth Street, NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained iin the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc. Room 2229, Interstate Commission Building, Washington, DC 20423. Telephone (202) 289-4537/4539. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Decided: December 21, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett. Commissioner Lamboley dissented with a separate expression. Vice Chairman Simmons dissented.

Noreta R. McGee,

Secretary.

[FR Doc. 90-738 Filed 1-10-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31569]

Kankakee, Beaverville and Southern Railroad Co.,—Operation Exemption—Line in Benton County, Indiana

Kankakee, Beaverville and Southern railroad Company (KBSR) has filed a notice of exemption to operate a 25.7-mile line of railroad located in Benton County, IN. The line consists of two segments, one of which was abandoned by Consolidated Rail Corporation (Conrail) in Docket No. AB-167 (Sub-No. 991N), Conrail Abandonment of the Fowler Secondary Track in Benton County, Indiana (not printed), served February 13, 1987, and the other by Norfolk and Western Railway Company (NW) in Docket No. AB-290 (Sub-No. 16), Norfolk and Western Railway Company—Abandonment—Between Lafayette, IN and Gibson City IL, in Benton County, IN and Vermillion and Ford Counties, IL (not printed), served June 28, 1988. The Conrail segment extends between Swanington, IN, near former Conrail milepost 199.68, to Templeton, IN, near former Conrail milepost 192.44 and NW milepost SP-277.4. The NW segment extends from that point at Templeton to Lafayette, IN, near former milepost SP-259.0. Illiana Railroad Services, Inc. (Illiana), was to acquire the Cornail segment from Benton Central Railroad Company, a noncarrier, and the NW segment from NW on or after December 15, 1989. KBSR will operate both segments under an agreement with Illiana.

Comments must be filed with the Commission and served on Kevin M. Sheys, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 5, 1990.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee

Secretary.

[FR Doc. 90-739 Filed 1-10-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 6, 1989, a Consent Decree in *United States* v. *City of Donna, Texas,* Civil Action No. M-88-023, was lodged with the United States District Court for the Southern District of Texas, McAllen Division.

The Consent Decree requires the City of Donna, Texas and Knapp-Sherrill Company, Inc. to undertake programs to attain and maintain compliance with all applicable pretreatment standards and the Act. The City must also maintain compliance with its NPDES permit. To achieve these goals, the City will upgrade its POTW to expand its capacity and Knapp-Sherrill will upgrade its pretreatment facilities to more effectively treat its waste. Knapp-Sherrill has agreed to pay a civil penalty of $80,000 to the United States and has also agreed to pay the City $82,000 to assist in the expansion of its POTW. The consent decree does not call for any penalty payment from the City. The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *City of Donna, Texas,* D.J. Ref. No. 90-5-1-1-3022.

The Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas Courthouse and Federal Building, 515 Rusk Avenue, Houston, Texas, 77002; at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas Texas, 75202; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.60 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-766 Filed 1-10-90; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to Safe Drinking Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 15, 1989, a proposed Consent Decree in *United States* v. *Dale Moreau,* Civil Action No. 87-0068-BG-(M), was lodged with the United States District Court for the Western District of Kentucky. The complaint sought injunctive relief and the recovery of civil penalties under the Safe Drinking Water Act for violations of the Underground Injection Control regulations promulgated under that Act. The violations occurred in connection with defendants' operation of three enhanced recovery underground injection wells located in Metcalfe County, Kentucky. Under the proposed Consent Decree, the defendants will pay a civil penalty totalling $16,000 in settlement of the United States' claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Dale Moreau,* D.J. Ref. 90-5-1-1-2787.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Kentucky, Tenth Floor, Bank of Louisville Bldg., 510 West Broadway, Louisville, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044, or in person at the U.S. Department of Justice Building, room 1517, 10th Street and Pennsylvania Avenue NW., Washington, DC.

Richard B. Stewart,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 90-768 Filed 1-10-90; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on December 18, 1989, a proposed consent decree in *United States* v. *Yaworski, Inc., et al.,* and *State of Connecticut* v. *Yaworski, Inc., et al.,* Civil Action No. N-89-615, was lodged with the United States District Court for the District of Connecticut. The actions were brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and certain state statutes for cleanup of the Yaworski Lagoon Superfund Site located in Canterbury, Connecticut, and for the recovery of costs expended by the United States and the State in connection with the site.

The consent decree is entered into between the United States and the State of Connecticut; Yaworski, Inc., and James Yaworski and Rose Yaworski, the owners and operators of the site; and eight generator defendants, Pervel Industries, Inc., InterRoyal, Triangle PWC, Inc., Revere Textile Prints Corp., Kaman Aerospace Corp., Rogers Corp., Ross & Roberts, and C&M Corp. The decree requires the defendants to implement the remedial action selected by the Environmental Protection Agency ("EPA") for the site, to reimburse the United States and the State of Connecticut for their response costs at the site, and to pay future oversight, operation and maintenance costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Yaworski, Inc., et al.,* D.O.J. Ref. 90-11-2-307.

The proposed consent decree may be examined at the office of the United States Attorney, District of Connecticut, United States Courthouse, 141 Church Street, New Haven, Connecticut 06510, and at the Region I Office of the Environmental Protection Agency, John F. Kennedy Building, Boston, Massachusetts 02203. Copies of the

proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the decree should be accompanied by a check in the amount of $8.60 for copying costs payable to the "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-769 Filed 1-10-90; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 14, 1989, a proposed Consent Decree in *United States* v. *Western States Construction, Inc. and Carson City School District,* Civil No. CV-N-87-436-BRT (D. Nev.), was lodged with the United States District Court for the District of Nevada. The Complaint sought civil penalties and other relief against Western States Construction, Inc., pursuant to sections 112 (c) and (e), and 113 of the Clean Air Act ("Act"), 42 U.S.C. 7412 (c) and (e) and 42 U.S.C. 7413, respectively, and the notification, removal, and disposal requirements for the National Emission Standards for Hazardous Pollutants ("NESHAP") for asbestos, 40 CFR part 61, part 61, subpart M. The defendants' violations included failed to notify the EPA in writing prior to scheduled demolition of a facility containing friable asbestos material, failing to remove friable asbestos material from a facility prior to demolition, failing to adequately wet asbestos material during and after removal in order to prevent its emission into the environment, and failing to properly dispose of asbestos material in an EPA approved disposal facility.

The proposed Consent Decree requires Western States Construction to pay $20,000 in settlement of the United States' claims for civil penalties and the Carson City School District will be required to pay $5,000 in settlement of the United States' claims for civil penalties. Each of the defendants is subject to a one year injunction against violation of the Act or the asbestos NESHAP.

The decree also requires that any further asbestos removal or renovation be performed by persons who have completed training in asbestos identification, asbestos removal techniques and worker safety.

The United States Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resource Division, United States Department of Justice, Post Office Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Western States Construction, Inc. and Carson City School District,* D. J. Ref. No. 90-5-2-1-1126.

The proposed Consent Decree may be examined at the office to the United States Attorney, District of Nevada, 300 Booth Street, Reno, Nevada, or at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1732 (R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the address provided above.

When you request a copy of the Consent Decree by mail, please enclose a check payable to the "Treasurer of the United States" in the amount of $2.00 (for the cost of reproduction, 10 cents per page).

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice.

[FR Doc. 90-767 Filed 1-10-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-90-01-C]

Darmac Associates Corp.; Petition for Modification of Application of Mandatory Safety Standard

Darmac Associates Corporation, R.D. #3, Box 3629, Grove City, PA 16127 has filed a petition to modify the application of 30 CFR 75.1710-1 (canopies or cabs) to its Chicora No. 1 Deep Mine (I.D. No. 36-07876) located in Butler County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that mobile bridge conveyor units (self-propelled electric face equipment) be operated with a canopy. The petitioner requests that such equipment be allowed to operate without a canopy under permanently supported roof.

2. Under normal operating conditions the canopies on such units can drop abruptly while the equipment operator is underneath, resulting in serious injuries.

3. The coal seam ranges from 48 to 52 inches thick. Four self-propelled mobile bridge units, each approximately 36 feet long, serve as mobile belt conveyors to transport coal from the continuous mining machine directly to the section belt.

4. Removing the canopy would reduce injuries caused by the equipment but would not increase hazards from falls of roof or rib.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on of before February 12, 1990. Copies of the petition are available for inspection at that address.

Dated: January 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-705 Filed 1-10-90; 8:45 am]

BILLING CODE 4510-43-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Announcement of Meeting

Background

The Lower Mississippi Delta Development Commission was created by Public Law 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that

makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its final report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, and Tennessee no later than May 14, 1990.

This notice announces the Louisiana public hearing.

Public Hearing

Time: 5:30 p.m., January 23, 1990.
Place: Southern University, Harding Boulevard, Baton Rouge, Louisiana 70813.
Status: Open Meeting.
Contact: Ron Register, Telephone (901) 753-1400.
Time: 5:30 p.m., January 24, 1990.
Place: Northeastern Louisiana University, 700 University Avenue, Monroe, Louisiana 71209.
Status: Open Meeting.
Contact: Ron Register, Telephone (901) 753-1400.

Wilbur F. Hawkins,
Executive Director.

[FR Doc. 90-762 Filed 1-10-90; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-06]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATES: January 25, 1990, 9 a.m. to 4:40 p.m.

ADDRESSES: Capital Gallery, West Wing, room 100, 600 Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Haymes, Code EZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1435).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Astrophysics Subcommittee provides advice to the Astrophysics Division and to the SAAC on operation of the Astrophysics Program and on the formulation and implementation of the Astrophysics research strategy. The Subcommittee will meet to discuss recent developments, and plan future Subcommittee activities. The Subcommittee is chaired by the Dr. Irwin Shapiro and is composed of 34 members. The meeting will be open to the public up to the capacity of the room (approximately 50 including Subcommittee members).

Type of Meeting: Open.
Agenda: Thursday, January 25.
9 a.m.—Introduction.
9:10 a.m.—Recent Developments.
9:55 a.m.—Review of Mission Operations and Data Analysis Program.
11:10 a.m.—Astrophysics Proposal Writing.
12:50 p.m.—International Payloads/Lageos—3.
2:20 p.m.—Report from Bahcall Committee.
3:05 p.m.—Science Operations Management Operations Working Group (MOWG) Presentation.
3:45 p.m.—Astrotech—21 Update.
4:15 p.m.—Future Meeting Planning.
4:30 p.m.—Adjourn.

Dated: January 5, 1990.

John W. Gaff,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-691 Filed 1-10-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Meeting; Committee on Equal Opportunities in Science and Engineering

Amendment: The Committee on Equal Opportunities in Science and Engineering Meeting has been changed from two and one-half days to two days. For your convenience, the revised schedule is produced below in its entirety.

Name: Committee on Equal Opportunities in Science and Engineering.
Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Dates: January 24, 25, 1990.
Times/Rooms: January 24: Subcommittee on Women, 9:00 a.m.-12:00 p.m., Room 540; January 24: Subcommittee on Persons with Disabilities, 1:30 p.m.-4:30 p.m., Room 540; January 25: Subcommittee on Minorities, 9:00 a.m.-12:00 p.m., Room 543; January 25: Full Committee, 1:30 p.m.-5:00 p.m., Room 540.
Type of Meeting: Open.
Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, Room 635. Telephone Number: 202-357-7066.
Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, professional and technical fields.
Minutes: May be obtained from the Executive Secretary at the above address.
Agenda: To review progress by the subcommittees, become familiar with successful intervention programs, and to meet with the Director and other NSF staff.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 90-760 Filed 1-10-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Public Service Company of New Hampshire

[Docket No. 50-443]

Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Company of New Hampshire (the licensee) to withdraw its September 21, 1989 application for proposed amendment to Facility Operating License No. NPF-67 for the Seabrook Station, Unit No. 1, located in Seabrook Township, Rockingham County, New Hampshire.

The proposed amendment would have added cross-connect piping from the Plant Instrument Air System, outside Containment, to the Containment Building Compressed Air System, inside Containment. The purpose of the proposed change was to enhance plant reliability and operational flexibility by providing a back-up air supply to the Containment Building Compressed Air System.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 26, 1989 (54 FR 43634). However, by letter dated November 29, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment, dated September 21, 1989, and the licensee's letter, dated November 29, 1989, which withdrew the

application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the local public document room at the Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Dated: at Rockville, Maryland, this 4th day of January 1990.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-710 Filed 1-10-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-390A]

Tennessee Valley Authority Receipt of Antitrust Information

By letter dated December 5, 1989, the Tennessee Valley Authority (TVA) submitted antitrust information in conjunction with the application for an operating license for a pressurized water reactor known as Watts Bar Nuclear Plant, Unit 1 (Watts Bar) located approximately 50 miles northeast of Chattanooga, Tennessee. The data submitted contain antitrust information for review pursuant to Nuclear Regulatory Commission Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with its Antitrust Review of Operating License Applications for Nuclear Power Plants." These data will assist the staff in determining whether there have been any significant changes since the completion of the antitrust operating license review conducted for Watts Bar in 1979.

In light of the fact that the antitrust operating license review was completed over ten years ago and Watts Bar is not scheduled to be completed until sometime in late 1991 or 1992, the staff requested TVA to provide an updated response to Regulatory Guide 9.3 to determine whether or not significant changes have occurred since the earlier review. The updated Regulatory Guide 9.3 response addresses relevant information since TVA's submission of Regulatory Guide 9.3 information for Watts Bar dated August 31, 1978. This **Federal Register** notice acknowledges receipt of this updated information and seeks public comment on same.

Upon completion of a staff antitrust review, the Director of the Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act, as amended. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluation that are requested will be published in the **Federal Register** and copies sent to the Washington, DC and local public document rooms. Copies of the general information portion of the application for an operating license and the antitrust information submitted are available for public examination and copying for a fee at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. 20555, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Any person who desires additional information regarding the matters covered in this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred in the applicant's activities since the completion of the initial antitrust operating license review for Watts Bar should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, within 30 days of the initial publication of this notice in the **Federal Register.**

Dated at Rockville, Maryland this 4th day of January 1990.

For the Nuclear Regulatory Commission.

Eileen M. McKenna

Acting Chief Policy Development and Technical Support Branch Program Management, Policy Development and Analysis Staff Office of Nuclear Reactor Regulation.

[FR Doc. 90-711 Filed 1-10-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206; License No. DPR-13]

Southern California Edison Co. and San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1; Order Confirming Licensee Commitments on Full-term Operating License Open Items

I.

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR-13, which authorizes the licensees to operate San Onofre Nuclear Generating Station, Unit 1, at power levels up to 1347 megawatts thermal (rated power). The facility is a pressurized water reactor located on the licensees' site in San Diego County, California. The license is subject to all applicable provisions of the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC).

II.

On May 1, 1989, the NRC staff met with the licensees to discuss the NRC requirements for conversion of Provisional Operating License No. DPR-13 to a full-term operating license and additional actions needed to resolve NRC concerns with respect to broken bolts on the reactor vessel thermal shield. The NRC staff explained that, for a variety of reasons, certain safety-significant improvements due to be made to the facility had been unacceptably delayed over the years and that a firm, integrated schedule must be developed to complete these actions in the next two refueling outages. These actions consist of Three Mile Island Action Plan items, NRC generic letter items, and action items resulting from the integrated plant safety assessment for San Onofre Unit 1 (NUREG-0829). Collectively, these actions are referred to as the full-term operating license (FTOL) open items and are identified in Attachments 1 and 2. They are so called because their implementation is considered a prerequisite to conversion of Provisional Operating License No. DPR-13 to an FTOL.

The licensees were requested to finalize and document the schedules discussed at the meeting in a letter to the NRC, and to include their rationale for the schedules.

With respect to the thermal shield, the licensees proposed a mid-cycle inspection by not later than June 30, 1990, and a vibration monitoring and action plan to resolve the staff's concerns. These commitments were subsequently confirmed in Amendment No. 127 issued on May 15, 1989.

The schedular request pertaining to the FTOL open items was subsequently confirmed in an NRC letter to licensees dated August 17, 1989, which reiterated the NRC staff's desire to have the FTOL open items completed in the next two refueling outages, even if the outages had to be extended in order to finish them. The letter stated that the NRC staff understood that its request did

involve significant commitments that would require some time for evaluation, but requested the licensees to give the matter priority and to respond by the end of September 1989.

III.

On October 2, 1989, the licensees responded with an integrated schedule (shown in Attachments 1 and 2) for accomplishing the FTOL open items in the next two refueling outages. The plan calls for completing or resolving 18 open items in the next refueling outage (fuel cycle 11) and 21 open items in the second refueling outage (fuel cycle 12)—a total of 39 items. The schedule shows significant improvements in both scheduling and activity. The reactor vessel thermal shield would be repaired in the outage beginning June 30, 1990, rather than inspected and repair deferred until September 1991. Also, the licensees, having determined that significant safety improvement will be achieved by upgrading the recirculation portion of the safety injection system as well as the injection portion, have included these improvements in the schedule for the cycle 12 outage. The licensees also have committed to install a plant-specific reference simulator for operator training. Taken as a whole, the licensees have made significant commitments that involve substantial safety improvements to the facility and that are responsive to the NRC staff's request.

To support this schedule as proposed, the licensees propose to combine the fuel cycle 11 refueling with repair of the thermal shield and inspection of the steam generator tubes in one extended outage (June 30, 1990, to about December 2, 1990) (Attachment 3).

The licensees are currently required to install a reactor vessel level indicating system and upgrade the core exit thermocouples by not later than startup for fuel cycle 11 in response to TMI Action Plan Item II.F.2, "Inadequate Core Cooling Instrumentation" (NRC order dated May 10, 1989). Because the fuel cycle 11 refueling would start much earlier than previously scheduled (June 30, 1990, rather than September 17, 1991), the licensees do not have sufficient time to design and test a reactor vessel level monitor because existing designs must be modified for installation at San Onofre Unit 1 (licensees' amendment request dated November 1, 1989). The licensees propose to install the reactor vessel level monitor and upgrade the core exit thermocouples at the same time by not later than fuel cycle 12, and submit specific implementation plans by December 1, 1990. This would entail a relatively minor change in schedule that would involve an additional 9 months of plant operation before implementation and is acceptable.

The second schedular change involves the inspection schedule for the steam generator tubes which would be required to be inspected by March 7, 1990 (licensees' amendment request dated October 31, 1989). The licensees request that this inspection be coordinated with the long outage beginning June 30, 1990. This revised schedule for inspection is acceptable, since the licensees have shown that steam generator tube corrosion has stabilized, and this is a relatively modest 4-month extension of a 24-month inspection interval.

IV.

I find that the licensees' commitments collectively represent significant safety improvements to the facility and are acceptable. In view of the foregoing, I have determined that the public health and safety require that the licensees' commitments contained in their letter of October 2, 1989, be confirmed by order.

Accordingly, pursuant to Sections 103, 161b and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered that Provisional Operating License No. DPR-13 be modified as follows:

Licensees shall implement the schedular commitments contained in their letter of October 2, 1989, as summarized in Attachments 1, 2, and 3 hereto with respect to the specific activities to be conducted at outages for fuel cycles 11 and 12 (exact dates of the outages may be revised from time to time). Specific plans for implementation of Item II.F.2, "Inadequate Core Cooling Instrumentation System" (Generic Letter 82-28), shall be submitted to the NRC for approval by no later than December 1, 1990.

The licensees or any person who has an interest adversely affected by this order may request a hearing within 30 days of the date of publication of this order in the **Federal Register**. A request for hearing must be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with copies to the Assistant General Counsel for Enforcement at the same address. If a person other than the licensees requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested, the Commission will issue an order designating the time and place of the hearing. If a hearing is held, the issue to be considered shall be whether this order should be sustained. Upon the failure to answer or request a hearing within the specified time, this order shall be final without further proceedings.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 2nd day of January, 1990.

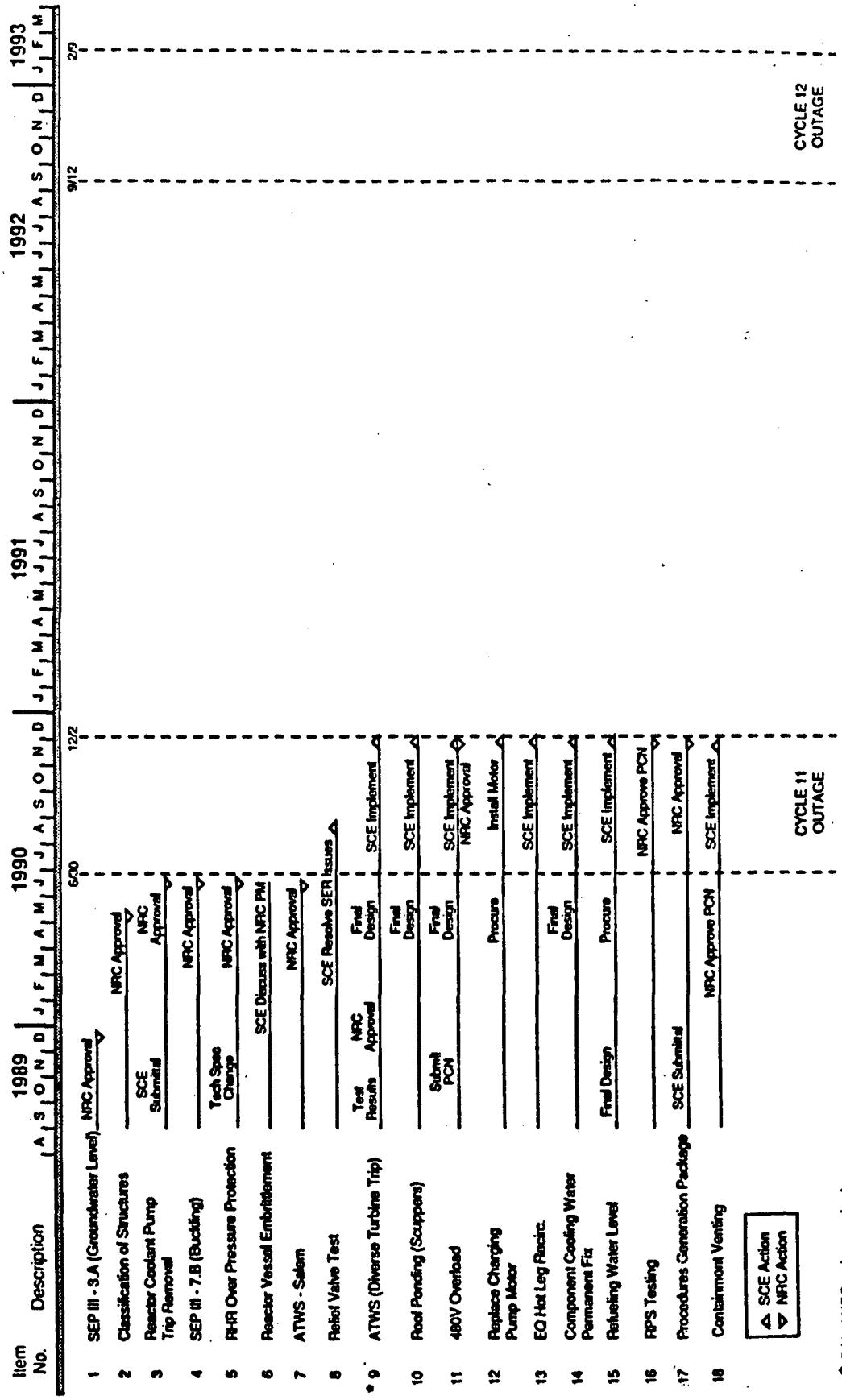
Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

BILLING CODE 7590-01-M

ATTACHMENT 1

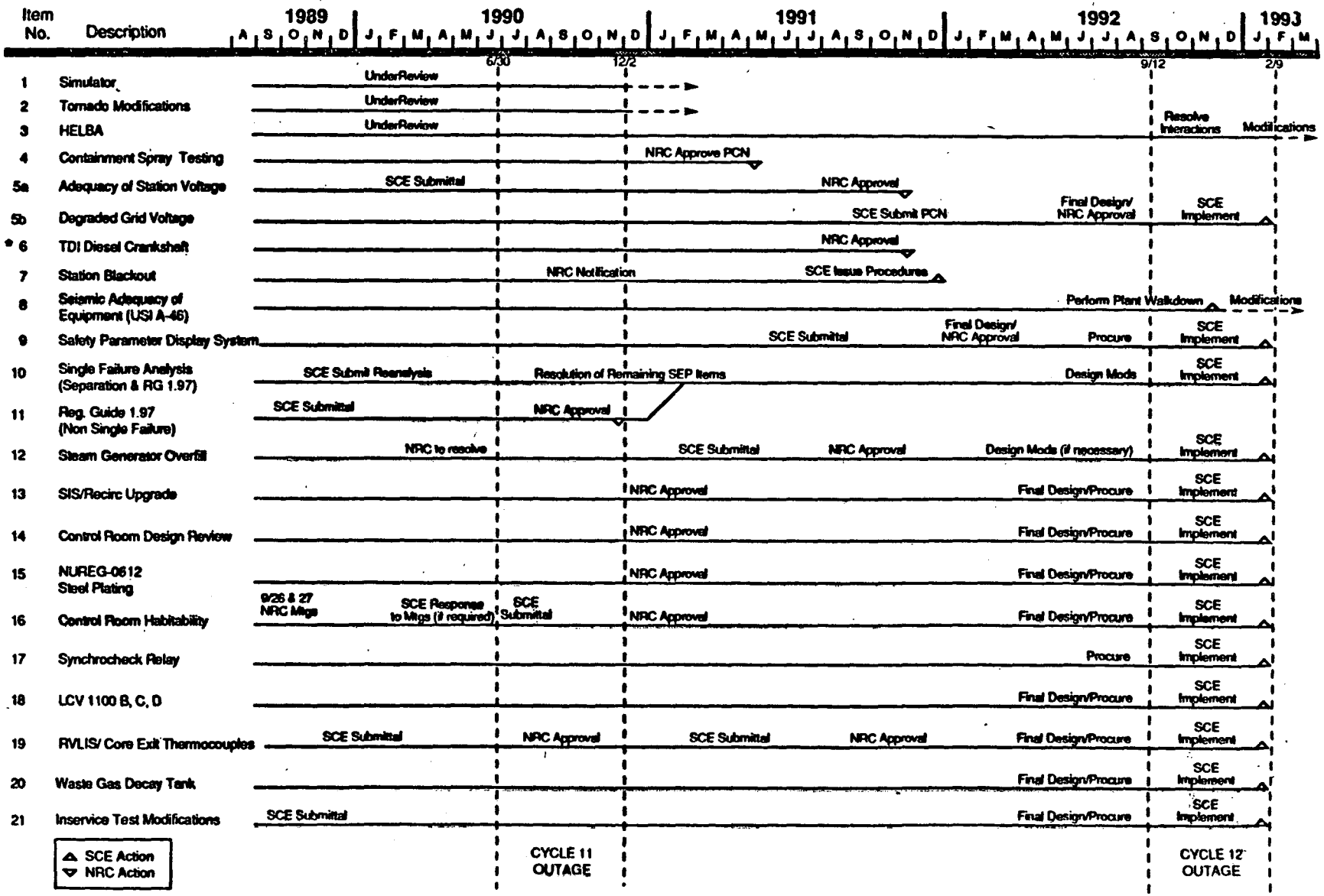
SONGS 1 Cycle 11 FTOL Projects



* Critical NRC action required

ATTACHMENT 2

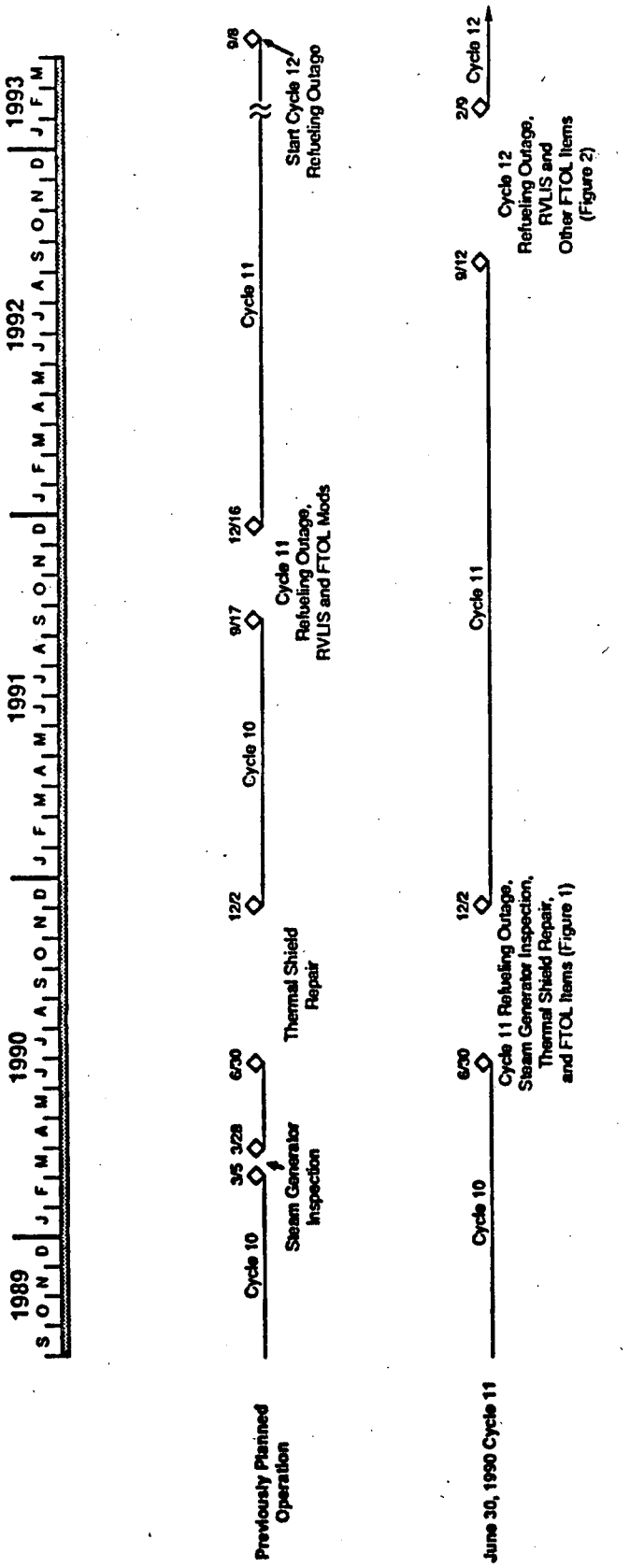
SONGS 1 Cycle 12 FTOL Projects



* Critical NRC action required

ATTACHMENT 3

SONGS 1 Operation Schedule



[FR Doc. 90-708 Filed 1-10-90; 8:45 am]

BILLING CODE 7590-01-C

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 82 to Facility Operating License No. NPF-10 and Amendment No. 72 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County California.

The amendments were effective as of the date of issuance.

The amendments revise the following sections of the Technical Specifications:

3/4.3.2 "Engineered Safety Feature Actuation System Instrumentation"
3/4.3.3.1 "Radiation Monitoring Instrumentation"
3/4.4.10 "Reactor Coolant Gas Vent System"

Specifically in each case, the surveillance interval has been extended from a nominal 18 months to once per refueling interval, which is defined as at least once every 24 months. These amendments were in response to applications for amendments designated as PCN 266, 267 and 291.

The applications for amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which is set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 24, 1989 (54 FR 8034), February 24, 1989 (54 FR 8038), and May 16, 1989 (54 FR 21142). No request for a hearing or petition for leave to intervene was filed following the notices.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendments will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the applications for amendments dated December 19, 1988 and December 30, 1988, which were supplemented September 5, 1989; and April 7, 1989, which was supplemented November 6, 1989; (2) Amendment No. 82 to License No. NPF-10 and Amendment No. 72 to License No. NPF-15; (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 2nd day of January, 1990.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Project Manager, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-709 Filed 1-10-90; 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:* Certification of Relinquishment of Rights.
(2) *Form(s) submitted:* G-88.
(3) *OMB Number:* 3220-0016.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Revision of a currently approved collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents: Individuals or households.*
(8) *Estimated annual number of respondents:* 3,600.
(9) *Total annual responses:* 3,600.
(10) *Average time per response:* .1 hours.
(11) *Total annual reporting hours:* 360.
(12) *Collection description:* Under section 2(e)(2) of the Railroad Retirement Act, the Railroad Retirement Board must have evidence that an applicant for an age and service, spouse or divorced spouse annuity has relinquished rights to return to the service of a railroad employer. The collection provides the means for obtaining this evidence.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Ronald J. Hodapp, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald J. Hodapp, 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 J. Hodapp,

Director of Information Resources Management.

[FR Doc. 90-683 Filed 1-10-90; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27590; File No. SR-Amex-89-31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-Lot Market Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Exchange proposes that its pilot program regarding execution of odd-lot market orders be extended for one year.[1] The Amex received approval, on

[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which will expire on January 10, 1990, to continue without interruption. An odd-lot market

Continued

a one year pilot basis, of amendments to Exchange Rule 205 to require execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential; and received permanent approval of procedures to provide that the odd-lot portion of a Part of Round Lot ("PRL") order will be executed at the same price as the round lot portion, with no differential charged.[2]

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 Amex 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 III below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose. In January 1989, the Commission approved proposed amendments to Amex Rule 205 as a one year pilot program.[3] Rule 205, as amended, requires that odd-lot market orders with no qualifying notations are to be executed at the price of the prevailing Amex quotation in the stock at the time the order is represented in the market either by being received at the trading post or through the Exchange's Post Execution Reporting system ("PER"). In addition, Rule 205 was amended to provide that the odd-lot portion of a PRL order [4] will be executed at the same price as the round lot portion, with no differential charged, whether entered directly with the specialist or through the PER system.

On December 1, 1989, the Exchange implemented enhancements to its PER system to provide for the automatic execution of odd-lot market orders and PRLs as set forth in the Approval Order. The Exchange proposes that the pilot program applicable to odd-lot execution procedures be extended for one year. This will permit an adequate time period for the Exchange to assess odd-lot execution procedures under the pilot program and to provide the Commission with additional information regarding operation of the PER system enhancements.

Basis. The proposed rule change is consistent with section 6(b) of the Act and furthers the objectives of sections 6(b)(5) and 11A(a)(1) in that it facilitates the economically efficient execution of odd-lot transactions, which will result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-89-31 and should be submitted by February 1, 1990.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6 [5] and 11A(a)(1)[6] of the Act and the rules and regulations thereunder. In particular, the Commission believes that the revised procedures which provide for pricing of odd-lot market orders at the prevailing market quote rather than a subsequent transaction should provide investors with more timely executions of these orders. Moreover, these orders will receive execution prices that more accurately reflect market conditions than would otherwise be the case under former procedures. In addition, the Exchange implemented enhancements to its PER system to provide for the automatic execution of odd-lot market orders and PRLs, as set forth in the Approval Order, on December 1, 1989.[7] The Commission believes that it is reasonable to extend the pilot program for one more year to enable the Exchange to fully review the new odd-lot execution procedures and PER system enhancement operations.

The Commission reiterates the request stated in its 1989 Approval Order, however, that the Amex analyze the difference in executions between using the Intermarket Trading System ("ITS") best bid or offer and the Amex quote without the differential. Specifically, the Commission is interested in whether customers are receiving a better execution, both in terms of price and time, using the new Amex system. The Commission also is interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer and no differential. The Commission requests that Amex provide a report on these questions by September 30, 1990.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[8]

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order is an order of less than a unit of trading to buy, sell, or sell short, which carries no further qualifying notations.

[2] *See* Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (approving File No. SR-Amex-88-23) ("Approval Order").

[3] *Id.*

[4] A PRL order is an order consisting of a round-lot and an odd-lot portion.

[5] 15 U.S.C. 78f (1982).

[6] 15 U.S.C. 78k-1(a)(1) (1982).

[7] *See* Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (approving File No. SR-Amex-88-23) for a description of the Exchange's odd-lot procedures and the Commission's rationale for approving those procedures on a one-year pilot basis. The discussion in that order is incorporated by reference into this order.

[8] No comments were received in connection with the proposed rule change which implemented these procedures. *See* Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (approving File No. SR-Amex-88-23).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change referenced above be, and hereby is, approved for a one-year period ending on January 10, 1991..

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: January 5, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-729 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27589; File No. SR-MSE-89-11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Amendments to Article XX, Rule 37 (Guaranteed Execution System)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1989, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("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 text of the proposed rule change amending the MSE's Article XX, Rule 37 is as follows:

(Additions italicized; deletions bracketed)

Rule 37. No change

1.-2. No change

3. All agency limit orders in Dual Trading System issues will be filled if one of the following conditions occur:

(a) The bid or offering at the limit price has been exhausted in the primary market (as defined in the CTA plan); *NOTE: orders will be executed in whole or in part, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market,*

(b)-(c) No change

4.-7. No change

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30-3(a)(12) (1989).

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 test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article XX, Rule 37 provides that the MSE Guaranteed Execution System (the "BEST System") is available to Exchange members and, where applicable, to members of a participating exchange who send orders to the Exchange Floor through a foreign exchange linkage established pursuant to Rule 42. The BEST System includes all issues in the MSE Specialist System that are traded in the Dual Trading System and NASDAQ/NMS securities.

Currently, Rule 37 requires that all agency orders (*i.e.,* orders for the accounts of non-broker/dealers) from 100 up to and including 2099 shares be filled within certain guaranteed pricing parameters by the specialist.[1] Furthermore, under current Rule 37, agency limit orders in Dual Trading System issues will be filled on the MSE if one of the following conditions are met: (a) The bid or offering at the limit price has been exhausted in the primary market, (b) there has been price penetration of the limit price in the primary market, or (c) the stock is trading at the limit price in the primary market unless it can be shown that the order would not have been executed if it had been sent to the primary market (*i.e.,* insufficient volume has traded in the primary market at the limit price) or the broker and specialist agree to a specific volume related or other criteria for requiring a fill. These primary market protection rules are designed to assure a customer that his order will receive an execution on the MSE as good as one he would have received on the primary market.

The proposed amendment to Rule 37 will modify the parameters for a guaranteed execution for any agency limit order when the bid or offering at the limit price has been exhausted in the primary market. The proposed change will clarify that when a bid or offering is exhausted, orders in the book on the MSE will be executed, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market. The Exchange believes that this proposal will result in orders on the MSE receiving the same fill as would have been received in the primary market without imposing undue burdens on specialists to execute limit orders on the MSE even though such orders would not have been executed in the primary market.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it removes impediments to the mechanisms of a free and open market and a national market system while protecting investors and promoting just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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.,

[1] Generally, under Rule 37, market orders are guaranteed execution at the best bid and offer, while limit orders are guaranteed execution based on trading in the primary market.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at 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 MSE. All submissions should refer to file No. SR-MSE-89-11 and should be submitted by February 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 5, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-730 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27581; Files No. SR-NSCC-89-13]

Sel-Regulatory Organizations; National Securities Clearing Corporation; Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Concerning the Automated Settlement of Mutual Fund Dividends

December 29, 1989.

The National Securities Clearing Corporation ("NSCC"), on August 14, 1989, filed a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The rule change modifies the Networking aspect of NSCC's Fund/Serv to provide for the automated settlement of mutual fund dividends through NSCC's Networking Service. Notice of this proposal was published in the **Federal Register** on September 8, 1989, to solicit comments from interested persons.[2] No comments were received. On September 29, 1989, the Commission granted accelerated approval of the proposal on a temporary basis through December 31, 1989.[3] NSCC has requested that the temporary order be extended for an additional two months through February 28, 1990.[4] The instant order extends the temporary approval of this proposal through February 28, 1990.

I. Description of the Proposal

The rule change amends NSCC's Rule 52, Section 17 (captioned "Networking").[5] Rule 17, prior to this proposal, had authorized NSCC's broker-dealer and Fund members to use NSCC's Networking Service for the transmission among themselves of mutual fund customer account data. NSCC notes that Networking's "initial phase" provided NSCC members with a centralized data communications system for the exchange of customer information and securities positions.[6]

The proposed amendments to Rule 17 (which NSCC terms Networking's "second phase") provide for the establishment of a Networking dividend service and the automated settlement of cash dividends paid by mutual fund holdings maintained in Networking accounts. While the passing of mutual funds distribution information through the Networking predates this proposal, the actual payment of the mutual fund distributions (except as authorized by the temporary approval of this proposal) still occurs directly between the Fund member and each broker that holds units of the mutual fund. This proposed rule change provides the additional benefit of enabling a Fund member, *i.e.*, a mutual fund, to make only one distribution payment to NSCC (instead of a payment to each broker) which NSCC distributes via Networking to the brokers.[7]

Under the proposal, NSCC provides to broker-dealer and Fund members using Networking Settlement Summary File ("Summary File"). The Summary File consists of two sub-files: (1) the Networking Settlement Summary Detail Output Record ("Output Record"), and (2) the Networking Settlement Summary Trailer Record ("Trailer Record").

The Output Record details on a daily basis for each Fund member and each broker as of the day before a distribution's payable date ("Payable-1"): (1) the payable and settlement dates,[8] (2) the settlement amounts, and (3) all dividend updates (*i.e.*, additions and corrections) up to and including Payable-1. The Trailer Record details the identical information on a daily basis as of settlement date. NSCC makes the Summary File available at approximately 11:00 a.m. (EST) daily.

Under the proposal, Fund members must pay their cash dividend settlement figures in same-day funds, via Fedwire,[9] no later that 1:00 p.m. (EST) on the payable date. NSCC pays its broker members in next-day funds at approximatley 3:00 p.m. Inasmuch as NSCC is paid in same-day funds but pays its members in next-day funds, it credits its broker members with interest earned on those funds.

The Fund members' dividend payments will constitute independent obligations under the proposal. Accordingly, the payments ordinarily will not be netted with the Fund members' other settlement balances. If, however, as a result of Networking dividend corrections and reversals, a Fund member's settlement figure results in a credit balance, NSCC will repay the balance in next-day funds.[10]

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[1] 15 U.S.C. 78s(b) (1982).

[2] *See* Securities Exchange Act Release No. 27199 (August 30, 1989), 54 FR 37395.

[3] *See* Securities Exchange Act Release No. 27324 (September 29, 1989), 54 FR 41707. The Commission found "good cause" for granting accelerated approval under Section 19(b)(2) of the Act inasmuch as NSCC members: had administered training to personnel, had equipment in place, and were scheduled to commence operations with the new system on September 29, 1989. Accordingly, the Commission concluded that it would be burdensome of NSCC's members to stand down and renew their phase-in operations at a later time. *Id.*

[4] *See* letter from Alison Hoffman, Associate Counsel, NSCC, to Jonathan G. Katz, Secretary, SEC, dated December 22, 1989.

[5] "Networking" is an NSCC mutual fund service, provided on a subscription basis, that permits automated transmission of mutual fund data between NSCC members and Fund/Serv. *See* Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544 (File No. SR-NSCC-88-01).

"Fund/Serv" is a more basic NSCC mutual fund service. Participating mutual funds are known as "Fund members." The service is available to all NSCC broker-dealer members for subscription and service fees. The acronym "Serv" of Fund/Serv refers to the services of mutual fund "settlement, entry, and registration verification," services which, among others, are provided by NSCC to the subscribing members. *See, e.g.*, Securities Exchange Act Release Nos. 26377 (December 20, 1988), 53 FR 52546; 24088 (February 10, 1988), 52 FR 5228 (File Nos. SR-NSCC-87-12, SR-NSCC-86-05).

[6] *See* NSCC Important Notice No. A3232, dated August 10, 1989.

[7] NSCC states in its filing that a valid payable date for this purpose will be defined as any date on which New York banks are open for business.

[8] Under the proposal, payable dates and settlement dates ordinarily will be the same. But a Fund member could report its dividend payable information after the payable date. In that case, the settlement date would be the date on which the information was reported. *See* NSCC's Important Notice No. A3232, dated August 10, 1989.

[9] "Fedwire" is an acronym for the Federal Reserve System wire facility which provides a system for transferring funds among all 12 Federal Reserve Banks, their 24 branches, the Federal Reserve offices in Washington, DC and Chicago, and the Commercial Credit Corporation. *See* Division of Marketing Regulation, Securities and Exchange Commission, *The October 1987 Market Break*, at 1-12 (1988).

[10] NSCC notes in its filing that the dividend payments will not be a guaranteed service. If NSCC were to credit a broker with a dividend and not receive the corresponding debit from the Fund member, the credit would be subject to reversal.

II. NSCC's Rationale for the Proposal

NSCC states that the proposed rule change is consistent with section 17A of the Act inasmuch as automating the settlement of mutual fund dividends would promote the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The Commission notes, moreover, that section 17A(a)(1) of the Act expressly encourages the use of automated systems to make the processing of securities transactions more prompt and more efficient.

This proposal permits the automated settlement of mutual fund distributions. That is, for a mutual fund participating in NSCC's Fund/Serv, dividend payments to many broker-dealers can be reduced to only one dividend payment to one clearing agency, NSCC; and NSCC then distributes the dividends to the brokers via its Networking Service in next-day funds.

Nevertheless, the Commission believes it needs further information about the proposal. Accordingly, in order to assess further the benefits, costs, and risks associated with this service, the Commission is extending its temporary approval of this proposal for an additional two months, *i.e.*, through February 28, 1990.

The Commission finds good cause for approving the proposed rule change on a temporary accelerated basis prior to the thirtieth day after the date of publication of notice of filing inasmuch as: (1) this order merely is extending for an additional two months a prior temporary approval order by the Commission;[11] and (2) the NSCC proposal in question constitutes an ongoing operation that is being monitored by the Commission to determine whether it merits prmanent approval.

IV. Conclusion

For the reasons discussed in this order, the Commission believes that the proposal is consistent with the requirements of the Act, particularly Section 17A of the Act and the rules and regulations thereunder. Nonetheless, the Commission desires further information about this proposal before granting permanent approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR-NSCC-89-13) be, and hereby is, approved on a temporary basis through February 28, 1990.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority (17 CFR 200.3(a)(12)).

Jonathan G. Katz,

Secretary.

[FR Doc. 90-727 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

[11] *See supra*, note 3.

[Rel. No. 34-27588; File No. SR-NYSE-89-41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to NYSE Rule 80A

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1989, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("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 proposed rule change amends Exchange Rule 80A to provide that program trading colors (as defined in the Rule) routed through the Exchange's Designated Order Turnaround ("DOT") system will be diverted to a separate file as provided in the Rule (i) for 15 minutes on any day that the Dow Jones Industrial Average ("DJIA") declines by 50 points or more from its closing value on the previous trading day; and (ii) for 30 minutes on any trading day that the price of the primary Standard & Poor's 500 Stock Price Index futures ("S&P 500 futures") contract traded on the Chicago Mercantile Exchange ("CME") declines 12 points below its closing value on the previous trading day. The proposed rule change is being submitted as a one-year pilot program.

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 statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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 Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As noted in SR-NYSE-88-22, the filing in which Rule 80A was originally approved by the Commission,[1] the securities markets in recent years have experienced unprecedented volatility. The Exchange and other market centers have been concerned that significant influxes of sell orders in a concentrated time period related to program trading may create excess volatility that undermines investor confidence in the fairness and orderliness of the securities markets, and may, in fact, constitute a threat to the viability of America's capital markets.

In 1988, the Exchange took several steps to address market volatility:

(i) The Exchange introduced the Individual Investor Express Delivery Service ("IIEDS") to provide for prioritized delivery of systematized orders of under 2,100 shares entered for the accounts of individual investors.[2]

(ii) The Exchange, in conjunction with the CME, developed the procedures in current Rule 80A, whereby program trading orders routed through DOT are diverted to a separate file for five minutes on any day that the price of the primary S&P 500 futures contract traded on the CME declines 12 points below its closing value on the previous trading day.

(iii) The Exchange and the nation's other securities and futures markets have agreed to coordinate halts in trading of one hour on any day that the DJIA declines by 250 points from its closing value on the previous trading day, and two hours on any day that the DJIA declines by 400 points from its closing value on the previous trading day.[3]

The Exchange believes it is appropriate at this time to amend Rule

[1] This filing was approved in Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.

[2] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.

[3] Id.

80A to introduce additional provisions for diverting program trading orders from the market during periods of significant market declines, and to extend the time periods during which such orders are diverted from the market. In the Exchange's view, the these amendments are appropriate at this time to institute a structured mechanism for slowing down what might otherwise be a rapid market decline by providing a means to manage influxes of sell orders related to program trading that may be stimulating excess volatility at specific points in time during the trading day.

The amendments to Rule 80A would:

(i) Provide that program trading orders (as defined in the Rule) routed through DOT in component stocks of the S&P 500 Index will be diverted to a separate file, as provided in the Rule, for 15 minutes, on any day that the DJIA declines by 50 points or more from its closing value on the previous trading day; and

(ii) Provide that such program trading orders routed through DOT will be diverted to a separate file for 30 minutes on any day that the price of the primary S&P 500 futures contract traded on the CME declines 12 points below its closing value on the previous trading day. The purpose of channelling program trades into a separate file, or "sidecar," at times of market volatility is an attempt to isolate one potential cause of market volatility, program trading, from other market activity.

The Exchange believes that these "sidecar" procedures can be expected to have a favorable effect on minimizing excess market volatility related to program trading, and requests that the Commission require all other market centers where component stocks of the S&P 500 Index are traded to adopt comparable procedures.

In a further effort to minimize excess market volatility related to program trading, the Exchange is requesting that its member firms voluntarily refrain from executing program trades (including customer facilitation program trades) for their own accounts. In addition, the Exchange is requesting that its member firms ask their customers to refrain from program trading, unless those trades would have a stabilizing influence on the market, particularly on any day that the DJIA has declined by 50 points or more.

The Exchange will employ the procedures specified below as to quotation spreads and mandatory indications on any day when Rule 80A is in effect.

Guidelines for Quotation Spreads and Mandatory Trading Halts With Indications When Rule 80A is Activated

Quotation Spreads

During any period that Rule 80A is activated and systematized orders in the NYSE-listed component stocks of the S&P 500 Index relating to program trading (as defined in Rule 80A) are diverted to an undisclosed file (*i.e.*, sidecar), the quotation spread in any such stock may be no wider than the following:

—up to one point from or around a last sale of under $20;
—up to two points from or around a last sale of between $20 and $99⅞; and
—up to three points from or around the last sale of $100 or more.

Reasonable trade variations should nevertheless take place during that period based upon supply and demand, and Intermarket Trading System commitments to trade received during any period Rule 80A is activated should receive executions at the best available bid or offer, as appropriate, in the subject security when the commitment is received in accordance with reasonable trade-to-trade continuity.

Mandatory Indications at the Conclusion of a Sidecar Period

During, and at the conclusion of, any sidecar period, trading in any sidecar stock shall halt if there is not sufficient trading interest on the Exchange to allow for orderly executions in that stock. In any event, trading in such stock shall be halted, and a price indication disseminated, where the next sale would be:

—more than one point from a last sale under $20;
—more than two points from a last sale between $20 and $99⅞; and
—more than three points from a last sale of $100 or more.

In any case where trading in any of the 50 highest capitalized NYSE-listed stocks in the S&P 500 Index, or any of the stocks in the Major Market Index not among the 50 highest capitalized NYSE-listed stocks in the S&P 500 Index, is halted, and there is an imbalance in such stock of 50,000 shares or more, the size of the imbalance in such stock will also be disseminated. A trading halt shall not be required on the basis of a 50,000 share imbalance alone, if there is sufficient trading interest on the Exchange to allow for an orderly execution in that stock.

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes these proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

While this proposed rule change is not based on the rules of another self-regulatory organization or of the Commission, one aspect of the Rule was developed in conjunction with a similar rule of the CME.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the 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.

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 February 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: January 5, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-743 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; Arctic Alaska Fisheries Corp., Common Stock, $.01 Par Value (File No. 1-9889)

January 5, 1990.

Arctic Alaska Fisheries Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on January 2, 1990. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 29, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-724 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

[4] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. 35-25019]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 5, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 29, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70-7544)

Northeast Utilities ("NU"), a registered holding company, Western Massachusetts Electric Company, and The Quinnehtuk Company, all located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company, Northeast Utilities Service Company, Northeast Nuclear Energy Company, and The Rocky River Realty Company, all located on Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company, Canal Street, Holyoke, Massachusetts 01040, subsidiaries of NU ("Applicants") have filed a post-effective amendment to their application-declaration under sections 6, 7, 9, 10, and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By prior Commission order, dated November 18, 1988 (HCAR No. 24750), the Applicants were authorized, through December 3, 1990, to enter into short-term borrowings in the form of bank notes pursuant to lines of credit and revolving credit agreements and commercial paper, open account advances by NU to its subsidiaries, and the continuation of a system money pool, subject to stated limits on the aggregate amount of such borrowings that each Applicant could undertake.

Applicants now seek to increase the aggregate amount of such short-term borrowings authorized for The Rocky River Realty Company, NU's Connecticut non-utility real estate subsidiary, from $15 million to $20 million.

The Connecticut Light and Power Company (70-7639)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric utility subsidiary of Northeast Utilities ("NU"), a registered holding company, has filed an application under section 6(b) of the Act and Rule 50 thereunder.

CL&P proposes to issue and sell up to $300 million principal amount of its first and refunding mortgage bonds, or preferred stock, or a combination of both (together, the "Securities") in one or more series, from time to time through June 30, 1991. The amount of preferred stock to be issued and sold will not exceed $100 million. Each series of bonds would have a maturity of not less than five nor more than thirty years. The interest rate (which shall be a multiple of ⅛ of 1%) and the price, exclusive of accrued interest (which shall not be less than 98% nor more than 100% of the principal amount), will be determined by the competitive bidding standards of Rule 50 of the Act, as modified (HCAR No. 22623, September 2, 1982). CL&P proposes to issue and sell up to a total of $100 million aggregate par value of preferred stock, $50 par value or Class A Preferred Stock, $25 par value, or a combination of both (together, the "Preferred Stock"). The Preferred Stock would have either a fixed dividend rate, an adjustable dividend rate or would be an auction rate preferred stock. With the exception of the auction rate preferred stock, the dividend rate would be

determined through the receipt of competitive offers. CL&P may amend the application to seek an exception from the competitive bidding requirements of Rule 50 so that it may offer the Securities through a negotiated public offering. In issuing and selling the Securities, CL&P would invite at least two or more investment banking firms, banks or other financial institutions to submit proposals for the purchase of the Securities as representative of the underwriters, for their own account, as agent, or for resale.

Up to $150 million of the proceeds from the issue and sale of the securities would be used to repay short-term borrowings (consisting of bank loans, commercial paper and system company money pool borrowings), which were incurred or are expected to be incurred to finance CL&P's construction program and for general working capital purposes. All or a portion of the remaining net proceeds from the issue and sale of the securities may be used to refund outstanding first and refunding mortgage bonds bearing relatively high interest rates or high dividend rate preferred stock or to refinance maturing debt and to fund preferred stock sinking funds.

OLS Energy-Chino, et al. (70-7725)

OLS Energy-Chino ("Chino"), OLS Energy-Berkeley ("Berkeley") and OLS Energy-Camarillo ("Camarillo"), One Gatehall Drive, 3rd Floor, Parsippany, New Jersey 07054, each of which is an indirect subsidiary of General Public Utilities Corporation, a registered holding company, have filed a declaration with this Commission under sections 6(a) and 7 of the Act.

By orders dated May 10, 1989, and August 1, 1989 (HCAR Nos. 24885 and 24931, respectively) ("Order"), the Commission, among other things, authorized Energy Initiatives, Incorporated, a wholly owned indirect subsidiary of GPU, to acquire through a newly formed, wholly owned subsidiary, Camchino Energy Corporation, general and limited partnership interests, aggregating a 50% interest, in OLS Power Limited Partnership ("Partnership") and the acquisition, directly or indirectly, by the Partnership of all of the outstanding common stock ("Common Stock") of Chino, Berkeley and Camarillo. Each of Chino, Berkeley and Camarillo ("Lessees") is the lessee of an operating cogeneration facility ("Facility") located in California. Each Facility is a qualifying facility under the Public Utility Regulatory Policies Act of 1978. Pursuant to the Order, the Common Stock was acquired in August 1989 by OLS Acquisition Corp., a wholly owned subsidiary of the Partnership.

Prior to the acquisition, each of the Lessees had entered into a Revolving Credit Agreement with General Electric Capital Corporation ("GECC"), the owner of the Facilities, to provide for the short-term working capital requirements of its Facility. At October 31, 1989, Camarillo had borrowings outstanding under its Revolving Credit Agreement aggregating $451,452 and Berkeley and Chino had no borrowings outstanding.

The Lessees have requested authority to amend the Revolving Credit Agreements to (a) increase the aggregate principal amounts which may be outstanding from time to time thereunder from $1,000,000 to $1,250,000, (b) reduce the annual interest rate payable on all outstanding borrowings from 5% above Morgan Guaranty Trust Company's prime rate, as in effect from time to time, to 3% above such rate and (c) extend the time during which they may borrow under their respective Revolving Credit Agreements to December 31, 1990.

The Lessees would use the proceeds from such borrowing for working capital and general corporate purposes. In addition, Chino and Camarillo may each utilize a portion of such proceeds ($700,000 for Chino and $800,000 for Camarillo) to repay to GECC amounts paid by GECC under certain letters of credit which GECC may issue on their behalf as security for their obligations to pay for natural gas supplied to their Facilities. Chino and Camarillo will each pay to GECC an issuance fee of ½ of 1% of the face amount of letters of credit issued on their behalf.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-728 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw From Listing and Registration; Templeton Emerging Markets Fund, Inc., Common Stock, $0.01 Par Value (File No. 1-9395)

January 5, 1990.

Templeton Emerging Markets Fund, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-d(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on December 13, 1989. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 29, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street N.W., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-725 Filed 1-10-90; 8:45 am]

BILLING CODE 810-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Superior Industries International, Inc., Common Stock, $0.50 Par Value (File No. 1-6615)

January 5, 1990.

Superior Industries International Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from

listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on December 5, 1989. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 29, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-726 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27587; File No. SR-GSCC-89-15]

Self-Regulatory Organizations; Filing and Order Temporarily Approving, on an Accelerated Basis, a Proposed Rule Change by the Government Securities Clearing Corp. Concerning Billing Procedures

January 4, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),[1] notice is hereby given that on December 22, 1989 the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to authorize GSCC to bill members at the beginning of each month for members' anticipated fee obligations for the next succeeding month. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. This Order also temporarily approves the proposal on an accelerated basis until July 31, 1990.

I. Description of the Proposal

The proposed rule change modifies GSCC's Rule 26, enabling GSCC to bill a member, in advance, for charges on account of such member's anticipated business during the next succeeding month. Prior to this proposal, GSCC would render bills for a member's business charges during a particular month, on, or before, the fifth business day [2] of the succeeding month.

Pursuant to the proposal, GSCC will submit to each participant a bill for the anticipated use of comparison and netting services. GSCC will render such bills on, or before, the fifth business day of the month prior to the month during which such use is expected. Each bill will also include any unpaid fines imposed on a member pursuant to GSCC Rules [3] and any unpaid charges for unusual expenses caused directly or indirectly by such member prior to the submission of the bill for anticipated services.[4]

GSCC will determine a member's anticipated use based on the member's actual use of comparison and netting services during the month prior to the month during which the bill is rendered to a participant. The bill, however, will be adjusted for the participant's prior payments. Thus, a member falling short of the anticipated use projection for the month prior to the month when the bill is rendered, would be credited for the difference between the dollar amount paid as a result of the assessed expected use for that month and the actual dollar amount accrued from its actual use during the same month.[5]

GSCC will implement the proposed rule change beginning February 1, 1990. As a result, in February, GSCC participants will receive a consolidated bill reflecting the actual use of clearing and netting services during January and the anticipated use of those services for February and March 1990.[6] Participants' anticipated use for February and March will be based on their corresponding actual use of clearing and netting services during January. The March bill will then reflect the amount for anticipated use of comparison and netting services during April and an adjustment for the anticipated use amount paid in February and the dollar amount for services actually used during February.

II. GSCC's Rationale for the Proposal

GSCC believes that the proposed rule change will promote the prompt and accurate clearance of securities transactions for which GSCC is responsible. For this reason, according to GSCC, the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organizations.

In its filing with the Commission, GSCC also states that the proposed rule change is necessary in order for it to avoid having to pre-pay, or, in effect, finance the payments of its operating costs until receipt of member fee payments. In addition, GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing within 21 days after the date of publication of this Order in the **Federal Register.** 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 USC § 552, will be available for inspection and copying in the

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[1] 15 USC 78s(b)(1) (1982).

[2] For purposes of billing and payment of charges for services rendered by GSCC, "business day" means day any during which GSCC is open for business. GSCC Rules and Procedures, R. 1 (July 24, 1989). This definition remains unchanged under GSCC's proposed rule change.

[3] *See id.* at R. 48.

[4] *See id.* at R. 24 2.

[5] *E.g.*, assuming full implementation of the proposed rule change; in June a participant pays an anticipated usage amount for July of $100 and uses $100 worth of GSCC's comparison and netting services. As a result of the participant's actual usage during June, it will receive on, or before, the fifth business day of July a bill for $100 for anticipated usage in August. Assuming that in July, however, the same participant uses $75 worth of GSCC's comparison and netting services, the August bill will reflect an anticipated usage for September of $75 and a credit for $25 (*i.e.*, July's anticipated usage—actual usage in July = $100—$75 = $25). This amount would be credited to the participant's bill in August, therefore that participant would have to pay $50 for anticipated usage in September.

[6] In addition, this bill will also include any unpaid fines and charges for unusual expenses, if any. *See supra* notes 3 & 4.

Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings and communications will also be available for inspection and copying at GSCC's principal office. All submissions should refer to file number SR-GSCC-89-15 and should be submitted by February 1, 1990.

IV. Accelerated Temporary Approval

The Commission believes that good cause exists for approving the proposal on a temporary basis because it will enable GSCC to avoid an unexpected projected shortfall in GSCC's cash flow from reduced and unanticipated transaction volumes. During the last year, GSCC has expended substantial funds in developing systems for comparison and netting of member trades in U.S. Government securities. GSCC now believes it may experience a cash-flow shortfall of approximately $175,000 if GSCC's trade processing volumes continue at December levels [7] and GSCC's expected membership base does not expand as initially anticipated during the next two months.[8] To address this potential shortfall, GSCC's Board of Directors has explored several alternatives, and concluded that accelerating GSCC's collection of service fees would provide GSCC with sufficient revenue to permit GSCC to meet its obligations on a timely basis.

The Commission believes that the preferred mechanism for a clearing agency to address shortfalls in revenue is for the clearing agency to increase its service fees. Nevertheless, the Commission recognizes that other solutions may be appropriate, on a short-term basis in the event of unanticipated changes in basic assumptions underlying a clearing agency's budget projections. Accordingly, the Commission invites interested persons to submit their views on this matter.

In the Release announcing standards for the registration of clearing agencies, the Division of Market Regulation underscored the importance of notifying participants regarding rule proposals involving changes in dues, fees and other charges in order to ensure, as required by section 17A(b)(3)(D) of the Act,[9] the equitable allocation among participants of the proposed dues, fees or charges.[10] While GSCC's proposal does not involve a change in the amount to be collected for netting and comparison services, the anticipated collection of such charges could place a financial burden on participants with lesser liquidity.

GSCC has not solicited comments on the proposed rule change from its members. GSCC, however, has represented that the proposal has been approved by GSCC's Board of Directors, which includes representatives from GSCC participants who are most likely to be significantly affected by the proposal. In addition, GSCC has represented to the Commission that it intends to notify participants regarding the proposed rule change and solicit comments.[11]

The Commission acknowledges GSCC's efforts to notify participants regarding the proposed rule change and the underlying reasons thereof. The Commission, however, is approving the proposed rule change temporarily until July 31, 1990 in order to provide a comment period for persons interested in the proposal. This way, the Commission will be able to obtain further information regarding the manner in which the proposed rule change will affect GSCC's membership, while enabling GSCC to adjust to the temporary reduction in member clearing activity.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular with section 17A. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register** in order to allow GSCC to adjust to current market conditions.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, SR-GSCC-89-15, be, and hereby is, approved on a temporary basis until July 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-(12) (1989).

Jonathan G. Katz,

Secretary.

[FR Doc. 90-721 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

[7] According to GSCC, trade volume processing for December represents a historically low trading volume for GSCC members.

[8] Currently, GSCC is required to finance participants' operational costs associated with their comparison and netting activities until it receives payment from participants at the beginning of the month following the month during which such services were rendered. This delay in payment causes an additional operational expense, burdening GSCC's cash flow and potentially affecting GSCC's clearing functions. This situation is exacerbated by current, unusual market conditions that have resulted in reduced member clearing activity.

The proposed rule change will give GSCC the flexibility to deal with these unusual market conditions by enabling it to cover potential shortfalls associated with the prepayment of member's comparison and netting operational costs. As such, the proposed rule change will ensure GSCC's continued capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, while enhancing its ability to safeguard securities and funds which are in its custody or control. *See* 15 USC 78q-1(b)(3)(A).

[9] 15 USC 78q-1(b)(3)(D).

[10] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920, 41930 (June 23, 1980).

[11] GSCC will notify participants and solicit comments by means of a notice to its participants. Within ten days after issuing this notice, GSCC will file three copies of such notice with the Commission. Securities Exchange Act Reg. 17a-22 (1987). In addition, GSCC has agreed to make available to the Commission any written comments received by GSCC regarding the proposed rule change.

[12] 15 USC 78s(b)(2).

[Release No. 34-27586; File No. SR-DTC-89-18]

Self-Regulatory Organizations; Depository Trust Company; Order Approving a Proposed Rule Change Concerning Invitations to Cover Short Positions

January 4, 1990.

On November 1, 1989, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-89-18) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal amends DTC's procedures for inviting tenders to cover short positions by adding a range of prices to the elements broadcast to participants. The Commission published notice of the proposal in the **Federal Register** on November 15, 1989.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would amend the current procedures related to DTC's program known as "Invitations to Cover Short Positions" in two ways. As a result of the experience gained since the program began operating in June, 1989, DTC determined that the program would be more successful if the procedures were changed so that the participant inviting tenders could indicate a range of prices that it is willing to pay for the security. The

[1] 15 U.S.C. 78s (1988).

[2] Securities Exchange Act Release No. 27431 (November 7, 1989), 54 FR 47624.

revised procedures therefore permit the inviting participant to indicate a range of prices for the security sought. In addition, the revised procedures provide certain additional automation of the program that will make the operation of the program by DTC more efficient and cost-effective. The additional automation consists of running a computer program to locate potential participants who will receive the message by the inviting participant. Previously, the identification of participants who should receive the message was done manually by DTC staff.

DTC's Invitations to Cover Short Positions program was established to enable DTC participants with a short position at DTC to invite tenders to cover the short position from DTC participants with a long position in that security or in a similar security that they may be willing to sell. DTC's automated network, the Participant Terminal System ("PTS"), is used to broadcast the message inviting the tenders. The inviting participant broadcasts its message inviting tenders to DTC. In that message, the inviting participant makes available the following information: security identification (CUSIP) number, description, quantity, price range, similar information about substitute securities, if applicable, and a contact and phone number at the inviting participant. Upon receipt of the automated message, DTC will automatically identify which participants have a long position in the depository in the relevant securities issues. DTC then will send an automated message over PTS to those participants, noting that if they are interested in tendering the securities, they should notify DTC. DTC will then inform the inviting participant of the identities of the long participants that responded affirmatively to the message. DTC will relay those names in the order in which DTC receives the responses, and all responses will be relayed.

At this point, participants may negotiate a transaction with each other outside of DTC.[3] DTC is not involved in the negotiations. Moreover, DTC's rules and procedures do not require participants to reach agreement to trade. For a more complete description of DTC's Invitations to Cover Short Positions procedures, *see* Securities Exchange Act Release No. 26896.[4]

II. DTC's Rationale for the Proposed Rule Change

DTC anticipates that the proposed modified procedures will be more successful because the participant inviting tenders will be able to indicate a range of prices that it might pay for the security. DTC's belief is based on its experience in eliminating short positions during a pilot program in which prices were included in the invitation.

III. Discussion

The Commission believes the proposed rule change is consistent with the Act, and especially Section 17A, and is approving the proposed rule change. The Commission believes the procedures for inviting tenders to cover short positions are consistent with the duties of a clearing agency under Section 17A to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

DTC's attempts to eliminate short positions should be enhanced by the changes proposed in this filing. Automation of the process of identifying participant with long positions should be more efficient than the former manual process. Including in the message a range of prices the inviting participants might be willing to pay may more affirmatively demonstrate the inviting participant's desire to use the securities to cover a short position. By having a range of prices noted in the initial message, a long participant with a customer holding the relevant securities need call its customer only once, having all relevant pricing information, to discern whether the customer may be willing to sell the securities. Experience gained during a pilot program in which a range of prices was broadcast to long participants indicates that including a range of prices will make the Invitations to Cover Short Positions procedures more successful. For the reasons discussed in Securities Exchange Act Release No. 26896,[5] the Commission believes that a more successful program to eliminate short positions is consistent with a clearing agency's duties to safeguard funds and securities, and therefore is approving the proposed rule change. DTC, however, must continue to file on a quarterly basis the information outlined in Securities Exchange Act Release No. 26896.[6]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-DTC-89-18) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority (17 CFR 200.30-3).

Jonathan G. Katz,

Secretary.

[FR Doc. 90-722 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

[3] For example, participants must negotiate the quantity and price of securities they wish to trade. If a transaction is negotiated, DTC may be instructed by the participants to make a book-entry delivery of the security as a result. Participants are reminded that execution of the transaction must take place in accordance with self-regulatory organization rules concerning order execution. *See, e.g., New York Stock Exchange Rule 390.*

[4] (June 5, 1989), 54 FR 25185.

[5] *See* note 4, *supra.*

[6] *See* note 4, *supra.*

[Release No. 34-27582; File No. SR-AMEX-89-05]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Providing for the Accelerated Comparison and Correction of Securities Transactions

December 29, 1989.

On March 8, 1989, the American Stock Exchange, Inc. ("Amex") filed with the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange of 1934 ("Act").[1] The proposal provides for the accelerated comparison and correction of securities transactions. Notice of the proposal was published in the **Federal Register** on April 26, 1989, to solicit comments from interested persons.[2] No comments were received. On August 18, 1989, the Commission issued an order approving the proposal on a temporary basis through December 31, 1989.[3] The instant order extends the temporary approval for an additional three months through March 31, 1990.[4]

I. Description of the Proposal

The rule change consists of proposed Amex Rule 719, which, in essence, requires that each regular-way trade[5] in

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] *See* Securities Exchange Act Release No. 26741 (April 18, 1989), 54 FR 18058.

[3] *See* Securities Exchange Act Release No. 27152 (August 18, 1989), 54 FR 39238.

[4] This order is being issued in response to Amex's written request that the Commission extend its existing approval order through March 31, 1990. *See* letter from James F. Duffy, Senior Vice President and General Counsel, Amex, to Jonathan G. Katz, Secretary, SEC, dated December 19, 1989.

[5] A "regular-way trade" is a trade between Amex members that, by its terms, settles five business days after the trade date. *See* Amex Rule 124(c).

stocks, rights, and warrants be compared or otherwise closed out by the close of business on the business day following the trade date (*i.e.*, T+1). Previous Amex rules required that such trades be compared or closed out by T+5. Thus, the proposal, when fully implemented, will shorten a transaction's comparison cycle by four business days. The proposal, however, will have no effect on the settlement of transactions, the majority of which will continue to settle on T+5.

Amex states in its filing that it has been working for more than a year with the New York Stock Exchange ("NYSE"),[6] the National Securities Clearing Corporation ("NSCC"),[7] and the Amex members firm community to establish the systems and rules necessary to implement T+1 comparison. Amex's proposed Rule 719 (which is an enabling rule of implementation) directs Amex members and member organizations to comply with such other rules and procedures as may be adopted by Amex or NSCC for: (1) The comparison or settlement of transactions, (2) the resolution of uncompared or questioned trades, and (3) the collection and submission of audit trail data.[8] Amex also noted in its filing that its Rule 719, like NYSE Rule 130 (*i.e.*, NYSE's compare or close out rule), will require up to 18 months to implement fully, as measured from the date that the Commission first approved the rule proposal on a temporary basis (*i.e.*, from August 18, 1989). Amex commenced a phase-in of its accelerated trade comparison operations on Saturday, August 19, 1989. That phase-in was effected in conjunction with an industry-wide effort, including NYSE and NSCC, to begin accelerated comparison on that date. Specifically, Amex shortened: (1) The period for resolving "Don't Know" trades ("DKs")[9] by 24 hours (from end-of-business on T+3 to end-of-business on T+2),[10] and (2) its trade comparison cycle for non-system trades[11] by 11 hours (from 1:00 p.m. on T+1 to 2:00 a.m. on T+1) in conformity with NSCC's companion proposal.[12]

Amex's automated trade correction system, known as the Intra-Day Comparison System ("IDC"), became operational on November 27, 1989. During the preceding three month period from August 19 to November 27, 1989, Amex has been using an improved version of its existing manual correction system, which had been modified to shorten its cycle by the necessary 24 hours.[13] Amex has informed the Commission that it soon will file a regular-way rule proposal under section 19(b)(1) of the Act that will cover the operation of IDC.[14]

II. Rationale for the Proposal

Amex believes that the proposed rule change is consistent with the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions. Moreover, Amex states in its filing that the eventual shortening of the comparison cycle for regular-way equity trades to T+1 would improve the marketplace because it would increase the efficiency of the post-trade comparison process and would reduce the time that its member organizations are exposed to the risk of market fluctuations on uncompared trades.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The Commission believes that the proposal, by shortening the comparison and correction cycles for Amex regular-way equity trades, would benefit the marketplace by: (1) Reducing the risk exposure to investors and to Amex members, and (2) contributing to the prompt and efficient clearance and settlement of securties transactions. Moreover, the Commission reiterates that the proposed rule change is similar to an NYSE proposed rule change already approved by the Commission.[15]

The Commission believes that the proposal is an appropriate way for the Amex to notify Amex members of its intention to shorten the time-frames for comparison of regularway equity trades and for the close-outs of uncompared and DK trades. Although the proposal does impose specific requirements on Amex members at this time, extending the temporary approval of this proposal reaffirms Amex's commitment to achieving the goal of next-day trade comparison and DK resolution.

The Commission notes that Amex has made substantial progress in developing and testing systems necessary to implement this proposal. As described above, NSCC has shortened, to the early morning hours of T+1, the time-frame for Amex member submission of trade data in order to permit NSCC to issue on the morning of T+1 reports that identify compared and uncompared trades. Also, Amex has developed and tested its IDC System's hardward and software. During the next three months, Amex must file with the Commission under section 19(b) of the Act, proposed rule changes authorizing Amex to offer IDC services and establishing procedures for member use of those services; and, separately, the reports previously described in note 8 of Securities Exchange Act Release No. 27152.[16]

The Commission is extending the temporary approval of this proposed rule change for three months, through March 31, 1990, to enable Amex to continue its part in the industry-wide T+1 efforts. Permanent approval of this proposal (*i.e.*, Amex Rule 719) will be conditioned on Amex's filing of: (1) The rules and procedures governing IDC, and (2) all required operational reports.

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[6] The Commission already has approved a parallel NYSE rule filing. *See* Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 [File No. SR-NYSE-88-36].

[7] For the NSCC's companion rule filing to NYSE Rule 130 and proposed Amex Rule 719, a filing recently approved by the Commission, *see* Securities Exchange Act Release No. 27074 (July 28, 1989), 54 FR 32405 [File No. SR-NSCC-89-04]. *See also*, Securities Exchange Act Release No. 26783 (May 4, 1989), 54 FR 20221 [File No. SR-NSCC-89-02].

[8] Amex had advised the Commission that it plans to adopt a series of procedures within the general framework of Rule 719 whereby the implementation of Rule 719 would be carried forward. Telephone conversation between Paul G. Stevens, then Executive Vice President for Operations, Amex, and Thomas C. Etter, Attorney, SEC (June 16, 1989).

[9] The terms "DK" in this context, means an uncompared trade that remains uncompared after a designated point in time. *See* Amex Rule 723. As part of this filing, Amex plans to shorten this designated point in time by 24 hours to noon on T+1.

[10] *See* Amex's Information Circular #89-131 (August 15, 1989) for discussion of its proposal to shorten from T+3 to T+2 its time frames for resolving DKs.

[11] A "non-system trade" is a transaction having traditional two-sided comparison where the transaction's input data come from the buying and selling brokers to the clearing agency. Its counterpart, a "system trade" or "locked-in trade," is a transaction in an automated system where the entity that operates the system or its specialists become the contra-side to each half of the trade. *See* Division of Market Regulation, Securities and Exchange Commission, *The October 1987 Market Break* (February 1988) at 10-3.

[12] Telephone conversations between George E. Stokes, Assistant Vice President, Amex and Thomas C. Etter, Attorney, SEC (August 16, 1989 and December 26, 1989). *See* Amex Information Circular, No. 89-131, dated August 15, 1989; NSCC Important Notice, No. A3218, dated July 18, 1989. *See, supra*, note 7 for NSCC's rule proposals. Regarding system trades, the Commission notes that the new comparison cycle (*i.e.*, 2:00 a.m. on T+1) already had been implemented by Amex for such trades prior to the general phase-in on August 19, 1989. Thus, system trades were not part of that phase-in at Amex. Telephone conversation between Carmine Barbado, Director, Systems Technology Department, Amex, and Thomas C. Etter, Attorney, SEC (December 28, 1989).

[13] Telephone conversations between George E. Stokes, Assistant Vice President, Amex, and Thomas C. Etter, Attorney, SEC (August 16 and December 26, 1989). *See* NSCC Important Notice, No. A3218, dated July 18, 1989.

[14] Telephone conversation between Ivonne L. Nagy, Special Counsel, Amex, and Thomas C. Etter, Attorney, SEC (November 30, 1989).

[15] *See, supra*, note 6.

[16] *See, supra*, note 3.

The Commission finds good cause under Section 19(b)(2) of the Act for approving the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of notice of its filing inasmuch as: (1) This order is a three month extension of a previous Commission order,[17] and (2) this proposal (*i.e.*, Amex Rule 719) constitutes a major Amex enabling rule under which Amex is establishing the rules and systems necessary to implement T+1 trade comparison.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly sections 6(b)(5) and 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the above-mentioned proposed rule change [File No. SR-Amex-89-05] be, and hereby is, approved on a temporary basis through March 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.3(a)(12)).

Jonathan G. Katz,

Secretary.

[FR Doc. 90-723 Filed 1-10-90; 8:45 am]

BILLING CODE 8010-01-M

[17] *See, supra,* note 3.

DEPARTMENT OF TRANSPORTATION

[Docket 46701]

U.S.-Japan All-Cargo Service Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled proceeding will be held on January 26, 1990 at 10 a.m. (local time), Room 5332, 400 Seventh Street, SW., Washington, DC 20590, by the undersigned Administrative Law Judge.

The parties are directed to submit one copy to each other and four copies to the Judge of (1) any proposals for changes in the evidence request contained in the Appendix to Order 90-1-4, (2) proposed procedural dates, (3) proposed stipulations, (4) a statement of the issues, and (5) a statement of position. This material shall be submitted on or before January 24, 1990.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 90-716 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-62-M

[Docket 46700]

1990 U.S.-Japan Gateways Proceeding; Assignment of Proceeding

This proceeding is assigned to Administrative Law Judge Daniel M. Head. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 90-712 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-62-M

[Docket 46701]

U.S.-Japan All-Cargo Service Case; Assignment of Proceeding

This proceeding is assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 90-713 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-90-2]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 31, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 4, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25577
Petitioner: Lake Union Air Services, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought: To extend Exemption No. 4953 that allows petitioner to conduct operations at an altitude below 500 feet over water outside of controlled airspace. Exemption No. 4953 will expire on June 30, 1990.

Docket No.: 26017
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(a) and 135.443(b)(3)
Description of Relief Sought: To allow petitioner's AS322 Super Puma flightcrews to install and remove an emergency rescue hoist and to make the appropriate entry in the aircraft maintenance log as to the installation or removal of the aircraft hoist.

Docket No.: 26035
Petitioner: Hector R. Ponce
Sections of the FAR Affected: 14 CFR 65.71
Description of Relief Sought: To allow petitioner additional time in which to take the mechanic certification test.

Docket No.: 26066
Petitioner: Vincent R. Van Pelt

Sections of the FAR Affected: 14 CFR 121.383(c)

Description of Relief Sought: To allow petitioner to serve as a crewmember on air carrier operations beyond the age of 60.

Docket No.: 26086

Petitioner: Project Orbis, Inc.

Sections of the FAR Affected: 14 CFR 91.303

Description of Relief Sought: To allow petitioner to operate a noncomplying Stage 1 four-engine turbojet aircraft for two operations to get its medical staff back to the United States for a rest period, to replenish medical and technical supplies, and to exhibit the Project Orbis flying eye hospital at an air and space show.

Docket No.: 26071

Petitioner: Air Ambulance Associates

Sections of the FAR Affected: 14 CFR 43.3, 135.429, 135.435, 135.437, 135.439, and 135.443

Description of Relief Sought: To allow petitioner's pilots to remove passenger seats and install a stretcher base and stretcher in petitioner's LearJet 25 and 35 series aircraft. An exemption would also allow those pilots to remove the stretcher base and stretcher and reinstall passenger seats upon completion of an ambulance operation.

Docket No.: 076CE

Petitioner: Raisbeck Engineering

Sections of the FAR Affected: 14 CFR 23.473(c)

Description of Relief Sought: To allow an exemption from requirement for a fuel jettison system if maximum landing weight is more than 95 percent maximum takeoff weight for Beech Model B90, C90, and E90 airplanes.

Docket No.: 25815

Petitioner: Ameriflight, Inc.

Sections of the FAR Affected: 14 CFR 135.89(a)

Description of Relief Sought/ Disposition: To allow petitioner to carry crewmembers and employees of other companies, as well as petitioner's crewmembers and employees, without complying with the passenger-carrying provisions of part 135.

DENIAL, December 26, 1989, Exemption No. 5126.

[FR Doc. 90-675 Filed 1-10-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Company Application and Renewal Fees; Increase in Fees Imposed

The Department of the Treasury, Financial Management Service, will be increasing the fees imposed and collected as referred to in 31 CFR 223.22. This increase is to cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business.

The new fees are effective December 31, 1989, and are determined in accordance with the Office of Management and Budget Circular A-25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$3,000.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$1,750.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$1,000.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$750.

Questions concerning this notice should be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 287-3921.

Dated: December 29, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 90-719 Filed 1-10-90; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "A Caravaggio Rediscovered: The Lute Player" (see list [1]) imported from aboard for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, N.Y., beginning on or about February 9, 1990, to on or about April 22, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 4, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-718 Filed 1-10-90; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Rembrant's Landscapes: Drawings and Prints" (see

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the office of the General Counsel of USIA. The telephone number is 202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC

list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about March 11, 1990, to on or about May 20, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: January 4, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-717 Filed 1-10-90; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 55, No. 8
Thursday, January 11, 1990

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 RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., January 16, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of legislative proposals.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Date: January 8, 1990.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90-788 Filed 1-8-90; 4:23 pm]

BILLING CODE 6760-01-M

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

DATE: January 18 and 19, 1990.

TIME: 9:00 a.m. to 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session—Thursday 9:15 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (Tentative): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the Thirty-seventh meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak, telephone (202) 457-1700.

Dated: January 9, 1990.

Christopher Paola,

Special Assistant to the Administrator, the United States Institute of Peace.

[FR Doc. 90-848 Filed 1-9-90; 12:34 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol 55, No 8
Thursday January 11, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents These corrections are prepared by the Office of the Federal Register Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1989-18]

Contributions and Expenditures; Prohibited Contributions

Correction

In rule document 89-27510 beginning on page 48580 in the issue of Friday, November 24, 1989, make the following correction:

§ 110.4 [Corrected]

On page 48582, in the first column, in § 110.4, the third paragraph should be designated as "(3)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89C-0480]

CIBA Vision Corp.; Filing of Color Additive Petition

Correction

In notice document 89-29372 beginning on page 51945 in the issue of Tuesday, December 19, 1989, make the following corrections:

1. On page 51945, in the second column, under **SUMMARY,** in paragraph (2), in the second line "phthalocyanina" should read "phthalocyaninato".

2. On the same page, in the third column, under **SUMMARY,** in paragraph (6), in the third line, insert a parenthesis before "sulfooxy)".

3. On page 51946, in the first column, in paragraph (6), in the third line, insert "ethyl)" after "(sulfooxy)".

4. On the same page, in the same column, in the same paragraph, in the fourth line, "naphthalenl)azo" should read "naphthalenyl)azo)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0518]

Drug Export: HTLV-1 Elisa Test Kit

Correction

In notice document 89-29373 appearing on page 51946 in the issue of Tuesday, December 19, 1989, make the following correction:

On the same page, in the third column, in the second complete paragraph, in the third line, "December 26, 1989" should read "December 29 1989"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. 89-11; Notice 01]

RIN 2127-AC10

Anthropomorphic Test Dummies; 9-Month-Old Child

Correction

In proposed rule document 89-29485 beginning on page 52425 in the issue of Thursday, December 21, 1989, make the following correction:

On page 52425, in the third column, in the first line, "March 21, 1990" should read "June 19, 1990".

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federal register

Thursday
January 11, 1990

Part II

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1786

Prepayment of REA Guaranteed Federal Financing Bank Loans; Rule and Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

RIN 0572-AA29

Prepayment of REA Guaranteed Federal Financing Bank Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Rural Electrification Administration (REA) is amending 7 CFR chapter XVII by revising part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. The revised part establishes policies and procedures to implement the provisions of section 306(A) of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) (the "RE Act"), section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202) (the "Continuing Resolution"), and section 637 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460) (the "1989 Appropriations Act").

Section 306(A) of the RE Act deals with the prepayment of certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA.

Section 633 of the Continuing Resolution provides that REA guaranteed FFB loans may be prepaid by borrowers pursuant to subsections (a) and (b) of section 306(A) of the RE Act, notwithstanding the provisions of subsections (c), (d), and (e) of section 306(A), provided that prepayments in excess of $2,500,000,000 shall be subject to the approval of the Secretary of the Treasury.

Because $2 billion of prepayments were completed during FY 1988 under the provisions of section 1401 of the Omnibus Budget Reconciliation Act of 1987 ("OBRA") only an additional $500 million of prepayments may be consummated without the approval of the Secretary of the Treasury.

These regulations implement the provisions of section 637 of the 1989 Appropriations Act which allocates $350 million of this $500 million of prepayment activity to REA-financed electric utilities, and the remaining $150 million to REA-financed telephone utilities.

For the reasons discussed in the Background section, this regulation only covers prepayment applications from telephone borrowers.

The regulations also set forth procedures for prioritizing and processing prepayment applications.

DATES: Final Rule is effective February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby amends 7 CFR chapter XVII by revising part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans.

This regulation is issued in conformity with Executive Order 12291, Federal Regulations. It will not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this final rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR part 3015 subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

The reporting and/or recordkeeping requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) The OMB approval number for these requirements is 0572-0088.

The public reporting burden for this collection of information is estimated to vary from 10 to 200 hours per response with an average of 27 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0572-0088), Washington, DC 20503.

Background: On January 14, 1987 (52 FR 1434), REA published a Final Rule to add a new part 1786 to 7 CFR chapter XVII. This Rule set forth the REA policy and procedures implementing section 306(A) of the RE Act which permits an REA-financed electric or telephone system to prepay an FFB loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance), if:

(a) The loan was outstanding on July 2, 1986;

(b) Private capital, with the existing loan guarantee, is used to replace the loan; and

(c) The borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

Pursuant to subsection (c) of section 306(A) and the determination of the Department of the Treasury that par prepayments of FFB loans have an adverse effect on the operation of the FFB, prepayments were limited during FY 1987 to no more than $2.0175 billion.

Furthermore, pursuant to subsection (d) of section 306(A), the January 14, 1987 Final Rule established eligibility criteria to ensure that the authorized prepayments during FY 1987 were directed to the cooperative-type borrowers in the greatest need of the benefits associated with prepayment.

The enactment of section 1401 of OBRA on December 22, 1987, permitted a borrower to prepay FFB pursuant to subsections (a) and (b) of section 306(A), during FY 1988, notwithstanding the provisions of subsections (c), (d), and (e) of said section 306(A).

However, section 1401 of OBRA provided that prepayments in excess of $2,000,000,000 during FY 1988 would be subject solely to the approval of the Secretary of the Treasury. The Department of the Treasury determined that par prepayments in excess of $2,000,000,000 during FY 1988 would not be approved.

On January 27, 1988 (53 FR 2468), in order to implement the provisions of OBRA, REA published an Interim Rule with Requests for Comments, which

amended the January 14, 1987 regulations by revising 7 CFR part 1786, REA Guaranteed Federal Financing Bank Loans in its entirety. By February 25, 1988, borrowers had consummated $2,000,000,000 in prepayments, thus completing the prepayment program under OBRA.

The January 27, 1988 Interim Rule did not address prepayments under the provisions of section 633 of the Continuing Resolution, some of the provisions of which have been modified by section 637 of the 1989 Appropriations Act, nor did that Interim Rule address prepayments to be made after September 30, 1988.

As a result, in order to (1) implement the provisions of section 633 of the Continuing Resolution and the allocation provisions of section 637 of the 1989 Appropriations Act; (2) eliminate certain provisions contained in the prior regulations which are no longer applicable; and (3) respond to comments received in connection with the January 27, 1988 Interim Rule, on May 23, 1989, REA published a Proposed Rule at 54 FR 22290 proposing to revise 7 CFR part 1786.

In developing this final rule, REA determined that it would make certain changes in the regulations relating to the proposed financially distressed borrowers' reserve. It was proposed that this reserve be established and be used to assist in the financial restructuring of certain electric borrowers in default or near default on loans made or guaranteed by REA. Because the proposed changes to the provisions relating to this reserve are substantive, REA decided to solicit public comment on these proposed changes. For a further discussion, see the Proposed Rule; Amendment, 7 CFR part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans published elsewhere in today's **Federal Register**.

Because none of these proposed changes affect telephone borrowers, (there is no need to establish a reserve for telephone borrowers since none are in default or near default) REA concluded that telephone borrowers should be permitted to make prepayments while REA is soliciting comments on the proposed amendments. Therefore, this final rule only addresses prepayment applications from telephone borrowers. Prepayment applications received from electric borrowers under these regulations will be returned without action.

Comments: In the May 23, 1989 Proposed Rule, REA invited interested parties to file comments on or before June 22, 1989. All responses received have been considered in preparing this Final Rule.

Twenty one different organizations or groups commented on the Proposed Rule. They are:

1. The National Rural Electric Cooperative Association,
2. The National Rural Telecom Association, the Organization for the Protection and Advancement of Small Telephone Companies, and the United States Telephone Association (signed jointly),
3. Georgia Electric Membership Corporation,
4. The National Bank for Cooperatives (CoBank), the St. Paul Bank for Cooperatives, and the Springfield Bank for Cooperatives,
5. National Rural Utilities Cooperative Finance Corporation,
6. Smith Barney,
7. CONTEL (Contel Service Corporation),
8. Telephone and Data Systems, Inc. (Telephone Systems Services Division),
9. Alaska Electric Generation and Transmission, Inc.,
10. Arkansas Electric Cooperative Corporation,
11. Basin Electric Power Cooperative,
12. Chugach Electric Association, Inc.,
13. East Kentucky Power Cooperative, Inc.,
14. New Hampshire Electric Cooperative, Inc.,
15. Oglethorpe Power Corporation,
16. Plains Electric Generation and Transmission Cooperative, Inc.,
17. Runestone Telephone Association,
18. Seminole Electric Cooperative Incorporated,
19. United Power Association,
20. United Telephone System, and
21. Western Farmers Electric Cooperative.

For the purposes of discussion, the comments of these organizations have been categorized.

A number of these organizations questioned the decision of REA to establish a reserve for financially distressed electric borrowers utilizing $200 million of the $350 million of prepayment authority allocated for REA-financed electric borrowers and/or the decision to maintain this reserve until December 31, 1990.

These and other comments relating to the financially distressed borrowers' reserve are addressed in the Proposed Rule; Amendment, 7 CFR part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans published elsewhere in today's **Federal Register**.

The final rule does require, that in order to apply for a portion of the financially distressed borrowers' reserve, the chief executive officer of the system will be required to submit a certification to the effect that the borrower is either (i) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (ii) participating in a work out or debt restructuring plan with REA, either as the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring.

It should be noted that such certifications will be retained by REA and may be considered as part of any future credit evaluation process performed by REA.

In order to alleviate concerns raised by some commentators, the regulations are being modified to make it clear that no portion of the telephone program prepayment authority will be used for electric borrowers.

REA received comments suggesting that borrowers who utilize only internally generated funds in connection with a prepayment, be authorized to make unlimited prepayments of their outstanding FFB loans at par value. Such par prepayments are not permitted under the terms of the borrowers' loan agreements with REA and the FFB. Under the provisions of section 306(A) of the RE Act, par prepayments in excess of $2.5 billion require the approval of the Secretary of the Treasury. Accordingly, the amount of permitted par prepayments not requiring the approval of the Secretary of the Treasury has not been increased.

Some of the organizations requested that the final regulations be revised to permit prepayments by a combination of private capital with the existing guarantee and internally generated funds. It was also suggested that borrowers be permitted to delay the decision as to the source of funding for the prepayment until after the allocation of prepayment authority has been made to the borrower. These suggestions provide additional flexibility to borrowers in structuring a prepayment transaction and have been adopted. The regulations and the Notice of Intent to Prepay the Federal Financing Bank have been modified accordingly. When reviewing a prepayment transaction which utilizes both internally generated funds and a private loan REA will examine both the combined transaction and each component individually for the purposes of assessing loan feasibility and the loan guarantee risk to REA.

Many commentators objected to the provisions of the Proposed Rule which allocate a portion of the remaining $500

million of prepayment authority to each eligible applicant submitting an application during the application period, or the use of 10 percent per annum interest as a criterion in situations which require the proration of prepayment applications. It was suggested that the prepayment authority be allocated to borrowers in descending order of interest rates on outstanding FFB advances. It was also suggested that a rate, either higher or lower than 10 percent, be used for the basis of proration.

Allocating the remaining prepayment authority in accordance with descending interest rates would severely limit the number of borrowers eligible to make prepayments under these regulations. REA believes that permitting any eligible borrower, other than financially distressed borrowers, to apply for and make a prepayment without regard to interest rate, equitably allocates the remaining prepayment authority and maximizes the number of participants in the prepayment program.

In order to have a proration criteria that more closely reflects current market conditions, REA has modified the proration provisions of the regulations to eliminate the use of 10 percent per annum interest as a criterion in proration of prepayment applications. Because interest rates change constantly, the prevailing market interest rate will be used to determine which FFB advances, if prepaid would result in an economic savings to the borrower, and the amount of such advances will be used in prorating applications.

It was also suggested that priority for prepayment and any required proration be given to those REA-financed systems that previously applied to make a prepayment under prior regulations. No rationale was offered by the commentator as to why priority should be given to those borrowers submitting previous applications. Because of changes in prepayment legislation and in the regulations governing prepayments, borrowers who did not previously submit a prepayment application may elect to file an application under this rule. Therefore, REA considers it fair and reasonable to give all borrowers an equal opportunity to submit a payment application during the specified application period. Under the Final Rule, in response to borrowers who requested more time to prepare prepayment applications, the length of this application period will be 30 days instead of the 15 days specified in the Proposed Rule. The date for commencement of the application period has been changed to a date 30 days after publication of the Final Rule. REA is in the process of returning to applicants, any prepayment applications submitted under previous regulations which REA may have retained.

Some of the organizations suggested that telephone holding companies be permitted to apply for prepayments by all their operating companies in a combined application, and/or reapportion prepayment allocations to one or more of their operating companies as determined by the holding company. Another commentator suggested that borrowers be permitted to buy or sell prepayment allocations. REA has rejected these suggestions. REA makes loans and evaluates credit on the operating company level not at the holding company level. Additionally, section 306(A) requires that the savings resulting from the prepayment be passed on to customers or retained by the borrower in the case of financial hardship. The transfer of prepayment allocations between borrowers would prevent the savings generated by the prepayment from being passed on to the customers of the REA-financed system applying for the prepayment.

One organization suggested that the interest rate cap provisions of the regulations be modified to allow a consolidated interest rate cap for a group of borrowers desiring to jointly obtain private capital with the existing guarantee. While REA has no objection to two or more borrowers joining together to raise funding in the private credit markets, REA does not believe that it is necessary to alter the interest rate cap provisions of the regulations in order to consummate such joint borrowings. A consolidation or averaging of the interest rate cap among borrowers may result in a borrower paying a higher interest as a result of this prepayment than currently being paid FFB, thus increasing the loan guarantee risk of REA. REA does not believe that section 306(a) contemplates prepayments transactions which would increase the loan guarantee risk to REA.

A number of comments were received requesting a longer application period and more flexibility in determining a lender or trustee, whether to use internally generated funds, and the selection of a settlement date. REA has modified the regulations to permit such additional flexibility in making prepayments.

Additionally in response to comments received and for clarification purposes certain other modifications were made in the regulations.

The principal modifications to 7 CFR part 1786 are summarized as follows:

The date of commencement and the length of the application period have been changed to provide more time to prepare a prepayment application (§ 1786.3(a)).

Borrowers may utilize a combination of private loans and internally generated funds to make a prepayment (§ 1786.4(a)(2) and § 1786.4(e)).

After allocating the prepayment authority to borrowers and completing any required proration, REA shall notify borrowers in writing of their prepayment allocations (§ 1786.6(c)).

Borrowers are not required to determine the method of prepayment until after they have been notified of their prepayment allocation (§ 1786.7(b)).

The application procedures have been simplified and the Notice of Intent to Prepay the Federal Financing Bank now includes the certifications required to be submitted by non-financially distressed borrowers (§ 1786.7 and Notice of Intent to Prepay the Federal Financing Bank).

The regulations require borrowers submitting a financially distressed borrower's application to certify that they are in default, near default, or are participating in a financial restructuring with REA as well as a statement as to why they are in default or near default (§ 1786.7(a)(5)).

List of Subjects in 7 CFR Part 1786

Administrative practice and procedure, Electric utilities, Telephone utilities, Guaranteed loan program—energy, Guaranteed loan program—telephone.

In view of the above, REA is amending 7 CFR chapter XVII by revising part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

1. The authority citation for part 1786 is revised to read as follows:

Authority: 7 U.S.C. 901–950b; Title I, Subtitle B, Pub. L. 99–509; Title I, Pub. L. 100–202: Pub. L. 100–203; Title VI, Pub. L. 100–460; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Part 1786 consisting of § 1786.1 through § 1786.14 is revised to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

Sec.

1786.1 Purpose.
1786.2 Policy.
1786.3 Definitions and Rules of Construction.
1786.4 Qualifications.
1786.5 Prepayment Authority, Program Allocations, Categories of Prepayment Applications, and Financially Distressed Borrowers' Reserve.
1786.6 Processing Procedure.
1786.7 Application Procedure.
1786.8 Settlement Procedure.
1786.9 Forms.
1786.10 Access to Records of Lenders, Servicers, and Trustees.
1786.11 Loss, Theft, Destruction, Mutilation, or Defacement of REA Guarantee.
1786.12 Other Prepayments.
1786.13 Application of Regulation to Previous Prepayments.
1786.14 Judicial Review.

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

§ 1786.1 Purpose.

This subpart contains the general regulations of the Rural Electrification Administration (REA) for implementing the provisions of (a) section 306(A) of the Rural Electrification Act of 1936, as amended (RE Act); (b) section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202) (the continuing resolution); and (c) section 637 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460) (the 1989 Appropriations Act) which permit, in certain circumstances, loans made by the Federal Financing Bank (FFB) and guaranteed by the Administrator of REA to be prepaid by REA electric and telephone borrowers by paying the outstanding principal balance due on the FFB loan, using a private loan with the existing REA guarantees or using internally generated funds.

§ 1786.2 Policy.

It is the policy of REA to facilitate the prepayment of FFB loans in accordance with the provisions of section 306(A) of the RE Act and section 633 of the continuing resolution as modified by section 637 of the 1989 Appropriations Act. Furthermore, consistent with the RE Act, the continuing resolution and the 1989 Appropriations Act, it is the policy of REA to implement the objectives of the prepayment program in a manner which does not result in an increase in loan guarantee risk or an inappropriate increase in the administrative burden on REA.

§ 1786.3 Definitions and Rules of Construction.

(a) *Definitions.* For the purposes of this part, the following terms shall have the following meanings:

"Administrator" means the Administrator of REA.

"Application Category" shall have the meaning set forth in § 1786.5(c).

"Application Period" means a period during which REA is accepting applications to make prepayments pursuant to this part, and initially means the period commencing on February 12, 1990 and ending on March 12, 1990.

"Borrower" means any organization which has an outstanding FFB loan guaranteed by REA under the RE Act.

"Business Day" means any day other than a Saturday, a Sunday, a legal public holiday under 5 U.S.C. section 6103 for the purposes of statutes relating to pay and leave of employees, or any other day declared to be legal holiday for the purposes of statutes relating to pay and leave of employees by Federal statute or Federal Executive Order.

"Continuing Resolution" means section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202).

"Date Received" means the date inscribed on the Notice of Intent to Prepay the Federal Financing Bank, by an authorized official of REA, as the date the application was received.

"Documentation" means all or part of the agreements relating to a prepayment under this part, irrespective of whether REA is a party to each agreement, including all exhibits to such agreements.

"Electric Program Applications" shall have the meaning specified in § 1786.5(c)(1).

"Existing Loan Guarantee" means a guarantee of payment issued by REA to FFB pursuant to the RE Act for an FFB loan made on or before July 2, 1986.

"Fees" means any fees, costs or charges, incurred in connection with obtaining the private loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees (including fees and disbursements charged by counsel representing the borrower), printing costs, recording fees, trustee fees, underwriting fees, capital stock purchases or other equity investment requirements of the lender, and other related transaction expenses.

"Financially Distressed Borrower" means an REA-financed electric system determined by the Administrator to be either (1) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (2) participating in a work out or debt restructuring plan with REA, either as the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring.

"Financially Viable Lender" means:

(1) A lender (i) which has a capital and surplus of at least $50 million; (ii) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of $50 million; (iii) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of $50 million from a lending institution with a capital and surplus of at least $50 million; or (iv) has other credit support, in form and substance satisfactory to the Administrator, in the amount of $50 million; or

(2) In the event of a prepayment totalling less than $100 million, a lender (i) which has a capital and surplus of at least $10 million; (ii) is a beneficiary of an irrevocable letter of credit, in form and substance satisfactory to the Administrator, payable to it in the amount of $10 million; (iii) is the beneficiary of a guarantee, in form and substance satisfactory to the Administrator, in the amount of $10 million from a lending institution with a capital and surplus of at least $10 million; or (iv) has other credit support, in form and substance satisfactory to the Administrator, in the amount of $10 million;

"FFB" means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

"FFB Loan" means one or more advances, or a part of one or more advances, made on or before July 2, 1986, by FFB on a promissory note or notes executed by a borrower and guaranteed by REA pursuant to section 306 of the RE Act (7 U.S.C. 936).

"Guarantee" means the original endorsement, in the form specified by REA which is executed by the Administrator and shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

"Increase in Loan Guarantee Risk" means the change in any of the components of loan guarantee risk associated with the private loan which in the judgment of REA increases the magnitude or duration of the loan guarantee risk currently assumed by

REA in connection with the existing loan guarantee;

"Internally Generated Funds" means money belonging to the borrower other than: (1) Proceeds of loans made or guaranteed under the RE Act or (2) funds on deposit in the cash construction trustee account;

"Lender" means the organization making and servicing the private loan which is to be guaranteed under the provisions of this part and used to prepay the FFB loan. The term "lender" does not include the FFB, or any other Government agency.

"Loan Guarantee Agreement" means the written contract by and among the lender, the borrower, the Administrator, and such other parties that REA may require, setting forth the terms and conditions of a guarantee issued pursuant to the provisions of this part.

"Loan Guarantee Risk" means the risk as determined by REA associated with guaranteeing a loan for a particular borrower. Components of loan guarantee risk include the following:

(1) The outstanding principal balance of a loan;

(2) The dollar weighted average interest rate (stated as an annual percentage rate) on a loan;

(3) The final maturity date of a loan;

(4) The annual principal amortization of the loan; and

(5) Any other factor that as determined by REA increases the magnitude or duration of the guarantee.

"Mortgage" means the mortgage and security agreements by and among the borrower and REA, as from time to time supplemented, amended and restated.

"1989 Appropriations Act" means the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460).

"Notice of Intent to Prepay the Federal Financing Bank" means the notice in the form specified in § 1786.9 hereof.

"Prepayment Authority" shall have the meaning specified in § 1786.5(a).

"Private Loan" means a loan or loans to be guaranteed under the provisions of this part and used to prepay an FFB loan.

"Pro-rated Percentage" shall have the meaning specified in § 1786.6(b)(1).

"REA" means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

"RE Act" means the Rural Electrification Act of 1936 (7 U.S.C. 901-950b), as amended.

"Service" or "Servicing" means the following activities:

(1) The billing and collecting of the private loan payments from the borrower;

(2) Notifying the Administrator promptly of any default in the payment of principal and interest on the private loan and submitting a report, as soon as possible thereafter, setting forth the servicer's views as to the reasons for the default, how long the servicer expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;

(3) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, loan guarantee agreement, the mortgage, or related security instruments, or conditions of which the servicer or the lender is aware which might lead to nonpayment, violation or other default; and

(4) Such other activities as may be specified in the loan guarantee agreement.

"Settlement Date" means the date the borrower disburses funds to the FFB in order to complete a prepayment pursuant to this part, and shall be a date agreed to by REA, and a date on which both the FFB and the Federal Reserve Bank of New York are open for business.

"Standard Electric Program Application" shall have the meaning specified in § 1786.5(c)(1).

"Telephone Borrower" means a borrower that provides telephone service as defined in 7 CFR 1745.2(f).

"Telephone Program Applications" shall have the meaning specified in § 1786.5(c)(2).

(b) *Rules of Construction.* Unless the context shall otherwise indicate, the terms defined in § 1786.3(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this part as a whole.

§ 1786.4 Qualifications.

(a) *Borrowers.* To qualify to prepay an FFB loan pursuant to this part, the borrower must:

(1) Demonstrate that the FFB loan was outstanding on July 2, 1986;

(2) Prepay the FFB loan by (i) using a private loan with the existing loan guarantee; (ii) using internally generated funds; or (iii) using a combination of a private loan with the existing loan guarantee and internally generated funds;

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship; and

(4) Be a telephone borrower.

(b) *Lenders.* To participate pursuant to this part, in a borrower's prepayment of an FFB loan by means of a private loan, the lender must:

(1) Be a private legally organized lender, or a lender established pursuant to the Farm Credit Act of 1971, as amended;

(2) (i) Be subject to credit examination and supervision by either an agency of the United States or a state and be in good standing with its licensing authority and have met the requirements, if any, of licensing, lending and loan servicing in the state where the collateral for the Loan is located; (ii) be a financially viable lender; or (iii) be a trust administered. by an entity meeting the requirements of paragraph (b)(2) (i) or (ii) of this section; and

(3) Have the capability to adequately service the private loan either by using its own resources or by contracting for such resources with a financially viable lender. Under no circumstances may the borrower or an affiliate of the borrower service the private loan. A qualified lender may participate out each private loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator.

(c) *Private Loans.* A borrower who qualifies pursuant to § 1786.4(a) may at its option elect to use a private loan to make a prepayment, or a portion of a prepayment, pursuant to this part. Private loans, the proceeds of which are used exclusively to prepay FFB loans, shall be eligible for a guarantee under this part. The Administrator shall endorse a guarantee on each note evidencing a qualifying private loan. The private loan shall be structured in a manner which in the judgment of REA shall not result in an increase in loan guarantee risk and shall comply with the following:

(1) The private loan shall provide for the periodic payment of interest by the borrower not less frequently than annually, at either a variable or fixed rate in a manner which shall not result in an increase in loan guarantee risk. (i.e. The dollar weighted average interest rate on the private loan shall be less than or equal to the dollar weighted average interest rate on the FFB loan being prepaid, so that:

$$C_r = C_o + \frac{\sum_{i=1}^{n} (C_o - A_i) T_i}{(J - n)}$$

Where,
C_r=The revised interest rate cap;
C_o=The original interest rate cap at the time of prepayment;
A_i=The average interest rate actually charged in the ith period;
T_i=Length of the ith period expressed in years;
n=The number of years that have elapsed since the initial prepayment;
J=The initial term of the private loan, at the time of prepayment;

Subject to the constraint that A_1 must be less or equal to C_o).

(2) Principal payments on the private loan shall be made either quarterly, semiannually, or annually and shall commence on or before the last day of the calendar year during which the prepayment pursuant to this part was made.

(3) With the approval of the Administrator, the lender may refund the private loan with the proceeds of another loan from the same lender, with the existing guarantee and under terms, conditions, and a structure substantially similar to the private loan, on such dates as the lender, the borrower and REA may agree, provided however, that such a refunding loan shall comply with the provisions of § 1786.4(c) hereof. Additionally, with the approval of the Administrator, the private loan may be prepaid either in whole or in part at any time by the borrower using its general funds.

(4) The private loan and the guaranteed note evidencing the private loan shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1986.

(5) The guaranteed note evidencing the private loan shall not be transferable or assignable except (i) with the written approval of the Administrator; (ii) in the event that the guaranteed note evidencing the private loan is held by a trust, to a similar trust, in connection with a refunding loan made by the lender pursuant to § 1786.4(c)(3); or (iii) as an undivided pro rata interest in a pool of obligations.

(6) The loan documentation shall provide REA with the right to accelerate the note evidencing the private loan upon the occurrence of any "Event of Default" under the mortgage with the effect that all of the unpaid principal and interest on any such note shall become immediately due and payable to REA, and REA shall continue to pay under its guarantee the principal of and interest on such note without taking into account such acceleration. The loan documentation shall also provide REA with a right, upon the occurrence of such an "Event of Default," to accelerate payment on its guarantee and accelerate payment on the note evidencing the private loan on the earlier of any date the interest rate on the private loan is reset, without premium or penalty; any date the borrower may prepay in accordance with the terms of the private loan, or the tenth anniversary of the date the private loan first bears interest at a fixed interest rate.

(7) The principal of the private loan shall not include amounts attributable to fees associated with the private loan. At the time it submits its application, a borrower may request that the Administrator approve the inclusion of amounts attributable to fees as part of the interest rate on the private loan, if the net effective interest rate including such fees meets the test contained in § 1786.4(c)(1). For the purposes of these regulations, such financed fees shall be considered "interest".

(8) Private loans and guaranteed notes evidencing private loans shall otherwise be in form and substance satisfactory to the Administrator.

(d) *Prepayments Without a Guarantee.* Qualifying borrowers may elect to utilize internally generated funds without a guarantee to prepay an FFB loan, or partially prepay an FFB loan, pursuant to this part, if

(1) The borrower notifies REA, of its intent to prepay using internally generated funds in accordance with the application procedures set forth in this part; and

(2) The borrower submits a certification to REA that the prepayment does not, materially adversely affect the financial stability of the borrower and its ability to meet all its obligations, including debt service on all loans made, guaranteed or lien accommodated under the RE Act which will remain outstanding after the date of the prepayment.

(e) *The Use of both a Private Loan and Internally Generated Funds.* Qualifying borrowers may elect to utilize a combination of private loans and internally generated funds without a guarantee, to prepay an FFB loan pursuant to this part, if

(1) The private loans comply with the provisions of paragraph (c) of this section, and

(2) The borrower complies with paragraph (d) of this section.

(f) *FFB loans.* A borrower's FFB loans that qualify to be prepaid pursuant to this part are:

(1) *Qualifying Borrowers.* In the case of qualifying borrowers other than financially distressed borrowers, FFB advances with long-term maturity dates may be prepaid pursuant to this part; and

(2) *Financially Distressed Borrowers. [Reserved]*

§ 1786.5 Prepayment Authority, Program Allocations, Categories of Prepayment Applications and Financially Distressed Borrowers' Reserve.

(a) *Prepayment Authority.* So long as the aggregate amount of prepayments made after December 22, 1987, including prepayments made pursuant to § 1786.4(d) and § 1786.4(e), under section 306(A) of the RE Act, does not exceed $2.5 billion, the approval of the Secretary of the Treasury is not required in order to make a prepayment pursuant to this part (such amount of prepayments is hereinafter called prepayment authority).

(b) *Program Allocations.* In accordance with the provisions of section 637 of the 1989 Appropriations Act, $350 million of prepayment authority is allocated to REA-financed electric systems and $150 million of prepayment authority is allocated to REA-financed telephone utilities. The amounts of prepayment authority allocated to electric program borrowers and telephone program borrowers shall not be transferred between programs. Borrowers may not sell, assign, or otherwise transfer prepayment authority to another borrower.

(c) *Categories of Prepayment Applications.* Applications received by REA from borrowers desiring to prepay pursuant to this part will be separated into the following two application categories:

(1) *Electric Program Applications.* Electric program applications are applications to make a prepayment pursuant to this part from REA-financed electric utilities, that qualify in accordance with § 1786.4(a) hereof and which are received by REA during the application period. Electric program applications will be further subdivided and classified as being either (i) a financially distressed borrower's application, or (ii) a standard electric program application. Applications received from borrowers determined by the Administrator not to be a financially distressed borrower will be classified and processed as a standard electric program application;

(2) *Telephone Program Applications.* Telephone program applications are applications to make a prepayment pursuant to this part from REA-financed telephone utilities that qualify in accordance with § 1786.4(a) hereof and which are received by REA during the application period;

(d) *Financially Distressed Borrowers' Reserve. [Reserved]*

§ 1786.6 Processing procedure.

(a) *Priority of Processing.* The determination of the order or method in which applications or portions of applications will be processed by REA rests solely within the discretion of the Administrator. REA expects that a number of prepayment applications will be processed simultaneously. In the event that it becomes necessary to establish priorities of processing, prepayment applications will be processed without regard to the date received, generally in the following order of priority:

(1) Applications from telephone borrowers;

(2) Applications from financially distressed borrowers;

(3) Applications from all other borrowers. When assigning priority to such applications, REA will consider a number of factors, including without limitation, (i) the number of prepayment applications being processed by the area office; (ii) the novelty or complexity of the proposed transaction; (iii) the method of prepayment; and (iv) the availability of resources. In the event that REA receives during the initial application period, prepayment applications from such borrowers in an amount less than remaining prepayment authority for each respective program, REA will establish a new application period and publish a notice to that effect in the **Federal Register.**

(b) *Pro-rated Applications.* Standard electric program applications, and telephone program applications will be prorated within their respective application categories to permit partial prepayments in the event that the aggregate amount of prepayment applications received during the application period exceeds the amount of prepayment authority allocated to that application category. In such circumstances, the amount of each borrower's permitted prepayment shall be determined within each respective application category, as follows:

(1) The principal amount of FFB advances under each individual application, which, if prepaid pursuant to this part, would result in an economic savings to the borrower, shall be divided by the aggregate principal amount of FFB advances, under all of the applications, which, if prepaid pursuant to this part, would result in an economic savings to the borrowers, in order to determine a percentage (hereinafter called a pro-rated percentage) for each borrower;

(2) Each borrower's share of the prepayment authority for its application category shall be equal to the product of (i) the prepayment authority times (ii) the respective pro-rated percentage, and may be used to prepay a portion of any of the borrower's FFB loans listed pursuant to § 1786.7(a)(2);

(3) If any approved prepayment transaction fails to be settled within 180 days of the date the borrower is notified by REA of its prepayment allocation, REA may rescind its approval. The unused prepayment authority represented by such a failed transaction is subject to being included in any subsequent notice of a new application period under this part; and

(4) In the event that applications from financially distressed borrowers exceed the amount prepayment authority remaining in the financially distressed borrowers' reserve, the Administrator at his discretion shall select one or more of such applications and allocate the reserve. In making such a selection and allocation, the Administrator may consider various factors, including without limitation, (i) the dollar amount of savings to be realized by the proposed prepayment; (ii) the interest rates on the FFB loans proposed to be prepaid; (iii) the magnitude of the default or potential default; and (iv) whether the borrower has previously completed a prepayment under § 306(A).

(c) *Notification of Borrowers' Allocations.* Promptly after allocating the prepayment authority to borrowers and completing any proration calculations that may be necessary, REA will return to each borrower submitting a prepayment application pursuant to this part, a copy of their Notice of Intent to Prepay the Federal Financing Bank specifying the amount of the borrower's prepayment allocation.

§ 1786.7 Application procedure.

Applications to make a prepayment pursuant to this part shall be submitted to REA on such forms as REA may prescribe in the following manner:

(a) *Application.* Each borrower desiring to make a prepayment pursuant to this part shall submit an application to REA. No application from a borrower will be accepted by REA prior to the commencement of the application period. An application shall not be deemed submitted to REA until it is received by REA, and the "Date Received" has been inscribed on the Notice of Intent to Prepay the Federal Financing Bank by an authorized official of REA. Incomplete applications may be returned to the borrower at the discretion of REA and thereafter must be resubmitted in order to be processed. To be considered complete, the application should include the following:

(1) "Notice of Intent to Prepay the Federal Financing Bank" in the form specified in § 1786.9 hereof;

(2) A listing of each FFB loan advance to be prepaid by loan designation, REA note number, REA account number, advance date, maturity date, original amount, outstanding balance, and interest rate;

(3) Evidence that the borrower meets the qualification provisions of § 1786.4(a) of these regulations;

(4) The certification set forth in part A of the Notice of Intent to Prepay the Federal Financing Bank executed by the chief executive officer of the borrower;

(5) In the event that a borrower submits a prepayment application which proposes to utilize a portion of the financially distressed borrowers' reserve, a certification signed by the chief executive officer of the system to the effect that the borrower is either (i) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (ii) participating in a work out or debt restructuring plan with REA, either as the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring and stating why the borrower is in default or near default.

(b) *Election of Method of Prepayment.* Prior to requesting REA to schedule a settlement date, the borrower shall (1) elect whether it will use a private loan, internally generated funds, or a combination of a private loan and internally generated funds to make the prepayment, by completing part C of its Notice of Intent to Prepay the Federal Financing Bank; (2) specify in part C of the Notice of Intent to prepay the Federal Financing Bank a date after which a prepayment closing may be scheduled; (3) if appropriate, execute the certification set forth in part C of the Notice of Intent to Prepay the Federal Financing Bank; and (4) return a completed copy of the Notice of Intent to Prepay the Federal Financing Bank to the REA area office.

(c) *Final Documentation.* All documentation in connection with a proposed prepayment made pursuant to this part shall have been submitted to

REA in final form, no later than 5 business days prior to the settlement date agreed to by the borrower and REA. To be considered complete, the final documentation shall include the following material:

(1) A completed copy of the Notice of Intent to Prepay the Federal Financing Bank;

(2) In the event that a borrower proposes to utilize a private loan in connection with a prepayment or a portion of a prepayment,

(i) Evidence, in form and substance satisfactory to REA, that the borrower has an irrevocable commitment from the lender to close the private loan on the settlement date at an interest rate that meets the requirements of § 1786.4(c)(1);

(ii) Evidence that the lender meets the qualification provisions of § 1786.4(b);

(iii) Evidence that the private loan meets the qualification provisions of § 1786.4(c); and

(iv) The final documentation for the private loan;

(3) Estimate of fees, and expenses, including any taxes, in connection with the prepayment transaction;

(4) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting REA approval of the prepayment.

(5) In the case of financially distressed borrowers, evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or state regulatory body having jurisdiction over the borrower's rates has acknowledged its awareness of this requirement;

(6) In the event that borrower is unable to deliver final documentation or the evidence specified in accordance with, § 1786.7(c), REA may reschedule the settlement date at its discretion.

(Approved by the Office of Management and Budget under control number 0572–0088)

(c) *Procedure for Submission of Prepayment Applications.* An original and three copies of each initial application must be submitted, between the hours of 8:15 a.m. to 4:45 p.m. Washington, DC time, to: Chief, Communications and Records Management Branch, Administrative Service Division, Rural Electrification Administration, U.S. Department of Agriculture, Room 0175 South Agriculture Building, Washington, DC 20250–1500. The outside front of the package containing the prepayment application must be clearly marked, "FFB PREPAYMENT APPLICATION." The Notice of Intent to Prepay the Federal Financing Bank must be the first document in the application package. Upon receipt the prepayment application will be opened, logged in, and the Notice of Intent to Prepay the Federal Financing Bank will be inscribed with the date received by an authorized official of REA. A copy of the Notice of Intent to Prepay the Federal Financing Bank will then be returned to the borrower to acknowledge receipt of the application. Should an application be submitted other than in accordance with the provisions of § 1786.7, the date received shall be a date determined by REA in its sole discretion.

§ 1786.8 Settlement procedure.

(a) *General.* Settlements in connection with prepaying FFB loans pursuant to this part shall be conducted in accordance with the provisions of this section.

(b) *Settlement Date.* The prepayment will be settled and if a private loan is utilized, the guarantee will be delivered, on a settlement date agreed upon by the borrower and REA. Prior to scheduling a settlement date for a borrower's prepayment pursuant to this part, REA shall have received the material specified in § 1786.7(b).

(c) *Place of Settlement.* All settlements will take place in Washington, DC, at a location of the borrower's choosing; provided however, if more than one settlement is proposed for the same settlement date, REA reserves the right to coordinate the date and location of the settlements with borrowers involved.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to REA through the Department of the Treasury account at the Federal Reserve Bank of New York or shall provide for payment to REA in another manner acceptable to REA and FFB, in an amount sufficient to pay the outstanding principal of the FFB loan being prepaid plus accrued interest from the last payment date to and including the settlement date.

(e) *Documentation.* The borrower shall deliver, or cause to be delivered to REA and FFB, not less than 3 business days prior to the settlement date, written notice of the settlement date and a complete listing of each FFB loan advance to be prepaid or partially prepaid, in the format required by § 1786.7(a)(2). In the event that a private loan is used in connection with the prepayment, the following executed documents, opinions and material shall be delivered at the settlement:

(1) The guaranteed note evidencing the private loan.

(2) The guarantee.

(3) The loan guarantee agreement.

(4) Copy of the private loan agreement between the lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligations secured by the mortgage including the obligation of the borrower to reimburse REA for any amounts that REA may pay under the guarantee.

(7) An approving opinion of the borrower's legal counsel to the effect that the guaranteed note evidencing the private loan is a valid and legally binding obligation of the borrower which is secured under the mortgage, and the priority of the mortgage, as amended pursuant to paragraph (e)(6) of this section, remains undisturbed.

(8) An approving opinion of the lender's legal counsel to the effect that the loan guarantee agreement is a valid and legally binding obligation of the lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other documentation required by the lender.

(11) Copies of any other documentation required by REA to ensure that the obligations of the borrower to reimburse REA for any amounts that REA pays under the guarantee or may advance in connection with the private loan are adequately secured under the mortgage.

(Approved by the Office of Management and Budget under control number 0572–0088)

§ 1786.9 Forms.

Guarantees and loan guarantee agreements executed by REA pursuant to this part will be on forms prescribed by REA. Such forms will include, without limitation, additional details on servicing, procedures for notifying REA of a default, the manner for requesting payment on a guarantee. The Notice of Intent to Prepay the Federal Financing Bank shall be substantially in the form specified by REA. REA may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to § 1786.7 of this part.

§ 1786.10 Access to records of lenders, servicers, and trustees.

The lender, the servicer, or the trustee will permit representatives of REA (or other agencies of the U.S. Department of

Agriculture authorized by that Department) to inspect and make copies of any of their records pertaining to REA guaranteed loans. Such inspection and copying may be made during regular office hours of the respective party or any other time the party and REA find convenient.

§ 1786.11 Loss, theft, destruction, mutilation, or defacement of REA guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the REA Administrator is authorized on behalf of REA to issue a replacement guarantee(s) for one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender, or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to REA for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, requesting the replacement forms;

(ii) Legal name and address of lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the guarantee, including the name of the borrower, date of the guarantee, face amount of the evidence of debt purchased, date of evidence of debt and present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the guarantee; and

(vi) The lender or holder, shall present evidence demonstrating current ownership of the guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to REA (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to REA shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a state or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Electrification Administration. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save REA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1786.12 Other prepayments.

Nothing contained in this part shall prohibit a borrower from making prepayments of FFB loans in accordance with the terms thereof.

§ 1786.13 Application of regulation to previous prepayments.

Nothing contained in this part shall affect the validity of prepayments made or guarantees issued pursuant to previous regulations. Those borrowers, however, that completed a prepayment pursuant to section 306(A) of the RE Act and closed loans prior to February 27, 1988, may, in their discretion request REA approval and if required by prior regulations the concurrence of the Secretary of the Treasury, of any amendments necessary to make the terms and conditions of such loans consistent with, or to consolidate such loans with, loans guaranteed under these regulations.

§ 1786.14 Judicial review.

This part is intended to set forth REA policies and procedures for the orderly administration of the provisions of section 306(A) of the RE Act, section 633 of the continuing resolution, and section 637 of the 1989 Appropriations Act and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

Date: December 22, 1989.

Jack Van Mark,

Acting Administrator.

Editorial Note: The following form of the Notice of Intent to Prepay the Federal Financing Bank (which will not be published in the Code of Federal Regulations) may be used in connection with a prepayment application.

BILLING CODE 3410-15-M

Public reporting burden for this collection of information is estimated to average 1 hour 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 Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572-0088), Washington, DC 20503. OMB FORM NO. 0572-0088, Expires 02/29/92.

REA USE ONLY	
DATE RECEIVED	RECEIVED BY (Initials)

USDA-REA

NOTICE OF INTENT TO PREPAY THE FEDERAL FINANCING BANK

A **APPLICATION** - Submit an original and three copies to: Chief, Communications and Records Management Branch, Administrative Services Division, REA, U.S. Department of Agriculture, Rm. 0175-South Agriculture Building, Washington, DC 20250-1500 (See 7 CFR 1786.7, "Application Procedures").

1. Borrower Designation

2. Borrower Name and Address

3. Type of Application *(Check as applicable)*:

a. ☐ Telephone

b. ☐ Electric:

(1) ☐ Standard

(2) ☐ Financially Distressed *(Attach certification specified by 7 CFR 1786.7 (a)(5))*

4. This prepayment is intended to be made using:

a. Internally generated funds $

b. Private capital with the existing guarantee $

c. Proposed prepayment amount $

5. Dollar weighted average FFB interest rate on the proposed prepayment amount *(Attach schedule of advances)*

6. Name of Proposed Lender *(If applicable)*

CERTIFICATION

In making this application, I certify that, any savings from the prepayment of Federal Financing Bank loans pursuant to §306(A) of the Rural Electrification Act of 1936, as amended [7 U.S.C. 936(A)], will be passed on to our customers or used to improve our financial strength in cases of financial hardship:

SIGNATURE: _____ DATE: _____

TITLE: _____

B REA USE ONLY

Prepayment Allocation *(Completed by appropriate area office)*

$ _____

SIGNATURE: _____ DATE: _____

TITLE: _____

AREA: _____

C **CLOSING DATA** - Complete after receiving prepayment allocation from REA and return to appropriate area office.

1. This prepayment shall be made using:

a. Internally generated funds ..... $

b. Private capital with the existing guarantee $

c. Final prepayment amount ..... $

2. Dollar weighted average FFB interest rate of advances being prepaid *(attach schedule)*:

3. Name of Lender:

4. A closing may be scheduled after:

CERTIFICATION

(Complete if using internally generated funds)

This prepayment will not have a material adverse affect on our organization's financial stability and its ability to meet its obligations when due, including debt service on all loans made, guaranteed, or lien accommodated under the Rural Electrification Act of 1936, as amended, which will remain outstanding after the date of the prepayment.

SIGNATURE: _____ DATE: _____

TITLE: _____

REA Form 606 *(Rev. 8-89)*

[FR Doc. 90-655 Filed 1-10-90; 8:45 am]

BILLING CODE 3410-15-C

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

RIN 0572-AA29

Prepayment of REA Guaranteed Federal Financing Bank Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule; Amendment.

SUMMARY: The Rural Electrification Administration (REA) is proposing to amend 7 CFR chapter XVII by amending part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. The proposed amendments establish policies and procedures relating to the prepayment of certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA, by financially distressed and other electric borrowers.

These prepayments will be carried out under the provisions of section 306(A) of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) (the "RE Act"), section 633 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1988 (Pub. L. 100-202) (the "Continuing Resolution"), and section 637 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-460) (the "1989 Appropriations Act").

DATE: Written comments must be received by REA no later than February 12, 1990.

ADDRESS: Submit written comments to Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. Comments may also be inspected at Room 1272 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby proposes to amend 7 CFR chapter XVII by amending part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans.

This regulation is proposed to be issued in conformity with Executive Order 12291, Federal Regulations. It will not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this final rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR part 3015 subpart V in 50 FR 47034 (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

The reporting and/or recordkeeping requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) The OMB approval number for these requirements is 0572-0088.

The public reporting burden for this collection of information is estimated to vary from 10 to 200 hours per response with an average of 27 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0572-0088), Washington, DC 20503.

Background

Elsewhere in today's **Federal Register**, REA published a Final Rule revising 7 CFR part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. This Rule sets forth the REA policy and procedures implementing section 306(A) of the RE Act which permits an REA-financed telephone system to prepay an FFB loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance), if:

(a) The loan was outstanding on July 2, 1986;

(b) Private capital, with the existing loan guarantee, is used to replace the loan; and

(c) The borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

On May 23, 1989, REA published a Proposed Rule at 54 FR 22290 proposing to revise 7 CFR part 1786. After issuing this Proposed Rule, and in the process of developing the final rule, REA determined that it would make certain changes in the May 23, 1989, Proposed Rule relating to the financially distressed borrowers' reserve. Because these changes are substantive, REA decided to solicit public comment on these proposed changes via this Proposed Rule; Amendment.

As a result, this proposed amendment addresses prepayment applications from financially distressed and other electric borrowers.

Comments

In the May 23, 1989 Proposed Rule, REA invited interested parties to file comments on or before June 22, 1989. Comments addressing the financially distressed borrowers' reserved are discussed in this Proposed Rule; Amendment. Other comments are discussed in the Final Rule, 7 CFR part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans published elsewhere in today's **Federal Register**.

Twenty-one different organizations or groups commented on the May 23, 1989 Proposed Rule. They were:

1. The National Rural Electric Cooperative Association,
2. The National Rural Telecom Association, the Organization for the Protection and Advancement of Small Telephone Companies, and the United States Telephone Association (signed jointly),
3. Georgia Electric Membership Corporation,
4. The National Bank for Cooperatives (CoBank), the St. Paul Bank for Cooperatives, and the Springfield Bank for Cooperatives,
5. National Rural Utilities Cooperative Finance Corporation,
6. Smith Barney,

7. CONTEL (Contel Service Corporation),
8. Telephone and Data Systems, Inc. (Telephone Systems Services Division),
9. Alaska Electric Generation and Transmission, Inc.,
10. Arkansas Electric Cooperative Corporation,
11. Basin Electric Power Cooperative,
12. Chugach Electric Association, Inc.,
13. East Kentucky Power Cooperative, Inc.,
14. New Hampshire Electric Cooperative, Inc.,
15. Oglethorpe Power Corporation,
16. Plains Electric Generation and Transmission Cooperative, Inc.,
17. Runestone Telephone Association,
18. Seminole Electric Cooperative Incorporated,
19. United Power Association,
20. United Telephone System, and
21. Western Farmers Electric Cooperative.

For the purposes of discussion, the comments of these organizations have been categorized.

A number of these organizations questioned the decision of REA to establish a reserve for financially distressed electric borrowers utilizing $200 million of the $350 million of prepayment authority allocated for REA-financed electric borrowers and/or the decision to maintain this reserve until December 31, 1990.

Currently, a significant portion, over $6 billion, of the outstanding REA guaranteed loan portfolio is not being repaid in accordance with its original terms. There are a number of REA-financed electric systems that are in default or near default on interest or principal due on FFB loans guaranteed by REA. Of these non-performing loans, there is significantly more than $200 million in FFB loans that if prepaid will result in economic savings to the borrowers.

In addition, some REA-financed electric systems are or may provide assistance to other REA-financed electric systems who are in default or near default as part of a workout or restructuring. REA proposes to utilize the $350 million of remaining electric program prepayment authority such financially distressed borrowers including borrowers assisting in a restructuring. This approach is consistent with the way the prepayment program has been administered since its outset. REA believes that the use of this prepayment authority in this manner may assist in the financial restructuring of these borrowers at the least cost to the Rural Electrification and Telephone Revolving Fund. Therefore, REA proposes to modify the concept of a financially distressed borrowers' reserve and established it at $350 million.

Because it takes time to develop a satisfactory financial restructuring plan, REA has not modified the period of time that the reserve will be set aside for such financially distressed borrowers. It is proposed to maintain the reserve until one year after publication of the final rule. Financially distressed borrowers may make an application for a portion of the reserve any time during this period, so long as the prepayment is consummated prior the end of this one year. Any portion of the financially distressed borrowers' reserve remaining unsubscribed after this period, shall be allocated to non-financially distressed electric borrowers.

It is proposed to limit the FFB advances that are eligible to be prepaid by financially distressed borrowers to those advances which if prepaid will result in an economic savings to the borrower.

Prepayment applications requesting a portion of the financially distressed borrowers' reserve which are received from otherwise eligible electric borrowers not determined by the Administrator to be financially distressed, will be considered eligible for any electric program prepayment authority remaining unused after one year from publication of the final rule.

The principal proposed modifications to 7 CFR part 1786 are summarized as follows:

The definition of the application period is proposed to be modified to provide enable financially distressed borrowers to apply for, and consummate a prepayment for a one year period after publication of the final rule.

The restriction limiting prepayments under the regulations to telephone borrowers has been deleted.

The financially distressed borrowers' reserve is established at $350 million. After one year, any unallocated funds remaining in the financially distressed borrowers' reserve will be allocated to borrowers filing standard electric program applications.

List of Subjects in 7 CFR Part 1786

Administrative practice and procedure, Electric utilities, Telephone utilities, Guaranteed loan program—energy, Guaranteed loan program—telephony.

In view of the above, REA is proposing to amend 7 CFR chapter XVII by making the following revisions and amendments to part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

1. The authority citation for part 1786 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Title I, Subtitle B, Pub. L. 99–509; Title I, Pub. L. 100–202; Pub. L. 100–203; Title VI, Pub. L. 100–460; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Section 1786.3 is proposed to be amended by revising the definition of "Application Period" in paragraph (a) to read as follows:

§ 1786.3 Definitions and rules of construction.

(a) * * *

"Application Period" means a period during which REA is accepting applications to make prepayments pursuant to this part, and initially means:

(i) In the case of telephone borrowers, the period commencing on (the date the final rule was effective for telephone borrowers) and ending on (a date 30 days later);

(ii) In the case of financially distressed borrowers, the period commencing (the date this amendment becomes final) and ending on (a date 11 months later); or

(iii) In the case of other borrowers, the period to be announced by REA.

* * * * *

3. Section 1786.4 is proposed to be amended by revising paragraphs (a)(2) and (a)(3) to read as follows, removing paragraph (a)(4) and revising paragraph (f)(2) to read as follows:

§ 1786.4 Qualifications.

(a) * * *

(2) Prepay the FFB loan by (i) using a private loan with the existing loan guarantee; (ii) using internally generated funds; or (iii) using a combination of a private loan with the existing loan guarantee and internally generated funds; and

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship.

* * * * *

(f) * * *

* * * * *

(2) *Financially Distressed Borrowers.* FFB loans that are eligible to be prepaid by utilizing the financially distressed borrowers' reserve are advances with long-term maturity dates, and which in

the opinion of the Administrator, if prepaid, would result in an economic savings to the financially distressed borrower.

4. Section 1786.5 is proposed to be amended by revising paragraph (d) to read as follows:

§ 1786.5 Prepayment Authority, Program Allocations, Categories of Prepayment Applications and Financially Distressed Borrowers' Reserve.

* * * * *

(d) *Financially Distressed Borrowers' Reserve.* The $350 million of prepayment authority allocated for REA-financed electric utilities, is initially set aside into a financially distressed borrowers' reserve. This reserve of prepayment authority will be available for prepayments pursuant to this Part by financially distressed borrowers who apply to make such a prepayment during the application period. In the event that a portion of financially distressed borrowers' reserve remains unsubscribed at the end of the initial application period, the unallocated portion of the financially distressed borrowers' reserve will be allocated to other electric borrowers having submitted applications during an application period to be announced by REA. Such prepayment applications shall be classified as standard electric program applications.

Date: December 22, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 90-656 Filed 1-10-90; 8:45 am]

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Thursday
January 11, 1990

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 291, 577, and 578

Single Family Property Disposition Homeless Initiative; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 291, 577 and 578

[Docket Nos. R-90-1461; FR-2704-I-01]

RIN 2502-AE80

Single Family Property Disposition Homeless Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule describes the basic policies and procedures that govern the disposition of HUD-acquired single family properties for use by the homeless. The rule provides for disposition by direct sale, lease with option to purchase, or lease-option under the Supportive Housing Demonstration program. The purpose of this rule is to link HUD's Single Family Property Disposition program to the effort to end homelessness.

DATES EFFECTIVE: This rule is effective on February 9, 1990, except for §§ 291.50 and 291.130(d), which will not be effective until approval of the information collection requirements in those sections and issuance of an approval number by the Office of Management and Budget (OMB). HUD will publish a separate Notice announcing the effective date of §§ 291.50 and 291.130(d) and the OMB approval number.

Comment Due Date: March 12, 1990.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection from 7:30 a.m. to 5:30 p.m. weekdays at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084).

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Single Family Property Disposition Division, Room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 755-5740 or, for hearing and speech-impaired, (202) 755-3938. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The Department has requested expedited review of the information collection requirements in the rule, so that the pre-approval process described in this rule may be carried out when the rule becomes effective. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. (Form HUD-9548, Sales Contract, referred to in § 291.120(d)(1), has been approved by OMB under control number 2502-0306 (expiration 9-30-92).)

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading, *Other Matters.* Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent by February, 5, 1990 to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background of FHA Single Family Mortgage Insurance Funds

Section 203 of the National Housing Act authorizes HUD to insure mortgages for single family residences through the Federal Housing Administration (FHA) single family mortgage insurance program. The mortgages are insured through three revolving funds: The Mutual Mortgage Insurance Fund (MMIF), the Special Risk Insurance Fund (SRIF), and the General Insurance Fund (GIF). These funds provide the moneys to pay insurance claims to lenders on mortgages that default. The funds are replenished by insurance premiums (*i.e.,* a fee mortgagors pay to obtain FHA insurance), income from the investment of moneys held by the funds, and proceeds from the sales of homes that HUD acquires, either by foreclosures or voluntary transfers, following default on the mortgages.

The MMIF encompasses approximately 90 percent of the FHA-insured single family homes. The MMIF insures only single family mortgages, and is self-sustaining. Other than an original $10 million appropriated by Congress in 1934 to get the fund started, and repaid in 1959, the MMIF has never received any Federal funds. Currently, the MMIF contains approximately $1.8 billion. Although, in contrast to the MMIF, the SRIF and the GIF primarily provide funding for insurance of mortgages on multifamily properties, each serves discrete special purpose single family mortgage insurance programs, which account for the remaining ten percent of FHA-insured single family homes. In further contrast to the MMIF, which is self-sustaining, the SRIF and GIF programs have over the years been the recipients of routine appropriations from Congress to replenish the funds since their establishment.

Although the MMIF was intended to be, and has remained, self-sustaining, it has recently been losing money annually. Based on a revised accounting system HUD established in 1988, and data for FY 1989 not as yet audited by Price-Waterhouse, the MMIF sustained losses of $1.4 billion in Fiscal Year (FY) 1988, and for $22.7 million in FY 1989. Similarly, in FYs 1988 and 1989, the SRIF incurred losses, respectively, of $253 million and $58.3 million, and the GIF losses of $2.98 billion and $484 million. Thus, overall, the losses to all three funds have totalled $4.63 billion in FY 1988 and $565 million in FY 1989.

HUD Programs To Provide Single Family Homes to the Homeless

HUD currently has available three programs to offer HUD-acquired properties to governmental entities and private nonprofit organizations for the use of the homeless (hereafter referred

to as "Single Family Homeless Programs"):

1. *Direct Sales Program:* HUD offers single family homes that it acquires to qualified homeless providers at a discount of normally ten percent below market value before HUD lists the homes for sale to the general public. If no homeless provider requests to purchase the property, HUD lists the property for sale to the general public. If a home is not thereafter sold within a reasonable time, further discounts are available to the homeless provider.

HUD does not provide purchase money mortgages under this program because of the burden of administering the mortgages, and the cost incurred when such mortgages default. Nor does HUD typically repair properties prior to sale, for three reasons: (1) The administrative burden of overseeing such repairs; (2) the cost, should the price of repairs not be realized by an equivalent increase in the sales price, when the property is eventually sold; and (3) the conclusion that purchasers would prefer to make their own decisions about what repairs should be made, and the best manner of making them (*e.g.*, possibly as part of improvements to the property).

2. *Lease with Option to Purchase Program:* HUD offers HUD-owned homes to homeless providers for use for the homeless at a cost of $1 per year. The homeless provider is responsible for maintaining the property and paying taxes during the lease period. For the same reasons as with the direct sales program, HUD does not typically make repairs to the properties before leasing them. Although originally limited to properties in the SRIF and GIF, in 1988 HUD authorized the use of MMIF properties on a case-by-case basis. Homeless providers who participate in this program may purchase the property upon expiration of the lease, at the property's pre-lease value, less ten percent.

3. *McKinney Act Lease-Option Program:* The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301–11412) (McKinney Act) authorized the Supportive Housing Demonstration Program, which provides assistance to governmental entities and private nonprofit organizations to provide housing and supportive services for the homeless. Under that program, applicants may apply for advances for the acquisition of property for use as housing for the homeless. Applicants that can demonstrate site control when they apply for assistance receive points under the ranking criteria for selection. If an applicant is interested in purchasing HUD-owned homes in connection with this program, HUD will assist it in meeting the site control criterion by agreeing to enter into a six month lease-purchase option with a public housing authority (PHA) or other governmental entity, under which the property is effectively held off the market while the applicant applies for acquisition assistance.

The McKinney Act Lease-Option program differs from the Lease with Option to Purchase program, discussed above, in two important ways: (1) Under the McKinney Act Lease-Option program, the homeless provider must purchase the property in order to lease it to the homeless (*i.e.*, the property may not be subleased during the period of time it is leased); and (2) the provider receives an advance under the McKinney Act to fund the acquisition. Under the Lease with Option to Purchase program, there is no requirement that the leasing provider eventually purchase the property, but, if the provider does purchase, it must obtain its own funding.

For a variety of reasons, the three Single Family Homeless Programs have not resulted in a substantial number of homes being purchased or leased by homeless providers. As of July, 1989, only 220 homes have been sold under the programs, and 374 leased.

Justification of the Cost of HUD's Single Family Homeless Programs

Helping to end the tragedy of homelessness is one of the six priorities Secretary Kemp has established for HUD. Accordingly, he has determined that additional steps should be taken to make HUD's Single Family Homeless Programs more productive. However, the Secretary has an overarching responsibility to protect the financial integrity of the FHA funds, particularly the MMIF, which is expected to be self-sustaining. When a HUD-acquired property is sold at a deep discount, or leased for $1 per year, the affected FHA fund suffers a loss if the property could otherwise promptly be sold at fair market value. The losses generated in past fiscal years by all three funds, but particularly the MMIF, place real constraints on the financial loss that the funds may be expected to absorb in order to contribute to the alleviation of the problem of homelessness.

Accordingly, in order to guide the Secretary's decision on how much use he may prudently make of the single family inventory for the homeless, an estimate of the annual cost per home, if single family properties are made available to the homeless rather than sold, is necessary.

Under HUD's direct sales program, HUD sustains little, if any, cost to the FHA funds. This is because the ten percent discount represents the approximate savings HUD realizes by selling directly, rather than pursuant to its ordinary competitive bid process. The savings is comprised of a selling broker's commission of up to six percent, and reasonable and customary closing costs of approximately three percent, of the sales price. HUD typically pays these costs in its ordinary sales; but under the direct sales program no broker is used, and HUD typically requires the homeless provider to pay closing costs. The average sales price of a HUD-acquired property is $40,000, and therefore the loss on a sale under the reduced sales would typically be one percent (the ten percent discount less the nine percent HUD saves by utilizing a direct sale), or $400. This loss may be further reduced, or perhaps eliminated, by savings in holding costs HUD may realize by selling properties under direct sales that it otherwise would sell at a later time under its ordinary sales program. As described below, those holding costs amount to $17.15 per day in direct out-of-pocket expenses (*i.e.*, excluding salaries). Thus, since HUD sustains little, if any, loss from direct sales, there is no limit on the number of properties the Secretary will sell to homeless providers under this program.

The loss to HUD under the lease program relates to the cost to HUD of deferral of a sale. The daily cost for HUD to hold a single family property it has acquired, excluding HUD salaries, is approximately $17.15. This holding cost includes $9.15 in direct out-of-pocket expenses, such as for property preservation, taxes, and management fees, as well as an estimated $8 in interest loss to the relevant fund as a result of sales proceeds not being deposited in the Treasury. The average period of time that HUD holds a single family property after it is available for sale, until it is sold, is 171 days. Thus, if HUD leased a property for $1 per year on the first day that it became available for sale, and leased it for the maximum three-year period that is prescribed in this rule, the Department would lose approximately $9,035 per property over the three-year period. This $9,035 is computed as follows:

(1) $8 per day in lost interest multiplied by 194 days, which represents the first one-year (365 days) term of the lease, less the 171 days HUD would normally hold the property after it is available for sale ($1,552);

(2) $8 per day in lost interest multiplied by 730 days, which is the next two one-year terms of the lease ($5,840);

(3) $17.15 per day in lost interest and daily holding cost multiplied by 171 days, which is the normal holding period in HUD's inventory after the property is returned at the expiration of the three-year maximum lease period ($2,933);

(4) Subtract the amount of money HUD would *save* by immediately leasing the property ($1,290), which is HUD's $9.15 daily holding cost multiplied by 141 days (the 171-day average holding period less the 30 days during which HUD will be attempting to sell the property before making it available for lease).

Based on these estimates, and balancing his need to safeguard the financial integrity of insurance funds against the needs of the homeless, the Secretary has determined that up to ten percent of the FHA inventory of acquired single family homes, which inventory currently totals approximately 47,000 homes, could be made available to the homeless under the lease programs. The maximum theoretical cost of leasing ten percent of the inventory (4,700 homes) to homeless providers would be approximately $42.4 million over the next three years [$9,035×4700 homes]. This estimate would assume that: (1) The entire ten percent of homes was utilized; (2) all properties were leased on the first day that they became available for sale; (3) all properties were leased for the maximum three-year period that HUD is prescribing in this rule; and (4) all properties were returned to HUD inventory at the end of the three-year period and not sold by HUD until the expiration of the normal 171-day holding period. The $42.4 million is derived by multiplying 4,700 (ten percent of HUD's inventory as of October 1, 1989) by $9,035 (cost to HUD described above that occurs when a sale of a HUD-acquired property is deferred for the three-year lease period, during which time the property is leased, under this program).

Even with the changes described below that are designed to facilitate leases by homeless providers of HUD-acquired homes, the full ten percent ceiling of HUD homes may not be leased, obviously all properties would not be leased on the first day of the three-year period beginning after the effective date of this rule, probably not all homeless providers will lease properties for a full three years, some providers may purchase their properties rather than returning them to HUD for sale, and HUD may sell returned properties faster than the average 171-day period. Thus, the actual cost to HUD over the next three years from its Single Family Homeless Programs will probably be substantially less than the estimated theoretical maximum discussed above. But even if the maximum were achieved, the approximately $14.2 million average yearly cost is sufficiently modest that the Secretary has determined that the FHA funds, and in particular the MMIF, could absorb the loss without jeopardizing their financial integrity. Of course, the Secretary reserves the right to increase or decrease in the future the number of homes that he will make available to the homeless, based on the financial condition of the FHA funds, and the extent of overall progress in addressing the problem of homelessness.

As described above, the "cost" HUD is bearing to fund the FHA Single Family Homeless Programs virtually entirely derives from the loss to the FHA funds from deferrals of sales of properties. Other than the as yet unknown cost of deleting the requirement that homeless providers leasing HUD properties purchase hazard insurance, explained later, the Secretary has determined that the Department cannot, at present, incur additional losses to the funds through these programs, in the form of increased administrative burden and/or out-of-pocket expenses, such as would come from offering deep sales discounts, purchase money mortgages, or effecting repairs, including abatement of lead-based paint, prior to sale or lease. Repairs and any necessary abatement for lead-based paint will be the responsibility of the lessee or purchaser.

Explanation of Revisions in the Single Family Homeless Programs

The Department has reviewed the Single Family Homeless Programs to determine ways in which more homes may be sold or leased to homeless providers. In addition, HUD has received a number of written and oral communications from homeless providers, legislators, and other interested individuals suggesting improvements that could be made in the programs. Based on HUD's own review, and its analysis of the communications, the following revisions in the program are being made. Based on public comments received in response to publication of this rule, the Department may, or course, make additional revisions.

1. *Payment of Rent by Tenants.* Under the current lease program, homeless providers may only charge the homeless residents who live in the HUD-acquired properties a rent of $1 per year, which is the amount the homeless providers must pay HUD. Homeless providers and legislators have requested that the providers be afforded the discretion to charge their tenants a reasonable rent in order to assist in covering operating costs, and to promote self-sufficiency and responsibility in the homeless tenants. HUD agrees, and will now permit providers to charge rents appropriate to the financial means of the occupants. However, the rent charged an occupant may not exceed the provider's cost of operating the property.

2. *Eligibility of Nonprofit Organizations.* Currently, only nonprofit homeless providers that receive federal, state, or local funding are eligible to participate in the Direct Sales Program. A legislator has questioned the need for this requirement. HUD agrees, and is deleting it. That a nonprofit receives all of its funding from private sources presents no basis for disqualifying it from eligibility to participate in the Direct Sales programs.

3. *Length of Lease.* Homeless providers that participate in the Lease with Option to Purchase program must currently sign a lease for one year, which is renewable at the option of the lessee. Two legislators have pointed out that nonprofit organizations, who might otherwise be willing to invest substantial funds to rehabilitate a property, may have difficulty in arranging necessary financing because of one-year lease is too short. In order to avoid this problem, and to provide an incentive for upkeep and maintenance, HUD is revising the program to provide that homeless providers will be offered leases of one year, with guaranteed renewals for two additional successive years. After the three-year lease period, the provider must either return the property, which HUD will then offer for sale to the public, or must purchase it. The reason that HUD is imposing this maximum three-year period is to encourage providers to purchase the properties, thereby providing a source of long-term non-HUD acquired properties for the homeless.

4. *Eligible Properties.* As discussed above, under the current lease program, all SRIF and GIF single family properties are available for use by the homeless, but MMIF properties are only made available on a case-by-case basis. Specifically, HUD only makes MMIF properties available if no SRIF or GIF properties are available in the same area. A legislator has pointed out that, since the MMIF encompasses the vast majority of HUD's single family inventory, circumscribing the availability of those properties limits the alternatives available to homeless

providers and should be eliminated. Since HUD is establishing an overall ceiling on the number of properties it is making available for lease to the homeless of ten percent of its inventory, the Department has concluded that it may make all properties available, including those in the MMIF, without restriction.

5. *Eligibility to Participate in the McKinney Act Supportive Housing Demonstration Lease-Option Program.* Until recently, the regulations implementing the McKinney Act required that nonprofit organizations wishing to obtain assistance to acquire HUD property under the Supportive Housing Demonstration program obtain the assistance of a PHA or other governmental entity. This was because HUD would only sign a lease-option, and execute a sale, directly with a PHA or governmental entity. Various nonprofit organizations have advised HUD that they would prefer to lease and purchase directly from HUD, thereby avoiding the administrative burden and delay of dealing with HUD through PHAs and other governmental entities. In order to facilitate the efforts of nonprofit organizations to utilize the Supportive Housing Demonstration Lease-Option program, HUD has deleted the requirement that a PHA or governmental entity execute the lease-option and sale; the Department will now enter these transactions directly with the homeless provider. (This change was made in the final rule for the Supportive Housing Demonstration program, published on November 8, 1989, as 24 CFR parts 577 and 578 (54 FR 47024). The relevant sections are 24 CFR 577.135(c) and 578.135(c).)

HUD is also deleting the prohibition in these same regulations against occupancy of properties by homeless families under the Supportive Housing Demonstration Lease-Option program during the lease period. Instead, providers that qualify to lease under HUD's Lease with Option to Purchase Program may sublease during the lease period. Should the provider be unable to obtain assistance under the Supportive Housing Demonstration program to purchase the property, then it would have the option of continuing its lease with HUD under the Lease with Option to Purchase program. In this way, properties that may be used to house homeless families will not unnecessarily sit unused for up to six months.

6. *Requirement to Purchase Hazard Insurance.* Under the present lease program, HUD requires homeless providers to purchase hazard insurance on properties they lease from HUD. The Department has no record or knowledge of a reported incidence of loss of property under this program since it began leasing properties to homeless providers in 1983. This insurance appears typically to cost providers between $150 and $300, which may be a significant expense for them, reducing their ability to make needed repairs or rehabilitation to the properties. Accordingly, HUD is deleting this requirement. Instead, the Department will assume the risks covered by the insurance. Since HUD does not itself insure its properties, the loss to the Department from deleting the insurance requirement will be the amount of damage sustained by leased homes that would otherwise have been covered by hazard insurance. HUD cannot at this point estimate what such a loss would be, although the record since 1983 indicates that it would not be a substantial one. However, the Department will monitor such losses, and reserves the right to reinstate the requirement that providers purchase hazard insurance if the losses prove substantial.

7. *Procedures for Homeless Providers to Reserve HUD Properties.* Currently, HUD field offices notify homeless providers at regular intervals of new properties coming into their inventories, and hold those properties for ten days. If, during that ten-day period, a provider expresses an interest in a property, HUD continues to hold the property for a reasonable period of time for the provider to complete arrangements either to purchase or lease the property. This procedure has two adverse consequences: (1) HUD is restricted from selling all newly-acquired properties for 10 days, with consequent loss to the FHA funds; and (2) HUD is precluded from acquiescing in the request of homeless providers to hold off the market older-acquired properties in which the providers may be interested. HUD is revising its procedure to permit the Department, before making properties available for lease, a 30-day period to sell newly acquired properties without holding any of the properties off the market. After the 30-day period, HUD will hold off the market for a reasonable period of time, at the request of homeless providers, any property in its inventory that has been offered for sale for more than 30 days. HUD will continue to offer properties for sale to homeless providers for ten days before offering them to the general public.

In order to avoid holding properties for providers who do not qualify as nonprofit organizations, or who do not meet other HUD requirements to participate in the Single Family Homeless Programs, HUD will require homeless providers to obtain preapproval to participate in those programs, and to purchase or lease a specified number of homes. If HUD preapproves a provider to purchase or lease multiple homes, HUD will hold, for a reasonable period of time, as many properties as the provider is preapproved to purchase or lease.

8. *Notification to Homeless Providers of Available Properties.* Currently, homeless providers designate to HUD field offices those geographical areas of the office's jurisdictions in which the providers are interested in purchasing or leasing homes. The field offices then prepare, at regular intervals, lists of properties that have become available in the designated areas since transmittal of the preceding list. HUD provides these lists even if providers are not currently seeking properties. This procedure creates an administrative burden, in terms of potentially needless preparation and duplication of property lists. HUD is revising its procedure in order to reduce this burden. Under the revised procedure, HUD will provide lists of properties to homeless providers at regular intervals, but less frequently if so requested by the provider. Consistent with the new procedure on reserving properties discussed in paragraph 7 above, the lists HUD will provide will include all properties that have been offered for sale for 30 or more days.

9. *Elimination of Deep Sales Discount.* Under the existing reduced sale price program, if a property remains in HUD's inventory for a sufficiently long time, homeless providers may obtain discounts in the sales price that exceed the normal ten percent. HUD is eliminating these formal deep discounts for two related reasons. First, they have not been as deep as homeless providers have advised HUD they would need in order to induce them to purchase properties, indicating that even deeper discounts would be necessary to generate significant sales activity to providers. Second, HUD has elected to eliminate losses sustained under the direct sales program as a result of deep discounts, in order to increase those losses it may sustain under the lease program. This is because the lease program is a more cost-effective means of providing housing for the homeless than the direct sales program, *i.e.*, more housing can be provided for the same "loss" to the FHA fund. For example, a $20,000 discount in the price of a home (*i.e.*, a 50 percent reduction in the $40,000 average sales price of HUD-acquired properties) would approximate

the "loss" to the FHA funds, in terms of loss of interest on deferred sales, incurred by leasing two homes to homeless providers for the maximum term of three years. (As described above, this cost to HUD would be $9,035 for the three-year period.)

It should be emphasized that HUD is simply terminating a formal program of deep discounts, *i.e.*, a certain-percentage reduction in the price of HUD-acquired properties corresponding to the length of time such properties have remained offered for sale, but remained unsold. HUD will continue its policy of recalculating the fair market value for HUD-acquired properties that have remained unsold for significant periods of time. Indeed, in individual cases, HUD's assessment of the "fair market value" for a property that has remained unsold for a substantial time may be equal to or less than the value that may have automatically been assigned the property under the deep discount program.

The Department is currently developing a proposed rule for public comment that will govern all aspects of the Single Family Property Disposition program. However, HUD considers the problem of homelessness in America to be of such a critical nature that this interim rule is being published for immediate effect, without prior public comment. In the McKinney Act, among the findings that Congress made were: (1) That "the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families"; and (2) that "the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless." (42 U.S.C. 11301(a)(1 and 2) (emphasis supplied).) The plight of the homeless becomes exacerbated each winter, when those individuals without adequate shelter risk death or injury because of exposure to cold weather. If the effective date of this rule were delayed until HUD received public comments and published a final rule responding to those comments, those additional single family homes that this rule will make possible for homeless providers to obtain would not become available to the homeless during the current upcoming winter. Accordingly, the Department has determined that prior public comment is contrary to the public interest, and that there is good cause to publish the rule for immediate effect. HUD is, however, publishing this as an interim rule, *i.e.*, the Department is requesting public comments in response to the rule, and will subsequently publish a revised final rule that responds to those comments.

Other Matters

The collection of information requirements for this program were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

Description	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
Application	1,000	1	1,000	2	2,000
Total annual burden					2,000

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in this final rule will have a potential significant impact on the formation, maintenance, and general well-being of participating homeless families. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because the program has been designed to make properties available with as little regulation as possible under existing law.

This rule was not listed in the Department's Semiannual Agenda of Regulations published at 54 FR 44702 on October 30, 1989, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 291

Homeless, Fair housing, Surplus government property, Housing standards, Mortgages, Health, Drug abuse, Lead poisoning, Conflict of interests, Civil rights, Loan programs; housing and community development.

24 CFR Part 577

Grant programs, Housing and community development, Housing, Homeless.

24 CFR Part 578

Grant programs, Housing and community development, Housing, Handicapped, Homeless.

Under the Secretary's authority in section 7(d), Department of Housing and Urban Development Act (42 U.S.C.

3535(d)), and for the reasons stated in the preamble, title 24, chapters II and V of the Code of Federal Regulations are amended as follows:

CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1. Part 291 is added, to read as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

Subparts A—D [Reserved]

Subpart E—Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

Sec.
291.1 Purpose and scope.
291.5 Definitions.
291.50 Applicant preapproval; notification of eligible properties.
291.100 Lease with option to purchase properties for use by the homeless.
291.110 Supportive Housing Demonstration program lease-option to purchase properties.
291.120 Sale of properties for use by the homeless.
291.130 Elimination of lead-based paint hazards.
291.140 Applicability of other Federal requirements.

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 2, Housing Act of 1949 (42 U.S.C. 1441); sec. 2, Housing and Urban Development Act of 1968 (42 U.S.C. 1441a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 291.1 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to describe the basic policies and procedures that govern the disposition of HUD-acquired one- to four-family properties for use by the homeless. The intent of the regulations is to balance the needs of the homeless and the interests of the FHA insurance funds, and to work toward the National Housing Goal of "a decent home and a suitable living environment for every American family."

(b) *Property available.* HUD will make available, to applicants approved by HUD, certain HUD-acquired single family properties for use by the homeless. Properties will be available for lease with option to puchase, for lease-option under the McKinney Act Supportive Housing Demonstration program, or for sale.

(c) *Property available for lease with option to purchase.* HUD will make available up to ten percent of its total inventory of eligible properties as of October 1, 1989. Thereafter, on October 1 of each year, the ten percent figure will be adjusted upward or downward to reflect increases or decreases in the total inventory. Property will be available for lease under the terms and conditions described in § 291.100, in accordance with the following criteria:

(1) The property is vacant;

(2) The property has been listed for sale for at least 30 days; and

(3) A sales contract has not been accepted for the property, and the property has not been committed to another program (such as Urban Homesteading).

(d) *Property available under a McKinney Act Supportive Housing Demonstration lease-option agreement.* Eligible properties will be available under a lease-option to purchase agreement, under the terms and conditions described in § 291.110 and in accordance with the criteria in paragraph (c) of this section, to Supportive Housing Demonstration program applicants for advances for acquisition under 24 CFR parts 577 and 578.

(e) *Property available for sale.* Eligible properties will be available for competitive sale or direct sale for fair market value, less a 10 percent discount, under the terms and conditions described in § 291.120.

(f) *Concentration of properties.* To the extent practicable and possible, HUD will avoid excessive concentration in a single neighborhood of properties leased or sold under this subpart.

§ 291.5 Definitions.

As used in this subpart:

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits a written expression of interest in eligible properties under this subpart. Governmental entities include those that have general governmental powers (*e.g.*, a city or county), as well as those with limited or special powers (*e.g.*, public housing agencies or state housing finance agencies).

Competitive sale means a sale through a sealed bid process in competition with other bidders where properties have been publicly advertised to all prospective purchasers for bids.

Direct sale means a sale to a selected purchaser to the exclusion of all other without resorting to advertising for bids. Such a sale is available only to approved applicants under this subpart.

Disposition means the sale, or lease with option to purchase, of eligible properties for use by the homeless.

Eligible properties means all single family properties acquired by HUD under the Mutual Mortgage Insurance Fund, the Special Risk Insurance Fund, the General Insurance Fund, or other housing programs.

Homeless means:

(a) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(b) An individual or family that has a primary nighttime residency that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Develpment.

Lessee means the applicant, approved by HUD as financially responsible, that executes a lease agreement with HUD for an eligible property.

Occupant means a homeless individual or family that occupies an eligible property after that property has been leased to an applicant under this subpart.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(a) Have a voluntary board;

(b)(1) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or

(2) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(c) Practice nondiscrimination in the provision of assistance under this part in accordance with the authorities described in § 291.130(a); and

(d) Have nonprofit status as demonstrated by Internal Revenue Code § 501.c(3) approval.

Secretary means the Secretary of the Department of Housing and Urban Development.

Single family property means a property designed for use by one to four families.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Supportive Housing Demonstration program means the transitional housing program described in 24 CFR part 577 or the permanent housing for the handicapped homeless program described in 24 CFR part 578.

Tribe means an Indian tribe, band, group or nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, considered an eligible recipient under the Indian Self Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

§ 291.50 Applicant preapproval; notification of eligible properties.

(a) *Applicant preapproval.* (1) An applicant must be preapproved by HUD before a Field Office may notify it of eligible properties, as described in paragraphs (b) and (c) of this section.

(2) For pre-approval to purchase or lease properties under this subpart, an applicant must provide to the appropriate HUD Field Office the following:

(i) Applicant data, including identity; a description of past experience relevant to providing housing or supportive services for the homeless; and, for private nonprofit organizations, information on eligibility and financial responsibility. (HUD has determined, for purposes of the requirements of this subpart, that States, metropolitan cities, urban counties, governmental entities, and tribes are financially responsible.)

(ii) A description of the particular homeless population expected to occupy the property, supportive services required by that group, and how the supportive services will be provided.

(iii) An applicant that desires to sublease property during the period of time its application for Supportive Housing assistance is pending, as described in § 291.110(c)(2), must also provide documentation of its ability to meet the obligations of § 291.100(d).

(b) *Notification of eligible properties available for lease with option to purchase.* (1) Applicants, pre-approved by HUD as described in paragraph (a) of this section, interested in leasing properties under § 291.100 or § 291.110 must designate geographical areas of interest to appropriate HUD Field Offices. Upon request, Field Offices will notify interested applicants in writing when eligible properties meeting the criteria in § 291.1(c) become available in the area designated by the applicant. Field Offices will coordinate the dissemination of the information to ensure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time, based on intervals agreed upon between HUD and the applicants. Properties will be leased to applicants on a first come-first served basis.

(2) After an applicant has been notified of eligible properties available in the geographical area, specific properties selected by the applicant will be held off the market for a 10-day consideration and inspection period. The 10-day period will begin to run upon notification by the applicant to the Field Office. Only those properties in which the applicant has expressed an interest will be held off the market. If no further communication from the applicant is received by the end of the 10-day consideration and inspection period, the Field Office will resume offering the properties for sale.

(c) *Notification of eligible properties available for direct sale.* (1) Applicants, pre-approved by HUD as described in paragraph (a) of this section, interested in purchasing properties by direct sale under § 291.120 must designate geographical areas of interest to appropriate HUD Field Offices. Upon request, and before properties are listed for sale, Field Offices will notify interested applicants in writing of eligible properties available in the area designated by the applicant. HUD Field Offices will coordinate the dissemination of the information to insure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time, based on intervals agreed upon between HUD and the applicants. Properties will be sold to applicants on a first come-first served basis.

(2) After an applicant has been notified of eligible properties available in the geographical area, properties will remain available for a 10-day consideration and inspection period. The 10-day period will begin to run upon receipt of the list of eligible properties by the applicant. In the case of notifications by mail, the 10-day period will begin to run five days from the date HUD mails the notification to the applicant. If no written expression of interest has been received by the HUD Field Office by the end of the 10-day consideration and inspection period, the Field Office will offer the properties for sale to the general public.

§ 291.100 Lease with option to purchase properties for use by the homeless.

(a) *Certification.* Eligible properties meeting the criteria in § 291.1(c) are available for lease to applicants, approved by HUD, that certify that the property will be utilized only for the purpose of providing housing for the homeless during the lease term and that the intended use of the property will be consistent with all local laws and regulations. The lease agreement will be in a form prescribed by the Secretary.

(b) *Term of lease.* (1) A lease of an eligible property may be negotiated for such time as the lessee requires, not to exceed one year. Leases are renewable, at the option of the lessee, at the end of the first lease term for up to two additional one-year terms, so long as the property is being used for the homeless.

(2) A property will not be leased to a lessee for a period longer than three years. At the end of the three-year period, if the lessee has not exercised the option to purchase, HUD will notify the lessee to vacate the property and, if necessary, will take appropriate action under the eviction laws of the jurisdiction in which the property is located. All property returned to HUD at the end of the lease period will be placed on the market for sale to the general public.

(c) *Rent.* (1) The lessee must pay HUD a nominal rent of $1 for the term of the lease.

(2) A lessee may charge rent to an occupant at a rate appropriate to the financial means of the occupant. Such rent, however, may not be in an amount that exceeds the lessee's costs of operating the property.

(d) *Property operating costs and insurance.* (1) Lessees are responsible for the payment of all utilities, taxes, repair costs (including treatment for lead-based paint, if necessary), management costs, and any other costs associated with the operation of leased properties.

(2) Lessees must obtain general liability insurance on each leased property in an amount determined by HUD and specified in the lease agreement. Lessees are not required to carry hazard insurance on the properties.

(3) If the lease is terminated before the end of the lease term, taxes and utilities due on the property will be prorated between HUD and the lessee.

(e) *Purchase of leased properties.* (1) Lessees that desire to purchase leased properties during the lease term will be offered the properties at the fair market value established at the time of the initiation of the lease, less 10 percent.

Any repairs to or rehabilitation of a property done by a lessee during the lease term will not be reflected in the purchase price. If conditions outside the control of the lessee cause the fair market value of the property to decrease after the initiation of the lease, the property will be offered at the fair market value at the time of purchase, less 10 percent.

(2) Sales of leased properties will be on an as-is, all-cash basis. HUD will not pay a fee for a selling broker. HUD will pay the closing agent's fee. The purchaser must pay all other closing costs.

§ 291.110 Supportive Housing Demonstration program lease-option to purchase properties.

(a) *Lease-option for Supportive Housing Demonstration program applicants.* Eligible properties meeting the criteria in § 291.1(c) will be available under a lease-option agreement to applicants for acquisition advances under the Supportive Housing Demonstration program, as described in 24 CFR parts 577 or 578. An applicant may enter into a lease-option agreement with HUD for up to six months while its application for Supportive Housing assistance is being reviewed by HUD.

(2) Except as provided in paragraph (c) of this section, the applicant may not sublease the property during the lease term. The applicant is responsible for the payment of all taxes and utilities for the property and for the security and maintenance of the property, including lawns and grounds, during the lease term.

(3) The applicant may purchase the property for fair market value, less 10 percent, at any time during the lease period in accordance with the terms of § 291.100(e).

(b) *Termination of the lease-option agreement.* If the applicant is not approved for assistance under the Supportive Housing Demonstration program, or for any other reason desires to terminate the lease-option agreement during the lease term, the applicant must promptly notify the Field Office that it is releasing the property back to HUD. All taxes and utilities will be prorated as of the termination date of the lease-option agreement, and the property must be returned to HUD in the same condition in which it was conveyed to the applicant. The lease-option agreement terminates automatically at the end of the lease term if the applicant fails to exercise its right to purchase and no extension has been granted.

(c) *Converting lease-option to lease with option to purchase; occupancy during lease-term.* (1) A lessee whose application for Supportive Housing assistance is not approved may convert the lease-option agreement to a lease with option to purchase under the terms and conditions of § 291.100, subject to HUD approval.

(2) A lessee may be allowed to sublease the property to the homeless under terms and conditions of § 291.100 (b) and (c) while its application for Supportive Housing assistance is pending if the lessee demonstrates to HUD's satisfaction the ability to meet the obligations described in § 291.100(d). In the event the application for Supportive Housing assistance is not approved, the lessee must execute a lease with option to purchase agreement under the terms and conditions of § 291.100 in order to continue to sublease.

§ 291.120 Sale of properties for use by the homeless.

(a) *Sale of properties.* Eligible properties are available for applicants to purchase by either direct sale or competitive sale for use by the homeless.

(b) *Direct sales.* For direct sales, the purchase price for the property will be at the fair market value established for the property in the approved disposition program, less 10 percent.

(c) *Competitive sales.* As an alternative to direct sales, an applicant, approved by HUD, may submit a competitive bid on any property listed for sale to the general public, following normal HUD procedures for the competitive bid process. If the applicant's competitive bid is the winning bid at the bid opening, the HUD Field Office will accept the bid, and will reduce the net amount due HUD by 10 percent.

(d) *Terms of sale.* (1) To purchase property by direct or competitive sale, an applicant must execute Form HUD-9548, Sales Contract. The applicant will be given 30 to 60 days (depending on the practice of the local HUD Field Office) from the date of acceptance of the contract by the Field Office to close the sale. Earnest money deposits and closing extension fees may be collected by the Field Office, if necessary, to assure compliance with the sales contract.

(2) Sales will be on an as-is, all-cash basis. HUD will not pay a fee for a selling broker. HUD will pay the closing agent's fee. The purchaser must pay all other closing costs.

(Approved by the Office of Management and Budget under OMB control number 2502-0306)

§ 291.130 Elimination of lead-based paint hazards.

(a) *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraphs (c) and (d) of this section) apply to the lease or sale of property constructed prior to 1978 under this subpart. This section establishes procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to properties that may be occupied by children under seven years of age. This section is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to this program, the requirements prescribed in subpart C of 24 CFR part 35.

(b) *Definitions.* The following definitions apply to this section:

Applicable surfaces means all intact and non-intact painted interior and exterior surfaces of a residential structure.

Chewable surfaces means all chewable, protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age; *e.q.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Lead-based paint means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm2.

(c) *Inspection and treatment of defective paint surfaces.* HUD will inspect the property for defective paint surfaces before offering the property for sale or lease. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be completed by HUD before the sale or lease of the property.

(d) *Testing and treatment of chewable surfaces.* (1) If the lessee or purchaser knows or has reason to expect that the property will be occupied by homeless families with children under the age of seven years, the lessee or purchaser must cause the unit to be tested for lead-based paint on chewable surfaces before initial occupancy. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or by an organization recognized by HUD. Lead content must be tested by using an X-ray florescence analyzer (XRF) or other method approved by HUD. Test

readings of 1 mg/cm or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, the lessee or purchaser must cause the entire interior or exterior chewable surface to be treated. Treatment must consist of covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii). If the lessee or purchaser certifies to HUD that the property will not be occupied by homeless families with children under the age of seven years, no testing or treatment of chewable surfaces will be required.

(2) If a lessee or purchaser has reason to believe that a property contains lead-based paint on chewable surfaces, it may, at its option, dispense with the testing procedure and proceed directly to treatment.

(3) The lessee or purchaser may not allow the property to be occupied until proof of testing or treatment, if necessary, has been submitted to HUD.

§ 291.140 Applicability of other Federal requirements.

Each lessee or purchaser of property under this subpart must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601–20) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(2) Lessees or purchasers that intend to serve designated populations of the homeless must comply, within the designated population, with the requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and handicap.

(3) If the procedures that the lessee or purchaser intends to use to make known the availability of housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the availability of the housing.

(b) *Conflicts of interest.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the lessee or purchaser of property under this subpart and who exercises or has exercised any functions or responsibilities with respect to the lease or purchase of the property, or who is in a position to participate in a decisionmaking process or gain inside information with regard to the lease or purchase of the property, may obtain a personal or financial interest or benefit from the lease or purchase of the property, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(c) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status.

(d) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR part 52 are not applicable to applications under this subpart.

(e) *Drug- and alcohol-free housing.* Lessees and purchasers are required to administer, in good faith, a policy designed to ensure that the property is free from the illegal use, possession, or distribution of drugs or alcohol.

CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 577—TRANSITIONAL HOUSING

2. The authority citation for part 577 continues to read as follows:

Authority: Section 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. Section 577.135 is amended by revising paragraph (c) to read as follows:

§ 577.135 Assistance under other HUD programs.

* * * * *

(c) *HUD-owned properties.* (1) HUD will make HUD-owned single family properties in its inventory available to potential applicants for purchase for use as transitional housing for homeless persons. To obtain these properties, potential applicants may request a listing of available properties from the HUD field office, Property Disposition Branch. If a potential applicant wishes to purchase a property or properties, it must enter into a lease-option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the applicant for up to six months for one dollar. These lease-option agreement will state that the applicant may purchase the property at a stated price during the lease period. Except as provided in paragraph (c)(2) of this section, an applicant leasing property under this section may not sublease or otherwise occupy the property until after closing of the sale. During the lease period, applicants will be responsible for all taxes and maintenance, excluding hazard insurance. Applicants demonstrating a lease-option agreement at the time their application is filed will be regarded as having site control of the property under §§ 577.210(b)(8) and 577.215(b)(8). If the option is not exercised, the lease-option agreement will expire at the end of six months, and the property will be returned to HUD's inventory, unless an extension of time is authorized by HUD.

(2) An applicant may be allowed to sublease the property to the homeless while its application is pending if the applicant demonstrates to HUD's satisfaction that it has the ability, in the event its application for assistance under this part is not approved, to continue in a lease arrangement with HUD beyond the six-month lease term and to meet all its obligations with regard to the payment of utilities, taxes, repair costs, management costs, and any other costs associated with the operation of the property.

PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

4. The authority citation for part 578 continues to read as follows:

Authority: Section 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Section 578.135 is amended by revising paragraph (c) to read as follows:

§ 578.135 Assistance under other HUD programs.

* * * * *

(c) *HUD-owned properties.* (1) HUD will make HUD-owned single family properties in its inventory available to potential applicants for purchase for use as permanent housing for handicapped homeless persons. To obtain these properties, potential applicants may request a listing of available properties from the HUD field office, Property Disposition Branch. If a potential applicant wishes to purchase a property or properties, it must enter into a lease-option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the applicant for up to six months for one dollar. The lease-option agreement will state that the applicant may purchase the property at a stated price during the lease period. Except as provided in paragraph (c)(2) of this section, an applicant leasing property under this section may not sublease or otherwise occupy the property until after closing of the sale. During the lease period, applicants will be responsible for all taxes and maintenance, excluding hazard insurance. Applicants demonstrating a lease-option agreement at the time their application is filed will be regarded as having site control of the property under §§ 578.210(b)(11) and 578.215(b)(8). If the option is not exercised, the lease-option agreement will expire at the end of six months, and the property will be returned to HUD's inventory, unless an extension of time is authorized by HUD.

(2) An applicant may be allowed to sublease the property to the homeless while its application is pending if the applicant demonstrates to HUD's satisfaction that it has the ability, in the event its application for assistance under this part is not approved, to continue in a lease arrangement with HUD beyond the six-month lease term and to meet all its obligations with regard to the payment of utilities, taxes, repair costs, management costs, and any other costs associated with the operation of the property.

Date: January 2, 1990.

Alfred A. DelliBovi,

Under Secretary.

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Part IV

Environmental Protection Agency

Endangered Species Protection Program; Notice of Availability

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36168A; FRL 3689-7]

Endangered Species Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This Notice announces the availability of the final U.S. Fish and Wildlife Service (FWS) Biological Opinion on selected pesticides which was completed on June 14, 1989, and revised on September 14, 1989. The document is a result of a new refined analysis by EPA in determining if pesticides may affect threatened or endangered species and represents a new approach by FWS in evaluating EPA's request for biological consultation.

ADDRESS: The Biological Opinion is available for public review in Rm. 246 at the following address: U.S. Environmental Protection Agency, Rm. 246, CM No.2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2805. Because of the length of the Biological Opinion, microfiche copies will be distributed in response to requests for the document. The microfiche copies are available in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, or by calling (703) 557-2805. Orders for copies of the document may be placed to the National Technical Information Service (NTIS) by calling (703) 487-4650, or by mail at the following address: National Technical Information Service, ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161.

The document is entitled: U.S. Fish and Wildlife Service Biological Opinion on Selected Pesticides: Dated June 14, 1989, (Revised September 14, 1989). The NTIS order number is PB-90122664.

The Biological Opinion is also available for public review at all EPA Regional offices and FWS Regional offices at the locations listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: By mail: Larry Turner, Ecological Effects Branch, Environmental Fate and Effects Division (H7507-C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. (703-557-1007).

SUPPLEMENTARY INFORMATION: This Biological Opinion is being made available as stated in the **Federal Register** (FR) Notice, published on July 3, 1989, (54 FR 27984), which summarized the EPA's revised proposed Endangered Species Protection Program. The document responds to EPA's September 30, 1988, request to the FWS for reinitiation of formal consultation on a portion of the existing Biological Opinions that were generated from the 1982 to 1984 cluster consultations. It was intended to clarify the status of certain pesticides and/or species, allow EPA to refine its "may affect" determinations, and allow FWS to review its approach to evaluating data for Biological Opinions. The Biological Opinion evaluates pesticides for certain crops (corn, cotton, soybeans, sorghum, wheat, barley, oats, and rye), in forests, as mosquito larvicides, and on rangeland and pastureland. EPA reinitiated consultation partly at the request of the FWS to allow FWS to incorporate new species and incidental take statements, and partly for EPA to reevaluate new and existing data, propose new reasonable and prudent alternatives, and provide more substantive data on certain species and pesticides.

The Biological Opinion is organized as follows:

1. *Section I*—Lists the assumptions FWS used in developing this Opinion.
2. *Section II*—Presents determinations of the effects of 112 pesticides on one or more of 165 listed species, with the appropriate reasonable and prudent alternatives to preclude jeopardy, and actions required to minimize the likelihood of incidental take.
3. *Section III*—Presents profiles of affected species, including their potential for exposure to pesticides, the resulting Biological Opinion, and incidental take statements with their accompanying reasonable and prudent measures.
4. *Section IV*—Lists those species for which maps or location descriptions were provided separately, as requested by EPA.
5. *Section V*—Presents chemical data sheets which, with hazard data provided in the request, assisted the evaluation of the potential for exposure and effect on listed species.

The Biological Opinion is available for inspection in all EPA Regional offices and all FWS Regional offices at the following locations.

List of EPA Regional offices

Region I (ME, NH, VT, MA, RI, CN) Library Services, 15th Floor, John F. Kennedy Federal Bldg., LIB 1500, Boston, MA 02203, (617) 565-3298, Contact person: Peg Nelson.

Region II (NY, NJ, PR, VI) Pesticides and Toxic Substances Branch, Woodbridge Avenue, Building No. 10, Bay D, Edison, NJ 08837, (201) 321-6769, Contact person: Fred Kozak.

Region III (PA, WV, MD, DE, DC, VA) EPA Library, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597-8067, Contact person: Karen Angulo.

Region IV (NC, SC, KY, GA, AL, MS) Pesticides and Toxic Substances Branch, 7th Floor, Tower Building, 345 Courtland St., NE Atlanta, GA 30365, (404) 347-3222, Contact person: Lila Koroma.

Region V (MI, WI, MN, IL, IN, OH) Environmental Sciences Division, Pesticides and Toxic Substances Branch, 536 South Clark St., 5SPT-7 Rm. 737, Chicago, IL 60605, (312) 353-2192, Contact person: Margaret L. Jones.

Region VI (OK, TX, NM, AR) Pesticides and Toxic Substances Branch, Library, 12th Floor, 1445 Ross Avenue, Dallas, TX 75202, (214) 655-6444, Contact person: John Larson.

Region VII (KS, NE, IA, MO) Pesticides and Toxic Substances Branch, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 236-2835, Contact: James MacDonald.

Region VIII (CO, MT, WY, UT, ND, SD) Toxic Substances Branch, 999 18th St., Suite 500, Denver, CO 80202-2405, (303) 293-1745, Contact person: Ed Stearns.

Region IX (CA, AZ, NV, HI) Pesticides and Toxic Substances Branch, Library, 215 Fremont St., San Francisco, CA 94105, (415) 974-8919, Contact person: Allen Demorest.

Region X (OR, ID, AK) Pesticides and Toxic Substances Branch, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-4768, Contact person: Lyn Frandsen.

List of FWS Regional Offices

Region I (CA, HI, ID, NV, OR, WA) Division of Endangered Species and Habitat Conservation, 1002 N.E. Holladay St., 14th Floor, East Wing, Portland, OR 97232, (503) 231-6150.

Region II (AZ, NM, OK, TX) Habitat Conservation Division, Rm. 4012, 500 Gold Avenue, SW., Albuquerque, NM 87103, (505) 766-3972.

Region III (IA, IL, IN, MI, MN, MO, OH, WI) Division of Endangered Species, Federal Building, Fort Snelling, Rm. 648G, Twin Cities, Minnesota 55111, (612) 725-3276.

Region IV (AL, AR, FL, GA, KY, LA, MS, NC, PR, SC, TN, VI) Division of Endangered Species, Richard B. Russell Federal Building, 75 Spring St. SW., Suite 1276, Atlanta, GA 30303, (404) 331-6343.

Region V (CT, DC, DE, MA, ME, NH, NJ, PA, RI, VA, VT, WV) Fish and Wildlife Enhancement, One Gateway Center, Suite 700, Newton Corner, MA 02158, (617) 965-9316.

Region VI (CO, KS, MT, ND, NE, SD, UT, WY) Federal Activities and Special Projects, Denver Federal Center, Rm. 420, Denver, CO 80225, (303) 236-8186.

Region VII (AK) Office of Public Affairs, 1011 East Tudor Road, 1st Floor, Anchorage, AK 99503, (907) 786-3486, Contact: Bruce Batten.

Dated: December 22, 1989.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-753 Filed 1-10-90; 8:45 am]

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