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Monday
January 22, 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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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[WRPA Docket No. 1; FV-88-063]

Procedures for the Conduct of Referenda in Connection With the Watermelon Research and Promotion Plan and for Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Such Plan

AGENCY: Agricultural Marketing Service (USDA).

ACTION: Final rule.

SUMMARY: The Watermelon Research and Promotion Act (Act) [7 U.S.C. 4901–4916] authorizes a program of research and promotion to be developed through the promulgation of a Watermelon Research and Promotion Plan (Plan). The Secretary's decision on the plan and a referendum order were published in the **Federal Register** on December 20, 1988, concurrently with an interim final rule of this action. The plan was approved by watermelon producers and first handlers voting in a referendum conducted February 6–21, 1989. A final rule issuing the plan was published in the June 8, 1989 **Federal Register.** This final rule adopts, with appropriate corrections, the interim final rule which established procedures for the conduct of the initial referendum to determine if producers and handlers favored the plan. These procedures will apply to any subsequent referenda to amend, continue, or terminate the plan. This rule also contains rules of practice governing proceedings on petitions to modify or to be exempted from the plan.

EFFECTIVE DATE: February 21, 1990.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Marketing Order Administration Branch, P.O. Box 96456, Room 2525–South, Washington, DC 20090–6456; telephone (202) 475–3916.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The record indicates that most handlers subject to this rule would meet the Small Business Administration's (SBA) definition of small agricultural service firms (13 CFR 121.2). Small agricultural service firms are defined as those having annual receipts of less than $3,500,000. There may be as many as 300 such handlers of watermelon who will be subject to this rule. Small agricultural producers are defined by the SBA as having annual receipts of less than $500,000. Hearing evidence indicates that watermelons are produced on almost 12,000 farms in the United States. A vast majority of these farms would meet the SBA's definition of small agricultural producers. As many as 5,000 of these 12,000 farms produce less than five acres of watermelons, and thus will not be affected by this rule because such producers are exempt from the provisions of the Watermelon Research and Promotion Plan. The industry also includes a few large farms in excess of 400 acres.

This rule finalizes with appropriate corrections those procedures used for the conduct of the initial referendum on determining whether producers and handlers favored issuance of the Watermelon Research and Promotion Plan. All eligible producers and handlers were allowed to vote. These procedures will apply to any subsequent referenda to amend, suspend, or terminate the plan, or any provision thereof.

This rule also finalizes rules of practice governing proceedings on petitions to modify, or be exempted from, the plan. Such petitions may be made by any person subject to the plan and must be based on the belief that the plan, or a provision of the plan, or any obligation imposed in connection with the plan, is not in accordance with law.

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The Watermelon Research and Promotion Act (title XVI, subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986, 7 U.S.C. 4901–4916) authorizes the development of nationally coordinated programs of market research and promotion designed to improve the position of watermelons in the marketplace. A public hearing was held on the proposed research and promotion plan in February 1987. Based on the record of the hearing, a recommended decision was issued on March 18, 1988, and published in the **Federal Register** on March 24, 1988 (53 FR 9637). The Secretary's decision was published in the **Federal Register** on December 20, 1988 (53 FR 51110) concurrently with an interim final rule, with opportunity for comment, of this action (53 FR 51089). No comments were received by the Department of Agriculture on the interim final rule during the comment period. However, experience gained during the referendum on issuance of the plan, conducted at County Cooperative Extension Offices on February 6–21, 1989, revealed a needed change in this final rule. The changes incorporated in this action revise paragraphs (d)(2) and (d)(3) of § 1210.203 to require that volumes produced or handled, as appropriate, be reported on ballots in pounds rather than hundredweight, since the industry operates primarily on a poundage basis. Since the corrections are based on actual referendum experience, it is necessary and appropriate to incorporate the changes in this final rule.

Producers and handlers voting in the referendum approved the plan. A final rule issuing the plan was published in the June 8, 1989 **Federal Register.**

This rule finalizes procedures to be followed by the Department in conducting referenda under the Watermelon Research and Promotion Plan. Referenda may be conducted by the Secretary at any time, or at the request of the National Watermelon Promotion Board (Board) or 10 percent or more of producers and handlers to

determine if producers and handlers favor termination or suspension of the plan. The provisions include sections on definitions, voting, instructions for referendum agents and subagents, ballots, the referendum report and the confidentiality of information.

Persons voting in any referendum will certify their eligibility to vote, and will designate their status as either a watermelon producer or handler. Producers will certify the amount of watermelon acreage they harvested during a specified representative period. Only producers of five or more acres of watermelons during the representative period will be eligible to vote in the referendum. Both producers and handlers will record the pound volume of watermelons they produced or handled during the representative period. These figures will be used to determine the results of the voting based on volume of watermelons produced and handled by those voting.

The vote of a person who both produces and handles watermelons will be counted as a producer vote if that person handles 50 percent or less of that person's own production during the representative period. If the person handles more than 50 percent of that person's own production during the representative period, then that person's vote will be counted as a handler vote. This determination is consistent with testimony provided at the public hearing regarding the Board member nomination process.

In addition, this rule contains rules for proceedings on petitions to modify or be exempted from the plan. Section 1650 of the Act provides that any person subject to the Act may file a written petition with the Secretary stating that the plan or any provision of the plan is not in accordance with law. The person may request a modification of the plan or an exemption from certain provisions or obligations of the plan. The person shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information and paperwork requirements contained in these subparts have been approved by the OMB and assigned OMB Control No. 0581-0158. It is estimated that a total of as many as 7,000 watermelon producers and handlers would be eligible to vote in any referendum, and that it would take an average of 15 minutes for each producer and handler to complete the ballot questions.

After consideration of all available information, it is found that these procedures, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in Proposed 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Watermelon.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR part 1210 is taken:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901-4916.

2. 7 CFR part 1210, consisting of the Subpart—Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan (§§ 1210.200-1210.207), and the subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from Such Plan (§§ 1210.250-1210.252), as published in an interim final rule at 53 FR 51091 on December 20, 1988, is adopted as a final rule with the following changes. In § 1210.203, paragraphs (d)(2) and (d)(3) are revised to read as follows:

§ 1210.203 Instructions.

* * * * *

(d) * * *

(2) The acreage and volume in pounds of watermelons produced by the voting producer during the representative period, and

(3) The volume in pounds of watermelons handled by the voting handler during the representative period.

* * * * *

Dated: January 17, 1990.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 90-1379 Filed 1-19-90; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 116

[Rev. 1; Amdt. 4]

Policies of General Application

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule implements the Great Lakes Coastal Barrier Act of 1988, section 204 of Pub. L. 100-707, approved November 23, 1988 (102 Stat. 4718), by adding to the coastal barrier areas in which SBA financial assistance is prohibited, the coastal barrier areas of the Great Lakes under United States jurisdiction.

EFFECTIVE DATE: January 22, 1990.

ADDRESS: Written comments may be sent to Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Room 804, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Telephone (202) 653-6574.

SUPPLEMENTARY INFORMATION: Part 116 of chapter I, 13 CFR contains policies of general application for specified SBA programs. Subpart E thereof reflects the Coastal Barrier Resources Act, 16 U.S.C. 3501, *et seq.*, which prohibits direct or indirect Federal financial assistance under authority of any Federal law within the Coastal Barrier Resources System (System). In accordance with the original 1982 enactment, Pub. L. 97-348, approved October 18, 1982 (96 Stat. 1653), subpart E defines the System, as "those undeveloped coastal barriers located on the Atlantic and Gulf coasts of the United States. Pub. L. 100-707, *supra*, added to these areas 'those undeveloped coastal barriers along the shore areas of the Great Lakes that are designated by Congress by law after considering the recommendations of the Secretary [of the Interior]'." The Secretary's recommendations were due within three months of November 23, 1988. The "Great Lakes" are defined in section 204(c) of Pub. L. 100-707 as Lake Ontario, Lake Erie, Lake Huron, Lake St. Clair, Lake Michigan, and Lake Superior. Accordingly, the proposed regulation adds these lake areas to those areas within which no Federal financial assistance is available for construction or similar purposes.

This final rule merely advises the public of the extension of the definition of "Coastal Barrier Resources System" by Pub. L. 100-707, *supra*. Accordingly, pursuant to 5 U.S.C. 553(b)(B), publication for comment of the amendment here set forth is unnecessary for the following reasons:

(1) The amendment does no more than implement without change a statutorily mandated restriction of SBA's authority; and

(2) Notification to the public of the new restriction is essential and in the public interest. Since no notice of

proposed rulemaking is required by section 553, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, specifically 5 U.S.C. 603.

SBA certifies that this rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12291, SBA has determined that the rule is not a major rule. SBA certifies that the economic impact on the national economy will not exceed $100 million since SBA is likely to make or guarantee few, if any, loans in undeveloped coastal barriers of the Great Lakes.

SBA is also certain that this rule will not cause an increase in costs for consumers, individual industries, Federal, State or local government agencies or geographic regions or have adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

There are no additional reporting or recordkeeping or other compliance requirements inherent in this final rule which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35, There are no Federal rules which duplicate, overlap or conflict with this final rule. There are no alternative means to accomplish the objectives of this final rule.

List of Subjects in 13 CFR Part 116

Flood insurance, Flood plains, Lead poisoning, Small Businesses, Veterans, Coastal barrier system.

PART 116—[AMENDED]

Accordingly, pursuant to 16 U.S.C. 3501, *et seq.*, and 15 U.S.C. 634(b)(6), subpart E of 13 CFR part 116 is amended as follows:

Subpart E—Coastal Barrier Resources Act

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

Authority: 16 U.S.C. 3501, *et seq.*, and 15 U.S.C. 634(b)(6).

§ 116.41 [Amended]

2. Section 116.41 *Definition of Coastal Barrier Resources System* is amended by inserting after "Atlantic and Gulf Coast of the United States" the words "and along the shore areas of the Great Lakes (Lakes Ontario, Erie, Huron, St. Clair, Michigan, and Superior to the extent that those lakes are subject to the jurisdiction of the United States)".

Dated: December 13, 1989.

Susan Engeleiter,

Administrator.

(Catalog of Federal Domestic Assistance Programs, Nos. 59.002 and 3, 59.008, 59.010 through 13, 59.016, 59.021, 59.030 and 31, 59.036, 59.038 and 59.041)

[FR Doc. 89-1336 Filed 1-19-90; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 120

RIN 3245-AB84

Business Loan Policy

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Public Law 101-162 enacted November 21, 1989, 103 Stat. 988 (1989 legislation) amends section 7(a) of the Small Business Act (15 U.S.C. 636) with respect to loans made by Preferred Lenders. This rule implements such amendment by limiting the amount of SBA's guarantee on Preferred Lenders Program (PLP) loans to 80% unless a Preferred Lender requests a lesser percentage. It also prohibits a Preferred Lender from selling all or any part of the unguaranteed portion of a PLP loan.

EFFECTIVE DATE: January 22, 1990. Comments may be submitted on or before March 23, 1990.

ADDRESS: Comments may be mailed to: Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202-653-6574.

SUPPLEMENTARY INFORMATION: Pursuant to statutory authority (15 U.S.C. 634(b)(7)) the Small Business Administration (SBA) has implemented the operation of a Preferred Lenders Program (PLP) in its regulations (title 13, Code of Federal Regulations, chapter I, part 120, subpart D).

Section 103 of the Small Business Administration Reauthorization and Amendment Act of 1988, Public Law 100-590 (102 Stat. 2989), enacted November 3, 1988 (1988 legislation), amended section 7(a) of the Small Business Act (15 U.S.C. 636(a)) with respect to loans by Preferred Lenders.

Under PLP prior to the 1988 legislation a guaranty by SBA could not exceed 75 percent of the amount of the loan. Section 103 of the 1988 legislation limited the SBA guaranty for a PLP loan to no more than five percentage points less than the percentage for other loans (non-PLP) guaranteed pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

Under present law, an SBA lender which makes a non-PLP guaranteed loan of $155,000 or less obtains an SBA guaranty of no less than 90 percent. If the non-PLP loan is greater than $155,000, the SBA guaranty cannot be more than 85 percent.

In a notice of proposed rulemaking, 54 FR 15952, April 20, 1989, SBA proposed to guaranty 80 percent of a PLP loan in excess of $155,000 and to prohibit any PLP loan of $155,000 or less. Thus, for a PLP loan over $155,000 the Preferred Lender would be at risk for five percentage points more than a non-PLP loan. This would continue to ensure that a Preferred Lender would process, service and liquidate a PLP loan at a high level.

Commenters on this proposal who opposed it basically stated that PLP is an important program for smaller loans and that it would be harmful to prohibit Preferred Lenders from making PLP loans of $155,000 or less. A commenter suggested that SBA could always revoke the PLP status of a lender which poorly services loans, so SBA does not need to place regulatory restrictions on such a lender. The supporting commenters stated generally that the proposed changes were beneficial to PLP. Forty-six respondents stated that PLP was very important in the affected state because a majority of the PLP loans in that state were for under $155,000. They advocated legislative changes to impose an across-the-board SBA guaranty of 80 percent for PLP lending. This was accomplished by the 1989 legislation.

The 1989 legislation authorizes SBA to guaranty not less than 80% of all PLP Loans. Pursuant to this authority, SBA has administratively decided to permit guarantees of 80% on all PLP loans unless a Preferred Lender requests a lesser percentage.

In this regard the PLP Program permits carefully selected, experienced lenders with an excellent record in SBA lending to make guaranteed loans without submitting the application to SBA for approval. In return, the lender agrees to accept an SBA guaranty that is significantly less than the 85 to 90% received on most other SBA guaranteed loans. The purpose is to more fully utilize the resources of SBA's best lenders, reduce processing time on strong credits and help SBA deal with resource considerations.

The lower guaranty percentage has been the plan's keystone from the beginning. The program is to be used only for the strongest credits: Those on which the SBA can justify giving a

lender the extraordinary privilege to unilaterally put government funds at risk.

Any time that a PLP Lender feels it needs the extra guaranty percentage, it has the unqualified right to submit the loan application to SBA for processing under Certified Lender (three-day turnaround) or regular processing. It is with these riskier loans that SBA must retain its authority to say yes or no. The unilateral approval authority of PLP should not be applied to loans that are so risky that the lender must seek the higher guaranty.

In addition, in order to ensure that a Preferred Lender will continue to service a PLP loan properly (particularly since SBA does not review the file as the loan is processed and made), SBA has also administratively determined that a Preferred Lender will not be allowed to sell or transfer any part of the 20 percent of a PLP loan that is unguaranteed by SBA. Thus, the Preferred Lender will remain at risk for the full 20 Percent. This will not preclude the Preferred Lender from selling or transferring part of the unguaranteed portions of non-PLP loans so long as such Lender complies with SBA rules and contractual provisions. The preponderance of loans made by Preferred Lenders are non-PLP loans so they will still be able to sell parts of the unguaranteed portions for most of their loans.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this rule will not have a significant impact on a substantial number of small entities because the changes would affect the speed in which a loan is processed and not whether a loan will be made. SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

The rule does not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

There is an administrative need to promulgate this rule in final form without prior public notice and comment because it implements an effective provision of law.

List of Subjects in 13 CFR Part 120

Loan programs/business.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Section 120.403–2 is revised to read as follows:

§ 120.403–2 Maximum percentage of PLP loan to be guaranteed.

Under this program, SBA shall guarantee 80% of any PLP loan unless a Preferred Lender requests a lesser percentage.

3. Section 120.403–7 is amended by revising the section heading and by adding a new paragraph (d) to read as follows:

§ 120.403–7 Limitations on preferred lenders; SBA access.

* * * * *

(d) *Sale of all or part of unguaranteed portion.* A Preferred Lender is prohibited from selling or transferring all or any part of the unguaranteed portion of a PLP loan.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: December 13, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 90–1337 Filed 1–19–90; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Parts 120 and 122

RIN 3245–AB86

Business Loan Policy and Business Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: Public Law 101–162, enacted November 21, 1989 (103 Stat. 988) (1989 legislation) authorizes all SBA participating lenders to retain one-half of the guaranty fee payable to the SBA on loans of $50,000 or less. It also authorizes SBA, at a lender's request, to reduce the 90 percent guaranty for loans of $155,000 or less.

EFFECTIVE DATES: January 22, 1990. Comments may be submitted on or before March 23, 1990.

ADDRESS: For further information, contact Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Telephone (202) 653–6574.

SUPPLEMENTARY INFORMATION: Prior to the 1989 legislation, only Certified and Preferred Lenders were authorized to retain one-half of the guaranty fee for loans of $50,000 or less. The 1989 legislation extends this to all SBA participating lenders in order to encourage lenders to make small SBA guaranteed loans. This final rule implements this provision. Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) places the obligation on the lender to pay the guaranty fee to SBA. The lender may then choose to be reimbursed by the borrower. If the lender elects not to charge the borrower for all or any part of the guaranty, that is permissible. The borrower which is not charged for the guaranty fee is released from an expense which inures to its benefit.

Until the 1989 legislation, SBA could guaranty no less than 90 percent of a loan of $155,000 or less even if the lender was prepared to accept a lesser percentage. The 1989 legislation authorizes SBA to guaranty less than 90 percent of such a loan if the lender requests the lesser percentage. This final rule implements this authority.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant impact on a substantial number of small entities because it is anticipated that the preponderant number of loans will not exceed $50,000. Further, whether a lender requests a reduction in the guaranty percentage of a loan of $155,000 or less would not be determinative as to whether the loan is made. SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the changes are not likely to result in an annual effect on the economy of $100 million or more.

This rule does not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

There is an administrative need to promulgate this rule in final form

without public notice and comment because it implements effective provisions of law, but SBA will review and consider comments received.

List of Subjects in 13 CFR Parts 120 and 122

Loan programs/business; Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends parts 120 and 122, chapter I, title 13, Code of Federal Regulations as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.104–1 is amended by revising paragraph (f) to read as follows:

§ 120.104–1 Guaranty fees.

* * * * *

(f) *Retention of guaranty fee for small loans.* When any Lender makes a loan of $50,000 or less, with a maturity in excess of twelve months, it shall pay SBA an amount equal to one percent of the amount of the deferred participation share of such loan.

PART 122—BUSINESS LOANS

1. The authority citation for part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Section 122.7–3 is amended by revising paragraph (a) to read as follows:

§ 122.7–3 Guaranty loans.

* * * * *

(a) *Guaranty of loans not to exceed $155,000.* Except as permitted under paragraph (c) of this section, SBA shall guarantee at least 90 percent of a loan so long as the total amount outstanding (including the loan under consideration) does not exceed $155,000, *provided* that such percentage may be reduced below 90 percent upon request of the Lender.

* * * * *

Dated: December 13, 1989.

Susan Engeleiter,

Administrator

[FR Doc. 90–1338 Filed 1–19–90, 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-179-AD; Amdt. 39-6477]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, which requires replacement of the existing standby transformer/rectifier (TR) with a TR identical to the main TR, and its installation in a different location with improved ventilation. This amendment is prompted by reports of false transitory electronic centralized aircraft monitor (ECAM) warnings occurring during cases of Auxiliary Power Unit (APU) shutdown. This condition, if not corrected, could result in unnecessary emergency action, such as an aborted takeoff.

EFFECTIVE DATE: February 20, 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 an airworthiness directive, applicable to certain Airbus Industrie Model A320 series airplanes, which requires replacement of the existing standby transformer/rectifier (TR) with a TR identical to the main TR, and its installation in a different location with improved ventilation, was published in the **Federal Register** on October 27, 1989 (54 FR 43825).

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

One fully supportive comment was received from the Air Transport Association of America in response to the proposal.

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

It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be supplied by the manufacturer 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 $1,760.

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 A320 series airplanes, Serial Numbers 005 through 039, and 042 through 049, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent possible false electronic centralized aircraft monitor (ECAM) messages on Auxiliary Power Unit (APU) shutdown, accomplish the following:

A. Replace the standby transformer/rectifier (TR) with one identical to the main TR, and relocate it to a position with improved ventilation, in accordance with Airbus Industrie Service Bulletin No. A320-24-1028, dated July 7, 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, 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 the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 20, 1990.

Issued in Seattle, Washington, on January 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1347 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-174-AD; Amdt. 39-6485]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 900 series airplanes, which requires modification of the thrust reverser electrical control system, reinforcement of the thrust reverser actuating mechanism (actuating rods, hinge pin, and hinge fitting), and replacement of the hydraulic actuator end fitting. This amendment is prompted by: (1) reports of the thrust reversers receiving a "stow" command when they should have been in the "deployed" condition, and (2) reports of cracking of the actuator system components. This condition, if not corrected, could result in excessive loads on the thrust reverser linkage while in stowage transit, and failure of the linkage.

EFFECTIVE DATE: February 26, 1990.

ADDRESSES: The applicable service information may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. 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: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 900 series airplanes, which requires modification of the thrust reverser electrical control system, reinforcement of the thrust reverser actuating mechanism (actuating rods, hinge pin, and hinge fitting), and replacement of the hydraulic actuator end fitting, was published in the Federal Register on September 26, 1989 (54 FR 39398).

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

The commenter concurred with the proposed rule, but suggested consideration be given to changing the source of the "T/R DEPLOYED" signal used for the cockpit indication of thrust reverser position. The cockpit indicator receives a signal from the position of the thrust reverser actuator body, which can lead the crew to believe that the thrust reversers are in the deployed position when the thrust reverser clam shell doors are not deployed. The FAA infers from this comment that the commenter is requesting additional AD action to further change the design. While the FAA concurs with the comments, and will explore the feasibility of a design change with the manufacturer, this suggestion is considered outside the scope of this action. If warranted, further rulemaking may be initiated. This final rule, however, is not changed in response to the comment.

Since the issuance of the Notice, AMD-BA has issued Revision 2 to Service Bulletin F900-54 (F900-78-1), dated September 20, 1989, which provides clarifying information in the accomplishment instructions. The final rule has been revised to cite the latest revision of the AMD-BA service bulletin as an alternate service information source for procedures relating to modifications required by this AD.

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 with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 40 airplanes of U.S. registry will be affected by this AD, that it will take approximately 50 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be provided by the manufacturer 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 $80,000.

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 adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation (AMD–BA): Applies to all Model Mystere Falcon 900 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent breakage of mechanical elements of the thrust reverser door actuating system, accomplish the following:

A. Within 60 days after the effective date of this AD, modify the thrust reverser automatic stowage electrical control system and ensure the segregation, at the ground/flight proximity detector level, of the braking and thrust reverser control circuits, in accordance with the procedures in AMD–BA Service Bulletin F900–54, Revision 1, dated July 19, 1989, or Revision 2, dated September 20, 1989.

B. In accordance with the following schedule, identify the source of the end fittings of the thrust reverser door actuating rods and reinforce the thrust reverser actuating mechanism (actuating rods and hinge pin) in accordance with AMD–BA Service Bulletin F900–61, dated July 19, 1989. (Reference Hurel-DuBois Service Bulletin F900HD001):

1. For end fittings manufactured by Frankenjura, prior to the accumulation of 800 landings since the airplane was new, or within 60 days after the effective date of this AD, whichever occurs later.

2. For end fittings manufactured by Sarma, prior to the accumulation of 1,300 landings since the airplane was new or within 60 days, after the effective date of this AD, whichever occurs later.

C. Prior to the accumulation of 1,300 landings, or within the next 60 days after the effective date of this AD, whichever occurs later, reinforce the thrust reverser actuating mechanism (actuating rods and hinge pin) and repair the synchronizing bell crank hinge fitting, in accordance with AMD–BA Service Bulletin F900–61, dated July 19, 1989. (Reference Hurel-DuBois Service Bulletin F900HD001)

D. Prior to the accumulation of 4,000 landings, or within 60 days after the effective date of this AD, whichever occurs later, modify the hydraulic actuator Part Number (P/N) 106124 to P/N 106124–01 by replacing end-fitting P/N 106124200101 with a new end-fitting P/N 106124200102, in accordance with the manufacturer's maintenance manual, Maintenance Procedure 78–305.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, 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.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 26, 1990.

Issued in Seattle, Washington, on January 9, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–1348 Filed 1–19–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–157–AD; Amdt. 39–6476]

Airworthiness Directives; British Aerospace Model BAe/DH/BH/HS 125–1A, –3A, –400A, and –600A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires repetitive inspections to detect cracks and corrosion in various components associated with the fuselage keel skin panels and local keel structures, and repair, if necessary. This amendment is prompted by reports of cracking in the forward keel skin panels due to undetected corrosion. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

EFFECTIVE DATE: February 20, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. 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. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–1565. 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 British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires repetitive inspections to detect cracks and corrosion in various components associated with the fuselage keel skin panels and local keel structures, and repair, if necessary, was published in the **Federal Register** on September 15, 1989 (54 FR 38250).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the single comment received.

The commenter supported the rule but requested that the inspection requirements in the AD be in consonance with the FAA-approved maintenance program and the British Aerospace Service Bulletin (SB) 51–4, dated May 31, 1989, in lieu of specific initial and repetitive inspection intervals. The change was requested to allow operators to accomplish the inspections at scheduled airplane downtime, simultaneously with the FAA-approved maintenance program. The FAA concurs, in part, with the commenter. While cracks and corrosion found in the fleet confirm a need to accomplish the initial corrosion inspection within a reasonably short period of time to assure safety, the FAA concurs that repetitive inspections can be accomplished as part of the FAA-approved maintenance program, as long as the complete SB 51–4 inspection procedures are accomplished once every 4 years. Accordingly, the final rule has been revised to allow operators the option of accomplishing repetitive inspections in accordance with SB 51–4 once every 4 years, or alternatively, revising their FAA-approved maintenance program to include SB 51–4 inspection requirements. Additionally, paragraph E. of the AD provides a means for operators to obtain adjustments in compliance times.

The commenter also asked the FAA to reconsider the proposed 90-day compliance time for the initial inspection, and suggested that 90 days seemed too short for the number of facilities servicing British Aerospace Model 125 series airplanes to accomplish the SB 51–4 inspections on as many as 420 airplanes. The FAA concurs that the compliance time for the initial inspection for airplanes that have not had certain specified inspections can be extended to 180 days while still maintaining an acceptable level of safety. Accordingly, the final rule allows 180 days for the initial inspection for those airplanes that have not had, within the past two years, visual and x-ray inspections as detailed in the Airplane Maintenance Schedules and Non-destructive Testing Techniques Manual. All other affected airplanes are required to have the initial inspection within one year after the effective date of this AD.

The commenter also noted that the economic impact of this AD was incorrectly cited because it did not include the teardown costs and time, and the associated costs and time to return the airplane to service. The commenter calculated these costs at $5.6 million; the Notice cited these costs at $168,000. The FAA does not concur. The inspection intervals in the final rule have been revised to coincide with other major inspections involving teardown, required by the FAA-approved maintenance program; therefore, the $168,000 cost figure now accurately reflects the cost for the required inspections.

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

It is estimated that 420 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 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 $168,000.

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 adding the following new airworthiness directive:

British Aerospace (BAe), PLC: Applies to Model BAe/BH/DH/HS 125–1A, –3A, –400A, and –600A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure continued structural integrity, accomplish the following:

A. Perform a visual and X-ray inspection for corrosion and/or cracking of the keel skin and local structures between frame 7 and frame 13 and stringers 15 left and 15 right, and center line keel skin lap joint and hydraulic duct attachment angles (left and right) between the nose wheel bay and frame 7, in accordance with British Aerospace Service Bulletin 51–4, dated May 31, 1989, as follows:

1. Initial inspection:

a. For airplanes on which visual inspections and X-ray inspections, detailed in the Airplane Maintenance Schedules and Non-destructive Testing Techniques, have been accomplished within the last two years prior to the effective date of this AD, and where no significant defects were found, perform this inspection within one year after the effective date of this AD.

b. For all other airplanes, perform the initial inspection within 180 days after the effective date of this AD.

2. Repetitive Inspection:

a. Following the initial inspection required by paragraph A.1. of this AD, perform repetitive inspections at intervals not to exceed 4 years in accordance with Service Bulletin 51–4, or

b. Within one year of the initial inspection required by paragraph A.1. of this AD, revise the FAA-approved maintenance program to include all inspection procedures described in Service Bulletin 51–4, and repeat the inspection at intervals not to exceed 4 years.

B. In areas where corrosion or cracking is found or suspected, prior to further flight, strip off paint and perform a dye penetrant inspection.

C. Any cracks and/or corrosion found which are within the limits specified in the Structural Repair Manual, must be repaired prior to further flight, in accordance with Service Bulletin 51–4, dated May 31, 1989. Repetitive inspections must be performed thereafter at intervals specified in paragraph A., above.

D. Any cracks and/or corrosion found which exceed the limits of the Structural Repair Manual, must be repaired prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region. Repetitive

inspections must be performed thereafter at intervals specified in paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, 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.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 20, 1990.

Issued in Seattle, Washington, on January 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1349 Filed 1-19-90, 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-256-AD; Amdt. 39-6478]

Airworthiness Directives; Honeywell Inc. Vertical Gyro Model VG-14A, as Installed in, But Not Limited to, Cessna Models 550/551, S550, 560, 650, Beech Models KA300, 1KA-1900, KA-200, CASA Model C-212-300, Grumman Model TC-4C; British Aerospace Model Jetstream 31, and de Havilland Models DHC-8-100 and -300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Honeywell Inc. Model VG-14A vertical gyros, which requires replacement of certain vertical gyros employing a defective liquid level tilt switch with vertical gyros using an improved version liquid level tilt switch. This amendment is prompted by an incident of failure of both vertical gyros installed in an airplane, which caused erroneous attitude information to be supplied to the autopilot and to the pilot's and copilot's displays, without any warning annunciation. This condition, if not corrected, could cause erroneous attitude display and erratic autopilot performance.

EFFECTIVE DATE: February 5, 1990.

ADDRESSES: The applicable service information may be obtained from Honeywell Inc., Business/Commuter Aviation Operation, Sperry Commercial Flight Systems Division, P.O. Box 29000, Phoenix, Arizona 85038. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ward C. Mulby, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5352.

SUPPLEMENTARY INFORMATION: A flight crew of a Cessna Citation series airplane recently reported faulty attitude information supplied to the autopilot and to the displays on both sides of the cockpit without any warning annunciation. This airplane was equipped with two Honeywell Model VG-14A gyros, part number 7000622-901. Crews from several other airplanes using this same type vertical gyro have also reported the occurrence of faulty attitude information from one of the two vertical gyros without any warning annunciation. Reliable attitude information is essential to the safe operation of the aircraft.

Honeywell has determined that the cause of these failures is a fluid leak from one or both liquid level tilt switches which are an integral part of the Honeywell VG-14A vertical gyro, and has identified an improved liquid level tilt switch which is less susceptible to fluid leakage.

The FAA has reviewed and approved Honeywell Alert Service Bulletin No. 21-1989-191, Revision 1, dated November 20, 1989, which describes procedures for inspection and replacement of any suspect Model VG-14A vertical gyro which may contain a defective liquid level tilt switch. The service bulletin also describes a functional test procedure to ensure proper installation and operation of a gyro with replaced tilt switches.

Since this condition is likely to exist on other aircraft equipped with Honeywell Model VG-14A vertical gyros, this AD requires inspection and modification of certain VG-14A vertical gyros in accordance with the service bulletin previously described.

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. 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 would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

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

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

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

Honeywell Inc., Sperry Commercial Flight Systems Division: Applies to Honeywell Model VG-14A vertical gyro, part number 7000622-901, with serial numbers listed in Honeywell Alert Service Bulletin No. 21-1989-901, Revision 1, dated November 20, 1989.

Note: These components are known to be installed in, but not limited to, Cessna Models 550/551, S550, 560, 650; Beech Models KA300, 1KA-1900, KA-200; CASA Model C-212-300; Grumman Model TC-4C; British Aerospace Model Jetstream 31; and de Havilland Models DHC-8-100 and -300 series airplanes.

To prevent erroneous attitude display and erratic function of the autopilot, accomplish the following, unless already accomplished:

A. Within 60 days after the effective date of this AD, inspect the Model VG-14A vertical gyros to determine the serial number, in accordance with the procedures specified in Honeywell Alert Service Bulletin 21-1989-191, Revision 1, dated November 20, 1989.

1. If the vertical gyros have serial numbers beginning with the letter "S" or ending with the letter "K", no further action is required, and the airplane may be returned to service.

2. If the vertical gyros have serial numbers beginning with the letters "EG", or if the serial number is obscured so that identification is not possible, prior to further flight, accomplish the following in accordance with the service bulletin:

a. Replace the vertical gyros with modified (repaired) units as specified in the service bulletin.

b. After replacement of the tilt switches, test the gyro to ensure proper operation.

c. Mark out the letter "D" on the mod status identification tag of the vertical gyro.

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, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Honeywell Inc., Business/Commuter Aviation Operation, Sperry Commercial Flight Systems Division, P.O. Box 29000, Phoenix, Arizona 85038. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425.

This amendment becomes effective February 5, 1990.

Issued in Seattle, Washington, on January 8, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1350 Filed 1-19-90, 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-12; Amdt. 39-6419]

Airworthiness Directives: Garrett Engine Division (Hereinafter Called "Garrett"), Allied-Signal Inc., Models TFE731-3, -3A, -3AR, and -3R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal of suspect high pressure turbine rotor (HPTR) discs at next access to the turbine rotor assembly or within 150 operating cycles after the effective date of this AD or prior to June 1, 1990, whichever occurs first, on certain Garrett turbofan engine models. This AD is needed to prevent additional uncontained turbine rotor failures due to low cycle fatigue from an inclusion of foreign material within the disc.

DATES: *Effective:* February 22, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable engine manufacturer's service bulletin may be obtained from Garrett General Aviation Service Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225-2548, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM-140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5246.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires removal and inspection of suspect HPTR discs on certain Garrett turbofan engine models was published in the **Federal Register** on June 23, 1989 (54 FR 26392).

The proposal was issued after the FAA detrmined that a Garrett TFE731-3 engine incurred an uncontained HPTR disc failure after 2,764 cycles due to low cycle fatigue from an inclusion of stainless steel in the disc bore area. This foreign material contamination occurred during the preforging remelt process. It has been determined that during subsequent forging operations additional discs could contain the foreign material. A non-destructive inspection technique conducted by Garrett will confirm the discs acceptability for continued service. This AD requires removal of the 70 suspect discs. Since this condition is likely to exist in other engines of the same type design, the AD would require the removal of suspect discs, in accordance with Garrett Alert Service Bulletin (SB) TFE731-A72-3388, dated February 28, 1989, to correct the unsafe condition.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was submitted by a foreign authority questioning the FAA's decision to issue an NPRM rather than a Priority Letter AD or use a similar avenue of "urgency". Since the FAA has determined that the compliance times of the next turbine rotor access, 150 cycles or June 1, 1990, are adequate to correct the unsafe condition, the more "urgent" means available to effect emergency action were not required.

Accordingly, the proposal is adopted without change.

The regulations adopted herein do 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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves only 70 engines at a negligible cost due to Garrett's incentive program. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12921; (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) 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, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (FAR) 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 (AD):

Garrett Engine Division (hereinafter called "Garrett") Allied Signal Incorporated: Applies to models TFE731-3, -3A, -3AR, and -3R turbofan engines equipped with high pressure turbine rotor (HPTR) discs, part numbers 3072316-2, -3, and 3073110-1, -2.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained engine failure, accomplish the following:

(a) Remove and replace with a serviceable part, specific serial number HPTR discs, in accordance with the accomplishment instructions in the Appendix (Garrett Alert Service Bulletin TFE731-A72-3388, dated February 28, 1989) to this AD, at next access to the turbine rotor assembly or within 150 operating cycles after the effective date of this AD or prior to June 1, 1990, whichever occurs first.

Notes.—(1) For the purpose of this AD, access to the turbine rotor assembly is defined as whenever the N_1 turbine module is separated from the engine.

(2) Discs inspected by Garrett as noted in the Appendix to this AD and determined to be airworthy may be retuned to service.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate means of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Los Angeles Aircraft Certification Office, Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, 3229, East Spring Street, Long Beach, California 90806-2425.

This amendment becomes effective on February 22, 1990.

Issued in Burlington, Massachusetts, on November 27, 1989.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Appendix

Note.—Garrett Alert Service Bulletin TFE731-A72-3388, dated February 28, 1989, pertains to this removal.

Engine—Turbine Section—Inspect Specific Serial Numbered HP Turbine Rotor Disc, Part No. 3072316-2/-3 and Part No. 3073110-1/-2

1. Planning Information

A. Effectivity

Note.—Upon receipt of this service bulletin review Life Limited Part Log Card in Engine Log Book for specific serial number of HP turbine rotor disc identified in Table 1.

This service bulletin is applicable to the following turbofan aircraft engines.

Part No.	Model No.	Prior to Serial No.	Application
3072800-1/-2/-4/-5	TFE-731-3-1C	[1] 76101	Falcon 50
3072300-1/-2/-4	TFE-731-3-1E	[1] 75205	731 Jetstar
3072600-1/-3	TFE-731-3-1F	[1] 78163	Jetstar II
3072500-1/-2/-4	TFE-731-3-1G	[1] 77183	Westwind 1124
3072900-2/-3/-4/-6/-7	TFE-731-3-1H	[1] 80124	BAe HS125-SERIES
3073100-1 thru -4	TFE-731-3-1J	[1] 82101	CASA 101
3074850-1/-3	TFE-731-3-1K	[1] 78163	Jetstar II (Springfield)
3074100-1/-3-6/-9	TFE-731-3A-2B	[1] 85101	Learjet 55
3074100-4/-7/-10	TFE-731-3A-2B1	[1] 85101	Learjet 55
3074550-1/-2	TFE-731-3A-200G	[1] 96101	Westwind 1125
3074800-1/-4/-7	TFE-731-3AR-2B	[1] 94101	Learjet 55
3074800-2/-5/-8	TFE-731-3AR-2B1	[1] 94101	Learjet 55
3074560-1/-2	TFE731-3AR-200G	([2])	Westwind 1125
3073750-2/-3	TFE731-3R-1D	[1] 83101	Sabreliner 65/65A
3074910-1 thru -4	TFE 731-3R-1G	[1] 77183	Westwind 1124
3074000-1 thru -6	TFE731-3R-1H	[1] 84101	BAe HS125-SERIES

[1] At time of original manufacturer, engine serial number listed and subsequent serial numbers had an HP turbine rotor assembly installed which had no suspect disc installed. However, if a maintenance action has been accomplished since original manufacture (review Engine Log Book Life Limited Part Log Card) that resulted in, or may have resulted in the replacement of the HP turbine rotor assembly or disc, this service bulletin shall be compiled with. Refer to paragraph D for listing of affected discs.

[2] First production engine.

B. Reason

(1) Problem: A recent engine inflight shutdown was caused by the uncontained separation of an HP turbine rotor disc.

(2) Background: Investigation determined that the subject disc fracture due to low cycle fatigue from an inclusion of foreign material within the disc. Due to the possibility that additional discs could contain the foreign material, those disc from the suspect heat lot of material should be inspected for the presence of a similar inclusion.

(3) Action: The manufacturer has developed a non-destructive inspection technique which will confirm the discs acceptability for continued service. Garrett recommends that suspect discs be inspected no later than next access or 150 operating cycles after receipt of this service bulletin, refer to step D.

C. Description

This service bulletin provides instructions for removing specific HP turbine rotor discs and to inspect disc for possible inclusion of foreign material.

D. Compliance

Garrett recommends that this service bulletin be accomplished at next access or within 150 operating cycles as follows.

(1) Review Life Limited Part Log Card to determine if HP turbine rotor disc serial number is listed in Table 1. If disc serial number is listed, review steps (2) and (3) to determine action required. If disc serial number is not listed, no further action is required, enter on HP turbine disc Life Limited Part Log Card that service bulletin is not applicable on this disc.

(2) Operators with serial numbered HP turbine rotor disc listed in Table 1 should immediately notify Garrett General Aviation Services Division, by completing and forwarding (FAX/TELEX) questionnaire attachment to bulletin.

(3) Remove for inspection, specific serial numbered HP turbine rotor discs identified in Table 1 at next access or within 150 operating

cycles after receipt of this bulletin, whichever occurs first.

TABLE 1.—HP TURBINE ROTOR DISCS TO BE INSPECTED

[Disc Serial No.]

6-12112-918	6-12112-941	6-12112-964
6-12112-919	6-12112-942	6-12112-965
6-12112-920	6-12112-943	6-12112-966
6-12112-921	6-12112-944	6-12112-967
6-12112-922	6-12112-945	6-12112-968
6-12112-923	6-12112-946	6-12112-969
6-12112-924	6-12112-947	6-12112-970
6-12112-925	6-12112-948	6-12112-971
6-12112-926	6-12112-949	6-12112-972
6-12112-927	6-12112-950	6-12112-973
6-12112-928	6-12112-951	6-12112-974
6-12112-929	6-12112-952	6-12112-975
6-12112-930	6-12112-953	6-12112-976
6-12112-931	6-12112-954	6-12112-977
6-12112-932	6-12112-955	6-12112-978
6-12112-933	6-12112-956	6-12112-979
6-12112-934	6-12112-957	6-12112-980

TABLE 1.—HP TURBINE ROTOR DISCS TO BE INSPECTED—Continued

[Disc Serial No.]

6-12112-935	6-12112-958	6-12112-981
6-12112-936	6-12112-959	6-12112-982
6-12112-937	6-12112-960	[1] 6-12112-983
6-12112-938	6-12112-961	6-12112-984
6-12112-939	6-12112-962	6-12112-985
6-12112-940	6-12112-963	6-12112-986
		6-12112-987

[1] Fractured disc.

E. Approval

FAA approved.

F. Manhour Requirements

Refer to paragraph G.

G. Material—Price and Availability

A special program is available for this modification, under certain conditions, providing compliance recommendations of paragraph D are met. Information on special program and availability of parts may be obtained from a Garrett authorized service center or the aircraft manufacturer's appointed service facility. (Refer to Service Information Letter (SIL) F731-3 for a complete listing of these facilities.)

H. Tooling—Price and Availability

No special tooling is required except that already listed in publications referenced in paragraph J.

I. Weight and Balance

No change.

J. Publications References

The sources of information used in the preparation of this service bulletin include Garrett engineering documentation and the following.

Part/Model No.	Heavy maintenance manual	Light maintenance manual	Illustrated parts catalog
TFE731-3-1C	NA	*72-02-06	*72-00-74
TFE731-3-1E	NA	*72-02-36	*72-00-74
TFE731-3-1F	NA	*72-02-26	*72-00-74
TFE731-3-1G	NA	*72-02-46	*72-00-74
TFE731-3-1H	NA	*72-02-56	*72-00-74
TFE731-3-1J	NA	*72-02-86	*72-02-85
TFE731-3-1K	NA	*72-02-26	*72-00-74
TFE731-3A-200G	NA	*72-02-66	*72-02-65
TFE731-3A-2B	NA	*72-00-69	*72-00-68
TFE731-3A-2B1	NA	*72-00-69	*72-00-68
TFE731-3AR-200G	NA	*72-02-66	*72-02-65
TFE731-3AR-2B	NA	*72-00-69	*72-00-68
TFE731-3AR-2B1	NA	*72-00-69	*72-00-68
TFE731-3R-1D	NA	*72-02-16	*72-00-74
TFE731-3R-1G	NA	*72-02-46	*72-00-74
TFE731-3R-1H	NA	*72-02-56	*72-00-74

* Affected Chapter/Section/Subject 72-50-06.

K. Service Bulletin References

None.

L. Other Publications Affected

Same as those listed under paragraph J. Publications References.

2. Accomplishment Instructions

Note.—Publications listed in Section 1 provide applicable disassembly, cleaning, inspection, reassembly, and testing instructions and shall be referred to during the accomplishment of the following instructions.

A. Remove for Inspection Specific HP Turbine Rotor Disc (Review Table 1)

Note.—Prior to engine disassembly, review Engine Log Book to ensure that one of the specific HP turbine rotor discs listed in Table 1 is installed in engine.

(1) Disassemble engine as required and remove HP turbine rotor assembly in accordance with Engine Light Maintenance Manual.

Note.—If deblade capability is not available, send the entire HP turbine rotor assembly to the nearest facility with deblade capability.

(2) Remove turbine blades in accordance with Engine Light Maintenance Manual.

(3) Return removed HP turbine rotor disc for inspection (include updated Life Limited Part Log Card) to the following address. Indentify part on shipping documents as removed in accordance with Service Bulletin TFE731-A72-3388. Notify Garrett General Aviation Services Division by FAX/TELEX (FAX (602) 225-2572), (Telex No. 667-437, ANSBK: GARRETTSUP PHX) Attn: Turbofan Programs, Dept H83-7, when part is shipped and provide shipping information.

Garrett General Aviation Services Division, Component Repair Center (Part removed per Service Bulletin TFE731-A72-3388), 1725 W 10th Place, Tempe, AZ 85281; ATTN: "FAST" Shop (Fax 602-893-5950)

(4) Review Life Limited Part Log Card on replacement HP turbine rotor disc prior to installation turbine blades to ensure proper entries.

(a) If disc serial number is not listed in Table 1, this service bulletin should be entered as not applicable on this disc.

(b) If disc serial number is listed in Table 1, this service bulletin should have been previously entered as complied with on Life Limited Part Log Card. If not entered as complied with, contact Turbofan Programs, see paragraph 1.D.(2).

(5) Assemble (reblade, balance, perform air flow leakage check) HP turbine rotor assembly using serviceable HP Turbine Disc, Part No. 3072316-2/-3 or 3073110-1/-2 (as required) in accordance with Engine Light Maintenance Manual.

(6) Install HP turbine rotor assembly and reassemble engine in accordance with Engine Light Maintenance Manual.

(7) Check and ensure proper engine operation in accordance with Aircraft Flight Manual and/or appropriate aircraft documents.

(8) Make entry in engine log book noting date of compliance, engine operating time (and serial number of installed component if applicable) and compliance with this service bulletin (and service bulletin revision number if applicable).

(9) Complete Compliance Certificate form and mail. Contact local Garrett authorized service center to obtain forms, if required.

3. Material Information

Note.—Applicable illustrated parts catalogs and spare parts bulletins dated later than the original issue date of this service bulletin may introduce different parts for

installation. Refer to these documents before ordering parts.

Expendable parts discarded in gaining access to the affected area of the equipment are not included.

The following parts are required to accomplish the instructions outlined in this service bulletin.

New PN	Quantity	Unit List Price *	Key Word	Old PN	Instructions-Disposition
3072316-2/-3	1		HP Turbine Rotor Disc	3072316-2/-3	T
3073110-1/-2	1		HP Turbine Rotor Disc	3073110-1/-2	T

* A special program is available for this modification under certain conditions. Refer to Section 1, paragraph G for program information.

Disposition Code T: Identify part on shipping documents as removed in accordance with Service Bulletin TFE731-A72-3388 (notify Garrett General Aviation Services Division by FAX/TELEX (FAX (602) 225-2572), (Telex No. 667-437, ANSBK: GARRETTSUP PHX) Attn: Turbofan Programs, Dept H83-7, when part is shipped) and return to:

Garrett General Aviation Services Division, Component Repair Center (Part removed per Service Bulletin TFE731-A72-3388), 1725 W 10th Place, Tempe, AZ 85281; ATTN: "FAST" Shop (Fax 602-893-5950).

Questionnaire Attachment

Customer _____
Address _____

Service Center _____
P/N OF HPT DISK _____
Serial Number _____
TSN/CSN _____
Aircraft S/N _____
Engine S/N _____
Model No. _____
When will this work be accomplished? _____

Where? _____
Next MPI due at TSN____ CSN ____

Send (FAX Telex) to: (FAX (602) 225-2572), (Telex No. 667-437, ANSBK: GARRETTSUP PHX). Attn: Turbofan Programs, Dept H83-7.

[FR Doc. 90-1228 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-40]

Establishment of Transition Area, Claxton, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Claxton, Georgia, Transition Area. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed for the Claxton-Evans County Airport. This action lowers the base of controlled airspace from 1200' to 700' above the surface in the vicinity of the airport. This additional controlled airspace is required for protection of instrument flight rules (IFR) aeronautical operations. Concurrent with publication of the SIAP, the operating status of the Claxton-Evans County Airport will change from visual flight rules (VFR) to IFR.

EFFECTIVE DATE: 0901 UTC, March 8, 1990.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On October 18, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Claxton, Georgia, Transition Area (54 FR 42806). This action would lower the floor of controlled airspace from 1200' to 700' above the surface in the vicinity of the Claxton-Evans County Airport. An NDB standard instrument approach procedure has been developed to Runway 9 at the airport. This action is required for protection of IFR aeronautical operations. Concurrent with publication of the SIAP, the operating status of the Claxton-Evans County Airport will change from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Claxton, Georgia, Transition Area. The floor of controlled airspace is lowered from 1200' to 700' above the surface in the vicinity of the Claxton-Evans County Airport. An NDB standard instrument approach procedure has been developed to the airport. This action will provide additional controlled airspace for protection of IFR aeronautical operations. Additionally, concurrent with publication of the SIAP, the operating status of the airport will change from VFR to IFR.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

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

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

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

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Claxton, Georgia [New]

That airspace extending upward from 700' above the surface within a 5-mile radius of the Claxton-Evans County Airport (Latitude 32°11'37"., Longitude 81°52'23"W.); within 3 miles each side of the 248° bearing from the Claxton NDB (Latitude 32°11'34"N., Longitude 81°52'30"W.), extending from the 5-mile radius area to 8.5 miles west of the NDB.

Issued in East Point, Georgia, on January 9, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-1351 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-41]

Revocation of Control Zone, Moultrie, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Moultrie, GA, control zone. One of the requirements for the continued designation of a control zone is hourly and special weather observations. Weather observations have not been available for the Moultrie Municipal Airport for several months. No plans exist to reestablish weather reporting service at the airport. The effect of this action is to raise the floor of controlled airspace from the surface to 700 feet above ground level in vicinity of the Moultrie Municipal Airport.

EFFECTIVE DATE: 0901 UTC, March 8, 1990.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On November 8, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Moultrie, GA, control zone (54 FR 46918). Weather reporting service, which is a requirement to have a control zone, is no longer available at the Moultrie Municipal Airport. The proposed action would revoke the control zone, thereby raising the floor of controlled airspace from the surface to 700 feet above ground level in vicinity of the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Moultrie, GA, control zone. Designation of a control zone is dependent upon hourly and special weather observations being taken at the primary airport. Weather observations have not been available at the Moultrie Municipal Airport for several months. No plans exist to reestablish weather reporting service. This action will raise the floor of controlled airspace from the surface to 700 feet above ground level in the vicinity of the airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

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

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

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

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

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Moultrie, GA [Removed]

Issued in East Point, Georgia, on January 8, 1990.

Don Cass,

Acting Manager, Air Traffic Division.

[FR Doc. 90-1352 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

Generic Determination of Rate of Return on Common Equity for Public Utilities

[Docket No. RM89-15-000]

January 16, 1990.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the benchmark rate of return on common equity applicable to rate filings made during the period February 1, 1990 through April 30, 1990. This benchmark rate is set at 11.75 percent.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the tests of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Forn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Notice of Benchmark Rate of Return on Common Equity for Public Utilities

Issued January 16, 1990.

On December 26, 1989, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 517) concerning the generic determination of the rate of return on common equity for public utilities.[1] In several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its regulations.[2] In Order No. 517, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1990 and that 0.02 percent is an appropriate flotation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period February 1, 1990 through April 30 1990 is 11.75 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities This average cost is based on the average of the median dividends yields for the two most recent calendar quarters for a sample of 98 utilities. The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$$k_t = 1.02\ Y_t + 4.32$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the sample of utilities for the third and fourth quarters of 1989 are 7.28 percent and 7.27 percent, respectively. The average yield for those two quarters is 7.28 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 11.75 percent.

This notice supplements the generic rate of return rule announced in Order No. 517, issued December 26, 1989 and effective on February 1, 1990.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 37, chapter I, title 18 of the Code of Federal Regulations, as set forth below, effective February 1, 1990.

Richard P. O'Neill,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

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

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
2/1/86 to 4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86 to 7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86 to 10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86 to 1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87 to 4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87 to 7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87 to 10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87 to 1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88 to 4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88 to 7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88 to 10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88 to 1/31/89	1.02	4.36	7.92	12.44	12.44
2/1/89 to 4/30/89	1.02	4.33	7.89	12.38	12.38
5/1/89 to 7/31/89	1.02	4.33	7.95	12.44	12.44
8/1/89 to 10/31/89	1.02	4.33	7.94	12.43	12.43
11/1/89 to 1/31/90	1.02	4.33	7.56	12.04	12.04
2/1/90 to 4/30/90	1.02	4.32	7.28	11.75	11.75

Note: The Appendix will not be published in Code of Federal Regulations.

APPENDIX

Exhibit No.	Title
1	Initial sample of utilities.
2	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters.

APPENDIX—Continued

Exhibit No.	Title
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample.
Source of data	Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 517, 55 FR 146, (Jan. 3, 1990), FERC Stats. Regs. § 30,871 (Dec. 26, 1989).

[2] 18 CFR 37.9 (1989). The most recent adoption of the DOF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (Feb. 5, 1988).

EXHIBIT 1—SAMPLE OF UTILITIES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Service	CIP	4931
Central Louisiana Electric	CNL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
CILCORP Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy Syste	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
DQE Inc	DQE	4911
Duke Power Co	DUK	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Elec Light	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Elec	IWG	4931
IPALCO Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
Long Island Lighting	LIL	4931

EXHIBIT 1—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
NECO Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric Syst	NES	4911
New York State Elec & Gas	NGE	4931
Niagara Mohawk Power	NMK	4931
NIPSCO Industries Inc	NI	4931
Northeast Utilities	NU	4911
Northern States Power-MN	NSP	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utiliti	ORU	4931
Pacific Gas & Electric	PCG	4931
PACIFICORP	PPW	4931
Pennsylvania Powr & Light	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
PSI Holdings Inc	PIN	4911
Public Service Co of Colo	PSR	4931
Public Service Co of NH	PNH	4911
Public Service Co of N ME	PNM	4931
Public Service Entrp	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
SCANA Corp	SCG	4931
SCECORP	SCE	4911
Sierra Pacific Res	SRP	4931
Southern Co	SO	4911
Southern Indiana Gas & El	SIG	4931
St Joseph Light & Power	SAJ	4931
TECO Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
UNITIL Corp	UTI	4911
UTILICORP United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931

EXHIBIT 1—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Wisconsin Public Service	WPS	4931
WPL Holdings Inc	WPH	4931

N=98.

EXHIBIT 2—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN THE DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

[Year=89 Quarter=4]

Ticker symbol	Utility	Reason for exclusion
CMS	CMS Energy Corp.	Dividend rate was zero for quarter Calendar 89Q3.
GSU	Gulf States Utilities Co.	Dividend rate was zero for quarter Calendar 89Q4.
IPC	Illinois Power Co.	Dividend rate was zero for quarter Calendar 89Q4.
LIL	Long Island Lighting.	Dividend rate was zero for quarter Calendar 89Q2.
NMK	Niagara Mohawk Power.	Dividend rate was zero for quarter Calendar 89Q4.
PNW	Pinnacle West Capital.	Dividend rate was zero for quarter Calendar 89Q4.
PNH	Public Service Co of NH.	Dividend rate was zero for quarter Calendar 89Q4.
PNM	Public Service Co of N ME.	Dividend rate was zero for quarter Calendar 89Q4.
TEP	Tucson Electric Power Co.	Dividend rate was reduced for quarter Calendar 89Q3.

N=9.

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

[Year = 89 Quarter = 4]

Ticker symbol	Price, 1st month of qtr—high	Price, 1st month of qtr—low	Price, 2nd month of qtr—high	Price, 2nd month of qtr—low	Price, 3rd month of qtr—high	Price, 3rd month of qtr—low	Average price	Dividends annual rate	Annualized dividend yield
AEP	30.875	29.250	31.125	29.625	33.375	30.875	30.854	2.400	7.779
ATE	37.125	35.000	39.000	37.000	39.750	38.125	37.667	2.880	7.646
AYP	39.625	38.000	41.625	39.250	42.500	40.625	40.271	3.160	7.847
BGE	32.750	30.125	33.000	31.875	34.875	32.125	32.458	2.100	6.470
BKH	27.875	25.750	28.125	26.625	28.750	27.125	27.375	1.520	5.553
BSE	20.625	18.000	21.375	20.500	22.125	18.875	20.250	1.820	8.988
CER	37.500	35.500	37.750	36.125	39.375	37.500	37.292	2.460	6.597
CES	35.500	33.750	37.625	35.000	38.500	36.375	36.125	2.800	7.751
CIN	29.875	28.125	30.750	29.250	32.375	30.250	30.104	2.320	7.707
CIP	23.750	22.500	24.000	22.625	24.125	22.500	23.250	1.800	7.742
CNH	23.250	22.000	23.125	22.500	24.125	22.875	22.979	1.760	7.659
CNL	34.000	32.875	34.375	33.500	36.000	34.000	34.125	2.440	7 150
CPL	45.125	41.750	46.250	43.750	48.000	44.625	44.917	2.840	6.323
CSR	36.625	35.000	37.625	35.250	40.250	37.250	37.000	2.600	7.027
CTP	18.750	17.000	19.500	18.250	20.625	18.750	18.812	1.520	8.080
CV	28.000	26.250	27.750	26.750	29.000	27.000	27.458	2.040	7.429

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

[Year = 89 Quarter = 4]

Ticker symbol	Price, 1st month of qtr—high	Price, 1st month of qtr—low	Price, 2nd month of qtr—high	Price, 2nd month of qtr—low	Price, 3rd month of qtr—high	Price, 3rd month of qtr—low	Average price	Dividends annual rate	Annualized dividend yield
CWE	38.750	33.125	39.125	37.500	40.750	35.750	37.500	3.000	8.000
CX	19.500	17.875	20.125	19.000	20.875	19.375	19.458	1.600	8.223
D	44.500	42.375	46.375	44.500	47.875	45.000	45.104	3.320	7.361
DEW	19.625	18.000	20.500	19.125	21.250	20.375	19.812	1.500	7.571
DPL	29.375	27.375	30.875	29.000	30.750	29.500	29.479	2.240	7.599
DQE	23.875	21.375	23.250	21.625	23.875	23.125	22.854	1.360	5.951
DTE	24.375	22.125	25.125	23.875	25.875	24.750	24.354	1.680	6.898
DUK	52.750	50.500	53.375	51.625	56.500	53.250	53.000	3.120	5.887
ED	25.500	24.250	27.125	25.375	29.875	26.625	26.458	1.720	6.501
EDE	30.750	29.375	32.125	30.000	32.125	31.000	30.896	2.320	7.509
ETR	22.625	20.125	22.375	20.875	23.250	22.125	21.896	1.000	4.567
EUA	41.750	36.375	40.875	37.500	41.750	38.500	39.458	2.500	6.336
FGE	33.500	31.500	32.000	31.000	33.500	31.000	32.083	2.000	6.234
FPC	37.625	36.125	39.250	37.125	40.250	38.125	38.083	2.640	6.932
FPL	33.625	31.500	34.625	32.875	36.750	33.500	33.812	2.280	6.743
GMP	26.875	24.875	27.750	26.125	27.875	25.875	26.563	1.980	7.454
GPU	44.000	40.875	45.750	43.750	47.250	45.375	44.500	2.200	4.944
HE	35.500	33.750	38.500	35.500	40.250	37.500	36.833	2.160	5.864
HOU	35.625	32.250	35.875	33.500	35.750	34.750	34.625	2.960	8.549
IDA	27.750	26.375	29.500	27.000	30.000	28.750	28.229	1.860	6.589
IEL	26.375	25.000	27.625	26.000	28.000	26.500	26.583	2.060	7.749
IOR	20.125	19.000	21.500	20.000	22.000	20.750	20.562	1.680	8.170
IPL	24.500	23.500	25.875	24.125	26.625	25.250	24.979	1.720	6.886
IPW	24.375	23.750	25.625	24.250	25.375	24.750	24.687	2.000	8.101
IWG	43.750	41.500	44.875	43.375	46.250	44.250	44.000	3.260	7.409
KAN	24.500	23.250	24.750	23.625	24.875	24.000	24.167	1.760	7.283
KGE	23.500	21.375	24.000	22.250	24.000	22.875	23.000	1.720	7.478
KLT	34.250	32.250	35.375	33.125	36.125	34.000	34.187	2.560	7.488
KU	19.875	19.000	20.875	19.500	20.875	19.750	19.979	1.400	7.007
LOU	40.125	37.500	41.250	39.375	41.750	40.625	40.104	2.780	6.932
MAP	22.625	20.875	22.750	21.375	22.500	21.125	21.875	1.600	7.314
MPL	25.875	24.250	26.375	25.375	27.250	25.750	25.812	1.780	6.896
MTP	40.625	37.750	40.375	39.000	42.250	39.500	39.917	2.760	6.914
MWE	20.500	19.250	21.500	20.000	22.250	21.000	20.750	1.600	7.711
NES	26.500	24.875	27.750	26.000	28.875	27.000	26.833	2.040	7.602
NGE	27.250	25.625	27.375	26.125	29.000	27.000	27.062	2.040	7.538
NI	18.625	17.000	18.500	17.375	19.625	18.500	18.271	0.840	4.597
NPT	16.000	14.500	19.000	14.875	19.875	17.000	16.875	1.500	8.889
NSP	37.500	33.875	38.875	36.750	40.000	37.750	37.458	2.220	5.927
NU	22.125	20.750	22.500	21.000	22.750	21.250	21.729	1.760	8.100
NVP	22.750	21.750	24.000	22.125	25.875	23.625	23.354	1.560	6.680
OEC	22.750	20.750	23.250	22.125	24.000	22.500	22.562	1.960	8.687
OGE	36.500	35.375	37.750	36.250	39.000	37.500	37.062	2.380	6.422
ORU	29.625	28.000	31.000	29.000	32.000	30.375	30.000	2.300	7.667
PCG	20.250	18.750	21.375	19.875	22.000	20.750	20.500	1.400	6.829
PE	23.000	21.125	23.125	21.750	24.000	22.125	22.521	2.200	9.769
PEG	27.500	26.000	28.125	27.250	29.375	27.500	27.625	2.080	7.529
PGN	24.125	22.250	23.750	21.750	23.125	20.875	22.646	1.960	8.655
PIN	17.125	16.125	17.375	16.500	18.000	16.750	16.979	0.800	4.712
POM	21.750	20.375	22.625	21.375	24.250	22.000	22.062	1.460	6.618
PPL	41.000	40.125	42.375	40.500	42.875	41.625	41.417	2.860	6.905
PPW	42.125	40.125	44.500	41.875	46.250	43.500	43.062	2.760	6.409
PSD	21.750	20.375	22.250	21.000	22.500	21.750	21.604	1.760	8.147
PSR	25.500	23.500	26.375	25.125	27.000	26.125	25.604	2.000	7.811
RGS	20.750	19.500	21.750	20.250	22.125	20.375	20.792	1.560	7.503
SAJ	23.000	22.000	24.250	22.375	24.625	23.625	23.312	1.520	6.520
SCE	36.875	34.125	38.625	37.000	41.000	38.250	37.646	2.560	6.800
SCG	33.750	32.250	34.875	33.250	35.750	34.375	34.042	2.460	7.226
SDO	40.875	39.500	44.125	40.375	45.625	42.750	42.208	2.700	6.397
SIG	28.875	28.000	30.250	28.625	31.625	29.250	29.437	1.800	6.115
SO	27.875	24.000	28.125	27.000	29.750	27.375	27.354	2.140	7.823
SRP	24.500	23.000	24.750	23.500	25.625	24.125	24.250	1.840	7.588
TE	27.375	26.000	28.000	26.625	29.500	27.750	27.542	1.520	5.519
TNP	21.750	21.000	22.375	21.250	22.000	21.250	21.604	1.550	7.175
TXU	34.000	31.250	35.750	33.625	37.500	34.500	34.437	2.920	8.479
UCU	20.750	18.750	21.125	19.625	22.250	19.750	20.375	1.440	7.067
UEP	27.500	26.000	28.500	27.250	28.625	27.125	27.500	2.080	7.564
UIL	32.750	30.000	33.000	30.500	34.250	31.000	31.917	2.320	7.269
UTL	36.500	34.625	35.750	34.875	37.000	35.500	35.708	2.080	5.825
WEC	29.500	28.000	30.125	28.625	32.125	29.750	29.688	1.660	5.592
WPH	23.625	22.500	24.375	22.875	24.375	23.125	23.479	1.680	7.155
WPS	23.500	22.125	24.250	23.000	24.125	23.000	23.333	1.620	6.943
WWP	30.750	28.375	31.375	29.250	31.125	29.250	30.021	2.480	8.261

N=89.

[FR Doc 90-1311 Filed 1-19-90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 16

[Docket No. R-90-1466; FR-2759-F-01]

Privacy Act of 1974, Technical Amendment

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule; technical amendment.

SUMMARY: The purpose of this technical amendment is to amend part 16, Appendix A of title 24 of the Code of Federal Regulations. This amendment revises the mailing addresses for the officials who receive inquiries, requests for access, and requests for correction or amendment as they pertain to the Privacy Act.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Donna Eden, Departmental Privacy Act Officer, Department of Housing and Urban Development, Room 4142, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6050. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: Title 24 of the Code of Federal Regulations, part 16, Appendix A, contains the position titles and mailing addresses for the Privacy Act Officers, or their designees, who are authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment that pertain to the Privacy Act. It has been recently noted that the addresses of several Regions are incorrect. This technical amendment will revise the mailing addresses for the officials who receive inquiries for correction or amendment as they pertain to the Privacy Act of 1974.

List of Subjects in 24 CFR Part 16

Privacy Act.

PART 16—[AMENDED]

Accordingly, 24 CFR Part 16, is amended as follows:

1. The authority citation for part 16 continues to read as follows:

Authority: Department of Housing and Urban Development Act, Pub. L. 89-174; sec. 7(d), 42 U.S.C. 3535(d); Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a.

2. 24 CFR Part 16, Appendix A, is revised to read as follows:

Appendix A—Officials To Receive Inquiries, Requests for Access and Requests for Correction or Amendment

Headquarters

Privacy Act Officer, 451 Seventh Street SW., Washington, DC 20410.

Region I

Regional Administrator-Regional Housing Commissioner, 10 Causeway Street, Room 375, Federal Building, Boston, Massachusetts 02222-1092.
Manager, 330 Main Street, 1st Floor, Hartford, Connecticut 06106-1860.
Manager, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101-2487.
Chief, Casco Northern Bank Building, 23 Main Street, 1st Floor, Bangor, Maine 04401-4318.
Manager, Room 330, John O. Pastore Federal Building and U.S. Post Office, Kennedy Plaza, Providence, Rhode Island 02903-1785.
Chief, Federal Building, 11 Elmwood Avenue, Room B-31, Burlington, Vermont 05402-0879.

Region II

Regional Administrator-Regional Housing Commissioner, 26 Federal Plaza, New York, New York 10278-0068.
Manager, The Parkade Building, 519 Federal Street, Camden, New Jersey 08103-9998.
Manager, Military Park Building, 60 Park Place, Newark, New Jersey 07102-5504.
Manager, 465 Main Street, Lafayette Court, Buffalo, New York 14203-1780.
Manager, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918-1804.
Manager, Leo W. O'Brien Federal Building, North Pearl Street and Clinton Avenue, Albany, New York 12207-2395.

Region III

Regional Administrator-Regional Housing Commissioner, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106-3392.
Manager, HUD Building, 451 Seventh Street SW., Room 3158, Washington, District of Columbia 20410-5500.
Manager, The Equitable Building, 3rd Floor, 10 North Calvert Street, Baltimore, Maryland 21202-1865.
Manager, Old Post Office Courthouse Building, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219-1906.
Manager, 400 North Eighth Street, Richmond, Virginia 23240.
Chief, Federal Building, 844 King Street, Room 1304, Wilmington, Delaware 19801-3519.
Manager, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301-1795.

Region IV

Regional Administrator-Regional Housing Commissioner, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303-3388.
Manager, Beacon Ridge Tower, 600 Beacon Parkway West, Birmingham, Alabama 35233-3144.
Manager, 325 West Adams Street, Jacksonville, Florida 32202-4303.
Manager, P.O. Box 1044, 601 West Broadway, Louisville, Kentucky 40201-1044.
Manager, Doctor A. H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269-1096.
Manager, 415 North Edgeworth Street, Greensboro, North Carolina 27401-2107.
Manager, Strom Thurmond Federal Building, 1835-45 Assembly Street, Columbia, South Carolina 29201-2480.
Manager, 3rd Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, Tennessee 37902-2526.
Manager, Gables One Tower, 1320 South Dixie Highway, Coral Gables, Florida 33146-2911.
Manager, 700 Twiggs Street, Room 527, P.O. Box 17910, Tampa, Florida 33672-2910.
Manager, One Memphis Place, 200 Jefferson Avenue, Suite 1200, Memphis, Tennessee 38103-2335.
Manager, Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228-1803.
Manager, Langley Building, 3751 Maguire Boulevard, Suite 270, Orlando, Florida 32803-3032.

Region V

Regional Administrator-Regional Housing Commissioner, 626 West Jackson Boulevard, Chicago, Illinois 60606-5601.
Manager, 151 North Delaware Street, Indianapolis, Indiana 46204-2526.
Manager, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226-2592.
Manager, 220 Second Street, South, Minneapolis, Minnesota 55401-2195.
Manager, 200 North High Street, Columbus, Ohio 43215-2499.
Manager, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203-2289.
Chief, 524 South Second Street, Suite 672, Springfield, Illinois 62701-1774.
Manager, Amitec Building-Local, 352 South Saginaw Street, Room 200, Flint, Michigan 48502-1953.
Manager, 2922 Fuller Avenue, NE, Grand Rapids, Michigan 49505-3499.
Manager, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202-3253.
Manager, One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, Ohio 44114-1670.

Region VI

Regional Administrator-Regional Housing Commissioner, 1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113-2905.
Manager, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201-3707.
Manager, Fisk Federal Building, 1661 Canal Street, New Orleans, Louisiana 70112-2887.
Manager, 525 Griffin Street, Room 860, Dallas, Texas 75202-5007.
Manager, Washington Square, 800 Dolorosa Street, San Antonio, Texas 78207-4563.
Manager, Joe D. Waggoner Federal Building, 500 Fannin Street, Room 6B04, Shreveport, Louisiana 71101-3077.
Manager, 625 Truman Street, NE, Albuquerque, New Mexico 87100-6443.

Manager, Murrah Federal Building, 200 NW 5th Street, Oklahoma City, Oklahoma 73102-3202.
Manager, 1516 S. Boston Avenue, Suite 110, Tulsa, Oklahoma 74119-4032.
Manager, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098-4096.
Manager, Federal Office Building, 1205 Texas Avenue, Lubbock, Texas 79401-4093.

Region VII

Regional Administrator-Regional Housing Commissioner, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106-2496.
Manager, 210 North Tucker Boulevard, St. Louis, Missouri 63101-1997.
Manager, Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102-1622.
Manager, Federal Building, 210 Walnut Street, Room 239, Des Moines, Iowa 50309-2155.
Chief, Frank Carlson Federal Building, 444 SE Quincy Street, Room 256, Topeka, Kansas 66683-0001.

Region VIII

Regional Administrator-Regional Housing Commissioner, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202-2349.
Manager, Federal Office Building Drawer 10095, 301 S. Park, Room 340, Helena, Montana 59626-0095.
Chief, Federal Building, P.O. Box 2483, 653 2nd Avenue North, Fargo, North Dakota 58108-2483.
Chief, 300 Building, 300 North Dakota Avenue, Suite 116, Sioux Falls, South Dakota 57102-0311.
Manager, 324 South State Street, Suite 220, Salt Lake City, Utah 84111-2321.
Chief, 4225 Federal Office Building, 100 East B Street, Post Office Box 580, Casper, Wyoming 82602-1918.

Region IX

Regional Administrator-Regional Housing Commissioner, Federal Building, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, California 94102-3448.
Manager, 1615 W. Olympic Boulevard, Los Angeles, California 90015-3801.
Manager, One North First Street, Suite 300, Post Office Box 13468, Phoenix, Arizona 85002-3468.
Manager, Pioneer Plaza, 100 North Stone Avenue, Suite 410, Tucson, Arizona 86701-1467.
Manager, 1630 East Shaw Avenue, Suite 138, Fresno, California 93710-8193.
Manager, 777 12th Street, Suite 200, Sacramento, California 95809-1997.
Manager, Federal Office Building, 880 Front Street, Room 5S3, San Diego, California 92188-0100.
Manager, 34 Civic Center Plaza, P.O. Box 12850, Santa Ana, California 92712-2850.
Manager, 300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96850-4991
Manager, 1500 East Tropicana Avenue, 2nd Floor, Las Vegas, Nevada 89119-6516.
Manager, 1050 Bible Way, Post Office Box 4700, Reno, Nevada 89505-4700.

Region X

Regional Administrator-Regional Housing Commissioner, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101-2058.
Manager, 520 Southwest Sixth Avenue, Portland, Oregon 97204-1596.
Manager, 222 West 8th Avenue, #64, Anchorage, Alaska 99513-7537.
Manager, FB/USCH, Box 042, 550 West Fort Street, Boise, Idaho 83724-0420.
Manager, 8th Floor East, Farm Credit Bank Building, West 601 First Avenue, Spokane, Washington 99204-0317.

Dated: January 17, 1990.

Claire E. Freeman,

Assistant Secretary for Administration.

[FR Doc. 90-1406 Filed 1-19-90; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD-8-89-11]

Drawbridge Operation Regulations; Trinity River, and Buffalo Bayou, Texas

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Southern Pacific Transportation Company, the Coast Guard is changing the regulations governing the operations of two drawbridges. One is across the Trinity River and one is across Buffalo Bayou, Texas, as follows:

(1) The swing span bridge across the Trinity River, mile 117.3, at Goodrich, Polk County, Texas.

(2) The swing span bridge across Buffalo Bayou, mile 3.1, at Houston, Harris County, Texas.

The changes for these bridges provide that the bridges need not be opened for the passage of vessels. Presently, there is no operating regulation for the Trinity River bridge, and the Buffalo Bayou bridge is required to open on signal when at least 24 hours notice is given.

These changes are being made because no requests have been made to open the draws for 30 years at the Trinity River bridge and for 17 years at the Buffalo Bayou bridge. This action should relieve the bridge owner of the burden of having persons available for opening the draws while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 18 September 1989, the Coast Guard published a proposed rule (54 FR 38388) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated September 28, 1989. In each notice interested parties were given until November 2, 1989 to submit comments.

Drafting Information: The drafters of these regulations are Mr. John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of Comments: One letter was received in response to Public Notice No. CGD8-11-89. The Federal Emergency Management Agency offered no objection to the proposed rule changes.

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

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the Trinity River bridge and the Buffalo Bayou bridge have not been opened for a period of 30 and 17 years, respectively. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.955 is revised to read as follows:

§ 117.955 Buffalo Bayou.

(a) The draw of the Lockwood Drive bridge, mile 2.3 mile at Houston, and all drawbridges downstream of it, shall open on signal if at least 24 hours notice is given.

(b) The draws of the Southern Pacific railroad bridge, mile 3.1, and the Houston Belt and Terminal railroad bridge, mile 4.3, need not be opened for the passage of vessels.

3. Section 117.989 is revised to read as follows:

§ 117.989 Trinity River.

The draws of the Southern Pacific railroad bridges, mile 41.4 at Liberty and mile 117.3 at Goodrich, the Missouri Pacific railroad bridges, mile 54.8 at Kenefick and mile 181.8 at Riverside, and the Atchison Topeka and Santa Fe railroad bridge, mile 96.2 at Romayor, need not be opened for the passage of vessels.

Dated: January 10, 1990.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 90-1327 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3705-2]

Approval and Promulgation of Air Quality Implementation Plan; Delaware; Final Proposed SO_2 Control Strategy for Delmarva Power & Light Co.; Indian River Plant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. The revision consists of the incorporation of a Conciliatory Order which is designed to reduce ambient sulfur dioxide (SO_2) levels around the Delmarva Power and Light Company's (DP&L) Indian River power plant. The Conciliatory Order addresses the nonattainment of the SO_2 National Ambient Air Quality Standards (NAAQS) in the area of the Delmarva Power and Light plant.

EFFECTIVE DATE: This rule will become effective on February 21, 1990.

ADDRESSES: Copies of the revision and accompanying documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Attn: Mr. Joseph W. Kunz, Chief (3AM11), Projects Management Section.

Delaware Department of Natural Resources and Enviromental Control, Division of Environmental Control, Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901, Attn: Mr. Robert French.

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

FOR FURTHER INFORMATION CONTACT: Kelly Yost at (215) 597-2746.

SUPPLEMENTARY INFORMATION: On April 14, 1989 (54 FR 14969), EPA published a Notice of Proposed Rulemaking (NPRM) for the revision of the State of Delaware SO_2 SIP. The NPRM proposed to incorporate into Delaware's SO_2 SIP, a Conciliatory Order originally issued by Delaware to correct a NAAQS violation caused by aerodynamic downwash effect at the DP&L, Indian River power plant. A description of the revision was provided in the NPRM and will not be restated here.

The public was given an opportunity to comment on the April 14, 189 NPRM and only one comment was received by EPA. The comment, received on May 15, 1989 from DP&L, requested that their comments be incorporated into the final rulemaking notice. DP&L's comments concerned the following statement made by EPA in the NPRM:

> In addition to the raising of stack height, there are other control options such as lower sulfur coal and SO_2 control technology which are viable control options at comparable costs and comparable implementation times.

DP&L's commented that "there are no control options other than those identified by DP&L that would satisfy EPA's scheduling and compliance criteria." Their reasoning is as follows:

> * * * [The] Company has performed extensive environmental, economic, engineering and technical feasibility studies to assess which alternative could be implemented in the time mandated by the DNREC and EPA to achieve and demonstrate compliance (February 29, 1992). The Company has spent significant resources to ascertain the potential feasibility of implementating new SO_2 removal technologies, conventional flue gas desulfurization systems, higher profile chimneys, as well as lower sulfur coals in order to correct the observed problem.
>
> The results of these analyses were quite clear—there are only seven candidate solutions which are expected to result in total compliance and can be implemented within the time frame mandated by the EPA. These solutions are described in the DNREC issued Conciliatory Order * * *

EPA recognizes that the control options identified by DP&L are the only ones which can feasibly be installed within the compliance time-frame mandated by the Clean Air Act. However, the other control options referred to by EPA could feasibly have been installed within the compliance time-frame set if installation began earlier.

Conciliatory Order: The NPRM was published as part of a "parallel processing" procedure in which EPA proposed approval of the unsigned Order while the State was completing its own administrative action, with the agreement that a signed Order would be submitted before final approval action would be taken. After the original Order was submitted to EPA, the State of Delaware, appointed a new State Secretary. For clarification purposes, a new Order was executed under the current State Secretary's signature, and that Order was submitted to EPA on May 31, 1989. In all other respects, this new Order is unchanged from that one upon which the proposed approval was based.

The State of Delaware has certified that a public hearing with regard to this proposed SIP revision was held on November 29, 1989, in Millsboro, Delaware, as required by 40 CFR 51.102.

Final Action: EPA approves this revision incorporating Delaware's Conciliatory Order into the Delaware SO_2 SIP. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for SIP revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors, and in relation to relevant statutory and regulatory requirements. EPA has determined that this revision will not cause adverse effects to the air quality if approved, and the comments received do not effect EPA's decision to approve this action. The revision meets the requirements of section 110 of the Clean Air Act and 40 CFR part 51.

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by March 23, 1990. This action may not be challenged later in proceedings to enforce its requirements (section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Sulfur dioxide.

Dated: December 20, 1989.

Edwin B. Erickson,

Regional Administrator.

Identification of Document

Subpart I-Delaware

PART 52—[AMENDED]

40 CFR part 52, subpart I, is amended as follows:

1. Section 52.420 is amended by adding paragraph (c)(38) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(38) Revision to the Delaware State Implementation Plan incorporation of a Conciliatory Order, was submitted on May 31, 1989. The order is designed to reduce ambient sulfur dioxide levels around the Delmarva Power and Light Company's Indian River power plant.

(i) Incorporation by reference.

(A) Letter dated May 31, 1989 from the State of Delaware containing the Conciliatory Order for incorporation into the Delaware State Implementation Plan.

(B) Conciliatory Order issued on May 31, 1989, for Delmarva Power and Light Company's Indian River power plant.

[FR Doc. 90-1421 Filed 1-19-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

45 CFR Part 3

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is revising the regulations in title 45 Code of Federal Regulations, part 3, governing the conduct of persons and traffic on the NIH Federal enclave in Bethesda, Maryland, to: (1) Describe explicitly the applicability and effect of the Assimilative Crimes Act (18 U.S.C. 13), and identify certain Maryland criminal statutes that apply to the NIH under that Act; (2) identify for the information of the public certain Federal criminal statutes, which apply without regard to the place of the offense and which are particularly relevant to activities on Federal enclaves; and (3) add a new provision limiting solicitation.

EFFECTIVE DATE: This rule is effective January 22, 1990.

FOR FURTHER INFORMATION CONTACT: William G. Ketterer, Senior Attorney, NIH, Office of the General Counsel, Building 31, Room 2B-50, Bethesda, Maryland 20892, telephone (301) 496-6043.

SUPPLEMENTARY INFORMATION: These regulations revise the existing regulations at 45 CFR, part 3, to improve readability, update certain provisions, explicitly identify certain Federal and State criminal laws which presently apply independently of part 3, and add a provision governing solicitation.

Specifically, these regulations: make various editorial changes to the existing regulations; add paragraphs (d) and (e) to § 3.2 "Applicability", concerning the application of Federal statutes and assimilated Maryland statutes to the enclave; add § 3.44 "Solicitation", to strengthen the authority of the Director to regulate solicitation activity within the enclave; and revise § 3.22 relating to requests for identification, to conform the regulations to pertinent rulings of the United States Supreme Court.

The explicit citation of the Assimilative Crimes Act and specific Federal statutes in titles 18 and 21, United States Code, and certain Maryland Statutes of particular relevance to NIH, serve to better inform the public as to the applicability of these statutes and their penalties.

On November 21, 1988, the NIH published the Notice of Proposed Rulemaking (53 FR 46886). The public was given 60 days to comment on the proposed regulations. No public comments were received. Therefore, these final regulations are the same as the proposed regulations except for minor editorial changes.

Regulatory Impacts

The regulations have been reviewed under the requirements of Executive Order 12291, and the Director has determined that they do not constitute a major rule. If promulgated, these regulations will not result in an annual effect on the economy of $100 million or more, nor will they create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor will they have significant adverse effects on the competition, employment, investment, innovation or ability of United States-based enterprises to compete in domestic or export markets.

The existing penalties for violations of provisions of the regulations set forth in subpart D of the existing regulation are not affected by these regulations, and any economic impact of the provision governing solicitation is expected to be insubstantial and will not affect a substantial number of small entities. For these reasons, the Director certifies that these regulations do not constitute a major rule under Executive Order 12291, and that a regulatory impact analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

The regulations have been reveiwed under the requirements of Executive Order 12612 on "Federalism", and the Director has determined that they do not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, the regulations will not limit the policy making and administrative discretion of the States, nor will they affect the States' abilities to discharge traditional State governmental functions or otherwise affect any aspects of State sovereignty.

The regulations have also been reviewed under the requirements of Executive Order 12606 on the "Family", and the Director has determined that they do not contain a significant potential negative impact on family formation, maintenance, or general well-being.

Information Collection Requirements

The regulations have been reviewed under the requirements of the Paperwork Reduction Act of 1980, Public Law 96-511, and it has been determined that the regulations do not contain information-collection requirements subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

Catalogue of Federal Domestic Assistance

The regulations do not affect any assistance programs.

List of Subjects in 45 CFR Part 3

Conduct, Federal buildings and facilities, Government property, Traffic regulations.

For reasons set forth in the preamble, title 45, part 3 of the Code of Federal Regulations is revised to read as set forth below.

Dated: January 9, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

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Authority: 40 U.S.C. 318–318d, 488; Delegation of Authority, 33 FR 604.

Subpart A—General

§ 3.1 Definitions.

Director means the Director or Acting Director of the National Institutes of Health (NIH), or other officer or employee of NIH to whom the authority involved has been delegated.

Enclave means, unless the context requires a different meaning, the area, containing about 318 acres, acquired by the United States in several parcels in the years 1935 through 1983, and any further future acquisitions, comprising the National Institutes of Health located in Montgomery County, Maryland, over which the United States acquired exclusive jurisdiction under the Act of March 31, 1953, Chapter 158 (1953 Maryland Laws 311).

Police officer means a uniformed or non-uniformed police officer appointed under a delegation of authority to the Director under Title 40 United States Code section 318 or 318d; any other Federal law enforcement officer; and any other person whose law enforcement services are secured by contract, or upon request or deputation from a State or local law enforcement agency.

§ 3.2 Applicability.

(a) The regulations in this part apply to all areas in the enclave and to all persons on or within the enclave, except as otherwise provided.

(b) The regulations in this part do not apply to occupants, their visitors, and other authorized persons in areas used as living quarters:

(1) When specifically made inapplicable, and

(2) In the case of the following provisions: § 3.24 Parking permits; § 3.25 Servicing of vehicles; § 3.42 Hobbies and sports; and § 3.42(f) Smoking.

(c) All regulations in this part are in addition to the provisions in the United States Code, including title 18 relating to crimes and criminal procedure, and title 21 relating to food and drugs, which apply:

(1) Without regard to the place of the offense, or

(2) To areas (such as the enclave) subject to the "special maritime and territorial jurisdiction of the United States," as defined in Title 18 United States Code section 7.

(d) In accordance with the Assimilative Crimes Act (18 U.S.C. 13), whoever is found guilty of an offense which, although not made punishable by any act of Congress, nor any provision of these regulations, would be punishable if committed within the State of Maryland, shall be guilty of a like offense and subject to a like punishment. In the event of an irreconcilable conflict between a provision of this part and a Maryland statute governing the identical subject matter, this part shall control.

(e) *Federal criminal Statutes which apply.* The following Federal criminal statutes in the United States Code apply to Federal enclaves and elsewhere without regard to the place of the offense. This listing is provided solely for the information of the public and is not all-inclusive. The omission of other Federal statutes does not mean that such other statutes do not apply. In any given situation, the cited statutory provisions and any amendments in effect when the alleged offense occurred shall determine the specifics of the offense, applicability, and penalty.

Subject	U.S. Code	Provides generally	Maximum penalty
1. By force or threat of force, willful injury, intimidation or interference with, or attempts to injure, intimidate or interfere with, a person from participating in or enjoying any benefit, service, privilege, program, facility, or activity, provided by or administered by the U.S., and engaging in certain other Federal protected activities.	18 U.S.C. 245	Prohibits	Not involving death or bodily injury: Imprisonment one year and/or $1,000 fine
2. Malicious destruction or damage, by an explosive, to a building or other property owned, possessed, used, or leased by the U.S., U.S. agency, or any organization receiving Federal financial assistance.	18 U.S.C. 844(f)	Prohibits	First offense not involving death or personal injury: Imprisonment 10 years and/or $10,000 fine and seizure and forfeiture of explosive materials.
3. Possession of explosive in buildings owned, possessed, used, or leased by U.S. or U.S. agency.	18 U.S.C. 844(g)	Prohibits, except with written consent of the agency.	Imprisonment one year and/or $1,000 fine and seizure and forfeiture of explosive materials.
4. Use of or carrying an explosive to commit, or during commission of, a felony prosecutable in a U.S. court.	18 U.S.C. 844(h)	Prohibits	First offense: Imprisonment 10 years and seizure and forfeiture of explosive materials.
5. Use of or carrying a firearm during and in relation to any crime of violence prosecutable in a U.S. court.	18 U.S.C. 924(c)	Prohibits	First offense: Imprisonment 5 years and $5,000 fine and seizure and forfeiture of firearm and ammunition.

Subject	U.S. Code	Provides generally	Maximum penalty
6. Manufacture, distribution, dispensing, or possession with intent to do these acts, of narcotics and other controlled substances and counterfeit substances.	21 U.S.C. 841, 842, 843, 845.	Prohibits, except as authorized by the Controlled Substances Act (generally 21 U.S.C. 801-904).	First offense: Imprisonment 20 years and/or $250,000 fine depending on the amount and kind of substance (twice the above penalties for distribution by a person at least 18 years of age to one under age 21).
7. Simple possession of narcotics or other controlled substances.	21 U.S.C. 844	Prohibits, unless substance obtained directly, or pursuant to prescription or order, from a practitioner, acting in the course of professional practice, or as otherwise authorized under the Controlled Substances Act.	First offense: Imprisonment 1 year and/or $5,000 fine.

(f) *Maryland criminal statutes that apply.* The matters described in this paragraph are governed, in whole or in part, by the current version of the cited Maryland criminal statutory provisions, which are made Federal criminal offenses under the Assimilative Crimes Act (18 U.S.C. 13). This listing sets forth areas of conduct particularly relevant to the enclave and is provided solely for the information of the public. The list is not all-inclusive and omission of other Maryland criminal statutes does not mean that such other statutes are not assimilated as Federal offenses under the Act. Generally, other Maryland criminal statutes will apply on the enclave, by force of the Act, unless superseded by Federal Law or a given provision of this part. In any given situation, the cited statutory provisions and any amendments in effect when the alleged offense occured shall determine the specifics of the offense, applicability, and penalty.

Subject	Maryland code annotated	Provides generally	Maximum penalty
1. Pedestrian right-of-way	Transportation, Sec. 21-502.	Pedestrians have the right-of-way in crosswalks and certain other areas. Subject to certain limitations.	Imprisonment 2 months and/or $500 fine.
	Sec. 21-511	Blind, partially blind, or hearing impaired pedestrians have the right-of-way at any crossing or intersection. Subject to certain limitations.	$500 fine.
2. Drivers to exercise due care	Transportation, Sec. 21-504.	Drivers shall exercise due care to avoid colliding with pedestrians, children and incapacitated individuals.	$500 fine.
3. Driving while intoxicated, under the influence of alcohol and/or a drug or controlled substance.	Transportation, Sec. 21-902.	Prohibits	Sec. 21-902(a) (driving while intoxicated, first offense): Imprisonment 1 year and/or $1,000 fine. Sec. 21-902 (b), (c), (d) (driving under the influence): Imprisonment 2 months and/or $500 fine.
4. Unattended motor vehicles	Transportation, Sec. 21-1101.	Prohibits leaving motor vehicles unattended unless certain precautions are taken.	$500 fine.
5. Carrying or wearing certain concealed weapons (other than handguns) or openly with intent to injure.	Article 27, Sec. 36	Prohibits, except for law enforcement personnel or as a reasonable precaution against apprehended danger.	Imprisonment 3 years or $1,000 fine.
6. Unlawful wearing, carrying, or transporting a handgun, whether concealed or openly.	Article 27, Sec. 36B	Prohibits except by law enforcement personnel or with permit.	First offense and no prior related offense: Imprisonment 3 years and/or $2,500 fine.
7. Use of handgun or concealable antique firearm in commission of felony or crime of violence.	Article 27, Sec. 36B	Prohibits	Imprisonment 20 years.
8. Disturbance of the peace	Article 27, Sec. 122	Prohibits acting in a disorderly manner in public places.	Imprisonment 30 days and/or $500 fine.
9. Gambling	Article 27, Secs. 240, 245	Prohibits betting, wagering and gambling, and certain games of chance (does not apply to vending or purchasing lottery tickets authorized under State law in accordance with approved procedures).	Sec. 240: Imprisonment one year and/or $1,000 fine. Sec. 245: Imprisonment 2 years and/or $100 fine.

§ 3.3 Compliance.

A person must comply with the regulations in this part; with all official signs; and with the lawful directions or orders of a police officer or other authorized person, including traffic and parking directions.

§ 3.4 False reports and reports of injury or damage.

A person may not knowingly give any false or fictitious report concerning an accident or violation of the regulations of this part or any applicable Federal or Maryland statute to any person properly investigating an accident or alleged violation. All incidents resulting in injury to persons or willful damage to property in excess of $100.00 (one hundred dollars) in value must be reported by the persons involved to the Police Office as soon as possible. The Police Office's main location and telephone number is: Building 31, Room B3BN10; (301) 496-5685.

§ 3.5 Lost and found, and abandoned property.

Lost articles which are found on the enclave, including money and other personal property, together with any identifying information, must be deposited at the Police Office or with an office (such as the place where found) which may likely have some knowledge of ownership. If the article is deposited with an office other than the Police Office and the owner does not claim it

within 30 days, it shall be deposited at the Police Office for further disposition in accordance with General Services Administration regulations (41 CFR part 101–48). Abandoned, or other unclaimed property and, in the absence of specific direction by a court, forfeited property, may be so identified by the Police Office and sold in accordance with 41 CFR 101–45.304–1 and 101–45.304–2.

§ 3.6 Nondiscrimination.

A person may not discriminate by segregation or otherwise against another person because of age, color, creed, handicap, national origin, race or sex, in furnishing or by refusing to furnish to that person the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided within the enclave. (Title 18 United States Code section 245 prohibits, by use of force or threat of force, willful injury, intimidation, or interference with, a person from participating in or enjoying any benefit, service, privilege, program, facility, or activity provided by or administered by the United States, attempts to do these acts, and engaging in certain other activities.)

Subpart B—Traffic Regulations

§ 3.21 Emergency vehicles.

A person must yield the right of way to an emergency vehicle operating its siren or flashing lights.

§ 3.22 Request for identification.

Upon request by a police officer, a person involved in any of the following situations must provide identification, for example, by exhibiting satisfactory credentials (such as an employment identification card or driver's license):

(a) A traffic accident within the enclave;

(b) The police officer reasonably believes that the individual is engaged in, or has engaged in, criminal conduct or a violation of the regulations of this part; or

(c) The enclave or a portion of the enclave is not open to the public (see § 3.41).

A driver of a motor vehicle involved in an accident within the enclave shall also exhibit, upon the request of a police officer, the owner's registration card or other satisfactory proof of ownership.

§ 3.23 Parking.

(a) A person may not stand (vehicle stopped, with or without, an occupant), or park a motor vehicle or other vehicle:

(1) In a lane, space, or area not designated by a sign for parking, and/or standing;

(2) On a sidewalk;

(3) Within an intersection or crosswalk;

(4) within 10 feet of a fire hydrant, 5 feet of a driveway, or 20 feet of a stop sign, crosswalk, or traffic control signal;

(5) In a double-parked position;

(6) At a curb painted yellow;

(7) On the side of a street facing oncoming traffic;

(8) In a position that would obstruct traffic;

(9) For a period in excess of 24 hours, except at living quarters, or with the approval of the Police Office.

(b) A person must park bicycles, motorbikes, and similar vehicles only in designated areas, and may not bring these vehicles inside buildings.

(c) A visitor must park in an area identified for that purpose by posted signs or similar instructions, such as "visitor parking" and "reserved for visitors".

(d) A person may not drive or park an unauthorized motor vehicle on a grassy, or any other unpaved, area without the approval of the Police Office.

§ 3.24 Parking permits.

Except for visitor parking, a person may not park a motor vehicle without displaying a parking permit, currently valid for that location. The Director may revoke or refuse to issue or renew any parking permit for violation of this section, or any provision of this part.

§ 3.25 Servicing of vehicles.

A person may not wash, polish, change oil, lubricate, or make nonemergency repairs on a privately owned vehicle.

§ 3.26 Speed limit.

The speed limit is 25 miles per hour, unless otherwise posted. A driver of a vehicle may not exceed the speed limit.

§ 3.27 Bicycles.

A person may not operate a bicycle, motorbike, or similar vehicle without a horn or other warning device, and, if the vehicle is operated between dusk and dawn, it must be equipped with an operating headlight, and taillight or reflector.

Subpart C—Facilities and Grounds

§ 3.41 Admission to facilities or grounds.

The enclave is officially open to the public during normal working and visiting hours and for approved public events. The enclave is closed to the public at all other times, and the Director may also officially close all or part of the enclave, or any building, in emergency situations and at other times the Director deems necessary to ensure the orderly conduct of Government business. When all or part of the enclave is closed to the public, admission is restricted to employees and other authorized persons who may be required to display Government credentials or other identification when requested by a police officer and may be required to sign a register. The living quarters and adjacent areas are not open to the public but are open at all times to occupants and their visitors and business invitees, unless otherwise closed by the Director.

§ 3.42 Restricted activities.

(a) *Hobbies and sports.* A person may undertake hobbies and sports only in designated areas or as approved by the Director.

(b) *Pets and other animals.* A person may not bring on the enclave any cat, dog, or other animal except for authorized purposes. This prohibition does not apply to domestic pets at living quarters or to the exercise of these pets under leash or other appropriate restraints. The use of a dog by a handicapped person to assist that person is authorized.

(c) *Photography.* A person may take photographs, films or audiovisuals, for personal or news purposes on the grounds of the enclave or in entrances, lobbies, foyers, corridors, and auditoriums in use for public meetings, except when contrary to security regulations or Department of Health and Human Services policies, or where prohibited by appropriate signs. Photographs and similar activities for advertising or commercial purposes may be taken only with the advance written approval of the Director. A person may take photographs of a patient only with the informed consent of the patient (or the natural or legal guardian) and of the Director of the Warren Grant Magnuson Clinical Center or delegate.

(d) *Intoxicating beverages, narcotics, and other controlled substances.* A person may not possess, sell, consume, or use alcohol or other intoxicating beverages, except in connection with official duties, as part of authorized research, or as otherwise authorized by the Director, or, in the case of possession, consumption or use only, in living quarters. (The sale, consumption, use, or possession of narcotics and other controlled substances is prohibited and shall be governed by the Controlled Substances Act (21 U.S.C. 841–845); driving under the influence of an alcoholic beverage, drug or controlled substance is prohibited and shall be governed by the Maryland *Transportation Code Annotated* section 21–902.)

(e) *Nuisances and disturbances.* The following acts by a person are prohibited: Unwarranted loitering, disorderly conduct (acting in a disorderly manner to the disturbance of the public peace is prohibited and shall be governed by *Maryland Code Annotated,* Article 27, section 122); littering or disposal of rubbish in an unauthorized manner, the creation of any hazard to persons or property; the throwing of articles of any kind from or at a building; the climbing upon any part of a building for other than an authorized purpose; the loud playing of radios or other similar devices; and rollerskating, skateboarding, sledding or similar activities, except in officially designated areas.

(f) *Smoking.* Except as part of an approved medical research protocol, a person may not smoke in any building on the enclave.

§ 3.43 Removal of property.

A person may not remove Federal property from the enclave or any building on the enclave without a property pass, signed by an authorized property custodian, which specifically describes the items to be removed. In an emergency, or when the property custodian is not available, a police officer may approve removal of Federal property if, after consulting with the administrative officer or other appropriate official, the police officer is authorized by the official to do so. Privately-owned property, other than that ordinarily carried on one's person, may be removed only under this property pass procedure, or upon properly establishing ownership of the property to a police officer.

Packages, briefcases, or other containers brought within the enclave are subject to inspection while on, or being removed from, the enclave.

§ 3.44 Solicitation.

It shall be unlawful for a person (other than an employee using authorized bulletin boards), without prior written approval of the Director, to offer or display any article or service for sale within the enclave buildings or grounds; or to display any sign, placard, or other form of advertisement; or to collect private debts; or to solicit business, alms, subscriptions or contributions, except in connection with approved national or local campaigns for funds for welfare, health and other public interest purposes, or solicitation of labor organization membership or dues as authorized under the Civil Service Reform Act of 1978 (Pub. L. 95–454).

This provision shall not apply to authorized lessees and their agents and employees with regard to space leased for commercial, cultural, educational, or recreational purposes, under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(A)(16)).

Subpart D—Penalties

§ 3.61 Penalties.

(a) A person found guilty of violating any provision of the regulations in this part is subject to a fine of not more than $50 or imprisonment of not more than thirty days or both, for each violation (40 U.S.C. 318c).

(b) Penalties for violation of offenses proscribed by Federal statutes (generally codified in title 18 of the United States Code) and Maryland criminal statutes which are made Federal offenses under the Assimilative Crimes Act and are prescribed in the applicable provisions of those statutes.

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FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 89–07]

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

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission issues a Final Rule in Docket No. 89–07 finding unfavorable conditions to exist in the foreign oceanborne trade between the United States and Ecuador, which arise from certain laws and regulations of the Government of Ecuador. In order to meet or adjust unfavorable conditions found the Commission assesses a fee of $50,000 per outbound voyage from the United States to Ecuador on Maritima Transligra, S.A., an Ecuadorian-flag carrier.

In addition, the Commission revises part 586 of the Code of Federal Regulations to incorporate as a single section the present part 586, and to add this final rule to that part as a new section. For this reason, the final rule issued in the separate proceeding in Docket No. 87–6, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the U.S./Peru Trade,* 54 FR 12629 (March 28, 1989) is reprinted herein as a recodification which makes no substantive change in the rule and does not otherwise affect its status.

EFFECTIVE DATES: March 8, 1990, except paragraph (a) of § 586.2 which is effective March 28, 1989, and paragraphs (b) and (c) of § 586.2 which are suspended until the Commission publishes an order in the **Federal Register** establishing their effectiveness.

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

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 19(1)(b) ("section 19"), Merchant Marine Act, 1920 ("1920 Act"), 46 U.S.C. app. 876(1)(b), as implemented by 46 CFR part 585, the Federal Maritime Commission ("Commission" or "FMC") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are set forth at 46 CFR 585.3. Among these are conditions which: (1) Preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors, 46 CFR 585.3 (a), (b), and (d).

Background

The Commission instituted this proceeding by Notice of Inquiry issued on March 15, 1989 (54 FR 10,721) ("March Notice") to determine whether certain laws, regulations and policies of the Government of Ecuador ("GOE") created conditions unfavorable to shipping in the United States/Ecuador trade ("Trade") within the meaning of section 19. The basis of this inquiry was the allegation by Overseas Enterprises, Inc. ("OEI"), a U.S.-owned company, that it has been unable to reestablish a liquid bulk service in the Trade due to

GOE Resolution No. 012/87.[1] In addition to the issuance of the March Notice, the Commission requested information from the U.S. Department of State ("DOS") about its efforts to resolve the situation through diplomatic channels.

On May 18, 1989 (54 FR 21,473), the Commission issued a Notice of Further Comments ("May Notice") to provide interested parties an opportunity to submit additional comments on the status and operations of OEI, as well as on shipping conditions in the Trade. In the May Notice, the Commission advised, however, that GOE Resolution No. 012/87, on its face, appears to create conditions unfavorable to shipping in the Trade within the meaning of Section 19.

Subsequently, based on the comments received to the March and May Notices and on information submitted by DOS, the Commission on August 18, 1989, issued a Notice of Proposed Rulemaking ("Proposed Rule") (54 FR 34,914) pursuant to Section 19 to address the apparent unfavorable shipping conditions caused by GOE cargo reservation laws.[2] The Proposed Rule would impose a fee of $100,000 per outbound voyage from the United States to Ecuador on Maritime Transligra, S.A. ("Transligra"), an Ecuadorian-flag parcel tanker carrier. The Supplementary Information to the Proposed Rule explained that the reason sanctions would be imposed only on Transligra is because it is the chief, if not sole, beneficiary of Resolution No. 012/87.

In the Supplementary Information the Commission found that the record in this proceeding supports the conclusion that the GOE Resolution, on its face, appears to create conditions unfavorable to shipping. The Commission stated that to the extent that the Resolution applies only to the U.S./Ecuador bulk trade, leaving most other Ecuadorian bulk trades open to third-flag carriers, it is discriminatory.[3] The Commission explained that the Resolution allows Ecuadorian shipping companies to charter and employ foreign-flag vessels in the Trade, whereas U.S. shipping companies may employ only U.S.-flag vessels in the Trade. It advised that even if, as the GOE represents, U.S. companies may employ third-flag vessels in the Trade if they operate at least one U.S.-flag vessel, troubling questions are raised as to whether Ecuadorian laws dictating the fleet mix and other registration requirements for U.S. or other non-Ecuadorian citizens' participation in U.S. trade create conditions unfavorable to shipping.

The Commission noted that the exclusion of third-flag operators pursuant to Resolution No. 012/87 alone may create unfavorable trade conditions and that comments received to date indicated shipper support for OEI's position that GOE cargo reservation laws create such conditions. It stated that "nothing in the second round of comments justifies or offsets the discriminatory nature of the Resolution noted therein."

The Commission dealt, at length, with the jurisdictional issue raised by Transligra, that the reach of Section 19 is limited to U.S.-flag vessel operators and thus may not be invoked by an entity such as OEI which is said to arrange and coordinate shipping transactions between vessel owners and operators and U.S. exporters. The Commission rejected Transligra's position regarding the scope of Section 19.

The Commission found that section 19 was intended by Congress to protect not only U.S.-flag carriers, but U.S. interests in the efficient movement of U.S. export and import commerce. It explained that while FMC rules do not specifically refer to an entity such as OEI in delineating who may file a petition for relief under Section 19 at 46 CFR 585.4, the rule is applicable to "any person, including, but not limited to * * *" the entities named. The Commission saw no reason to exclude non-carrier maritime businesses, such as OEI, from the broad coverage available under Section 19. The Commission noted that its rule clearly states its applicability to any owner, operator or charterer of "bulk or tramp," as well as liner vessels. OEI, as a U.S. company seeking to participate in transactions to provide bulk vessel capacity in the Trade for service to U.S. exporters, was therefore found to be within the range of shipping interests protected by Section 19.

Interested parties were invited to file comments to the Proposed Rule, including the sanctions proposed and likely effect of those sanctions on Transligra's rates. Comments have been received from the DOS, OEI, Transligra, Nedlloyd Lines ("Nedlloyd") and Shippers for Competitive Ocean Transportation ("SCOT").

Summary of Comments

A. DOS

DOS reports that the GOE has expressed willingness to seek a mutually acceptable settlement regarding OEI's concerns. DOS understands that the GOE has been in contact with OEI to offer a shipping agreement with Transligra. It advises that a meeting between U.S. Government officials, officials from the Ecuadorian Embassy and principals from OEI is currently being arranged. DOS states that it will report on that meeting as soon as possible.

B. OEI

OEI reports that "nothing of substance" has occurred since the Commission's Proposed Rule to remove the unfavorable conditions found therein. OEI states that it continues to be barred from the Trade. OEI therefore supports the Commission's proposed action to impose sanctions against the Ecuadorian-flag carrier.

C. SCOT

SCOT states that it supports the Commission's findings that conditions unfavorable to shipping exist in the Trade due to GOE laws and regulations. Further, SCOT supports the Proposed Rule and the imposition of the sanctions prescribed.

Nedlloyd supports the findings and proposed actions of the Commission. Nedlloyd, however, reiterates earlier comments that the conditions found unlawful in the Trade involving transport of liquid bulk commodities also exist in the liner trade. Therefore, it suggests that any final rule issued by the Commission should advise the GOE restrictions in the liner trade between the U.S. and Ecuador will not be tolerated. Nedlloyd is concerned that efforts by liner operations to remove GOE restrictions on carrier selection in U.S. export commenrce will be ignored by Ecuadorian interests.

Nedlloyd supports the Commission's use of sanctions derived from the Foreign Shipping Practices Act of 1988 ("1988 Act"), 46 U.S.C. app. 1710a, in the non-liner context. It believes that imposition of per voyage monetary sanctions can properly be viewed as a

[1] Resolution No. 012/87 of March 1987, reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadorian-flag vessels belonging to Ecuadorian shipping companies, or foreign vessels chartered by Ecuadorian shipping companies, or vessels flying the flag of the United States. The stated rationale in Resolution No. 012/87 for narrowing the application of the cargo reservation law solely to the trade between the United States and Ecuador is that 88 percent of Ecuador's imported bulk cargo originates "in the Gulf of the United States."

/2/ In addition, the Commission proposed revising part 586 of the Code of Federal Regulations to incorporate as a single section the present part 586, and to add the Proposed Rule to that part as a new section.

[3] Exceptions to this may be the Ecuador/Brazil-Argentina trades wherein the GOE states in its April 7, 1989 letter to DOS that 100 percent of the cargo generated by those two countries destined for Ecuador is reserved for "itself."

fee or charge which would equalize the benefits created by the GOE cargo reservation laws. Nedlloyd points out, however, that if Transligra attempts to use its monopoly position to protect itself against the adverse economic effects of such proposed sanctions by raising its rates to cover the cost of the fee, then the Commission may need to revise its sanctions to concentrate on vessel exclusion. Nedlloyd suggests that the possibility of imposing an alternative sanction be noted in any final rule in the event that monetary penalties do not adjust effectively unfavorable conditions in the Trade.

E. Transligra

Transligra argues that OEI, as agent for and affiliate of O.N.E. Shipping, Ltd. ("ONE"), a foreign-flag carrier, does not represent U.S. shipping interests, but rather the interests of foreign-flag carriers. Transligra contends that Section 19 protection does not extend to foreign-flag interests and should not be applied for the benefit of such agents.

Transligra details the corporate relationship between OEI and ONE and states that the two entities are operated and controlled by the same principal and are, therefore, one and the same company.[4] Transligra asserts that ONE uses OEI as its agent for export trade from the U.S. for tax reasons.

Transligra renews and expands its position that Section 19 is limited solely to protection of the U.S. merchant marine and not foreign-flag carriers. Transligra continues to maintain that foreign-flag carriers and U.S. importers were not the intended beneficiaries of Section 19.

Transligra states that Congress enacted a separate provision in the 1920 Act to offer protection to U.S. shipper interests and, therefore, these interests were not commingled with U.S.-flag carrier interests under Section 19. It refers specifically to section 20 of the 1920 Act which amended section 14 of the Shipping Act, 1916 ("1916 Act") to add a new section 14a which strengthened agency powers to deal with predatory practices of foreign-flag carriers which were injurious to U.S. carriers and shippers.

Transligra states that even if U.S. shippers were protected under Section 19, it would be necessary for them to provide a substantial showing of harm. It contends that in this proceeding no U.S. shippers have alleged actual or threatened harm and that no individual shipper has averred that it intends to employ ONE in the Trade and is being prevented from doing so by GOE Resolution No. 012/87. Shippers employing Transligra are said to have presented no evidence of the existence of unfavorable rates or service conditions.

Transligra states that the Commission's position that adequacy of service is irrelevant under Section 19 is inconsistent with that section. Transligra's argument regarding adequacy of service is said to reach the ultimate issue of shipper harm rather than provide justification for GOE Resolution No. 012/87. Shipper interests allegedly have suffered no harm and no conditions unfavorable to U.S. shippers in the Trade are argued to exist. Transligra suggests that rules made pursuant to Section 19 are to adjust or meet conditions unfavorable to shipping. Transligra takes the position that it must be provided with the opportunity to show that conditions in the Trade are not unfavorable.

Transligra comments on the impact of the Proposed Rule stating that the fee of $100,000 on each of its outbound voyages from the U.S. to Ecuador would drive it out of the Trade. It describes the financial losses it would incur from the imposition of such fees. Transligra asserts that the resulting losses would force it to transfer its vessels from Ecuadorian to third-flag, thereby making it ineligible for GOE preference cargo. Further, the Commission is said to have no justification for singling out Transligra, which is one of several Ecuadorian shipping companies, for punitive fees.

Transligra defends GOE reservation of cargo for U.S. and Ecuadorian-flag vessels on the basis that GOE preference laws contribute to the viability of the service provided by vessels of the two countries by establishing a stable cargo base. It maintains that cargo reservation in the Trade is particularly important due to the relatively small volume of trade.

Transligra states that the costs of operating parcel tankers under Ecuadorian-flag are significantly higher than under a third-flag. If GOE cargo preference were terminated, Transligra maintains that it would be forced to withdraw its vessel from the Ecuadorian-flag, thereby leaving the Ecuadorian merchant marine without any parcel tanker vessels.

Transligra further justifies cargo preference laws on grounds that the U.S. merchant marine relies on U.S. preference cargo for its survival. The high cost of operating under a national-flag allegedly must be offset by the availability of preference cargo.

Transligra contends that GOE cargo reservation laws do not hamper the ability of U.S. chemical exporters to compete in the Ecuador market. Transligra asserts that through the assurance of a stable cargo base afforded by GOE preference laws, it has been able to offer an Ecuadorian-flag service that is competitive and reliable, with comprehensive port calls, that meets the needs of shippers in the Trade.

Attached to Transligra's comments is an affidavit of Wil W. Nefkens, Vice President of Transligra. The affidavit is offered in support of the arguments presented in the comments summarized above.

Discussion

Only Transligra, among the commenters, opposes promulgation of the Proposed Rule as a final rule, including the imposition of sanctions. The DOS did not comment on the substance of the Proposed Rule, but reported on the status of action anticipated from the GOE. Of the remaining commenters, OEI and SCOT, in particular, support imposition of the sanctions as proposed.

Nedlloyd supports the Commission's view of the jurisdictional reach of section 19 and the use of sanctions provided under the 1988 Act. Nedlloyd further asks the Commission to broaden the scope of this proceeding to include the putative effects of GOE cargo reservation policies on the liner trades, if only as a warning to the GOE that restrictive policies affecting the U.S. trades will not be tolerated. No basis appears in this record, however, upon which the Commission might act favorably on Nedlloyd's suggestion.

Nedlloyd further suggests that the Commission provide in any final rule for exclusion of Transligra's vessels as an alternative sanction if Transligra raises its rates to cover the proposed $100,000 per voyage fee. However, this appears to be unnecessary at this time, in view of Transligra's statements concerning the limited profitability of the Trade. Should Transligra attempt to recoup the fees by raising its rates, the Commission expects to hear from affected shippers and will take further action as warranted.

Transligra again argues that the Commission's jurisdiction under section

[4] Transligra has attached to its comments an affidavit of Magnus E. Olsen, President of ONE, which was filed with the United States District Court, Southern District of New York, in connection with another case. The affidvit, along with prior filings from ONE to the FMC in Docket 87-11, *Actions to Adjust or Meet Unfavorable Conditions to Shipping in the United States/Colombia Trade*, provide the basis for Transligra's comments on the corporate relationship between ONE and OEI.

19 is limited to the protection of U.S.-flag carriers. This contention was discussed at some length in the Notice of Proposed Rulemaking and rejected. *See* 54 FR 34,194, 34,197 to 34,198, August 18, 1989. That determination is reaffirmed herein.

In its latest comments, Transligra again argues that Section 19 does not protect the interest of U.S shippers. It insists that shippers were not Section 19's intended beneficiaries, except to the extent that U.S. ships could be counted on in times of emergency to carry U.S. exports and imports. Transligra reiterates its argument that section 20 of the 1920 Act was the sole section of that Act intended to protect U.S. shippers and exporters. Section 20 amended the 1916 Act, prohibited certain anti-competitive acts of foreign carriers, and provided exclusion of vessels from U.S. ports as an additional sanction for such violations committed by foreign-flag carriers.[5] However, we do not view this as a basis for differentiating section 20 from Section 19 because section 20 also provided for application of the exclusion sanction against foreign carrier members of conferences which discriminated against U.S.-flag carriers in foreign-to-foreign commerce. Therefore, in reality, it provided for protection of U.S.-flag carriers as well as shippers.

In support of its argument that section 20 was meant to provide protection for shipper interests not to be confused (or "commingled") with the carrier interests protected under Section 19, Transligra also quotes from the legislative history. The quoted passage, illustrating the type of predatory activity to be prohibited by section 20, describes threats by a foreign carrier to withhold service from a foreign shipper who patronizes a competing U.S.-flag carrier. This passage would appear, however, to demonstrate once again that, in this paragraph at least, section 20 was meant to protect U.S.-flag carrier interests. Transligra's argument that section 20 may be differentiated from Section 19 based upon the interests to be protected by each is not supported by the legislative history cited.

Transligra also uses the legislative history in an attempt to distinguish references to "shipping" and "shippers" in connection with proposed authority for the Shipping Board to approve all regulations dealing with shipping promulgated by other U.S. agencies from references to "ships" made in connection with authorizing the Shipping Board to make rules to counter unfavorable conditions brought about by foreign government (or foreign carrier) actions. Both of these proposals were enacted as part of section 19: the first as Sections 19(1)(c) and 19(2), and the second as section 19(1)(b). Nothing in the legislative history indicates that, in granting the authority contained in the various paragraphs of section 19, Congress made or even focussed on the precise distinctions in subject matter ascribed to these terms by Transligra.

Transligra reiterates its argument, made at some length in its previous comments in this proceeding, that the Commission's authority under section 19 is limited by the statement of purpose language of the preamble to the 1920 Act, which refers to the development and promotion of a U.S.-flag merchant fleet. Specifically, that preamble states that the development and maintenance of a merchant marine "owned and operated privately by citizens of the United States" is necessary "for the national defense and for the proper growth of its foreign and domestic commerce." To those ends, the preamble decared it "to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine." The preamble further states that the U.S. Shipping Board, predecessor of the present Maritime Administration and Federal Maritime Commission, shall, in the disposition of vessels and property, making of rules and regulations, and administration of the shipping laws, keep always in view this purpose, as its primary goal, "insofar as may not be inconsistent with the express provisions of this Act * * *" 46 U.S.C. app. sec. 861. Unlike Transligra, however, we see nothing in the language of this preamble that precludes protection of the interests of U.S. importers, exporters and maritime businesses in the existence of competitive, efficient shipping services, "for the proper growth of [U.S.] foreign and domestic commerce," from the creation of conditions unfavorable to shipping by foreign governments or owners or operators of vessels.

The preamble, in any event, is not an operative part of the statute, and may not be read to confer authority or to limit authority elsewhere contained in the Act. *Yazoo and Mississippi Valley Railroad Co.* v. *Thomas*, 132 U.S. 174 (1889); *Association of American Railroads* v. *Costle*, 562 F.2d 1310 (D.C. Cir., 1977); *Hughes Tool Co.* v. *Meier*, 486 F.2d 593 (10th Cir. 1973). We, therefore, do not view the language of the preamble as controlling or determinative of the scope of Section 19.

It is incongruent, moreover, for Transligra to argue, on one hand, that the preamble language prevents Section 19 from being read to protect U.S. interests other than U.S.-flag vessels, including shippers, and on the other hand, that the protection of shippers was encompassed in section 20 of the same Act. Such shipper protection is not inconsistent with the language of the preamble. Transligra's arguments with respect to the scope of Section 19 are, therefore, ultimately unpersuasive.

Transligra argues that OEI does not represent U.S. interests, and, therefore, as a matter of fact, may not invoke the Commission's authority under Section 19. Referring to documents filed by ONE in connection with its antitrust suit concerning service to Colombia,[6] and in the related Section 19 petition at the Commission (Docket No. 87-11), Transligra argues that OEI is basically the U.S. arm of ONE, a third-flag carrier whose interests are not entitled to protection under Section 19.

We find no basis in Transligra's present arguments to set aside the Commission's preliminary determination, made in issuing the Proposed Rule, that OEI is within the range of shipping interests protected by Section 19. Transligra itself indicates that OEI is a U.S. corporation wholly owned by one Magnus Olsen,[7] and that OEI in turn owns 50 per cent of the stock of ONE, a Bermuda corporation which operates third-flag vessels in the U.S. trades with South America. Transligra alleges that the purpose of the corporate structure of ONE/OEI is to provide a means by which U.S. taxes on the major share of ONE's freight income may be avoided. The relevance of these tax considerations for application of Section 19, however, is not apparent. As we stated in the proposed rule, OEI is engaged in the business of "shipping in the foreign trade" in much the same way as non-vessel operating common carriers and ocean freight forwarders.

Transligra charges that GOE cargo preference policies are similar to the cargo reservation and subsidy practices of the U.S. government, and more necessary because of the lesser economic power of Ecuador. The Commission on previous occasions has

[5] Section 20 revised section 14 and added section 14a of the 1916 Act. Section 14a was repealed by section 20 of the 1984 Act, Pub. L. 98-237 March 20, 1984, 98 Stat. 67

[6] *O.N.E. Shipping, Ltd. v Flota Mercante Grancolombiana, S.A., et al.*, ___ F. Supp. (S.D.N.Y., 1986) *aff'd in part*, 830 F.2d 449 (2d Cir., 1987), *cert. denied* U.S. ___, 109 S.Ct. 303 (1988).

[7] The record does not reflect whether Olsen is a U.S. citizen, but Transligra does not allege that he is not.

found these arguments groundless.[8] The cargo reserved to U.S.-flag carriers under U.S. cargo preference legislation is specifically government-generated cargo, that is military or foreign-aid cargo, which constitutes a very small proportion of the total cargo moving in our trades. Unlike the Ecuadorian scheme, U.S. cargo preference laws do not affect the far greater amount of commerical cargo moving in our trades.[9] The GOE, by contrast, seeks to subsidize its merchant marine not from GOE coffers or those of Ecuadorian shippers, but solely from the revenues of U.S. shippers.

Transligra further argues that the sanctions contained in the Proposed Rule should not be imposed because: (1) Transligra has been unfairly singled out among Ecuadorian-flag carriers for imposition of sanctions; (2) Transligra would be unable to pay the fees based on the limited profitability of the Trade; (3) imposition of the fees would force Transligra to forgo the cargo preference and remove its vessel from the Ecuadorian flag, depriving U.S. shippers of the only existing Ecuadorian-flag parcel tanker in the Trade; and (4) Transligra would be unable to raise its rates to absorb the penalties because its rates are subject to approval by the GOE as well as "competitive pressures."

These reasons, and its remaining arguments with respect to "adequacy of service," present no basis upon which to set aside the Proposed Rule. Transligra's arguments are also internally inconsistent. The monopoly status conferred on Transligra by the GOE makes it immune to "competitive pressures." Transligra, as the operator of the sole Ecuadorian-flag parcel tanker, is the beneficiary of these GOE laws affecting the liquid bulk trade from the U.S. Thus, singling out Transligra from among Ecuadorian-flag carriers for imposition of sanctions does not appear to be inappropriate in a proceeding dealing with exclusion of all third-flag vessels, other than those chartered by Transligra, from the liquid bulk trade.

Transligra alleges that it has been denied the opportunity to show that no party representing U.S. interests has been harmed. It argues that such harm is a necessary basis for finding that conditions unfavorable to shipping exist. Transligra charges that the Commission's refusal to consider the adequacy of service offered in the Trade as a factor in determining whether conditions unfavorable to shipping exist establishes a new standard, under which the exclusion of any carrier from a U.S. foreign trade by government action creates a condition unfavorable to shipping, *per se*. Transligra's argument that the Commission has promulgated a *per se* standard for Section 19 is without basis.

Transligra's argument is, apparently, that, absent a showing that the exclusion of any carrier results in inadequate service—*i.e.* lack of capacity in the Trade—no condition unfavorable to the interests of shippers can be said to exist. Under this theory it follows that only the exclusion of a U.S.-flag carrier could be considered a condition unfavorable to shipping under Section 19 so long as adequate capacity can be shown to exist in the Trade.[10]

Transligra's argument ignores the more general, but no less real, detrimental effects of monopoly power on consumers: the total lack of choice of price, service and even routing options among which individual shippers may express a preference. In this case, SCOT, Pecten and others representing the interests of shippers have expressed the need for Commission action to redress these detrimental effects of the GOE-created monopoly power in the Trade. The combination of detriment to these interests as well as the detriment to the U.S.-owned company excluded from participation in the shipping business, OEI, are the basis for the Commission's finding of conditions unfavorable to shipping in the Trade.

Transligra's argument is, moreover, misdirected. The Commission's rejection of Transligra's adequacy of service arguments was not directed to the issue of whether any party with an interest to be protected under Section 19 has been harmed, but whether the existence of adequate service has any bearing on issues involving flag-based cargo reservation schemes. The Commission has clearly held in previous cases that it has not. *See*, e.g., *Actions to Adjust or Meet Conditions Unfavorable To Shipping In The United States/Peru Trade*, Order Denying Petition, ___ F.M.C. ___, 24 S.R.R. 308, 312 (June 18, 1987).

Transligra's reliance on the Commission's decision in *Petition of Ace Lines, Ltd.*, ___ F.M.C. ___, 19 S.R.R. 481 (1979) is misplaced. This case is cited for the proposition that foreign policy restricted affected a limited segment of trade which do not result in inadequate service to U.S. importers and exporters will not be the subject of Section 19 sanctions. The restriction in the *ACE* case, however, was found to be based upon appropriate transportation considerations and was not a flag-based preference bestowed on a national-flag carrier.[11]

In spite of the fact that the Commission has several times been informed that the GOE wished to resolve the matter and expected to hold talks to that end, the Commission is aware of no such resolution. Indeed, OEI and SCOT continue to represent the need for imposition of sanctions.

We therefore find no basis in Transligra's comments to set aside our conclusion that conditions unfavorable to shipping exist in the Trade. We further find that the actions suggested in the Proposed Rule to adjust or meet those conditions are warranted.

Transligra insists that the impact of the fee to be imposed under the Proposed Rule would be harshly punitive. It states that each of its U.S. export voyages yields between $80,000 profit and $80,000 loss, averaging $34,200 profit. The affidavit of Wil W. Nefkens, attached to Transligra's comments, states further, without quantification, "that the U.S. Gulf/Ecuador parcel tanker trade is a relatively small volume trade." Nefkens Affidavit at 3–4.

Based upon these representations, the Commission believes a fee in an amount lower than that established in the Proposed Rule would be consonant with the size and profitability of the Trade. We remain, nevertheless, conscious that the effect of GOE Resolution No. 012/87 is the total exclusion from the Trade of third-flag vessels (other than those chartered by Transligra), including third-flag vessels operated by U.S. carriers. A lower fee may be imposed, however, without substantial loss of the desired effect of creating countervailing conditions with respect to the Ecuadorian-flag carrier. Therefore, the Final Rule issued in this proceeding reduces the fee to $50,000 per outbound (ex-U.S.) voyage.

[8] *See, e.g., Actions to Adjust or Meet Conditions Unfavorable To Shipping In the United States/Peru Trade*, Proposed Rule, 52 F.R. 11,832, 11,835 (April 13, 1987); Order Denying Petition, 24 SRR 308, 312 (June 18, 1987); *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, Interim Report on Current Status of Proceedings, 21 SRR 1621, 1626–1627 (February 25, 1983).

[9] In addition, contrary to Transligra's suggestion, the U.S. government has terminated all construction subsidies to the U.S. merchant marine.

[10] Transligra would apparently recognize as an exception a showing that the limits on service have directly resulted in prices higher than they would otherwise be. Although Pecten Chemicals ("Pecten") stated in comments filed earlier in this proceeding that rates in the Trade are higher than in other trades, Transligra rejects these claims.

[11] In *Ace*, an Australian government entity determined that exports of Australian meat should be carried exclusively in refrigerated containers, for reasons of quality control. There were no flag-based restrictions on the ability of containerized carriers offering reefer service to compete in the trade.

In proposing the rule to meet or adjust conditions unfavorable to shipping in the U.S./Ecuador trade, the Commission also proposed to revise the manner in which it incorporates in the Code of Federal Regulations rules issued in similar proceedings under Section 19. Therefore, the Commission proposed to revise part 586 of the CFR to add a new § 586.1 descriptive of the function of part 586 and to redesignate and incorporate as a single § 586.2 all provisions of the current part 586 which were enacted by the final rule to adjust or meet conditions unfavorable to shipping in the U.S./Peru Trade, published at 54 FR 12629 (March 28, 1989). This U.S./Peru Trade rule is republished herein to reflect the redesignation and conforming changes. No substantive changes have been made in the rule and its status as a final rule is unchanged by this action. The Final Rule in the U.S./Peru trade issued in this proceeding is added to part 586 as § 586.3.

List of Subjects in 46 CFR Part 586

Foreign trade, Maritime carriers, Trade practices.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); Section 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961); and 46 CFR part 585; part 586 of title 46 of the Code of Federal Regulations is revised to read as follows:

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

Sec.

586.1 Actions to Adjust or Meet Conditions Unfavorable to Shipping in Specific Trades.
586.2 Conditions Unfavorable to Shipping in the United States/Peru Trade.
586.3 Conditions Unfavorable to Shipping in the United States/Ecuador Trade.

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1710a; 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

§ 586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 585, such rules shall be published in the **Federal Register** and added to this Part.

§ 586.2 Conditions unfavorable to shipping in the United States/Peru Trade.

(a) *Conditions Unfavorable to Shipping in the Trade.* (1) The Federal Maritime Commission has determined that the Government of Peru ("GOP") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(2) GOP law provides that non-Peruvian-flag carriers must become associate carriers or obtain cargo from shippers who have secured waivers for individual shipments or certification of cargo shipped, to operate in the Trade. The enforcement of this system discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

(b) *Peruvian-flag carriers—assessment of fees.* (1) "Voyage" means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this part, the transportation of cargo by water aboard a single vessel inbound or outbound between ports in Peru and ports in the United States under one or more bills of lading issued by or on behalf of the Peruvian-flag carriers named in paragraph (b)(2) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to Agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (b)(4) of this section, shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $50,000:

Compania Peruana de Vapores ("CPV");

Empresa Naviera Santa, S.A. ("Santa");

Naviera Neptuno, S.A. ("Neptuno"); and

Naviera Universal, S.A. ("Uniline").

The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(3) Each Peruvian-flag carrier named in paragraph (b)(2) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(4) If any Peruvian-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

(i)(A) *Compania Peruana de Vapores (CPV)*

FMC No. 14—Applicable BETWEEN United States Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.

FMC No. 15—Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.

FMC No. 16—Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

(B) *Empresa Naviera Santa, S.A.*

FMC No. 3—Applicable FROM Rail Container Terminals at United States Pacific Coast Ports TO Ports in South America.

FMC No. 5—Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.

FMC No. 7—Applicable BETWEEN United States Atlantic and Gulf Ports and Ports in Peru.

(C) *Naviera Neptuno, S.A.*

FMC No. 5—Applicable BETWEEN United States Pacific Ports AND Peru and Pacific Coast Ports in Chile, Colombia and Ecuador.

(D) *Naviera Universal, S.A. (Uniline)*

FMC No. 2—Applicable BETWEEN United States Ports and Points AND Ports and Points in Central America, South America, Mexico, and the Caribbean.

(ii) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

Atlantic & Gulf/West Coast of South America Conference

FMC No. 2—Applicable FROM United States Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

FMC No. 3—Applicable FROM Points in the United States TO Points and Ports in Chile, Peru, and Bolivia moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the United States, moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 6—Applicable FROM Chilean and Peruvian Ports of Call via the Panama Canal TO Ports of Call on the Atlantic and Gulf Coasts of the United States.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragraph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) *Source of fees.* Any fees assessed by paragraph (b)(2) of this section against Peruvian-flag carriers operating pursuant to any Agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Peruvian-flag carriers without affecting the revenue shares or amount of revenue earned by non-Peruvian-flag carriers operating pursuant to such Agreements.

(d) *Effective Date.* Paragraph (a) of this section is effective on March 28, 1989. The date upon which paragraphs (b) and (c) of this section shall become effective shall be determined by further order of the Commission amending this section.

§ 586.3 Conditions unfavorable to shipping in the United States/Ecuador trade.

(a) *Conditions unfavorable to shipping.* (1) The Federal Maritime Commission has determined that the Government of Ecuador ("GOE") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws, decrees and regulations which unreasonably restrict non-Ecuadorian-flag carriers from competing in the liquid bulk trade from the United States to Ecuador on the same basis as Ecuadorian-flag carriers.

(2) Resolution No. 012/87 unilaterally reserves export liquid bulk cargoes from the United States to Ecuador for carriage by Ecuadorian-flag carriers who utilize Ecuadorian-flag vessels or charter third-flag vessels, or U.S.-flag carriers who utilize U.S.-flag vessels. The enforcement of this system discriminates against U.S. carriers and other maritime companies desirous of participating in this Trade through the charter of third-flag vessels, and denies to non-Ecuadorian-flag carriers effective and equal access to liquid bulk cargoes in the Trade. It also discriminates against U.S. shippers and exporters whose opportunities to select a carrier of their choice are restricted and whose ability to compete in international markets is hampered.

(b) *Ecuadorian-flag carrier—assessment of fees.* (1) "Voyage," for purposes of this section means an outbound movement from the United States to a foreign country by a vessel engaged in the United States trade. Each outbound movement constitutes a separate voyage. The transportation of cargo by water aboard a single outbound vessel between ports in the United States and ports in Ecuador under one or more bills of lading issued by or on behalf of the Ecuadorian-flag carrier Maritima Transligra, S.A. ("Transligra"), whether on board vessels owned or operated by Transligra or in space chartered by Transligra in vessels owned or operated by others shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, Transligra shall pay to the Federal Maritime Commission a fee in the amount of $50,000. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 14 calendar days of the completion of the voyage for which it is assessed.

(c) *Report.* Transligra shall file with the Federal Maritime Commission a report setting forth the names of vessels operated by Transligra in the Trade, whether owned or chartered; the names of vessels on which Transligra has chartered space for the carriage of cargo in the Trade, and the names and addresses of the owners of such vessels; the date of each voyage completed in the Trade; the amount of cargo carried; and the amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Each report shall be filed within 15 days of the end of the applicable calendar quarter.

(d) *Refusal of Clearance by the Collector of Customs.* If Transligra shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at ports in the U.S. Gulf of Mexico to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by Transligra.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-1270 Filed 1-19-90; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Part 303

Procurement Integrity

AGENCY: Office of the Secretary, HHS.

ACTION: Suspension of interim rule.

SUMMARY: The Office of the Secretary, Department of Health and Human Services, is amending the Health and Human Services Acquisition Regulation (HHSAR), title 48 chapter 3, to suspend the interim rule on procurement integrity which was published in the **Federal Register** on July 31, 1989, (54 FR 31527). As a result of the enactment of section 507 of the Ethics Reform Act of 1989, the Federal Acquisition Regulation (FAR) has been amended by Federal Acquisition Circular (FAC) 84-54 to suspend the FAR regulations

implementing procurement integrity for a one year period beginning December 1, 1989, and ending November 30, 1990. Accordingly, the HHSAR is amended to conform to the FAR, as amended by FAC 84-54.

DATES: Effective December 1, 1989, sections 303.104, 303.104-4, 303.104-5, 303.104-6, 303.104-9, 303.104-11 and 303.104-12 are suspended beginning December 1, 1989, through November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Norman Audi, Procurement Analyst, Division of Acquisition Policy, (202) 245-0326.

SUPPLEMENTARY INFORMATION: The interim rule is suspended beginning December 1, 1989, and ending November 30, 1990. The interim rule will become effective again on December 1, 1990.

List of Subjects in 48 CFR Part 303

Government procurement.

Dated: January 11, 1990.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, chapter 3 of title 48, Code of Federal Regulations, is amended as shown.

1. The authority citation for part 303 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 303—[AMENDED]

303.104, 303.104-4, 303.104-5, 303.104-6, 303.104-9, 303.104-11 and 303.104-12 [Suspended]

2. Sections 303.104, 303.104-4, 303.104-5, 303.104-6, 303.104-9, 303.104-11 and 303.104-12, are suspended for a one year period beginning December 1, 1989, and ending November 30, 1990.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 90926-9277]

RIN: 0648-AC16

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement Amendment 1 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This rule (1) requires a permit for vessels harvesting reef fish for sale; (2) establishes a 50 percent earned income criterion to qualify for a permit; (3) provides for the charging of fees to cover the administrative costs of issuing permits and trap tags; (4) requires reporting by operators of charter vessels; (5) requires permitted vessels to display identification numbers; (6) reduces the exemptions to the size limit for red snapper; (7) establishes size limits for other major species; (8) extends the stressed area where certain gear is prohibited to include all waters off Texas out to the 30 fathom isobath and all waters off Louisiana out to the 10 fathom isobath; (9) prohibits use of longline and buoy gear for taking reef fish inside of 50 fathoms to the west and inside of 20 fathoms to the east of Cape San Blas, Florida; (10) establishes bag limits for certain snappers, groupers, and amberjack; (11) provides for the possession of two days' bag limits for charter vessels and headboats on trips in excess of 24 hours; (12) restricts vessels with trawl or entangling net gear aboard to the bag limits; (13) establishes annual commercial quotas for red snapper and deep- and shallow-water groupers; (14) prohibits fishing for and sale of reef fish when an annual quota for the species is reached; (15) reduces the number of traps that may be fished by a vessel; and (16) makes other technical changes to facilitate compliance. The intended effects of this rule are to reduce fishing mortality on the reef fish stocks so that stocks may be protected and rebuilt, to reduce user conflicts, and to maximize net economic benefits from the reef fish fishery.

EFFECTIVE DATES: February 21, 1990, except that § 641.4 is effective January 22, 1990; § 641.6, § 641.7(b), (e), (p), (r), and (s), and § 641.24 are effective April 23, 1990; and § 641.7 (t) and (u) are effective February 21, 1990 through April 23, 1990.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*

Amendment 1 is a major revision of the FMP which, to the extent allowed by the data, addresses snappers, groupers, and other reef fish on a species specific basis. This change from the FMP's approach of addressing snappers and groupers as a single mixed species complex was made possible by an expended reef fish data collection effort by NMFS and the states in recent years. Stock assessment analyses based on these data indicate red snapper are severely overfished and other species require reductions in fishing mortality to assure that the spawning stock biomass is maintained at a level adequate to prevent reductions in recruitment to those species or stocks. As a consequence of these analyses, Amendment 1 contains measures to reduce fishing mortality largely by imposing bag limits, quotas, size limits, and gear restrictions. It also provides a procedure for setting total allowable catch (TAC) annually based on stock assessments and for implementing or adjusting certain types of management measures to achieve TAC.

Background

In 1984, NMFS implemented, cooperatively with the states, a trip interview program which collected length-frequency and other biological and statistical information on landings of reef fish by species. Collection of landings data for groupers by species instead of by family was also initiated. These data sets along with similar information collected under the marine recreational fishery statistics survey, initiated in 1979 and available by 1984, surveys of Gulf charter and headboat fisheries, and fishery independent information from the southeast area monitoring and assessment program provided a data base that allowed stock assessments to be undertaken for major reef fish species.

The stock assessments for red snapper and other species were initiated by the Southeast Fisheries Center (SEFC) of NMFS in 1986 and were completed by SEFC and the Council in 1988. The stock assessments for red snapper concluded that the fishery was being subjected to recruitment overfishing and that the spawning stock biomass per recruit ratio (SSBR) was likely no greater than 4.8 percent of the unfished level. This analysis and those for the dominant groupers indicated that to restore the spawning stocks to a 20 percent SSBR level, reductions in fishing mortality on the order of 60 to 70 percent would be necessary by the year 2000 for red snapper and on the order of 20 percent over a shorter period of time for the groupers. Size limits, bag limits, and other reductions in harvest levels necessary to restore each species or species group to the 20 percent SSBR (i.e., the Council's goal for long-term optimum yield (OY) from the fishery)

and the supporting analyses are set forth in Amendment 1.

Problems in the fishery, the management objectives, the specification of OY, the definitions of overfished and overfishing, and each of the management measures in Amendment 1 were discussed in the proposed rule (54 FR 41297, October 6, 1989) and are not repeated here. In addition, other changes to the existing regulations, outside the scope of the regulations to implement Amendment 1, were discussed in the preamble to the proposed rule and are not repeated here. These additional changes were proposed to facilitate enforcement, including prohibition of possession of dynamite and similar explosives aboard reef fish vessels, and to make corrections and clarifications.

Comments and Responses

Numerous criticisms on the proposed rule were received, primarily from the commercial fishing sector which is most heavily impacted by Amendment 1. Three Council members criticized the amendment and submitted minority reports containing their respective objections. Three commercial fishing organizations, a state marine fisheries commission, the U.S. Fish and Wildlife Service, many commercial fishermen, and a few recreational fishermen commented on virtually every measure of this amendment. In general, most criticism was received in regards to the proposed size limits and quotas, gear restrictions, area restrictions, and income requirements for commercial permits. A few commentors objected that the proposed red snapper and jewfish restrictions were insufficient to protect these species from stock collapse. All coments are addressed below.

Size Limits and Quotas

Comment: A state marine fisheries commission commented that the proposed red snapper restrictions do not provide sufficient protection for the stock to recover within the specified 10-year time frame. The commission recommended that the Secretary of Commerce (Secretary) adopt a management measure that had been rejected by the Council. That measure would have immediately reduced fishing mortality by 74 percent to rebuild spawning stock biomass per recruit (SSBR) to the 20 percent level (relative to the unfished condition). The reduction would have been achieved by a two fish recreational bag limit and 1.4-million pound commercial quota. The commission indicated that short-term economic and social considerations should not be allowed to jeopardize the future of the red snapper fishery, and that in the absence of more restrictive harvest limits, this fishery would be closed entirely within five years.

Response: While the seven fish bag limit and 3.1-million pound quota for the initial fishing year exceed the harvest level required to rebuild the red snapper stock, they are expected to check the rate of decline. At the same time, the amendment contains procedures to address TAC annually in this fishery. Under those procedures, annual TAC decisions are to be guided by the range of acceptable biological catch specified by annual stock assessments and, although a series of catch levels may be set to fall within that range within three years or less, those decisions must ultimately be consistent with stock rebuilding goals. This strategy should prevent overfishing and rebuild the spawning stock but allow short-term social and economic disruption to be minimized where feasible and appropriate. NOAA, therefore, approves the harvest levels established by the Council for the initial fishing year, but expects that future harvest levels will be scaled down commensurate with the findings and recommendations contained in annual stock assessment reports.

Comment: A charter boat captain indicated that a seven fish limit on red snapper would cause severe economic impacts and instead recommended a limit of 10 to 12 red snapper per person per day. The implication was that commercial boats catch fish by the thousands, whereas charter boat customers "fish for fun" and take only a small amount.

Response: NOAA reiterates that even with the seven fish bag limit during the initial year, harvest will exceed the level required to rebuild the red snapper stock. During subsequent fishing years, harvest levels are likely to be reduced substantially to rebuild the stock within the time frame specified (10 years) for the recovery program. Available data indicate a significant number of red snapper are caught recreationally, including catch from charter vessels and headboats. Excessive bag limits would contribute to the collapse of the red snapper stock and result in even greater economic disruption to the fishery. It is appropriate that all users share in the burden of protecting and restoring this depleted resource. Furthermore, the seven fish daily bag limit is believed proportionate to the 3.1-million pound commercial quota in terms of reducing red snapper fishing mortality.

Comment: Two commercial fishing organizations objected to the 20-inch size limit on red grouper. The organizations recommended starting with a lower size limit of 16 to 18 inches, and gradually increasing it to 20 inches over a period of a few years, and indicated that a graduated approach appears more reasonable in view of the less drastic approach being taken on red snapper. The organizations also indicated that the commercial quota on grouper in addition to the 20-inch size limit will completely destabilize the fishery and, if a closure is invoked, the market for Gulf grouper may be replaced by imports. Finally, it was suggested that quotas should not be implemented until needed basic fishery information is acquired by the NMFS, otherwise funding and manpower to monitor additional quotas will be at the sacrifice of the fishery statistics program.

Response: Although the impacts of the initial management measures selected for red snapper may be less severe than for red grouper, the recovery program for red snapper could result in more drastic restrictions in the near future. Lower size limits on red grouper initially would allow growth overfishing to continue and result in the harvest of more females to the detriment of the population.

Closure of a fishery upon reaching quota always causes a certain amount of destabilization within the fishery and increases reliance upon imports. However, less severe size limitations or uncontrolled amounts of harvest could reduce the resource to levels where even more restrictive measures, along with their associated impacts, are needed.

Notwithstanding limitations on Federal funds and manpower, NMFS is currently making plans for quota monitoring and data collection activities associated with Amendment 1. Although a certain but unknown amount of reprogramming might be necessary, NMFS plans to utilize general canvass data to monitor reef fish landings in Alabama, Mississippi, and Louisiana. Landings data collected under state programs will be used for Florida and Texas. Since these data are not available on a real-time basis, NMFS plans to estimate closure dates based on projected landings of regulated species or species groups.

Comment: A number of commercial fishermen opposed the 20-inch minimum size limit for certain groupers and the annual quotas proposed for the deep-water and shallow-water groupers. One of the minority reports also registered opposition to the proposed quotas and the 20-inch size limit for red grouper.

Objection to the proposed quotas was based mainly on the insufficiency of landings data that historically have been collected under a voluntary reporting system. The objectors suggested that a size limit be imposed initially, and that quotas be instituted, if warranted, only after a reliable data base has been established. Some suggested that the size limit should be set at 18 inches, rather than 20 inches, to reduce initial impacts on fishermen and to conform with the Florida regulation since the preponderance of grouper are landed in Florida, and none of the other states has a size limit on grouper.

Response: The primary objective of Amendment 1 is to achieve an SSBR level of 20 percent to restore overfished reef fish resources. According to available scientific information, some of the groupers (red, Nassau, black, gag, and yellowfin) are experiencing growth overfishing and reductions in fishing mortality are needed to achieve a 20 percent SSBR level of these species. Models prepared showed the reductions that are necessary to achieve the SSBR goal at certain size limits. For most overfished species, a combination of minimum size limits, bag limits, and quotas was selected to reduce fishing mortality and promote stock rebuilding within an acceptable time frame.

To obtain the desired reduction in fishing mortality for the overfished species of grouper, a 20-inch total length minimum size limit in conjunction with a five fish recreational bag limit and a 9.2 million pound commercial quota was selected. Although some groupers undoubtedly mature at a smaller size, more than one-half of the red grouper are mature at 20 inches. Red grouper, the dominant species in the landings, was used as an index for the shallow-water grouper complex because of the scarcity of information on the other species.

The 20-inch size limit will substantially reduce growth overfishing and mortality on juvenile groupers and, coupled with the 10 to 20 percent reduction in harvest resulting from the bag limit and quota, should be sufficient to commence rebuilding the spawning stock. Although Florida currently has an 18-inch size limit, the state is expected to adopt the more restrictive limit of 20 inches that is imposed in the exclusive economic zone (EEZ). The data base for reef fish in the Gulf of Mexico is likely as valid as that for other multispecies fisheries currently under management and constitutes the best information available. Deferring the establishment of quotas until an improved data base is secured could result in irreversible damage to the grouper resources contrary to the national standards of the Magnuson Act.

NOAA believes that the size limits, quotas, and bag limits are based upon the best scientific information available, and are necessary to conserve the grouper spawning stock. In addition, there is an annual procedure within Amendment 1 that allows management adjustments to be made, based on new information, without amendment of the FMP.

Annual Management Adjustments

Comment: A commercial fishing organization expressed concern over the use of notice actions to make annual adjustments to bag limits, size limits, trip limits, seasonal and areal closures, and gear restrictions. Such changes may have significant impacts on resource users and should be subjected to a thorough review.

Response: NOAA acknowledges that adjustments to bag limits, size limits, trip limits, seasonal and areal closures, and gear restrictions can significantly impact users of the resource. However, the procedure does not diminish the responsibility of managers to identify and consider the impacts associated with implementing or modifying these types of management measures. Further, there is ample opportunity for public review. Prior to the implementation of the above actions, and the specification of TAC levels each year, the Council must prepare a regulatory impact review and, if necessary, a regulatory flexibility analysis to analyze fully the potential impacts of the proposed changes, a proposed rule must be published, followed by a period for public comment and publication of a final rule. Public hearings may be held. Other analyses, as appropriate, describing the associated impacts must be prepared; at a minimum these include an environmental assessment. Ultimately, the NMFS Southeast Regional Director decides whether to approve the adjustments recommended by the Council. The procedure, therefore, will allow for thorough review of all factors relevant to the decision making process. NOAA believes the ability to implement or adjust these types of measures under the outlined procedure will prove invaluable to timely, effective, and fair management of reef fish resources in future years.

Jewfish Restrictions

Comment: A state marine fisheries commission, the U.S. Fish and Wildlife Service, several fishermen, and two scientists expressed concern over the status of jewfish resources. Because jewfish are not a common species, there is only limited information on their growth, mortality, and reproductive biology. It is known, however, that because of the amount of time required to reach maturity, jewfish are highly susceptible to recruitment overfishing and would not be expected to recover quickly from a stock collapse. Commentors agreed that the 50-inch minimum size limit proposed for Federal waters will afford some protection, but indicated a total prohibition on harvest is necessary to reverse the damage from overfishing that has already occurred. Florida has proposed a ban on the harvest and sale of jewfish, and the Florida Marine Fisheries Commission has requested that the Secretary approve the proposed size limit restriction but reserve its implementation pending Council action on Amendment 2 to the FMP which proposes to ban the harvest of jewfish in the EEZ. The state believes that jewfish would be better protected by the state ban because over 90 percent of the Gulf-wide landings occur in Florida.

Response: NOAA believes the 50-inch minimum size limit should be implemented without delay. NOAA agrees that long-lived, slow maturing species, such as jewfish, need considerable protection to guard against overfishing. The 50-inch size limit will afford protection to jewfish by allowing them to reach maturity prior to harvest. Deferred implementation of the Federal size limit would leave jewfish totally unprotected off states other than Florida, even though collectively those four states account for only 10 percent of the landings. Also, Florida's restrictions on the harvest and sale of jewfish are only in the form of a proposed rule that could conceivably be delayed or possibly not implemented. In the absence of the 50-inch minimum size limit, jewfish would be completely unregulated in Federal waters. On November 29, 1989, the Council adopted Amendment 2 which proposes to increase protection in Federal waters by banning the harvest and possession of jewfish harvested in the EEZ. The Council has not yet submitted the amendment for Secretarial review. If approved and implemented by the Secretary, this measure would address the concerns of all the commentors.

Gear Restrictions

Comment: Members of a commercial fishing organization and a minority report opposed the prohibition of entanglement nets in a directed fishery for reef fish. They stated that entanglement nets harvest only about one percent of the reef fish resource, and

it has not been documented that entanglement nets have a significant or detrimental catch of other marine resources. The commentors stressed that a small traditional industry, based primarily in the Florida Keys, relies on entanglement nets for its livelihood and therefore would be adversely impacted.

Response: NOAA supports the Council's proposal to prohibit the use of entangling nets for the directed harvest of reef fish. Rationale for the prohibition is essentially the same as that supporting the prohibition of drift gillnets from the overfished fisheries for Gulf migratory group king mackerel and Gulf and Atlantic groups of Spanish Mackerel. NOAA felt that it would be unfair to allow the introduction of drift gillnets into those mackerel fisheries, since the existing users of traditional gear could already meet the restrictive quotas imposed in response to overfishing.

The use of entanglement nets for the directed harvest of reef fish in Federal waters is limited and does not constitute a well-established fishery. The proposal would allow retention of bycatch of reef fish up to the recreational bag limits by entanglement net fishermen targeting other species.

The overfishing of certain reef fish in the EEZ necessitates restrictive quotas, size, and bag limits to protect and rebuild those stocks. The reef fish fishing industry using other well-established gears in Federal waters is already economically stressed by such restrictions and capable of harvesting the entire quota. NOAA therefore believes that it is necessary and appropriate to decrease competition for these limited resources by disallowing a new type of gear in the fishery.

Comment: A minority report, a commercial fishing organization, and a large number of commercial fishermen objected to the Council's proposals that trawl vessels must comply with the reef fish size and bag limits established for the recreational fishery. The comments emphasized the large potential for harvesting by trawl "underutilized" resources, such as wenchman snapper, that are controlled by bag limits.

Response: The measure extending the application of size limits and bag limits to vessels with trawl gear aboard is the only effective means of ensuring that these vessels do not engage in a directed fishery for reef fish. Encouraging a directed trawl fishery for reef fish would present a burden to other users competing for already limited resources.

Exempting trawl vessels from the bag limit would allow a directed fishery for wenchman snapper and other "underutilized" reef fishes to develop. This would result in a substantial bycatch of red snapper or other overfished species in the management unit. An allowance for catches in excess of the bag limits would result in an unacceptable level of mortality to species under management.

However, for the reasons set forth in the response to the following comment, the final rule does not impose bag or size limits on the unsorted catch of vessels in the groundfish trawl fishery. The application of this exception to only the unsorted catch of reef fish by the few vessels in the groundfish trawl fishery will preclude any surreptitious targeting of reef fish by these vessles.

Comment: There were numerous objections to the requirement that permitted trawl vessels be forced to return to port to remove their trawls before fishing under the commercial quota. The minority report proposed that trawl vessels with commercial reef fish permits be allowed to target and harvest reef fish with any legal gear. Return trips to port to remove trawl gear from such vessels would not be necessary, thereby increasing efficiency and avoiding potential violations of the Council's proposal.

Response: An operator of a trawler desiring to fish for reef fish under the commercial quota with other gear will be required to unload all trawl gear prior to engaging in a directed effort for reef fish. This will require deciding in advance of departure which fishery will be prosecuted. Adoption of the minority report proposal would result in significant bycatch of overfished species of reef fish, and result in an unenforceable situation whereby large numbers of reef fish could be harvested by trawl gear. This would undermine the objective of rebuilding the overfished reef fish stocks. The long-term benefits derived from rebuilding of the reef fish stocks would more than offset the inconveniences and adverse economic impacts on the trawl fishermen.

Comments: The minority report and other objectors also suggested that the possession and sale of undersized reef fish for groundfish trawl vessles be allowed, which would then eliminate the burden of separting undersized reef fish from the catch. The report noted that this proposal would benefit the vessels where measurement of the catch is most difficult, without increasing fishing mortality or directed harvest of reef fish. The minority report also proposed that commercial trawl vessels be exempt from the established size limits provided the total weight of undersized fish does not exceed one percent of all fish (or invertebrates) aboard.

Response: There are basically two trawl fisheries in the Gulf of Mexico, shrimp and groudfish. Shrimp trawlers typically sort their catch at sea, utilize hold capacity for the more valuable shrimp, and discard other species. Marketable-sized reef fish may also be retained. Unlike the shrimp trawlers, trawlers in the groundfish fishery (currently seven) typically take many small fish, do not sort their catch at sea, and ultimately sort out only those large fish that are unsuitable for processing by grinding up for pet food and industrial products. The Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for Amendment 1 analyzes the impacts of the rules requiring adherence to the size and bag limits and prohibiting the sale of reef fish caught under the bag limits, as they apply to the sorted catch, in both the shrimp and groundfish fisheries. The RIR/IRFA does not analyze the impact of such requirement and prohibition on the unsorted catch that is typical in the groundfish trawl fishery. Without such analysis, the Amendment fails to demonstrate complaince with E.O. 12291 and the Regulatory Flexibility Act as to the goundfish trawl fishery. Because the impacts of requiring sorting of all catch in the groundfish trawl fishery have not been analyzed, NOAA is disapproving the application to the unsorted catch of reef fish in the groundfish trawl fishery of the bag and size limits and the permit requirement for sale of such unsorted catch. As a result of these disapprovals, the bag limits and prohibition of sale that may be implemented by a commercial closure (§ 641.26) will not apply to the unsorted catch of reef fish in the groundfish trawl fishery. Any sorted catch of reef fish must comply with the harvest limitations, including minimum sizes, and the bag and possession limits, including prohibition on sale.

To monitor the impact of the disapproved measures and to aid in enforcement, NOAA may initiate a regulatory amendment to require the owner or operator of each vessel in the groundfish trawl fishery to obtain annually a letter from the Regional Director authorizing participation in that fishery.

With the exception noted above, NOAA agrees with the Council that vessels with trawl gear aboard must comply with the minimum size limits.

Comment: Another commercial fisherman stated that hook-and-line fishing on trawlers is less efficient than longlines or other types of gear, and therefore should be exempt from the annual quotas on commercial fishing.

Response: NOAA disagrees. Hook-and-line fishing on trawlers is a source of fishing mortality and catches by that fishing mode should be included in the annual quotas.

Area Restrictions

Comments: Two of the minority reports and many commercial fishermen, including members of a commercial fishing organization, objected to the Council's proposal to extend the current stressed area boundary out to the 30-fathom isobath along the entire coastline of Texas, and out to the 10-fathom isobath along the entire coastline of Louisiana. The commentors also objected to the prohibition on fish traps, roller trawls and powerheads, noting that such gear are not commonly used in the extended stressed area and therefore are not significantly contributing to overfishing. They felt that gear prohibitions should apply to those gear that are inflicting the bulk of the fishing mortality. Several of the commentors noted that extension of the present boundary would create a larger burden on both administrative and law enforcement personnel, and would pose problems for the smaller vessles that have to travel large distances to fish outside the stressed area. The two minority reports criticized the extended stressed area based on the following specific objections to each of the six criteria:

(1) Although red snapper is overfished, the extended stressed boundary is arbitrary and therefore will not prevent overfishing of red snapper or other reef fish species;

(2) The area off Texas includes the entire recreational and most of the commercial fishing pressure; however, the gear prohibitions do not include commonly used gear and therefore will not reduce fishing mortality in those or other areas;

(3) There are no cities of high population on the Louisiana coast due to its marsh shoreline; the only such city on the Texas coast is Houston/Galveston, which already has an established stressed area;

(4) Coastal access is limited off both Louisiana and Texas because much of the coastline is undeveloped;

(5) Historical fishing practices in the extended stressed area do not include the prohibited gear; exclusion of such gear therefore is not appropriate; and

(6) The stressed area should not be extended, since there is no special habitat within the extended area that needs protection.

Response: The stressed area was the principal means by which the FMP addressed overfishing a nearshore waters. Once delineated, use patterns and nearshore resource problems were noted and management measures established for the stressed area to reduce fishing effort equitably to help alleviate overfishing. The FMP outlined factors which were important to the identification of the stressed area. Areas, however, were judged for inclusion based on overall area characteristics, not because all factors were present to justify the inclusion of each area.

NOAA supports the extension of the stressed area off Texas and Louisiana. Both Texas and Louisiana have population centers on or near the coast similar in size and number to other areas where the stressed areas has been established. Coastal development in Texas and Louisiana since the FMP was implemented has increased the potential for public access to the extended area. Red snapper, which is severly overfished, is the principal reef fish species in these areas and is subject to intense pressure. Extension of the stressed area is, therefore, appropriate.

Power heads, roller trawls, and fish traps are not now commonly used in the extended stressed area. Prohibition of these gears will affect an almost non-existent or very small group presently utilizing that gear in the EEZ. Such a prohibition will further two management objectives of the FMP: to minimize conflicts between user groups of the resource and conflicts for space; and, to conserve reef fish habitats and increase reef fish resources. Any negative socioeconomic impacts on the small number of users of the prohibited gear will be outweighed by increased catch per unit of effort and higher recreational satisfaction or similar benefits to the other user groups.

Comment: The commercial fishing organization and one of the minority reports also objected to the Council's rejection of management measures 1 and 3, which would have reduced the current stressed areas boundaries off west Florida and southwest Florida, respectively. The commentors indicated that the current boundaries include areas of very low human population and fishing pressure. They maintained that those regions do not meet the criteria used in delineating the boundaries, and were therefore proposed for removal from the stressed area. They also noted that the current boundaries had created problems with law enforcement and higher production costs.

Area fishery resources were also described, including a sea bass fishery within the boundary addressed by rejected measure 1. They indicated that development of this "underutilized" fishery had been unduly restricted by the current boundary and regulations of traps, and would not interfere with shrimping operations.

Response: Both measures would allow an increase in fishing mortality on nearshore reef fishes in those areas, which serve as nurseries for juvenile fishes. For example, rejected measure 3 would open an area easily accessible from Key West and the Pinellas County region, both of which have large populations of grouper fishermen. Rejected measure 1 would have allowed expansion of the sea bass fishery in the west Florida region. The long-term effects of increased fishing mortality on the sea bass resources resulting from the expanded fishery is unknown. Based upon these concerns, NOAA supports the Council's rejection of measures 1 and 3.

Comment: Some fishermen indicated that prohibiting longline fishing for reef fish within the 20-fathom contour east of Cape San Blas, Florida, would exclude them from the most productive bottom for red grouper—the backbone of the grouper fishery.

In addition to the prohibition being economically damaging, a commercial fishing organization also indicated that the area restriction on longlines and buoy gear was originally directed towards the protection of the red snapper spawning stock in the western Gulf and was not intended to reduce the harvest of large spawning grouper, since grouper have a different reproductive biology. The organization further indicated that grouper fishing mortality by other gear exceeds that resulting from longlines, yet these other fishing modes are not prohibited inside 20 fathoms.

Other fishermen indicated that the 50-fathom area restrictions west of Cape San Blas would cause economic hardship.

Response: The prohibition of longline and buoy gear in a directed fishery for reef fish inside of the 20-fathom contour east of Cape San Blas is expected to cause little disruption to the Florida grouper fishery as less than 10 percent of the red grouper catch occurs in this area. The intent of this restriction is to reduce the catch and subsequent release mortality of groupers under 20 inches that are abundant inside of 20 fathoms. Since most of the larger groupers are males, there is less concern over the use of longline and buoy gear taking the larger fish. NOAA believes that affording protection for the smaller females while regulating the overall harvest of larger fish (mostly males)

through quotas is a prudent management strategy.

Longline and buoy gear are prohibited inside the 50-fathom contour in the western Gulf to protect the red snapper resource. The western area generally covers the range of red snapper as few occur east of Cape San Blas or offshore of the 50-fathom contour. The restriction is designed to reduce the impact of these gears that typically have harvested large red snapper from the spawning stock from non-reef areas where catch per unit effort by more traditional gear is too low to fish economically. Since fecundity of red snapper increases with size, it is important to reduce harvest of large individuals. Although other gear have historically taken a greater share of the grouper resources, it should be mentioned that longlines are a recent introduction into the fishery. Therefore, NOAA concurs with the establishment of the longline and buoy gear restricted areas.

Use of Reef Fish as Bait

Comment: A number full-time commercial fishermen who use fish head as bait for stone crabs, and a commercial fishing organization, commented on the requirement that all reef fish be landed with head and fins intact. The fishermen felt that misinterpretation of the proposed rule by law enforcement agents could cause lost fishing time and therefore result in negative economic impacts on the stone crab fishery. The organization felt that the requirement would prevent the consumption of catch by fishermen on board their vessels; the organization proposed to exempt from the requirement the preparation of fish for immediate consumption while on board.

Response: The regulations implementing the FMP require red snappers to be landed with head and fins intact in order to provide whole specimens from selected fishermen and dealers for dockside inspection by authorized statistical reporting agents, and to ensure adherence to the minimum size limit. Amendment 1 will extend the requirement to all other reef fish for which minimum size limits are instituted. The regulations are not intended to preclude consumption aboard a vessel of legal-sized reef fish taken under bag limits.

After landing, possession of reef fish heads alone would not constitute a violation. As added protection and to expedite enforcement, fishermen should carry a receipt to document the purchase of the fish heads.

Amberjack Regulations

Comment: Several commercial fishermen commented on the proposed establishment of commercial size limits and recreational size and bag limits for greater amberjack.

One commentor objected to the proposed 36-inch fork length commercial size limit, which he felt was not warranted by the existing data base. He also noted that greater amberjack harvesting would already be reduced by the other measures in the amendment, since recreational fishermen would no longer be able to sell their catch and therefore would not target the species. Based on these concerns, the commentor suggested that both the commercial size limit and the recreational size be changed to 28 inches fork length.

Another commercial fisherman stated that the increase in landings was not typical of overfishing. The commentor also supported the 28-inch recreational size limit but indicated that the limited data base did not warrant the proposed recreational bag limit.

In addition, the commentor objected to the classification of greater amberjack as reef fish, since he believed that the species are instead mid-water fish that utilize reefs primarily for feeding.

Response: The comments regarding a limited data base are best addressed by national standard 2, which dictates that conservation and management measures be based on the best scientific information available, even though those data may be limited. Overfishing of greater amberjacks is possible but may not be accurately shown by the currently limited stock assessment data. Current rates of both recreational and commercial fishing are increasing. For example, data recently made available for January, 1988, indicate that commercial effort and landings have more than doubled compared to data for recent years. This rate of fishing mortality could result in overfishing of the species, if that has not already occurred. As other reef fish stocks decline or as quotas are met, anglers will target alternative species, such as greater amberjack, to compensate for reduced catches. This increased effort may equal or exceed the elimination of fishing mortality by those recreational fishermen who were previously harvesting greater amberjack for sale. Overfishing may therefore still occur despite the elimination of these fishermen from the fishery.

Recreational catches, primarily from charter and party boats in Florida and Louisiana, has fluctuated between 97 and 66 percent of the total harvest between 1979 and 1987. These data indicate that fishing mortality may be significantly reduced by restrictions on that mode.

The proposed bag limit on greater amberjack would result in approximately a 45 percent reduction in recreational catch, based on the 1985–87 average recreational catch, thus significantly reducing fishing mortality. A larger bag limit would result in a much lower reduction in mortality.

NOAA believes that the combination of the proposed regulations for both recreational and commercial fishermen should help stocks return to the 20 percent SSBR goal established in the amendment, if overfishing now exists. If this species is not yet overfished, the regulations represent an effective conservation strategy to prevent the stock from falling below the 20 percent SSBR goal.

In response to the comment on the classification of greater amberjack as a reef fish, the available scientific data indicates that this species inhabits reef areas. Its inclusion in the reef fish management unit therefore is in order.

Income Requirements

Comment: Several part-time and full-time commercial fishermen objected to the Council's proposal that more than fifty percent of an individual's (owner or operator) earned income must be derived from commercial, charter, or headboat fishing to quality for an annual fishing permit.

Some commentors stated that the regulation would remove part-time fishermen from the fishery and therefore would reduce depletion of reef fish stocks. However, several fishermen also noted that closures of the fishery when the proposed quotas are met may force full-time fishermen to obtain supplemental income. Such fishermen then would be forced from the fishery by such quotas, if less than fifty percent of their annual income were derived from fishing.

One commentor objected to the exclusion of unearned income from the Council's proposal. He correctly pointed out that large numbers of persons who live on pensions or other income classified as unearned could qualify by earning a small income from their fishing activities.

Response: The 50 percent threshold was proposed by the Council to differentiate fishermen whose primary income is earned from fishing and therefore depend on the fishery for their livelihood, and to distribute reductions in fishing effort necessary to rebuild overfished reef fish stocks. The catch

and associated revenue now benefitting the recreational and part-time commercial fishers would be redistributed to commercial fishermen who qualify for a permit.

Overfishing of certain reef fish species has necessitated restrictive quotas that have stressed the commercial fishing industry. As more reef fish species become overfished, additional quotas will be necessary. As noted in the RIR/IRFA, the income requirement will remove part-time fishermen from the fishery and therefore lessen the impact of these restrictions on those who rely on fishing for their primary income.

The proposed regulations impose quotas rather than a fixed fishing season. Therefore, it is possible that some or all of the quotas will not be reached and that some parts of the fishery will remain open throughout the year. Once quotas are reached, there are no restrictions against shifting to other fisheries to meet the earned income qualifications. Therefore, access to the fishery remains open, but competition over quotas by part-time fishermen is reduced, thereby distributing the benefits to those dependent upon the fishery for their livelihood.

The proposal does not unduly burden those who depend on the fishery for their primary livelihood, does not limit access to certain gear types, and is a fair and equitable solution to overfishing of certain reef fish stocks by recreational fishermen. Recreational fishermen who would no longer be able to fish under the commercial quota or sell their catch may be inconvenienced. NOAA believes that the Council's proposal will help protect and rebuild overfished reef fish stocks and also reduce economic impacts on the already stressed commercial fishery, factors which far outweigh any such inconveniences on the recreational sector.

Comment: Several commentors noted that the inefficiency of their gear prevented them from meeting the 51 percent income requirement. One such person supplemented his income from other sources with hook-and-line income during times of high demand for fish, and suggested that either 25 percent of $5,000 of an individual's (owner or operator) earned income must be derived from commercial, charter, or headboat fishing to qualify for a permit. Recreational fishermen would then be removed from the commercial fishery, while allowing small commercial fishing operations to stay in business.

Response: This approach would allow part-time fishermen to obtain permits and enter the fishery. In addition, a person earning $50,000 could qualify if over $5,000 of that income was derived from fishing. Use of a lump sum, therefore, would provide permits to part-time fishermen and thereby defeat the intent of the Council's proposal.

Economic Benefits

Comment: Another issue discussed by a commentor was the specific management objective of Amendment 1 to maximize net economic benefits from the reef fish fishery. An economist from a state university requested a definition of "net economic benefits" as it applies to optimum yield. The comments also noted that Amendment 1 mentions net economic benefits as an objective, but then does not provide clear data on the monetary difference between maximum net economic benefits and current net economic benetifs.

Reponse: The Magnuson Act includes economic considerations within the definition of optimum yield. Congress did not further define economic considerations in the Act; therefore, the relevant economic considerations when discussing optimum yield are determined by fishery managers and should be contained in appropriate regulatory impact reviews. According to NMFS guidelines for the preparation of regulatory impact reviews, net economic benefits are defined as the sum of producer and consumer surplus associated with commercial and recreational fishery effort.

Furthermore, data do not currently exist that can provide a quantitative answer as to the monetary difference between current net economic benefits and maximum net economic benefits. However, the amendment clearly indicates that current yield is well below optimum yield.

Vessel and Crew Safety

Comment: Two minority reports and many commercial fishermen, including members of a commercial fishing organization, cited vessel safety as part of their objections to some of the management measures approved by the Council, including stressed area boundaries, gear restrictions, quotas, size limits, and restricted areas for buoys and longlines.

Several commentors noted that these measures may post safety problems for the smaller vessels that have to travel large distances to legal fishing areas. One commentor noted that trips of up to five hours may be required to travel to and from the new longline area.

Some commented that longer travel times also would be needed to meet the quota and size limit restrictions, resulting in dangerous conditions for fishermen during bad weather. They suggested that vessel safety problems may also result from the additional time at sea required by Federal personnel to enforce the new regulations.

Reponse: The management measures approved by the Council do not establish a fixed period of time for fishing, regardless of climatic conditions. Fishermen are able to fish during good weather when vessel safety is maximized. The increased risk to vessels associated with travel to the new fishing areas is product of the potential dangers inherent in travel at sea. In order to increase vessel and crew safety, accurate weather forecasts are available for utilization by both fishermen and law enforcement personnel.

To avoid life-threatening conditions, fishermen should postpone travel during unsafe or marginal weather, and resume fishing during good weather until the quotas are met.

Charter Vessel and Headboat Requirements

Comment: One of the minority reports objected to the Council's proposal that both charter vessels and headboats with permits to fish under the commercial quota be required to fish under the bag limit when under charter or when there are more than three persons aboard, including captain and crew. The minority report proposed instead that such boats be required to fish under the bag limit when under charter or when there are more than five persons aboard, including captain and crew.

The minority report noted that charter vessels and headboats typically target reef fish commercially when business is slow. The report stated that up to five persons are needed to fish commercially on such boats, especially when using bottom rigs. Based on the Council's proposal, a charter vessel or headboat not under charter but with four or five persons aboard would therefore be unduly restricted to the bag limit, and would not be able to fish commercially. The report also stated that four or five persons on such boats may be needed to man lines for bottom fishing.

Further, the report stated that the Council based its proposal on the requirements for mackerel charter vessels and headboats as contained in the Coastal Migratory Pelagics FMP, which typically do not use multiple troll lines while fishing commercially.

Reponse: NOAA supports the Council's proposal, and believes that charter vessels and headboats with permits to fish under the commercial quota should be required to fish under the bag limit when under charter or when there are more than three persons

aboard, including captain and crew. Data available from NOAA surveys of charter vessels and headboats indicate that most such boats do not typically use over three persons on board to fish commercially for reef fish. Based on this information, economic impacts associated with this rule will be limited to a few charter vessels and headboats that would not be able to utilize their permits to fish under the commercial quota. Furthermore, the rule will allow effective enforcement of recreational bag limits consistent with legitimate use of commercial permits for the large majority of vessels affected by this rule.

The minority report proposal might encourage boats under charter with five persons total on board to harvest excess amounts of reef fish by claiming to be fishing commercially. NOAA believes that the ensuing difficulties and losses to enforcement of conservation and allocative measures would far outweigh any benefits to be derived from a rule which would accommodate legitimate commercial fishing by these few boats when not under charter.

The net effect of the Council's proposal is a reduction of fishing mortality by charter vessels and headboats, thus contributing to necessary conservation of the overfished reef fish resources. This benefit justifies the economic impacts on the few such vessels that are adversely affected by the Council's proposal.

Changes from the Proposed Rule

In § 641.4(c), the fees charged for each permit and for each fish trap identification tag are specified as $23 and $1, respectively. These amounts were included in the preamble to the proposed rule as the initial fees to be charged but were not specified in the codified section. An earlier, preliminary analysis of the administrative costs of issuing permits and tags had indicated fees of $17 and $1. Those amounts were included in the RIR/IRFA which accompanied Amendment 1. A more detailed analysis of the direct and indirect administrative costs of issuing permits and tags, including current information on Department of Commerce and NOAA overhead and other costs, rounded to whole dollar amounts, resulted in the current fees of $23 and $1. Any revision of these fees necessitated by a significant change in the administrative costs will be made by appropriate amendment to § 641.4(c).

The heading of § 641.6 is revised by adding the word "structure" to identify more clearly the requirements for identification contained in that section.

The prohibitions of §§ 641.7(f) and 641.21(d) on purchase or sale of reef fish smaller than the minimum sizes is removed as unnecessarily duplicative. The possession of reef fish smaller than the minimum sizes is prohibited by the regulations in this part, and purchase or sale of any fish taken or retained in violation of any regulations issued under the Magnuson Act is prohibited by the general prohibitions in § 620.7.

In §§ 641.24(b) and 641.25, the bag limit and commercial quotas of "All others—unlimited" are removed. "Unlimited" does not constitute a bag limit or a quota and it is unnecessary to include a rule to indicate that harvest restrictions are not established for other species.

Section 641.27 of the proposed rule included the statement from Amendment 1 of the long-term optimum yield of the reef fish fishery and contained procedures from Amendment 1 for setting TAC and adjusting management measures annually by regulation. The optimum yield and TAC procedures would apply to the Council and NMFS but are not regulatory in nature because they do not control the behavior of fishermen. Accordingly, NOAA has concluded that regulatory language is not necessary to implement the procedures for adjusting optimum yield, TAC, or size limits, quotas, or other management measures. NOAA chose to publish the optimum yield and TAC procedures in the proposed rule as the most effective means of notifying interested persons and obtaining public comments. Accordingly, the statement of long-term optimum yield and the TAC procedures for setting total allowable catch and adjusting management measures annually, contained in Amendment 1, are approved but need have no regulations to implement those procedures. Consequently, § 641.27, as published in the proposed rule, is not included in this final rule.

As discussed above, NOAA is disapproving the application to the unsorted catch of reef fish in the groundfish trawl fishing of (1) the bag and size limits, (2) the permit requirement for sale of reef fish, and (3) the commercial closure provisions. Accordingly, a definition of *groundfish trawl fishery* is added to § 641.2 and exemptions for the groundfish trawl fishery are added at § 641.27.

Approval of Amendment 1

NOAA concurs with the problems in the reef fish fishery and the management objectives as stated in Amendment 1. NOAA finds that the management measures of Amendment 1 address the problems and may achieve the objectives, and, accordingly, with the limited exception noted above regarding the groundfish trawl fishery, NOAA approves Amendment 1.

Effective Dates

The new vessel, structure, and gear identification requirements (§ 641.6) and bag and possession limits (§ 641.24) implemented by this rule depend, for application and enforcement, upon a categorization of reef fish fishermen in accordance with permitting requirements. Accordingly, the permit requirements (§ 641.4) are effective January 22, 1990, and §§ 641.6 and 641.24 (and their corresponding prohibitions in § 641.7) will be effective April 22, 1990. The delayed effectiveness of §§ 641.6 and 641.24 will allow sufficient time for owners and operators in the fishery to obtain and submit applications and for NMFS to process and issue permits. All other changes in this rule will be effective February 21, 1990.

This rule contains alternative minimum size limits for amberjack (§ 641.21(a)(6)) that depend on whether the person catching the amberjack is subject to the bag limits. Since the bag limit provisions will not be effective until April 22, 1990, the smaller of the alternative size limits (28 inches fork length) will apply to all harvests of amberjack from February 21, 1990 until April 22, 1990. Effective April 22, 1990, the 28-inch minimum size limit will apply to a person subject to the bag limit and a 36-inch (fork length) size limit will apply to a person not subject to the bag limit.

The prohibitions of the current rule that deal with the requirement to have a permit to fish with a fish trap and with the requirements for gear, vessel, and structure identification (§ 641.7(a) and (b)) will remain in effect until April 22, 1990.

The delayed effectiveness of portions of this rule notwithstanding, the commercial quotas established in § 641.25 will apply to the fishing year commencing on January 1, 1990.

Classification

The Secretary of Commerce determined that Amendment 1 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the Magnuson Act and other applicable law.

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

government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Based on the RIR/IRFA, which described the effects the rule would have on small business entities, the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) concluded that the proposed rule, if adopted, will have significant economic effects on a substantial number of small entities. A summary of the economic effects was included in the proposed rule published at 54 FR 41297, October 6, 1989, and is not repeated here.

NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) which addresses the need for the objectives of the final rule, summarizes public comments and responses thereto, explains changes to the proposed rule made by the final rule, and refers to discussion of proposed and alternative management measures designed to minimize significant economic impacts on small entities.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. None of the states commented within the statutory time period, and, therefore, consistency is automatically implied.

The Council prepared an environmental assessment (EA) for Amendment 1 and, based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

This rule contains two new collection-of-information requirements and revises two existing requirements subject to the Paperwork Reduction Act. These collections of information have been approved by the Office of Management and Budget, and the following OMB Control Numbers apply: permit requirement (revised) OMB #0648–0205; headboat requirement (revised) OMB #0648–0016; charter boat logbook requirement (new) OMB #0648–0233; and commercial boat logbook (new) OMB #0648–0234.

A comment received from a state agency during the public comment period regarding implementation of Amendment 1's size limit for jewfish implicated federalism principles to an extent that was sufficient to warrant preparation of a federalism assessment under E.O. 12612 to address that measure. A federalism assessment was prepared which concluded that implementation of the measure was consistent with the principles, criteria, and requirements of E.O. 12612.

The Assistant Administrator, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), finds for good cause, namely, to provide for timely and effective implementation of necessary conservation measures, that it is not necessary to delay for 30 days the effective date of § 641.4 of this rule.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 17, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 641 continues to read as follows:

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

2. Effective February 21, 1990, in § 641.1, paragraph (b) is revised to read as follows:

§ 641.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of reef fish in the EEZ of the Gulf of Mexico, except that §§ 641.5 and 641.25 also apply to fish from adjoining State waters.

3. Effective February 21, 1990, in §641.2, the definition for *Management area* is removed; Figures 1 and 2 are redesignated as Appendix A, Figures 1 and 2; in the definition for *Fork length*, the parenthetical phrase "(See Appendix A, Figure 1.)" is added after the period; in the definition for *Powerhead*, the word "which" is revised to read "that"; in the definition for *Statistical area*, the phrase "Appendix A," is added before the word "Figure"; in the definition for *Total length*, the word "when" is added before the word "depressed" and the parenthetical phrase at the end of the definition is revised to read "(See Appendix A, Figure 1.)"; the definitions for *Charter vessel, headboat, reef fish,* and *Roller trawl* are revised; and new definitions for *Buoy gear, Groundfish trawl fishery*, and *Trip* are added in alphabetical order to read as follows:

§ 641.2 Definitions.

* * * * *

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom, on which there is a hook or hooks (usually 6 to 10) at or near the end, which is allowed to drift freely with periodic retrieval to remove catch and rebait hooks.

Charter vessel means a vessel whose operator is licensed by the U.S. Coast Guard to carry six or fewer paying passengers and whose passengers fish for a fee. A charter vessel with a permit to fish on a commercial quota for reef fish is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

* * * * *

Groundfish trawl fishery means fishing by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

Headboat means a vessel whose operator is licensed by the U.S. Coast Guard to carry seven or more paying passengers and whose passengers fish for a fee. A headboat with a permit to fish on a commercial quota for reef fish is operating as a headboat when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

* * * * *

Reef fish refers to fish in the following two categories:

(a) *Management unit.* Species taken in the directed fishery include the following:

Snappers—Lutjanidae Family

Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*

Groupers—Serranidae Family

Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*

Sea Basses—Serranidae Family

Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*

Tilefishes—Malacanthidae Family

Goldface tilefish, *Caulolatilus chrysops*
Blackline tilefish, *Caulolatilus cyanops*
Anchor tilefish, *Caulolatilus intermedius*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lopholatilus chamaeleonticeps*

Jacks—Carangidae Family

Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*

Grunts—Haemulidae Family

White grunt, *Haemulon plumieri*

Porgies—Sparidae Family

Red porgy, *Pagrus pagrus*

Triggerfishes—Balistidae Family

Gray triggerfish, *Balistes capriscus*

(b) *Fishery.* Species taken incidental to the directed fishery include the following:

Wrasses—Labridae Family

Hogfish, *Lachnolaimus maximus*

Grunts—Haemulidae Family

Tomtate, *Haemulon aurolineatum*
Pigfish, *Orthopristis chrysoptera*

Porgies—Sparidae Family

Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Knobbed porgy, *Calamus nodosus*
Littlehead porgy, *Calamus proridens*
Pinfish, *Lagodon rhomboides*

Sand Perches—Serranidae Family

Dwarf sand perch, *Diplectrum bivittatum*
Sand perch, *Diplectrum formosum*

Triggerfishes—Balistidae Family

Queen triggerfish, *Balistes vetula*

* * * * *

Roller trawl means a trawl net equipped with a series of large solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, i.e., in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

* * * * *

4. Effective January 22, 1990, § 641.4 is revised to read as follows:

§ 641.4 Permits.

(a) *Applicability.* (1) As a prerequisite to selling reef fish and to be eligible for exemption from the bag limits specified in § 641.24(b), an owner or operator of a vessel that fishes in the EEZ or a person who fishes in the EEZ from a structure must obtain an annual vessel permit.

(2) A qualifying owner or operator of a charter vessel or headboat may obtain a permit. However, a charter vessel or headboat must adhere to applicable bag limits when under charter or carrying a passenger who fishes for a fee.

(3) For a corporation to be eligible for a vessel permit, the statement required by paragraph (b)(2)(xi) of this section must be provided by a shareholder or officer of the corporation or the vessel operator.

(4) An owner or operator of a vessel using a fish trap in the EEZ or a person using a fish trap from a structure in the EEZ must obtain both a vessel permit and a color code from the Regional Director.

(5) A vessel permit issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(b) *Application for permit.* (1) An application for a vessel permit must be submitted and signed by the owner or operator of the vessel or by a person who fishes from a structure. The application must be submitted to the Regional Director at least 60 days prior to the date on which the applicant desires to have the permit made effective.

(2) Permit applicants must provide the following information (a person fishing from a structure may omit vessel information):

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(iii) Social security number and date of birth of the applicant and the owner;

(iv) Name of the vessel;

(v) The vessel's official number;

(vi) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(vii) Engine horsepower and year the vessel was built;

(viii) Type of gear to be fished and other fisheries vessel is used for;

(ix) Passenger capacity and U.S. Coast Guard license number(s) of vessel operator(s) if the vessel also operates as a charter vessel or headboat during the year;

(x) Any other information concerning vessel and gear characteristics requested by the Regional Director;

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing during the calendar year preceding the application;

(xii) Proof of certification, as required by paragraph (b)(3) of this section;

(xiii) If fish traps will be used to harvest reef fish,

(A) The number, dimensions, and estimated cubic volume of the fish traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine fish traps for compliance with these regulations; and

(xiv) If fish traps will be used from a fixed structure,

(A) The name and number of the oil or gas structure or the most descriptive identification for other types of structures; and

(B) The location of the structure in latitude and longitude or distance and direction from a fixed point of land.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(xii) of this section before a permit is issued or to substantiate why such a permit should not be denied, revoked, or otherwise

sanctioned under paragraph (i) of this section.

(4) Any change in the information specified in paragraph (b) of this section must be submitted in writing to the Regional Director by the permit holder within 30 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a presumption that the information is still accurate and current.

(c) *Fees.* A fee of $23 will be charged for each permit issued under paragraph (a) of this section and a fee of $1 will be charged for each fish trap identification tag required under § 641.6(d). The appropriate fee must accompany each permit application or request for fish trap identification tags.

(d) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to the applicant. In addition, the Regional Director will issue a numbered tag for each fish trap that is used in the EEZ and will designate a color code to be used for the identification of each vessel and fish trap buoys when such vessel and buoys are used to fish with fish traps in the EEZ.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days, the application will be considered abandoned.

(e) *Permit condition.* Compliance with the reporting requirements of § 641.5 is a condition for the issuance, reissuance, or continuing validity of a permit issued under this section. Failure to comply with those requirements may result in the denial or sanction of a permit pursuant to subpart D of 15 CFR part 904.

(f) *Duration.* A permit remains valid for the remainder of the fishing year for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904.

(g) *Transfer.* A permit issued under this section is not transferable or assignable. A person purchasing a vessel with a permit to fish for reef fish must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of an executed (signed) bill of sale.

(h) *Display.* A permit issued under this section must be carried on board the fishing vessel or fixed structure, and such vessel or structure must be identified as provided for in § 641.6. The operator of a fishing vessel or person fishing fish traps from a fixed structure must present the permit for inspection upon request of an authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Alteration.* A permit that is altered, erased, or multilated is invalid.

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application.

5. Effective February 21, 1990, in § 641.5, in paragraph (b), the introductory text and paragraph (b)(2) are revised, in paragraphs (b)(1) and (b)(3) through (6), the semicolons are removed and periods are added in their place, and paragraphs (b)(7) and (8) are removed; in paragraph (c), the introductory text is revised, in paragraphs (c)(1) through (4), the semicolons are removed and periods are added in their place, and in paragraph (c)(5), the semicolon and the word "and" are removed and a period is added in their place; in paragraph (d), in the introductory text, the phrase "or parts thereof" is removed where it appears in two places and the commas preceding and following the second appearance are removed; in paragraph (g), the introductory text is revised, in paragraphs (g)(1) through (3), the semicolons are removed and periods are added in their place, in paragraph (g)(4), the semicolon and the word "and" are removed and a period is added in their place, and a new paragraph (g)(6) is added; in paragraph (h), in the introductory text, the words "or quarterly" are revised to read "or more frequent"; and paragraphs (f) and (i) are revised to read as follows:

§ 641.5 Recordkeeping and reporting.

* * * * *

(b) *Vessels and persons fishing with fish traps.* The owner or operator of a vessel or a person on a structure permitted under § 641.4 to fish with a fish trap in the Gulf of Mexico EEZ or who fishes in adjoining State waters must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received not later than 7 days after the end of each fishing trip or, in the case of a person fishing with fish traps from a structure, not later than 7 days after the end of each month. If no fishing occurred during a month, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of each month. If fishing occurred, the following information must be reported:

* * * * *

(2) Pounds of catch of reef fish by species for each type of gear used.

* * * * *

(c) *Vessels not fishing with fish traps.* The owner or operator of a vessel that is permitted under § 641.4 to fish with gear other than fish traps in the Gulf of Mexico EEZ, or who fishes in adjoining State waters, and who is selected by the Science and Research Director, must maintain a fishing record for each fishing trip on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than the 7th day of the end of the reporting period. If no fishing occurred during a month, a report so stating must be submitted on one of the forms. If fishing occurred, the following information must be reported for each trip:

* * * * *

(f) *Charter vessels.* The owner or operator of a charter vessel that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a daily fishing record for each trip on forms provided by the Science and Research Director, and must submit the forms to the Science and Research Director weekly within 7 days of the end of each week (Sunday). Information on the forms includes, but is not limited to the following:

(1) Name and official number of vessel.

(2) Operator's Coast Guard license number.

(3) Date and duration of fishing (hours) of each trip.

(4) Number of fishermen on trip.

(5) Fishing location, by statistical area.

(6) Fishing methods and type of gear.

(7) Species targeted.

(8) Number and estimated weight of fish caught by species.

(g) *Headboats.* The owner or operator of a headboat that fishes for or lands reef fish in the Gulf of Mexico EEZ or in adjoining State waters, and who is selected to report, must maintain a fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director and must report the following information at least monthly within 7 days of the end of each month:

* * * * *

(6) Operator's U.S. Coast Guard license number.

* * * * *

(i) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel, a person fishing traps from a structure, and a dealer or processor are required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director or an authorized officer.

6. Effective April 23, 1990, § 641.6 is revised to read as follows:

§ 641.6 Vessel, structure, and gear identification.

(a) *Vessels.* (1) A vessel for which a permit has been issued under § 641.4 must display its official number—

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

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

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

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

(2) In addition, a vessel for which a permit has been issued under § 641.4 to fish with fish traps must display its color code—

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

(ii) In the form of a circle at least 20 inches in diameter; and

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

(b) *Structures.* A person fishing from a structure with a fish trap who has been issued a permit under § 641.4 must display his permit number and color code—

(1) So as to be clearly visible from an enforcement vessel or aircraft;

(2) With the permit number in block arabic numerals in contrasting color to the background;

(3) With the permit number at least 10 inches in height;

(4) With the color code in the form of a circle at least 20 inches in diameter; and

(5) Permanently affixed to or painted on the structure.

(c) *Duties of operator or person.* The operator of each fishing vessel specified in paragraph (a) of this section or person specified in paragraph (b) of this section must—

(1) Keep the official number or permit number and color code clearly legible and in good repair, and

(2) Ensure that no part of the fishing vessel or structure, its rigging, fishing gear, or any other material aboard obstructs the view of the official number or permit number and color code from any enforcement vessel or aircraft.

(d) *Fish traps.* Each fish trap used or possessed in the EEZ must have affixed to it an identification tag provided by the Regional Director that displays the assigned permit number, a number (normally 1–100) indicating the specific tag number for that trap, and the year for which the tag was issued. A tag for the current year must be affixed to a trap before its first use in a new year or, if in use on Janaury 1, when it is first tended after January 1.

(e) *Buoys.* Each fish trap, or the ends of a string of fish traps, must be marked by a floating buoy or by a buoy designed to be submerged and automatically released. Each buoy used to mark fish traps must display the designated color code and permit number so as to be easily distinguished, located, and identified.

(f) *Presumption of ownership.* A fish trap in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to traps that are lost or sold if the owner reports the loss or sale within 15 days to the Regional Director.

(g) *Unmarked traps or buoys.* An unmarked fish trap or buoy deployed in the EEZ is illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of an unmarked trap or buoy can be ascertained, such owner is subject to appropriate civil penalties.

7. In § 641.7,

a. Effective from February 21, 1990 through April 23, 1990, in paragraph (a) the comma and phrase "as required by § 641.4" are removed and paragraphs (a) and (b) are redesignated as paragraphs (t) and (u), after which period of effectiveness paragraphs (t) and (u) are removed; and

b. Effective February 21, 1990, paragraphs (c) through (k) are removed; new paragraphs (a) through (s) are added; and new paragraphs (b), (e), (p), (r), and (s) are stayed until April 23, 1990 to read as follows:

§ 641.7 Prohibitions.

* * * * *

(a) Falsify information specified in § 641.4(b)(2) on an application for a vessel permit.

(b) Fail to display a permit, as specified in § 641.4(h).

(c) Falsify or fail to provide information required to be submitted or reported, as required by § 641.5(b) through (h).

(d) Fail to make reef fish or parts thereof available for inspection, as required by § 641.5(i).

(e) Falsify or fail to display and maintain vessel, structure, and gear identification, as required by § 641.6.

(f) Possess a reef fish smaller than the minimum size limits, as specified in § 641.21(a).

(g) Possess a reef fish without its head and fins intact, as specified in § 641.21(b).

(h) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 641.22(a).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for escape windows, degradable openings, and mesh sizes specified in § 641.22(b)(1), (2), and (3).

(j) Use in the EEZ shoreward of the 50-fathom isobath a fish trap that exceeds the maximum allowable size specified in § 641.22(b)(4).

(k) Fish or possess in the EEZ more than 100 fish traps per vessel or structure, as specified in § 641.22(b)(5).

(l) Pull or trend a fish trap, except during the hours specified in § 641.22(b)(6)(i); or tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6)(ii).

(m) Use a powerhead to take reef fish of the management unit in the stressed area, as specified in § 641.23(a)(l).

(n) Use a fish trap or a roller trawl in the stressed area, as specified in § 641.23(a)(2).

(o) Use a longline or buoy gear to fish for reef fish in the longline and buoy gear restricted area, as specified in § 641.23(b).

(p) Exceed the bag and possession limits, as specified in § 641.24(a) through (d).

(q) Operate a vessel with reef fish aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in §§ 641.21(c) and 641.24(e).

(r) Transfer reef fish at sea, as specified in § 641.24(f).

(s) Purchase, barter, trade, or sell a reef fish taken by a vessel that does not have a permit or by a person fishing from a structure who does not have a

permit, as specified in § 641.4(a), or taken under the bag limits, as specified in § 641.24(g).

* * * * *

8. Effective February 21, 1990, in § 641.24, Figure 4 is redesignated as Appendix A, Figure 3; § 641.26 is redesignated as § 641.28; §§ 641.21 through 641.25 are revised; new §§ 641.26 and 641.27 are added; and newly revised § 641.24 is stayed until April 23, 1990 to read as follows:

§ 641.21 Harvest limitations.

(a) *Minimum sizes.* The following minimum size limits apply for the possession of reef fish in or taken from the EEZ:

(1) Red snapper—13 inches total length.

(2) Gray, mutton, and yellowtail snappers—12 inches total length.

(3) Lane and vermilion snappers—8 inches total length.

(4) Jewfish—50 inches total length.

(5) Red, Nassau, yellowfin, and black groupers and gag—20 inches total length.

(6) Greater amberjack—28 inches fork length for a fish taken by a person subject to the bag limit specified in § 641.24(b)(4) and 36 inches fork length, for a fish taken by a person not subject to the bag limit.

(7) Black sea bass—8 inches total length.

(b) *Head and fins intact.* A reef fish subject to a minimum size limit specified in paragraph (a) of this section possessed in the EEZ must have its head and fins intact and such reef fish taken from the EEZ must have its head and fins intact through landing. Such reef fish may be eviscerated but must otherwise be maintained in a whole condition.

(c) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that reef fish possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section and are maintained with head and fins intact as specified in paragraph (b) of this section.

§ 641.22 Gear restrictions.

(a) *Poisons and explosives.* Poisons and explosives may not be used to take reef fish in the EEZ; however, powerheads may be used outside the stressed area. A vessel in the reef fish fishery may not possess on board any dynamite or similar explosive substance.

(b) *Fish traps.* A fish trap used or possessed in the EEZ and a person using a fish trap in the EEZ are subject to the following requirements and limitations:

(1) *Escape windows.* Each trap must have at least two escape windows on each of two sides, excluding the bottom (a total of four escape windows), that are 2×2 inches or larger.

(2) *Openings and degradable fasteners.*

(i) A degradable panel or access door must be located opposite each side of the trap that has a funnel.

(ii) The opening covered by each degradable panel or access door must be 144 square inches or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches.

(iii) The hinges and fasteners of each degradable panel or access door must be constructed of one of the following materials:

(A) Untreated jute string of 3/16-inch diameter or smaller; or

(B) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *Mesh sizes.* A fish trap must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands) (see Appendix A, Figure 3):

(i) A minimum of 2 square inches of opening for each mesh;

(ii) One-inch minimum length for the shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and 1.5 inches between parallel sides of square openings and of mesh openings with more than four sides; and

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measures of mesh.

(4) *Maximum allowable size.* The maximum allowable size for a fish trap fished in the EEZ shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom isobath.

(5) *Effort limitation.* The maximum number of traps that may be assigned to, possessed, or fished in the EEZ by a vessel or from a structure is 100.

(6) *Tending traps.*

(i) A reef fish trap may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(ii) A reef fish trap may be tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such trap, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

§ 641.23 Area limitations.

(a) *Stressed area.*

(1) A powerhead may not be used in the stressed area to take reef fish of the management unit. Possession of a powerhead and a mutilated reef fish of the management unit in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

(2) A fish trap or a roller trawl may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of such fish trap can be ascertained, such owner is subject to appropriate civil penalties.

(3) The stressed area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in Appendix A, Table 1. (See also Appendix A, Figure 4.)

(b) *Longline and buoy gear restricted area.*

(1) Longline and buoy gear may not be used to fish for reef fish in the longline and buoy gear restricted area. For the purposes of this paragraph (b), fishing for reef fish means possessing or landing reef fish—

(i) For which a bag limit is specified in § 641.24(b), in excess of that bag limit; or

(ii) For which no bag limit is specified, in excess of 5 percent by weight of all fish aboard or landed.

(2) A person aboard a vessel that uses on any trip longline or buoy gear in the longline and buoy gear restricted area to fish for species other than reef fish is limited on that trip to the bag limits specified in § 641.24(b) and, for other reef fish, to 5 percent by weight of all fish aboard the vessel or landed.

(3) The longline and buoy gear restricted area is that portion of the EEZ in the Gulf of Mexico shoreward of a line connecting the points listed in Appendix A, Table 2. (See also Appendix A, Figure 5.)

§ 641.24 Bag and possession limits.

(a) *Applicability.* Bag limits apply to a person who fishes in the EEZ—

(1) From a fixed structure without a permit specified in § 641.4;

(2) From a vessel—

(i) That does not have on board a permit specified in § 641.4,

(ii) With trawl gear or entangling net gear on board,

(iii) With a longline or buoy gear on board when such vessel is fishing or has fished on its present trip in the longline and buoy gear restricted area specified in § 641.23(b), or

(iv) That is carrying a passenger who fishes for a fee; or

(3) For a species for which the quota specified in § 641.25 has been reached and closure has been effected.

(b) *Bag limits.* Daily bag limits are:

(1) Red snapper—7.

(2) Snappers, excluding red, lane, and vermilion snapper—10.

(3) Groupers—5.

(4) Greater amberjack—3.

(c) *Possession limits.* A person subject to a bag limit may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any reef fish in excess of the bag limits specified in paragraph (b) of this section, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is aboard a charter vessel or headboat, and,

(1) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and

(2) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to State waters.

(e) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag or possession limit applicable to that vessel, based on the number of persons aboard.

(f) *Transfer of reef fish.* A person for whom a bag or possession limit specified in paragraph (b) or (c) of this section applies may not transfer at sea a reef fish—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such reef fish was taken.

(g) *Sale.* A reef fish taken under the bag limits specified in paragraph (b) of this section may not be purchased, bartered, traded, or sold.

§ 641.25 Commercial quotas.

Persons who are fishing under a permit issued pursuant to § 641.4, provided they are not subject to the bag limits specified in § 641.24, are subject to the following quotas each fishing year:

(a) Red snapper—3.1 million pounds.

(b) Yellowedge, misty, warsaw, and snowy grouper (deep-water groupers), combined—1.8 million pounds.

(c) All other groupers, excluding jewfish, combined—9.2 million pounds.

§ 641.26 Closures.

When a commercial quota specified in § 641.25 is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the **Federal Register.** After the effective date of such notice, for the remainder of the fishing year, the bag limit will apply to all harvest in the EEZ of the indicated species, and the purchase, barter, trade, and sale of the indicated species taken from the EEZ is prohibited. This prohibition does not apply to trade in the indicated species that were harvested, landed, and bartered, traded, or sold prior to the effective date of the notice in the **Federal Register** and were held in cold storage by a dealer or processor.

§ 641.27 Exemptions for the groundfish trawl fishery.

(a) The requirements of §§ 641.4(a)(1) and 641.24(a)(2)(ii) notwithstanding, the owner or operator of a vessel in the groundfish trawl fishery is exempt from the bag limits for its unsorted catch of reef fish and is not required to obtain a permit in order to sell the vessel's unsorted catch of reef fish or to be exempt from the bag limits for the vessel's unsorted catch of reef fish.

(b) The requirements of § 641.21(a) notwithstanding, the minimum size limits do not apply to the unsorted catch of a vessel in the groundfish trawl fishery.

(c) The requirements of § 641.26 notwithstanding, after a closure, the bag limits and the prohibition on purchase, barter, trade, or sale do not apply to the unsorted catch of reef fish in the groundfish trawl fishery.

(d) The harvest limitations of § 641.21 and the bag and possession limits of § 641.24 apply to any reef fish that may be sorted from the catch of a vessel in the groundfish trawl fishery.

9. Effective February 21, 1990, a new Appendix A is added to part 641 consisting of new Tables 1 and 2, newly redesignated Figures 1, 2, and 3, and new Figures 4 and 5 to read as follows: Appendix A to part 641—Tables and Figures.

TABLE 1.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No. and reference location [1]	North latitude	West longitude
1 Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5'	82°41.5'
2 North of Marquesas Keys	24°48.0'	82°06.5'
3 Off Cape Sable	25°15.0'	82°02.0'
4 Off Sanibel Island—Inshore	26°26.0'	82°29.0'
5 Off Sanibel Island—Offshore	26°26.0'	82°59.0'
6 West of Egmont Key	27°30.0'	83°21.5'
7 Off Anclote Keys—Offshore	28°10.0'	83°45.0'
8 Off Anclote Keys—Inshore	28°10.0'	83°14.0'
9 Off Deadman Bay	29°38.0'	84°00.0'
10 Seaward limit of Florida's waters east of Cape St. George	29°35.5'	84°38.6'
Thence westerly along the seaward limit of Florida's waters to		
11 Seaward limit of Florida's waters south of Cape San Blas	29°32.2'	85°27.1'
12 Southwest of Cape San Blas	29°30.5'	85°52.0'
13 Off St. Andrew Bay	29°53.0'	86°10.0'
14 De Soto Canyon	30°06.0'	86°55.0'
15 South of Florida/Alabama border	29°34.5'	87°38.0'
16 Off Mobile Bay	29°41.0'	88°00.0'
17 South of Alabama/Mississippi border	30°01.5'	88°23.7'
18 Horn/Chandeleur Islands	30°01.5'	88°40.5'
19 Chandeleur Islands	29°35.5'	88°37.0'
20 Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3'	89°00.0'

TABLE 1.—SEAWARD COORDINATES OF THE STRESSED AREA—Continued

Point No. and reference location [1]	North latitude	West longitude
Thence southerly and westerly along the seaward limit of Louisiana's waters to		
21 Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3'	89°28.2'
22 Southeast of Grand Isle	29°09.0'	89°47.0'
23 Quick flashing horn buoy south of Isles Dernieres	28°32.5'	90°42.0'
24 Southeast of Calcasieu Pass	29°10.0'	92°37.0'
25 South of Sabine Pass—10 fathoms	29°09.0'	93°41.0'
26 South of Sabine Pass—30 fathoms	28°21.5'	93°28.0'
27 East of Aransas Pass	27°49.0'	96°19.5'
28 East of Baffin Bay	27°12.0'	96°51.0'
29 Northeast of Port Mansfield	26°46.5'	96°52.0'
30 Northeast of Port Isabel	26°21.5'	96°35.0'
31 U.S./Mexico EEZ boundary	26°00.5'	96°36.0'
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location [1]	North latitude	West longitude
1 Seaward limit of Florida's waters north of Dry Tortugas	24°48.0'	82°48.0'
2 North of Rebecca Shoal	25°07.5'	82°34.0'
3 Off Sanibel Island—Offshore	26°26.0'	82°59.0'
4 West of Egmont Key	27°30.0'	83°21.5'
5 Off Anclote Keys—Offshore	28°10.0'	83°45.0'
6 Southeast corner of Florida Middle Ground	28°11.0'	84°00.0'
7 Southwest corner of Florida Middle Ground	28°11.0'	84°07.0'
8 West corner of Florida Middle Ground	28°26.6'	84°24.8'
9 Northwest corner of Florida Middle Ground	28°42.5'	84°24.8'
10 South of Carrabelle	29°05.0'	84°47.0'
11 South of Cape St. George	29°02.5'	85°09.0'
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0'	85°30.0'
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7'	85°30.0'
14 De Soto Canyon	30°06.0'	86°55.0'
15 South of Pensacola	29°46.0'	87°19.0'
16 South of Perdido Bay	29°29.0'	87°27.5'
17 East of North Pass of the Mississippi River	29°14.5'	88°28.0'
18 South of Southwest Pass of the Mississippi River	28°46.5'	89°26.0'
19 Northwest tip of Mississippi Canyon	28°38.5'	90°08.5'
20 West side of Mississippi Canyon	28°34.5'	89°59.5'
21 South of Timbalier Bay	28°22.5'	90°02.5'
22 South of Terrebonne Bay	28°10.5'	90°31.5'
23 South of Freeport	27°58.0'	95°00.0'
24 Off Matagorda Island	27°43.0'	96°02.0'
25 Off Aransas Pass	27°30.0'	96°23.5'
26 Northeast of Port Mansfield	27°00.0'	96°39.0'
27 East of Port Mansfield	26°44.0'	96°37.5'
28 Northeast of Port Isabel	26°22.0'	96°21.0'
29 U.S./Mexico EEZ boundary	26°00.5'	96°24.5'
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

* * * * *

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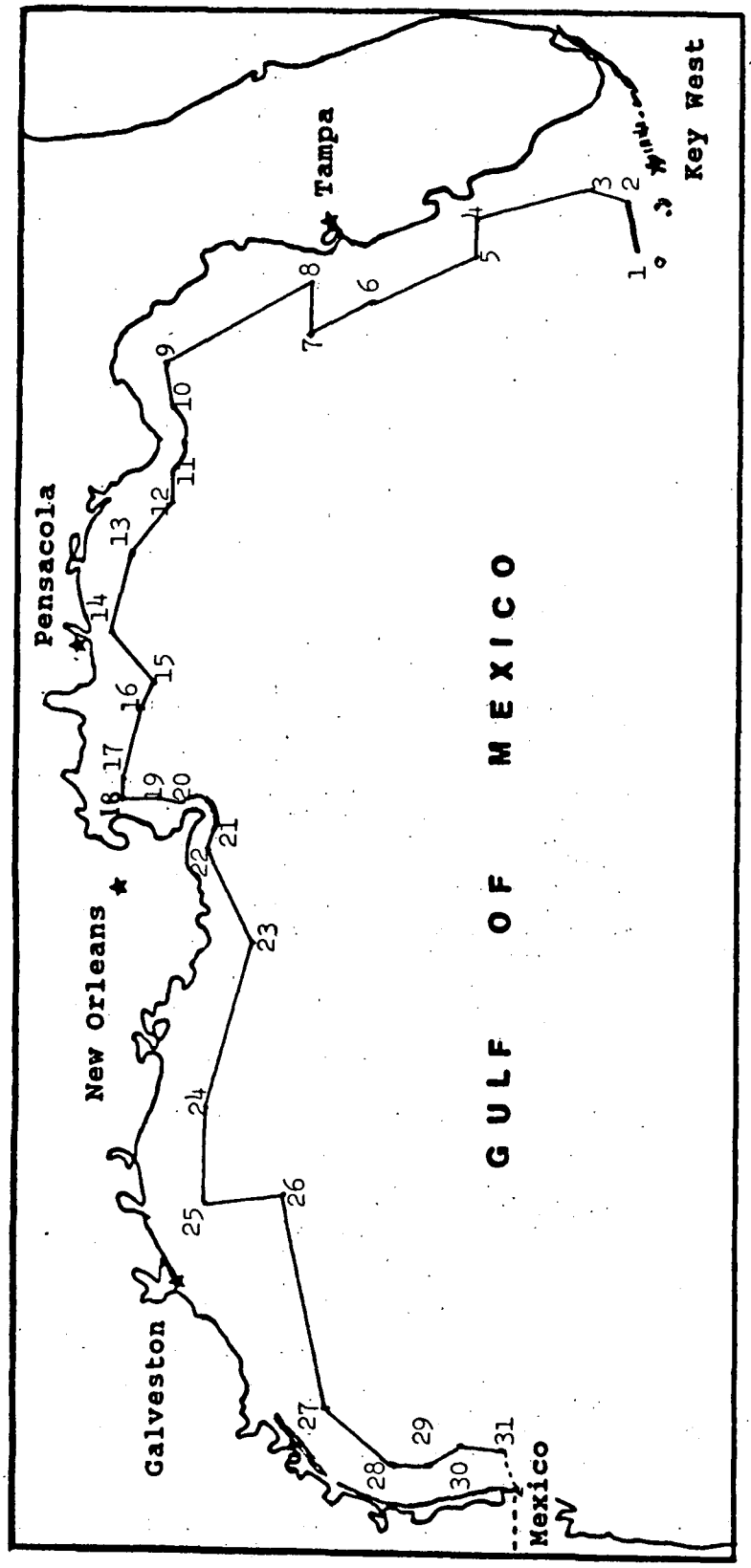

Figure 4. Seaward Limits of the Stressed Area.

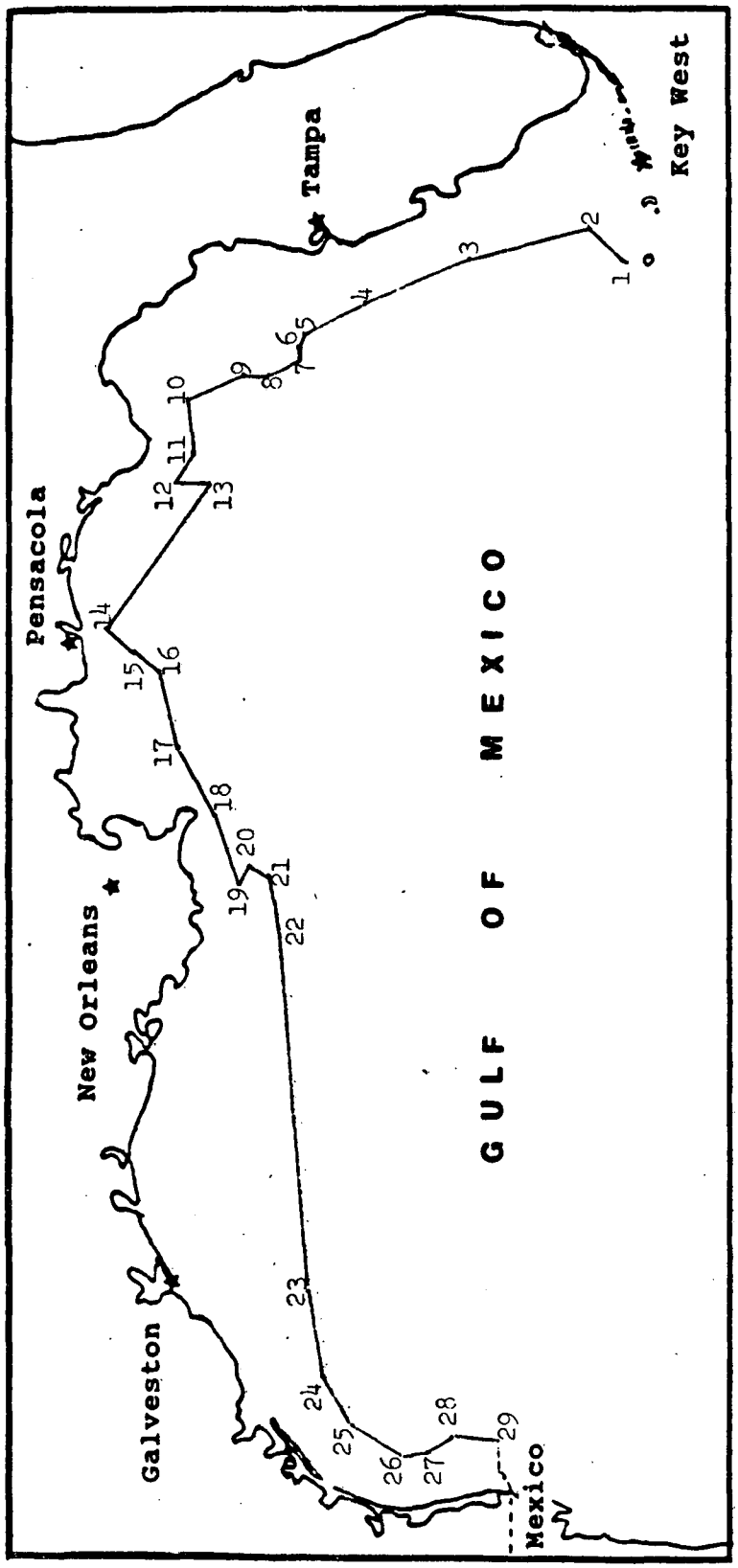

Figure 5. Seaward Limits of the Longline and Buoy Gear Restricted Area.

[FR Doc. 90-1418 Filed 1-17-90; 8:45 am]

BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 55, No. 14
Monday, January 22, 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-217-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 supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspections to detect cracks in the front spar pressure bulkhead chord, and repair and modification, if necessary. This action would delete the existing modification requirement. This proposal is prompted by a determination that accomplishment of the modification may result in fuel leakage from the wing center section fuel tank. This condition, if not corrected could result in a potential fire hazard in the forward cargo compartment.

DATE: Comments must be received no later than March 7, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-217-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. 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.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-217-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 31, 1984, the FAA issued AD 84-18-06, Amendment 39-4912 (49 FR 35619; September 11, 1984), to require inspections to detect cracks in the front spar pressure bulkhead chord and repair and modification, if necessary. That action was prompted by reports of cracks on five airplanes. This condition, if not corrected, could result in undetected cracks growing and resulting in sudden loss of cabin pressurization, causing extensive structural damage.

Since issuance of that AD, the FAA has determined that if cracks are found in the pressure bulkhead chord, accomplishment of the repair in accordance with the service bulletin referenced in the AD is necessary, but the modification is unnecessary. Subsequent reports have indicated that installation of bathtub fittings, the modification specified in the existing AD, is susceptible to fuel leakage from the center wing section fuel tank. As a result, the FAA issued AD 88-11-11, Amendment 39-5939 (53 FR 18834; May 25, 1988), to require repetitive inspections on airplanes with bathtub fittings to detect fuel leakage in this area.

The FAA has determined that the modification specified in AD 84-18-06 may create an additional unsafe condition in itself. Therefore, the existing AD must be superseded with a new AD to delete the required modification. The requirement to *repair* cracks, in accordance with Boeing Service Bulletin 747-53-2064, Revision 4, dated September 23, 1983, would remain unchanged. Airplanes that have previously been modified in accordance with the existing AD would continue to be subject to requirements for high frequency eddy current inspections to detect cracks in the front spar pressure bulkhead lower chord heel from stringers S-37 to S-39, ultrasonic inspections of the fuselage skin to detect cracks originating at the fastener holes beneath the forward drag splice fitting flanges, and repair, if necessary.

Additionally, this proposed rule has been revised to remove references to the use of "later FAA-approved revisions of the applicable service bulletins," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by paragraph C.

The economic impact of this action remains unchanged from the existing AD. There are approximately 201 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 102 airplanes of U.S. registry would be affected by this AD, that it would take approximately 84 manhours per airplane to accomplish the required actions, and that the 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 $342,720.

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 14 CFR 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 superseding AD 84-18-06, Amendment 39-4912 (49 FR 35619; September 11, 1984), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-53-2064, Revision 4, dated September 23, 1983, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the front spar pressure bulkhead chord, accomplish the following:

A. For airplanes that have not been modified in accordance with Service Bulletin 747-53-2064, dated July 25, 1972: Within the next 1,000 landings after October 15, 1984 (the effective date of AD 84-18-06, Amendment 39-4912), or prior to the accumulation of 10,000 landings, whichever occurs later, and thereafter at intervals not to exceed 7,000 landings, conduct a high frequency eddy current (HFEC) inspection of the chord to detect cracks between stringers S-37 and S-39 at the chord radius, heel and flanges adjacent to the fastener holes identified for inspection in Service Bulletin 747-53-2064, Revision 4, dated September 23, 1983. If cracks are found in the pressure bulkhead chord, accomplish the repair in accordance with the service bulletin before further flight. Repair of cracks along the chord radius under 5 inches in length, or across a chord flange that have not severed the chord flange, may be deferred 1,000 landings by stop drilling and reinspecting for crack progression every 200 landings using HFEC. If crack progression is found, repair in accordance with the service bulletin prior to further flight. Inspections are to continue at intervals not to exceed 7,000 landings after repair.

B. For airplanes that have been modified in accordance with Boeing Service Bulletin 747-53-2064, dated July 25, 1972: Within the next 1,000 landings after October 15, 1984 (the effective date of AD 84-18-06, Amendment 39-4912), or prior to the accumulation of 10,000 landings after the modification, whichever is later, and thereafter at intervals not to exceed 10,000 landings, conduct an HFEC inspection to detect cracks in the front spar pressure bulkhead lower chord heel from stringers S-37 to S-39, and conduct an ultrasonic inspection to detect cracks in the fuselage skin originating at the indicated fastener holes beneath the forward drag splice fitting flanges, in accordance with the service bulletin. If any cracks are found, repair in accordance with Boeing Service Bulletin 747-53-2064, Revision 4, dated September 23, 1983, before further flight. Inspections are to continue at intervals not to exceed 10,000 landings after repair.

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, 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.

D. For the purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's number of hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

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 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 January 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1353 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-259-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 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 British Aerospace Model BAC 1-11 200 and 400 series airplanes, which would require a one-time inspection of the service door to determine thickness of the forward side member, and modification, if necessary. This proposal is prompted by reports that some service doors were produced with material thinner than the required design dimensions. This condition, if not corrected, could result in premature fatigue damage to the service door and subsequent decompression of the airplane.

DATE: Comments must be received no later than March 7, 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-259-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. 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. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. 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-259-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAC 1-11 200 and 400 series airplanes. A report indicates that during production some service doors were assembled with material thinner than the required design dimensions. A recent review of Model BAC 1-11 series airplanes by the Aging Aircraft Task Force confirmed that service experience has demonstrated that airplanes with service door forward side members having less than the specified thickness have developed fatigue cracks. To ensure the structural integrity of the doors and adjacent areas, the Task Force recommended that certain modifications (previously developed by British Aerospace) be accomplished. This condition, if not corrected, could lead to premature fatigue damage to the service door and subsequent decompression of the airplane.

British Aerospace has issued Alert Service Bulletin 52-A-PM3682, Issue 1, dated August 30, 1968, which describes procedures for a one-time inspection of the service door to determine thickness of the forward side member, and modification, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time inspection of the service door to determine thickness of the forward side member, and modification, if necessary, in accordance with the service bulletin previously described.

It is estimated that 70 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 $5,600.

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities 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 14 CFR 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:

British Aerospace: Applies to certain Model BAC 1-11 200 and 400 series airplanes, as listed in British Aerospace Service Bulletin 52-A-PM3682, Issue 1, dated August 30, 1968, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished.

To prevent fatigue damage to the service door and subsequent decompression of the airplane, accomplish the following:

A. Check the serial number plate located on the rear edge of the service door to determine if the service door part number and serial number correspond to the part number and serial number identified on page 1 of British Aerospace Service Bulletin 52-A-PM3682, Issue 1, dated August 30, 1968,

1. If the service door part number and serial number do not correspond with those in the service bulletin, no further action is required.

2. If the service door part number and serial number correspond with those in the service bulletin, perform an inspection using a micrometer or other suitably accurate instrument, taking three measurements on the lip of the flange of the forward side member to determine the thickness of the material, in accordance with the service bulletin.

a. If the measurement of the forward side member is 0.031 inches or more, no further action is required.

b. If the measurement of the forward side member is less than 0.031 inches, rework the service door forward side member, 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 British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 8, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1355 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-10]

Airworthiness Directives; All Textron Lycoming Direct Drive Piston Aircraft Engines (Except: O-320-H, O-360-E, LO-360-E, TO-360-E, LTO-360-E, and TIO-541 Series Engines)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspections of the crankshaft gear installation and rework/replacement of the gears on certain Textron Lycoming direct-drive piston engines. The proposed AD is needed to prevent loosening and disengagement of the gear retaining bolt which could result in sudden engine failure.

DATE: Comments must be received on or before March 23, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89-ANE-10, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket No. 89-ANE-10.

Comments may be inspected at the New England Region, Office of the Assistant Chief Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin (SB) may be obtained from Textron Lycoming/Subsidiary of Textron, Inc., Williamsport, Pennsylvania 17701, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Pat Perrotta, Manager, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

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 taking action 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 Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ANE-10. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that incidents and accidents continue to occur due to engine power failure from crankshaft gear disengagement. The crankshaft gear drives the primary engine accessories and camshaft. When the gear retaining bolt loosens or fails, drive power to the main camshaft and accessory gear train is lost causing sudden engine failure. Retaining bolt loosening or failure can be caused by the gear not being properly seated within the crankshaft aft-end counterbore, improper installation of a "heli-coil" insert in the gear bolt hole, sudden gear overloads from the gear train and accessory units, or propeller strike overload.

The National Transportation Safety Board (NTSB) has issued safety recommendations A88-111 and A88-112 calling for mandatory compliance with Textron Lycoming SB No. 475, and restricting field repair of damaged threads in the gear retaining bolt hole. The NTSB cited seven accidents and eight incidents involving failure of the crankshaft gear assembly since 1982.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require inspections of parts, repairs where necessary, and modification of the gear flange if not already accomplished, on all Textron Lycoming direct drive piston engines except: O-320-H, O-360-E, LO-360-E, TO-360-E, LTO-360-E, and TIO-541 series engines. Compliance is required at each overhaul, after any propeller strike, or whenever gear train repair is accomplished.

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

The FAA has determined that this proposed regulation involves up to 175,000 engines in service. The maximum cost per engine would be $300, if all inspection, repair, and rework operations are accomplished. 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, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part

39 of the Federal Aviation Regulations (FAR) 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 (AD):

Textron Lycoming: Applies to all Textron Lycoming direct drive piston aircraft engines (except: O–320–H, O–360–E, LO–360–E, TO–360–E, LTO–360–E, and TIO–541 series engines).

Compliance is required at each engine overhaul, after any propeller strike, or whenever gear train repair is required.

To prevent loosening or failure of the crankshaft gear retaining bolt which may cause sudden engine failure, accomplish the following:

(a) Inspect the crankshaft counterbored recess, the alignment dowel, the bolt hole threads, and the crankshaft gear for wear, galling, corrosion, and fretting as described in Textron Lycoming Service Bulletin (SB) No. 475, dated October 31, 1986. Replace, prior to further flight, damaged or worn parts. Use replacement dowel pins listed in Table I of Textron Lycoming SB No. 475. If necessary, repair and rework crankshaft pilot diameter as specified and replace dowel pin with appropriate size dowel as shown in Table I of Textron Lycoming SB No. 475. Insure that the counterbored gear mounting face of the crankshaft is undamaged by fretting or galling. Damage of this nature is unrepairable. Repair crankshaft counterbore pilot diameter, if necessary, in accordance with section 3 of Textron Lycoming SB No. 475.

(b) Insure that the tapped threads in the gear retaining bolt hole of the crankshaft are clean and undamaged. If threads are damaged, do not repair by use of heli-coil insert. Prior to further flight, replace crankshaft with a serviceable unit, or have threads repaired by Textron Lycoming or by a facility specifically approved to do that repair.

(c) Verify that the crankshaft gear incorporates three .75-inch radius scallops on the flange as shown in Figure 5 of Textron Lycoming SB No. 475, including Supplement 1, dated May 24, 1988. Assemble gear onto crankshaft using a new retaining bolt and lockplate appropriate for the crankshaft gear as listed in Table II of the Textron Lycoming SB No. 475. Torque the retaining bolt and insure proper fit of mating parts as described in Paragraph 6 and Figure 6 of Textron Lycoming SB No. 475, including Supplement 1.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, may approve an equivalent means of compliance or an adjustment of the compliance schedule specified in this AD, which provides an equivalent level of safety.

Issued in Burlington, Massachusetts, on June 21, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90–1354 Filed 1–19–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–42]

Proposed Revocation of Transition Area, Ocean Springs, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Ocean Springs, MS, transition area. The transition area was established to provide controlled airspace protection for aircraft executing the VOR–B Standard Instrument Approach Procedure (SIAP) to the Gulfpark Airport. The VOR–B SIAP was cancelled effective January 11, 1990. This action would raise the floor of controlled airspace from 700 feet to 1,200 feet above the surface in vicinity of the Gulfpark Airport. Also, the operating status of the airport would change from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before: February 28, 1990.

ADDRESSES:

Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 89–ASO–42, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–42." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Ocean Springs, MS, transition area. The transition area was originally established to provide controlled airspace to protect aircraft executing the VOR–B SIAP to the Gulfpark Airport. The approach procedure was cancelled effective January 10, 1990. This proposed action

would raise the floor of controlled airspace from 700 feet to 1,200 feet above the surface in vicinity of the airport. Also, the operating status of the Gulfpark Airport would change from IFR to VFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ocean Springs, MS [Removed]

Issued in East Point, Georgia, on January 9, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-1356 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Importation of Chemical Subject to Toxic Substances Control Act (TSCA); Correction

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

ACTION: Proposed rule, correction.

SUMMARY: A document was published in the **Federal Register** (55 FR 738) on January 9, 1990, proposing to amend the Customs Regulations regarding submission of an importer's certification for Toxic Substance Control Act (TSCA) purposes. This document corrects the published proposed rule by including a Paperwork Reduction Act Statement, which was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Michael Smith, Regulations and Disclosure Law Branch, (202) 566-8681.

SUPPLEMENTARY INFORMATION:

Background

A document was published in the **Federal Register** (55 FR 738) on January 9, 1990, proposing to amend the Customs Regulations regarding submission of an importer's certification for TSCA purposes. Inasmuch as the required Paperwork Reduction Act statement was inadvertently omitted, this document corrects that error by including a Paperwork Reduction Act statement.

Correction

On page 739 of the document, in the first column, prior to the regulatory flexibility act portion, the following paragraph should be inserted:

Paperwork Reduction Act

The collection of information contained in this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in this proposed regulation is in § 12.121, Customs Regulations (19 CFR 12.121). This information is required by the Customs Service as blanket certification by the importer of a chemical substance to the district director of Customs as to whether the chemical shipment is subject to TSCA and complies with all applicable rules thereunder, or is not subject to TSCA. This information will be used to verify compliance with TSCA requirements on imported chemicals. The likely respondents are businesses or other for profit organizations.

Estimated total annual reporting burden: 10 hours.

Estimated average annual burden hours per respondent: 2 minutes.

Estimated number of respondents: 323.

Estimated annual frequency of responses: 1.

Dated: January 16, 1990.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 90-1299 Filed 1-19-90; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

RIN 1545-AN52

[FI-27-89]

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing on proposed regulations.

SUMMARY: This document contains corrections to the **Federal Register** publication for Friday, January 12, 1990, at 55 FR 1215 of the notice of public hearing. The proposed regulations relate to the reporting requirements and other administrative matters with respect to real estate mortgage conduits.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn, (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing that is the subject of these corrections provides notification of the scheduling of a public hearing for proposed regulations that prescribe the manner in which an entity elects status as a real estate mortgage investment conduit (REMIC) for Federal income tax purposes and the procedures to be followed when filing a Federal income tax return as a REMIC.

Need for Correction

As published, the notice of public hearing contains omitted language and typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

According, the publication of the notice of public hearing which was the subject of FR Doc. 90-780, is corrected as follows:

1. On page 1215, column 3, under the caption **"SUMMARY"**, third line, the language "regulations relating to real estate" is removed and is corrected to read "regulations relating to reporting requirements with respect to real estate".

2. On the same page, same column, under the caption **"SUPPLEMENTARY INFORMATION"**, third line, the language "regulations under sections 1272, 1275," is removed and corrected to read "regulations under sections 860D, 860F, 1275".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 90-1426 Filed 1-19-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

20 CFR Parts 1910 and 1926

[Docket No. H040]

RIN 1218-AA58

Occupational Exposure to 4,4'-Methylenedianiline (MDA)

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

ACTION: Proposed rule; notice of hearing.

SUMMARY: This notice schedules an informal public hearing to address certain limited issues concerning the notice of proposed rulemaking that OSHA issued on May 12, 1989 (54 FR 20672) on MDA.

DATES: The informal hearing will begin on March 20, 1990 at 9:30 a.m. Notices of intention to appear at the informal public hearing, additional written comments on the proposed standards, and testimony together with all evidence which will be offered into the hearing record must be postmarked by February 29, 1990.

ADDRESSES: Four copies of the notice of intention to appear, testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8615. For additional information on how to submit notices of intention to appear, see the section on Public Participation, below.

The hearing will be held in the Departmental Auditorium in the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC, 20210.

Written comments must be submitted in quadruplicate to the Docket Office, Docket Number H-040, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-7075.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8615.

Proposal and Hearing Issues: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION: On May 12, 1989, OHSA published a Notice of Proposed Rulemaking (NPRM) which proposed new standards regulating occupational exposure to MDA (54 FR 20672). The comment period and the time for requesting a hearing was extended to July 11, 1989. OSHA has received twenty-six comments with two requests for hearings from the A. O. Smith Co. and United Technologies. Accordingly, pursuant to section 6(b)(3) of the OHS Act, the Occupational Safety and Health Administration is scheduling informal public hearings on the proposed rule for occupational exposure to MDA to begin on March 20, 1990. Through these hearings the Agency expects to obtain testimony and other information pertinent to the issues which are raised in the hearing requests, in the notices of intention to appear, and at OSHA's initiative. In particular, OSHA solicits testimony, with supporting information, on the issues presented below.

Issue #1: Under the Scope and Application section of the proposed standard, paragraphs (a)(2) and (a)(3) provide certain exemptions. These exemptions provide that where initial monitoring indicates or objective data demonstrates that the product is not capable of releasing MDA in excess of the action level under the expected conditions of processing, use, and handling which will cause the greatest possible release, and where the likelihood of dermal exposure does not exist, these products shall be excluded from the regulation. Nevertheless, objectors argue that the inclusion of the phrase "where the likelihood of dermal exposure exists" actually precludes any exemption which might apply. Additionally, they argue that without a specific *de minimis* exclusion for mixtures containing MDA, the exemptions do not, in fact, exempt. Thus, these objectors would like OSHA to include in the final regulation a specific *de minimis* percentage cutoff as is provided currently in the Hazard Communication Standard mixture provision (29 CFR 1910.1200(d)(5)).

Objectors addressed the issue of including a *de minimis* exclusion for mixtures containing MDA. They maintain that the proposed standard does not contain any exclusion for mixtures which contain less than 0.1% MDA and encourage OSHA to apply the provisions of 29 CFR 1910.1200(d)(5) to the MDA standard. They note that 29 CFR 1910.1200(d)(5) provides that:

> If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under paragraph (d)(4) of this section.

The exclusion found in the proposed MDA rule, although not explicit, implicitly states that a 0.1% exclusion will be part of the MDA rule. OSHA is now inviting testimony on the appropriateness of expressly establishing a 0.1% exclusion by weight or volume for all operations involving mixtures containing MDA from the proposed regulation. OSHA is cognizant of the extremely high carcinogenic potency of MDA and solicits testimony on whether or not a lower percentage might be more appropriate.

Issue #2: The following paragraphs make reference to "the likelihood of dermal exposure": Paragraphs (a) (2) and (3) which define the scope and application of this proposed standard; paragraph (b) which includes a definition of a regulated area; paragraph (i)(1) which establishes requirements for the use of protective clothing and equipment; and paragraph (m)(l)(i) which establishes requirements for

conducting medical surveillance. Objectors argue that without a *de minimis* exclusion of 0.1%, that anywhere the phrase "the likelihood of dermal exposure" exists would mean that the employer would be obligated to comply with all the standard provisions regardless of the amount of MDA present. In fact, they argue that permissible exposure limits would be established at the limits of detection and compliance with the provisions noted above would be required. They further argue that at these low levels of exposure no hazard to workers exists and thus there is no need to implement the provisions described above. These objectors argue that the term "the likelihood of dermal exposure" must be quantified if unnecessary regulatory obligation is to be avoided.

Most of the twenty-six comments which OSHA received requested that OSHA redefine the phrase "likelihood of dermal exposure" to include some quantitative indicator. For example, some objectors have suggested that the 0.1% exclusion be incorporated into the definition of this phrase. This they feel would provide the necessary regulatory relief which they seek. Others have asked that OSHA require dermal monitoring and correlate exposures from skin absorption to absorption through inhalation of airborne MDA. Once having done this, they suggest that "the likelihood of dermal exposure" be correlated to the amount of MDA measured at the action level and that a comparable limit, based on the action level correlation, be set for dermal exposure. Still others would have OSHA define "the likelihood of dermal exposure" through a complex sampling methodology using swipe samples. They maintain that a series of swipe samples could be used to determine the presence of MDA and at the very minimum be used to demarcate regulated areas, lunch areas, trigger medical surveillance etc. Finally, objectors have asked OSHA to define the phrase "likelihood of dermal exposure" and hence employee exposure to include that exposure which would occur if an employee were wearing personal protective clothing and equipment.

Because of the controversy associated with the phrase "likelihood of dermal exposure," OSHA now invites testimony on the appropriateness of establishing dermal disposition limits and using these established limits to define the phrase "likelihood of dermal exposure." OSHA also invites testimony on the necessity of requiring some effectiveness testing, e.g. biological monitoring. In addition, OSHA seeks testimony on the feasibility of dermal monitoring techniques, biological monitoring, and visual monitoring techniques for occupational exposure to MDA. Finally, OSHA invites comment on allowing the "likelihood of dermal exposure" to be defined "regarding the use of personal protective equipment."

Issue #3: Paragraph (b) defines regulated area as an area where airborne concentrations of MDA exceed or can reasonably be expected to exceed the permissible exposure limit, or areas where the likelihood for dermal exposure exists. Objectors argue that while a regulated area can easily be demarcated by using air monitoring results to indicate which areas are in excess of the PEL, it is difficult to use the criteria "where the likelihood of dermal exposure exists" to establish regulated areas. They contend that the broad application of this definition to the establishment of regulated areas would result in nearly the entire plant, in some instances, being considered a regulated area. Furthermore, they maintain that this is not necessary, in that employees are not at an increased risk from exposure to MDA in many situations. Objectors ask that regulated areas not be defined by using the criteria "where the likelihood of dermal exposure exists." Objectors argue that defining regulated areas in this manner means that any amount of MDA anywhere would require the establishment of a regulated area.

OSHA recognizes the concerns of the objectors and agrees that strict interpretation of this provision could result in the employer being required to establish regulated areas virtually anywhere MDA was used regardless of quantities or hazards posed. OSHA invites testimony on the appropriateness of using the phrase "likelihood of dermal exposure" to establish regulated areas. Furthermore, OSHA invites testimony on alternative methods for establishing regulated areas where the only employee exposure results from contact with liquid MDA or mixtures containing MDA.

Issue #4: Paragraph (j)(3)(i)(C) establishes requirements for lunch areas. The proposed regulation requires that lunch areas be "free of MDA." Objectors argue that "free of MDA" must be quantified. For example, OSHA should define "free of MDA" as so many milligrams of MDA deposited on a given area or surface.

Objectors argue that analytical techniques are so sensitive that any amount of MDA can be detected and thus "free of MDA" as currently proposed would require that all lunch areas be "free of MDA" down to the limits of detection. Thus, they believe that OSHA should set some MDA deposition limit below which the employer could find that the lunch area is "free of MDA." OSHA invites testimony on establishing some quantifiable method for determining what "free of MDA" means with respect to lunch areas.

Issue #5: Paragraph (k)(2)(i) of the proposed standard requires that employers obtain or develop, and provide access to their employees, a material safety data sheet (MSDS) for MDA. Objectors argue that (1) downstream users should not be required to furnish MSDS's to their employees; and (2) employers should be allowed to use MSDS's for mixtures containing MDA instead of being required only to furnish MSDS's for pure MDA.

Regarding the first issue on whether or not downstream employers should be required to furnish MSDS's to their employees, OSHA notes that employers have an obligation under the current Hazard Communication standard to provide employees with information concerning the hazards of the chemicals which they must handle. Regarding the second issue, objectors contend that many employers do not have the means to research and develop an MSDS. Furthermore, they contend that other employers, for whatever reason, choose to rely upon the product manufacturers providing appropriate MSDS's. They believe that requiring an MSDS for MDA when the employees already have access to one for the mixture, which in turn already includes information on MDA, is unnecessary and burdensome. Thus, to help remedy this situation, the objectors ask that OSHA amend the MSDS requirements in these standards to allow the employer to be able to use MSDS for mixtures containing MDA. OSHA invites testimony on allowing the employer to use MSDS for mixtures containing MDA rather than furnish the employee with an MSDS for MDA only.

Issue #6: Paragraph (m)(3)(i) of the standard requires that the employer provide annual or periodic medical examinations to employees covered by this paragraph. Objectors seek clarification as to when this requirement has been satisfactorily satisfied and on the appropriateness of requiring a "termination of employment" examination.

The proposed standard requires that employers provide medical examinations for employees exposed above the action level 30 or more days per year, for employees with 15 or more

days of dermal exposure, for employees exposed in emergency situations, and for employees whom the employer finds have been dermally exposed. While the objectors believe that medical monitoring is appropriate where there is an established ongoing hazardous exposure, they beleive that the proposed standard contains no provision to stop annual exams for any employee. Indeed they believe that it is not even clear whether an employer must continue to offer annual medical examinations to former employees who have terminated employment.

OSHA believes that these objectors have misinterpreted the proposed MDA regulation. In fact, paragraph (m)(1)(i) clearly indicates that the employer is obligated to provide medical surveillance to those employees exposed to MDA in accordance with categories (A) through (D) as indicated above. Thus, OSHA asks for testimony from hearing participants as to whether this paragraph needs clarification.

These objectors also have asked OSHA to consider establishing requirements for the employer to provide medical examinations at the termination of employment. OSHA has not included such provisions in this proposed rule. OSHA entertains testimony on the need to include such provisions in the proposed rule.

Issue #7: The proposed standard contains certain provisions in paragraph (m)(6)(i) regarding a multiple physician review. Objectors believe that this paragraph needs clarification. This paragraph reads, in pertinent part, as follows:

> If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, and the employee has signs or symptoms which could include an abnormal liver function test, and the employee disagrees with the opinion of the examining physician, and this opinion could affect the employee's job status, *he* may designate a mutually acceptable internist as a second physician, accordingly: * * *

The objector contends that it is not clear from this paragraph to whom the pronoun "he" is referring. OSHA intended that the "he" be the employee. However, OSHA invites testimony regarding the necessity for clarification of this paragraph.

Issue #8: Paragraph (m)(9)(i)(A)(2) of the proposed standard requires that temporary removal be rendered to employees where the examining physician has made a determination that the change in liver function is not a result of exposure to MDA but that continued exposure may exacerbate the abnormalities. Objectors believe that the application of the multiple physician review mechanism should be restricted to cover only those medical situations which are addressed by paragraph (m)(9)(i)(A)(2) or which as indicated by this paragraph result from occupational exposure to MDA. OSHA invites testimony on restricting the application of the multiple physician review mechanism to include only those employees who have been adversely affected as a result of occupational exposure to MDA.

Issue #9: Paragraph (m)(9)(v)(D) of the proposed rule contains provisions for handling Workers' Compensation Claims as they relate to medical removal benefits. This paragraph provides:

> If a removed employee files a claim for workers' compensation payments for a MDA-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment-related expenses.

Objectors have requested that OSHA delete all reference to workers' compensation claims in the MDA final rule. Objectors argue that specific requirements for workers' compensation coverage are specified by individual states on a case-by-case basis and in no way should OSHA confound or complicate these various programs with this proposed regulation. OSHA invites testimony on whether this reference to worker's compensation should be removed from the medical removal protection benefits section of this proposed rule.

Issue #10: Paragraph (b) contains a definition of MDA. This definition excludes unreacted MDA, physically bound, such that it is incapable of releasing MDA into the workplace. Objectors believe that cured composite parts such as those found in PMR-15 (an advance composite which includes MDA) should also be exempted from the proposed standard.

Objectors argue that the handling of cured composites which may contain small quantities of residual MDA do not present a hazard to workers and thus should be exempt from the standard. Furthermore, they argue that if these cured composites are not exempt that entire factories would be deemed regulated areas under the proposal. OSHA invites testimony on whether cured composites such as PMR-15 should be exempt from the requirements of the regulations.

Issue #11: Paragraph (d)(1)(i) requires an emergency plan, including alarms, evacuation, and all other elements specified in § 1910.38 to be implemented where there is a possibility of an emergency. Objectors argue that the courts have restricted the requirement for implementing an emergency plan where the probability of harm is also present.

Objectors maintain that the courts have held that OSHA cannot require employers to abate the mere possibility of a hazard but that there must be a reasonable probability of harm. Although no actual court citations were proffered, they maintain that to be consistent with the court's interpretation, the word "possibility" in this paragraph should be changed to "reasonable probability". OSHA invites testimony on whether it is appropriate to change the term "possibility" to "probability".

Issue #12: Paragraph (e)(8) of the proposed rule establishes requirements for conducting visual monitoring of the skin for MDA exposure. These requirements are somewhat performance oriented and require that the employer make routine inspections of employee dermal areas potentially exposed to MDA in an effort to identify the hazard and to take the appropriate protective measures. Objectors argue that these requirements are difficult to comply with for these reasons:

(1) The frequency of the monitoring is not clear; (2) potentially exposed areas can mean areas which are "private in nature" and examination of which should only be done by the appropriate medical personnel; (3) all visual dermal monitoring for yellow staining of MDA skin areas should be included in the medical surveillance section of the standard; and (4) generally, the employer should be given more precise requirements.

OSHA invites testimony on the appropriateness of amending the proposed paragraph which requires visual monitoring to accommodate the concerns of the objectors.

Issue #13: Paragraph (g)(3) of the proposed standard restricts the use of employee rotation as a means of reducing exposure. The objectors contend that there are some circumstances in which employee rotation is necessary.

Objectors agree that the prohibition of employee rotation as an administrative control to achieve compliance with the PEL is appropriate. They also believe, however, that employee rotation

between jobs, as a means of equally dividing up the unpleasant jobs, is appropriate. Furthermore, they believe that where airborne levels are below the PEL, it should also be acceptable to rotate employees to limit potential for dermal contact and eliminate the need for costly medical surveillance. They state that the literature does not support the need for medical monitoring in these minimal exposure operations and that their employees perceive rotation as a fairness issue. That is, they want to rotate workers who must handle PMR-15 so that no one individual must do all the difficult or "risky" jobs. Therefore they ask that paragraph (g)(3) be amended to read "where the airborne concentration exceeds the permissible exposure limit (or the short term exposure limit), compliance may not be achieved by rotating employees to reduce exposure time on any one shift." OSHA invites testimony on whether or not employee rotation has been appropriately restricted with respect to MDA exposure.

Issue #14: Paragraphs (h) (1) through (6) of the proposed rule establish the appropriate provisions for use of a respirator when employees are required to do so. Objectors argue that many employees choose to wear a respirator even when their exposure does not exceed the PEL. Objectors believe that if workers voluntarily choose to wear a respirator the provisions set forth in paragraph (h)(1) should not be applicable.

Objectors agree that respirators should not be used as the primary protection for airborne contaminants. They argue that employees frequently request respirators even when airborne exposures are known to be very low because of the severe warnings on labels and MSDS's for mixture containing MDA or for MDA. Thus, they believe that voluntary use of respirators should not be done in accordance with the provisions contained in this paragraph (h)(1) of this proposed standard. OSHA invites testimony on whether voluntary use of respirators should be excluded from the requirements established in paragraph (h)(1) of this section.

Issue #15: Paragraph (j)(1) establishes change room requirements Change rooms must be equipped with a separate storage for protective clothing and equipment and for street clothes which prevent MDA contamination of street clothes. Objectors argue that the language governing change room requirements should be established using a performance approach. This they contend would allow the employer more creativity in developing protective strategies to prevent dermal contact.

Objectors argue that the requirement for change rooms implies that street clothes are not permitted in a regulated area. They further contend that in operations involving use of materials containing MDA that the potential for dermal contact is minimized by the use of disposable outer clothing which is removed and disposed of at the boundary of the regulated area. This, they say, prevents the spread of contamination to yet another area. Employees they say can then proceed to a clean area nearby to wash up and retrieve items left outside the contaminated area.

Under these circumstances they contend that separate lockers for street clothes and protective clothing is meaningless. Thus, they propose that OSHA rephrase the change room paragraph to include a more performance approach to establishing these types of protective measures. OSHA invites testimony on whether or not the change room requirements should be written using specification or performance language.

Issue #16: Paragraph (j)(2) includes requirements to wash spilled MDA from the skin. The issue is whether § 1910.1050(j)(2)(ii) needs to be clarified to denote that MDA which is deposited on the skin from ambient sources also be removed as soon as possible.

Some objectors find that a "plain reading" of this section would indicate that where there is airborne MDA exposure less than 5 ppb, it is not necessary to wash spilled material off the skin. They believe that this is not protective enough and ask that the section be changed to read:

> The employer shall ensure that materials containing MDA spilled on the skin are removed as soon as possible by methods which do not facilitate the dermal absorption of MDA.

OSHA adopted the recommendations of the MDA Mediated Rulemaking Committee and established tiered provisions for removing MDA from the skin. Based on record evidence, OSHA assumed that those exposed above the action level would primarily be exposed to dusts, fumes, or mists containing MDA and that showering at the end of the work shift would be necessary. OSHA further assumed that other workers, workers only handling liquid mixtures of MDA for whom exposure would result from the material being spilled on the skin, need not shower at the end of the shift. However, OSHA noted that, in this instance, the material should be removed as soon as possible. OSHA invites testimony on whether or not these proposed provisions should be changed.

Issue #17: Paragraph (k)(3) of the standard requires that the employer provide employees with information and training and lists the items to be included. The objectors find that while employee information and training are necessary, that it is difficult for the employer to administer these types of programs. Thus, the objectors have asked OSHA to develop an explanatory appendix which will aid the employer in explaining the standard and all of the appendices to employees.

Objectors agree that the employees should be well informed about the hazards of materials they use on the job. However, they maintain that one of the biggest obstacles to effective hazard communication training is providing highly technical information in a format which is understandable to all workers. The task, they note, is even more difficult when trying to explain information on MSDS's or in standards which are of necessity in legal and highly technical language. They maintain that it would be more efficient and cost-effective if this translation could be done once for all employers who wish to use it. Thus, they request that OSHA include one more non-mandatory appendix which can be given to and reviewed with employees. This document, the objectors believe, should explain, in plain language, the contents of the standard, appendices A, B, and C, and the requirements of a medical surveillance program. The objectors maintain that with such a document all employees would have access to the basic information necessary to protect themselves and employers would be assured that the proper information was made available. OSHA invites testimony on whether or not an additional appendix is needed and also on the contents of such an appendix.

Public Participation-Notice of Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the limited issues raised by this notice will be provided at an informal public hearings scheduled to begin at 9:30 a.m. on March 20, 1990 in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Intention of Appear

All persons desiring to participate at the hearing must file in quadruplication a notice of intention to appear, postmarked on or before February 27,

1990, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H-040, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-8615. The notice of intention to appear also may be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the notice are sent to the above address thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed; and

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by February 27, 1990 and will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administration Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m., on March 20, 1990. At that time, any procedural matters relating to the proceeding will be resolved. The informal nature of the rulemaking hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearings will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentation to the matters pertinent to the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Written Comments

Interested persons are invited to submit written comments on the issues raised in this hearing notice. Written comments must be postmarked by February 27, 1990 and submitted in quadruplicate to the Docket Office, Docket Number H-060, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The telephone number of the Docket Office is (202) 523-7894, and its hours of operation are 8:15 a.m. to 4:45 p.m., Monday through Friday, except Federal holidays. Comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Written submissions must clearly identify the issues raised in this notice which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35736) and 29 CFR part 1911.

Signed at Washington, DC on this 12 day of January, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-1302 Filed 1-19-90; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 816

Availability of Petition to Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Program Performance Standards; Surface Mining Activities

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

ACTION: Notice of availability of a petition to initiate rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) seeks comments concerning the rule change suggested in a petition, submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA), to amend OSM's regulations governing blasting operations at surface coal mines.

The petitioners suggest that OSM amend its rules by revising its surface mine blasting regulations to provide increased protection from damage outside the permit area than is afforded under the current rules. OSM is requesting comments on the merits of the petition and the rule changes suggested in the petition. Such comments will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern time on February 21, 1990.

ADDRESSES: Mail comments on proposal to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131A, 1951 Constitution Avenue, NW., Washington, DC 20240; or hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dermot M. Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-1928 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the suggested changes should be specific, should be confined to issues pertinent to the proposed revisions, and should explain the reason for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "**DATES**") or delivered to an address other than those listed (see "**ADDRESSES**") may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition and copies of 30 CFR Part 816 are available for inspection and may be obtained at the location listed under "**ADDRESSES**".

Public Hearing

OSM will not hold a public hearing on the proposed revision, but OSM personnel will be available to meet with the public during business hours, 9 a.m. to 5 p.m., during the comment period. In order to arrange such a meeting, call or write to the person identified under "**FOR FURTHER INFORMATION CONTACT**".

II. Background and Substance of Petition

OSM received a letter dated November 1, 1989, from Ms. Shirley Zell and Mr. John Albrecht of Clinton, Indiana petitioning OSM to initiate rulemaking to amend those regulations governing blasting operations found at 30 CFR 817.62 and 30 CFR 817.67. In response, OSM published a notice of availability and request for comments on that petition. (54 FR 50414, December 6, 1989) Responding to requests received from commenters, OSM published a notice extending the close of the original 30-day comment period to January 22, 1990. (54 FR 53329, December 28, 1989).

Subsequently, Ms. Zell and Mr. Albrecht requested the November 1 petition be withdrawn and replaced with the revised petition described in this notice. The petitioners indicated they were withdrawing the original petition because it mistakenly recommended rulemaking to revise §§ 817.62 and 817.67 pertaining to blasting for underground mining operations rather than §§ 816.62 and 816.67 pertaining to blasting for surface mining operations. A notice withdrawing the November 1 petition for rulemaking is being published concurrently with this notice and can be found elsewhere in this issue of the **Federal Register**.

Ms. Zell and Mr. Albrecht recommend the present regulatory language be replaced with the revised language provided in their petition. Ms. Zell and Mr. Albrecht contend that the existing rules have an inappropriate scientific basis and do not provide adequate protection for older structures from airblast and ground motion due to cast blasting, especially when such structures are built on glacial or other poorly consolidated deposits and/or overlie abandoned underground mine workings. Older structures are defined as being more than 20 years old and built with walls and ceilings of plaster on-lath rather than gypsumboard drywall.

SMCRA was signed into law on August 3, 1977. Section 515(b)(15) of the Act contains the Statutory requirements governing blasting operations at surface coal mines. The current regulations implementing these requirements were published in final on March 8, 1983 (48 FR 9807) and amended on September 30, 1983 (48 FR 44780).

Under section 301(g) of SMCRA, any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any of the regulations implementing SMCRA. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decision either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter, notice of that decision will be published in the **Federal Register**. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a formal rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 44 U.S.C. 4322(2)(C), is needed.

List of Subjects in 30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining, Surface Mining Reclamation and Enforcement Office

Dated: January 16, 1990

Harry M. Snyder,

Director

Appendix

The text of the petition dated December 20, 1989, from Ms. Shirley Zell and Mr. John Albrecht, is as follows

Before the Director of the Office of Surface Mining

Petition to Amend Rules:

§ 816.62 Use of Explosives: Preblasting Survey

§ 816.67 Use of Explosives: Control of Adverse Effects

Pursuant to "The Surface Mining Control and Reclamation Act of 1977", Public Law 95-87 section 201(g) this is a petition to request amendments to §§ 816.62 and 816.67 of the "Code of Federal Regulations".

Section 816.67(a) General Requirements

Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

The Federal regulations under 30 CFR 816.61 through 816.68 were developed for comparatively undisturbed geologic conditions. These regulations do not contain sound technical parameters regarding blast vibrations, frequency, long durations, structure response, long-term blasting vibration effects and the impacts and relationships between vibration and subsidence on houses.

Coal Industry is using new methods, such as cast blasting which was not the technique being used when research was done that the current regulations were based on. Cast blasting is a type of blast in which the energy from the blast is used to cast and fragment the shot material as opposed to just fragmenting as in a conventional shot. Cast blasting is helping operators increase production rates at their mines, while lowering stripping costs. One characteristic of cast blasting is that very large amounts of explosives per delay are utilized. The damage criteria was developed to quantify the response of and damage to residential type structures from small to intermediate sized blasts. Cast blasts cannot be defined as small to intermediate sized blasts. There are still no clear-cut formulas to assure that the blaster can design a successful cast. Cast blasting produces a high amount of air overpressure. You cannot compare ground vibrations or airblast from cast blasting to those of conventional blasting. A scientific study is needed analyzing waveforms recorded during conventional and cast blasting.

Low-level blasting vibrations are suspected to have the potential for accelerating subsidence. The effects of low-level blasting vibrations on subsidence-prone areas needs to be investigated.

The current blasting standards need to be reduced immediately for the protection of people and property. Every blasting operation, its environment, and its surrounding structures are unique. Should the blasting standards remain inadequate to protect the interests and property of citizens living around a mine, their inadequacies will continue to produce problems for all parties involved.

Dated: December 20, 1989.

Respectfully submitted,

Shirley Zell

John Albrecht

Proposed Amendments to The Surface Mine Blasting Performance Standards of 30 CFR §§ 816.62 and 816.67

Section 816.62 Use of Explosives: Preblasting Survey

(a) At least thirty (30) days before initiation of blasting in a permit area, the operator shall notify, in writing, all residents or owners of structures located within one (1) mile of the permit area how to request a preblast or condition survey.

(b) On the written request to the regulatory authority or the operator by a resident or owner of a dwelling or structure that is located within one (1) mile of any part of the permit area, or within an area determined by the regulatory authority to be appropriate in a particular situation on the basis of complaints or other information received by the regulatory authority, the operator shall promptly conduct a survey of the dwelling or structure and promptly submit a report of the survey to the regulatory authority and to the person requesting the survey. For any structure where, in accordance with this section, a survey has been requested by a previous resident or previous owner and the survey has been conducted by the operator and copies of the survey report have been provided to the previous owner or resident and the regulatory authority, the operator shall only be required to provide a copy of the previously completed survey report to any new or subsequent owner upon written request by the new or subsequent owner. If a structure is renovated or added to, subsequent to a survey, then upon request by the resident or owner a survey of such additions and renovations shall be performed by the operator in accordance with this section.

(c) The survey shall determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention. Assessment of these structures may be limited to surface condition and other readily available data.

(d) All survey requests received by the operator more than ten (10) days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. If the request is made after the start of blasting the operator shall conduct a condition survey of the dwelling or structure. A condition survey shall contain information identical to a preblasting survey, but need not be completed prior to initiation of blasting.

(e) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting to prevent damage. Copies of the report shall be promptly provided to the person requesting the survey and to the regulatory authority. If the person requesting the survey disagrees with the results of the survey, he or she may notify, in writing, both the operator and the regulatory authority of the specific area of disagreement.

Supporting Facts for Amendments to § 816.62

The current provisions require the operator to carry out a preblast survey of any dwelling or structure within one-half (½) mile of the permit area if requested in writing by the owner or resident. The owner or resident must be contacted by letter at least 30 days before the start of blasting, notifying them how they may request a preblasting survey. The current provisions are inadequate. Many citizen blasting complaints are from people who live more than one-half (½) mile from the mine site. This is because low frequency vibrations dominate at large distances. Low frequencies tend to amplify the structure response as they correspond to the natural frequency of individual structures. Recent research by the Bureau of Mines has quantified the problems of the increased structural response and damage potential from low frequency blast vibrations.

By offering and conducting preblast or condition surveys for people who are or will be subjected to the adverse vibrations from blasting, a coal company has a chance to let the public know who they are, that they are concerned about the feelings of the public, and are taking or planning to take all necessary steps to prevent damage to homes. When the preblast or conditon survey is conducted it is often the best opportunity to let the public know what is to be expected from the mining operation. Such requirements could be beneficial to residents and industry alike since it could:

(1) Require surveys where low frequency vibrations are a problem,

(2) More effectively alert the public as to its rights to a preblast or condition survey in particular problem situations;

(3) Protect coal companies from unsubstantiated damage claims;

(4) The survey report would determine the condition of the dwelling or structure and alert the regulatory authority of the presence of fragile conditions.

Recalling the intent of the Surface Mining Control and Reclamation Act of 1977 the regulatory authority must provide positive protection against damage to public or private property. It is clear that the possibility of actual damage is dependent not only on the peak particle velocity, but also on the frequency content of that vibration, on the type of terrain or rock upon which the structure stands and the local geologic conditions. It is also dependent on the type of structure, the height of the structure, the natural frequency of the structure and on the state of repair or-disrepair of the structure. Even when the structure can be said to be in a good state of repair, it might also be that it is old. Factors such as this dictate special considerations, perhaps specific velocity limitations. The preblast survey or condition survey report should include recommendations for whatever changes are needed to prevent damage.

Section 816.67 Use of Explosives: Control of Adverse Effects

(a) *General requirements.* Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) *Airblast*—(1) *Limits.* (i) Airblast shall be controlled so that it does not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in paragraph (e) of this section.

Lower frequency limit of measuring system, in Hz (±3 dB)	Maximum level, in dB
0.1 Hz or lower-flat response.[1]	134 peak.
2 Hz or lower-flat response	133 peak.
6 Hz or lower-flat response	129 peak.
C-weighted-slow response [1]	105 peak dBC.

[1] Only when approved by the regulatory authority

(ii) If necessary to prevent damage, the regulatory authority may specify lower maximum allowable airblast levels than those of paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) *Monitoring.* (i) Airblast shall be monitored and recorded by the operator for each blast to ensure compliance with the airblast standards. (ii) The regulatory authority may require an operator to conduct additional airblast measurements of blasts and may specify the locations at which such measurements are taken. (iii) The measuring systems used shall have an upper-end flat-frequency response of at least 200 Hz.

(c) *Flyrock.* Flyrock travelling in the air or along the ground shall not be cast from the blasting site.

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under § 816.66(c); or

(3) Beyond the permit boundary.

(d) *Ground vibration*—(1) *General.* In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under § 780.13 of this chapter. The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of paragraph (d)(2), the blasting-level chart of paragraph (d)(3) of this section, or by the regulatory authority under paragraph (d)(4) of this section. All structures in the vicinity of the blasting area, not listed in paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the regulatory authority before the initiation of blasting.

(2) *Maximum peak particle velocity.* (i) The maximum peak particle velocity shall not exceed 0.50 inch per second at the location of any dwelling, public building, school, church or commercial or institutional building. (ii) Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements. (iii) A seismographic record shall be provided for each blast.

(3) *Blasting-level chart.* (i) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

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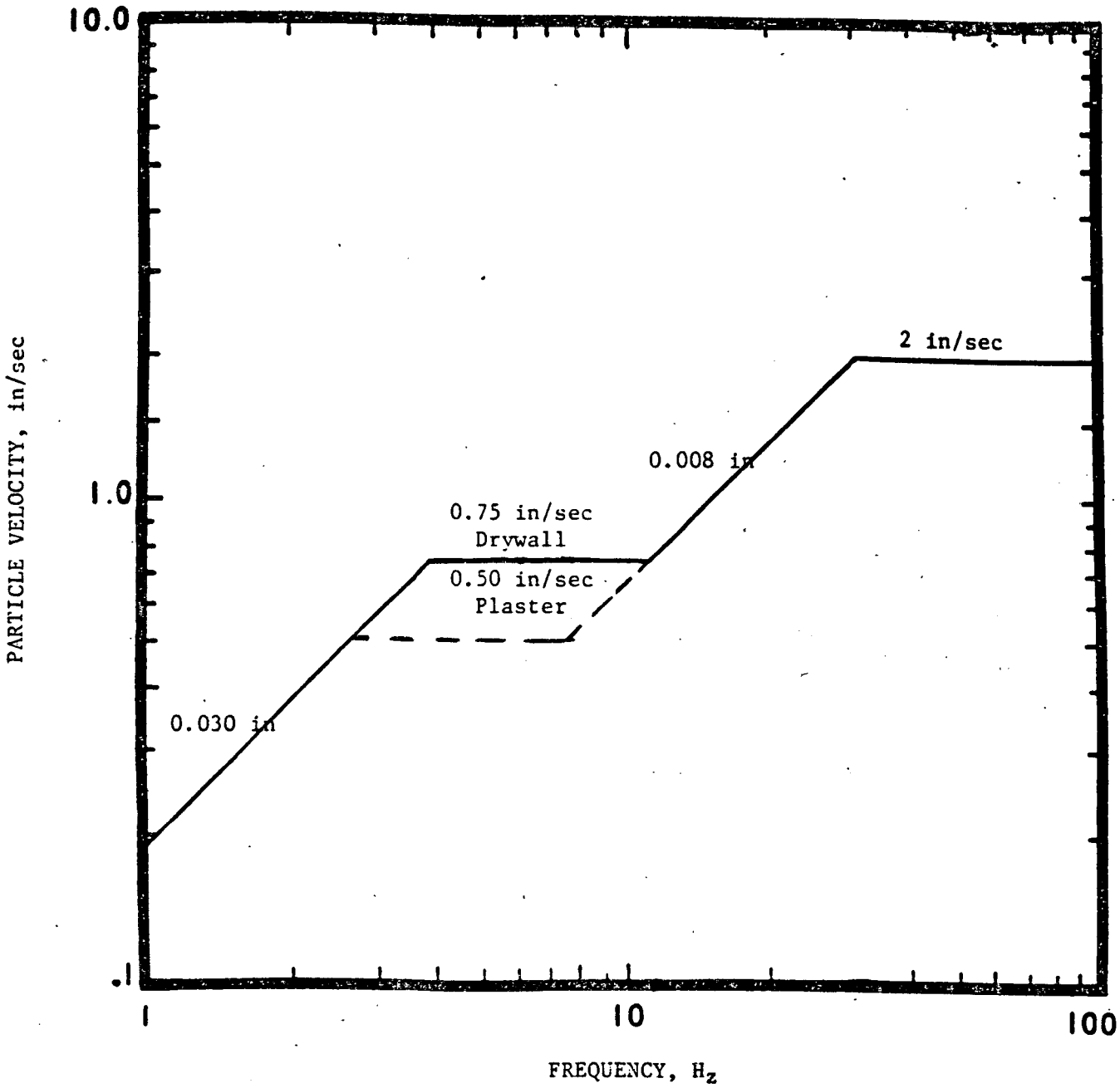

Figure 1. Alternative blasting level criteria.
(Source: Bureau of Mines RI8507 Appendix B)

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(ii) If the figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(4) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection of if so recommended in any preblast or condition survey report provided pursuant to § 816.62.

(5) The regulatory authority may require an operator to conduct additional seismic monitoring of blasts and may specify the location at which the mesurements are taken and the degree of detail necessary in the measurement.

(6) All blasts shall be monitored at the location of the dwelling, public building, school, church, or community or institutional building that is located nearest to the blast and which the operator does not own. Other locations may be approved if it is not possible to locate the seismograph at the afore-mentioned location.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person,

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

Supporting Facts for Amendments to Section 816.67

Two adverse effects of blasting are airblast and ground motion. The regulatory authortiy approves the standards that the operator will have to comply with. Surface mining operations damage the property of citizens and create hazards dangerous to life and property by degrading the quality of life in local communities. How does the regulatory authority know if people are being injured or damage is being done to public or private property if the operator isn't required to monitor their blasting? Why do we have compliance limits if operators are not required to monitor their blasting? Doesn't the regulatory authority have an obligation to require operators to monitor continuously to protect the homeowner since it is the regulatory authority that approves the standards in the permit that allows the operator to blast? Since homeowners are almost always responsible for the burden of proving that their health or property has been adversely effected by a surface mining operation continuous airblast and seismic monitoring should be mandatory for all operations. Blasting with explosives is not an exact science and there are too many unknown factors. Wouldn't continuous airblast and seismic monitoring protect the operator from unfounded claims and litigation? Citizens do not trust a coal operator to honestly fill out the blasting records. Isn't not requiring continuous airblast and seismic monitoring the door to the operator to falsify blasting records? Wouldn't continuous airblast and seismic monitoring provide the operator with data he could use to evaluate the effects of the blasting operation? Wouldn't continuous airblast and seismic monitoring allow the regulatory authority to have immediate access to records necessary to evaluate vibration characteristics when investigations into blasting complaints are conducted? The only way the regulatory authority can determine whether a problem exists is to evaluate airblast and seismic data. Without continuous airblast and seismic monitoring too many questions remain unanswered when problems arise for all parties involved, the regulatory authority, the operator, and the homeowner.

The eight millisecond criteria, as it is commonly called, originated with a Bureau of Mines study conducted in 1962 by a researcher named Duvall. This study dealt with construction and quarry blasting. Duvall found that if explosive charges were separated in time by at least 8 milliseconds, the individual ground vibration pulses caused by the detonation of the charges may be considered separate and should preclude the occurrence of constructive interference and unreasonably high ground vibrations. The researchers found a correlation with charge separation and resulting ground vibration levels and based on their data recommended that 8 milliseconds (ms) be used as a minimum separation between explosive charges. Since 1962 little research has been done to substantiate the validity of the 8-ms criteria for different types of blasting. This study on construction and quarry blasting produced ground vibrations of high particle velocities and high frequencies. This is not the case where low-strength, low velocity materials are found in old stream and lake beds and hydraulically filled ground as found at strip mine operations where severe structural responses, long duration wave trains, low frequencies, and abnormally large strains (or displacements) often result. Recent research by the Bureau of Mines has found that the 8-ms minimum time separation for independent charges appears insufficiently long for low-frequency sites and should not be used in cases of vibrations with dominant frequencies below about 10 Hz. The 8 ms criterion is not very useful when you have a low-frequency problem.

Public Law 95–87 the "Surface Mining Control and Reclamation Act of 1977" Section 507. Permit application requirements (g) states "Each applicant for a surface coal mining and reclamation permit shall submit to the regulatory authority as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of section 515(b)(15)." Section 515(b)(15) states in part "insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority, which shall include provisions to (C) limit the type of explsoives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public or private property outside the permit area, (iii) adverse impacts on any underground mine, and (iv) change in the course, channel, or availability of ground or surface water outside the permit area." Appropriate standards have not been established to protect society and the environment from the adverse effects of surface coal mining operations. The Office of Surface Mining contends its limits found at § 816.67 are statistically safe. If the limits found at § 816.67 are statistically safe why is injury occuring to persons, why is property being damaged outside the permit area, why are abandoned underground mines outside the permit area being adversely impacted, why are citizens outside the permit area losing their ground and surface water?

Existing Federal and State regulations pertaining to the Use of Explosives: Control of adverse effects are not adequate to protect society and the environment from the adverse effects of surface coal mining. As more companies and other parties do increasing amounts of seismic monitoring it is becoming clear that low frequency, long duration vibrations are quite common at strip mine operations and the higher frequency vibrations included in the data the Office of Surface Mining used to develop their standards may not

apply. What works at high frequencies in hard massive limestone may not work at lower frequencies typical of coal mine overburden. Geologic conditions which favor the generation of low frequency vibrations (3 to 18 Hz) can increase the potential for structural damage, because these frequencies match the natural frequencies of low rise residential structures. Ground motion at the same frequency as the structure's natural frequency causes increased vibrational energy transfer into the structure. Recent studies have shown that frequency has a very considerable effect on the possibility of blast vibration damage.

The **Federal Register** / Vol. 48, No. 46 / Tuesday, March 8, 1983 / Rules and Regulations page 9799 defines older and modern homes:

Older homes more than 20 years old with construction elements such as plaster-on-lath interiors and deteriorated or rigid, easily fractured construction materials.

Modern Homes less than 20 years old with gypsum-board interiors, reinforced concrete or concrete masonry unit foundations, and other wood-frame and wood-clad structures.

Structural response varies from structure to structure and within each structure. The vibration standards do not address structural response which is the homeowners greatest concern. Who determines if the property at risk might be a particularly vulnerable building? Many mining operations have surrounding neighbors whose homes are older or not built with reinforced construction. Are standards set to protect all structures or is it the regulatory authorities position to wait to see if damage occurs before deciding what vibrations a structure can withstand? When injury or damage occurs the citizen almost always has the burden of proof when it is the regulatory authority that is responsible for approving the standards that allows the operator to blast. Citizens want adequate protection of their health and property so that they do not bear an unreasonable personal cost.

Bureau of Mines Report of Investigations 8507 represents an advancement of knowledge available on the adverse effects of blasting vibrations on structures. It recognizes that the peak particle velocity of a blast is not the only factor which must be controlled to limit structural damage effected by ground vibrations resulting from blasting. RI 8507 recognized that the frequency of the vibrations as well as the peak particle velocity can be very important in assessing the probability of damage. The blasting level chart recommended by RI 8507 plot[s] the acceptable levels of peak particle velocity against the blast vibration frequency. The blasting level chart permits a gradually increasing peak particle velocity as the frequency of the vibrations increases. RI 8507 was concerned with the effects of blast vibrations on structures and did not address human response to vibrations. The standards established in RI 8507 do allow an acceptable probability range of damage to structures of 5%. The blasting level chart enacted by the Office of Surface Mining found at § 816.67 varies from the recommendations of RI 8507. RI 8507 recognized the damage level depends on the type, height, condition, and age of the structure, the type of ground on which the structure is built, and the frequency of the vibration. The reaction of structures to vibrations differs from ground movement. The structure will continue to vibrate after the ground movement has ended.

As long as personal injury and property damage are occurring citizens living near coal mines are going to continue to be vocal. Citizens whose homes have been damaged are the "wronged" party and our government has an obligation to protect people and property. The protection of society and the environment from the adverse effects of surface coal mining is very important and long overdue.

[FR Doc. 90-1360 Filed 1-19-90; 8:45 am]

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30 CFR Part 817

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Program Performance Standards; Underground Mining Activities

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

ACTION: Notice of withdrawal of petition to initiate rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI), at the request of the petitioners, is withdrawing a petition to initiate rulemaking to amend OSM's regulations governing blasting operations at underground mines.

FOR FURTHER INFORMATION CONTACT: Dermot M. Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-1928 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSM received a letter dated November 1, 1989, from Ms. Shirley Zell and Mr. John Albrecht of Clinton, Indiana petitioning OSM to initiate rulemaking to amend those regulations governing blasting operations found at 30 CFR 817.62 and 30 CFR 817.67. In response, OSM published a notice of availability and request for comments on that petition. (54 FR 50414, December 6, 1989). Responding to requests received from commenters, OSM published a notice extending the close of the original 30-day comment period to January 22, 1990. (54 FR 53329, December 28, 1989).

Subsequently, Ms. Zell and Mr. Albrecht requested the November 1 petition be withdrawn and replaced with a revised petition they were submitting. The petitioners indicated they were withdrawing the original petition because it mistakenly recommended rulemaking to revise §§ 817.62 and 817.67 pertaining to blasting for underground mining operations rather than §§ 816.62 and 816.67 pertaining to blasting for surface mining operations. A notice of availability of the revised petition for rulemaking is being published concurrently with this notice and can be found elsewhere in this issue of the **Federal Register**.

Dated: January 16, 1990.

Harry M. Snyder,

Director.

[FR Doc. 90-1361 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 920

Maryland Regulatory Program; Permit Applications, General Requirements; Hydrologic Balance; Definitions; Ponds and Sediment Control Measures; Revegetation; Civil Penalties

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concerns proposed changes to the Code of Maryland Administrative Regulations (COMAR) and are intended to incorporate regulatory changes initiated by the State. The proposed amendments would change certain permit application submittal requirements; would expand

details of requirements on groundwater monitoring; provides comment on Maryland's reasons for not modifying certain regulations concerning spillways; revises revegetation requirements; and, expands details of civil and individual penalty requirements.

This notice sets forth the times and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on February 21, 1990. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on February 16, 1990; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on February 6, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.16.

II. Discussion of Proposed Amendments

By letter of July 8, 1986, the Office of Surface Mining Reclamation and Enforcement transmitted to Maryland a list of deficiencies which the OSM had determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Record No. MD 351). Maryland has chosen to submit their response in three phases, two of which have already been published as proposed rules, 54 FR 16133 and 54 FR 39003 respectively. On October 31, 1989, the Maryland Department of Natural Resources, Energy Administration, Bureau of Mines (MDBOM) responded further by letter with the following additional proposed amendments to Maryland's approved program (Administrative Record No. 428).

In COMAR 08.13.09.02K(1), the term "mine plan area" is replaced by "permit".

COMAR 08.13.09.02K(2)(c) is deleted and replaced with specific baseline ground water hydrology information requirements to be furnished by the permit applicant to assist in determination of Probable Hydrologic Consequences (PHC) of a proposed operation.

COMAR 08.13.09.02K(2)(d) is deleted and replaced with specific baseline surface water hydrology information requirements to be furnished to assist in the determination of PHC of a proposed operation.

COMAR 08.13.09.02K(2)(e) is deleted and replaced with specific requirements to furnish geologic information for the permit and adjacent areas to assist in determination of PHC of a proposed operation.

COMAR 08.13.09.02K(2)(f) is deleted and replaced by a requirement that the PHC furnished be based upon the preceding baseline information delineated. It allows the use of modelling, interpolation or statistical techniques, and requires that the PHC determination shall include findings on whether; (i) adverse impacts may occur to the hydrologic balance, (ii) acid or toxic forming materials are present and threaten surface or ground water supplies, (iii) the proposed operation adversely impacts surface or subsurface water sources within or adjacent to the permit area; and, (iv) what impact the proposed operation will have on sediment yield, acidity, total suspended and dissolved solids, and other important water quality parameters of local impact, flooding or stream flow alteration, groundwater and surface water availability, and other characteristics as required by the MDBOM.

It further indicates that if negative impacts to hydrologic balance are defined, supplemental information beyond that already defined therein shall be required.

COMAR 08.13.09.02K(2)(g) is deleted and replaced by a requirement for provision of information on water availability and alternative water sources if PHC determination indicates contamination, diminution or interruption of a water source.

COMAR 08.13.09.02K(2)(h) is deleted and replaced by a requirement that hydrologic and geologic information for assessment of probable cumulative hydrologic impact of the proposed operation and anticipated mining on the cumulative impact study area designated by the MDBOM be furnished, if required, and the necessary raw data is available from appropriate Federal/State agencies.

COMAR 08.13.09.02K(2)(i) is deleted and subsequent existing paragraphs (j through r) are adjusted accordingly.

COMAR 08.13.09.02K(3) is added. Water quality sampling and analysis shall be conducted in accordance with methodology detailed in the 15th edition of "Standard Methods for the Examination of Water and Wastewater", or the methodology delineated in 40 CFR parts 136 and 434. Actual surface and groundwater information may be required when modeling techniques, interpolation or statistical techniques are included as part of a permit application.

COMAR 08.13.09.02O(12) is deleted and replaced with the requirement of a hydrologic reclamation plan.

COMAR 08.13.09.02O(13) is deleted and replaced with the requirement for a plan for control and treatment, if necessary, of surface and groundwater drainage in, through and out of the permit area during the life of the permit.

COMAR 08.13.09.02O(14) is deleted and replaced with a requirement for a plan addressing any potential adverse hydrologic consequences identified by the PHC determination.

In COMAR 08.13.09.02O(15) the term "mine plan area" is replaced with "permit area".

COMAR 08.13.09.02O(16) is deleted and replaced with a requirement for furnishing a plan for monitoring groundwater based upon PHC determination and analysis of all hydrologic and geologic baseline data and other information provided in the application.

COMAR 08.13.09.02O(17) is deleted and replaced with a requirement for a

plan for monitoring surface water based upon the PHC determination and the analysis of all hydrologic and geologic baseline data and other information in the permit application.

COMAR 08.13.09.23D(1) is deleted and replaced with a requirement that groundwater monitoring shall be conducted according to the approved groundwater monitoring plan.

COMAR 08.13.09.23D(2) is deleted and replaced with the requirement that the frequency of monitoring at approved monitoring locations shall be once per calendar quarter. Samples for consecutive quarters to be collected at a minimum of 60 day intervals. Groundwater monitoring data to be submitted to the MDBOM within 28 days of the end of the quarter. The operator is required to notify the MDBOM and immediately take action if the analysis of samples indicate permit noncompliance.

COMAR 08.13.09.23D(3) is deleted and replaced with a specification of minimum groundwater parameters to be monitored at each monitoring location. They include specific conductance, total suspended solids, acidity, alkalinity, pH, total iron, total manganese, sulfates, depth to water, rates of discharge, groundwater usage, and others assigned by the MDBOM.

COMAR 08.13.09.23E(1) is deleted and replaced with a requirement that surface water monitoring be conducted according to the approved surface water monitoring plan.

COMAR 08.13.09.23E(2) is deleted and replaced with a requirement setting frequency of monitoring at approved monitoring locations to be once every calendar quarter unless more frequent monitoring is required by the MDBOM. Samples of consecutive quarters to be collected at minimums of 60 day intervals. Surface water data to be submitted within 28 days of the end of the quarter.

COMAR 08.13.09.23E(3) is redesignated as E6.

COMAR 08.13.09.23E(3) is added. It specifies minimum surface water parameters to be monitored at each monitoring location. They include specific conductance, total suspended solids, acidity, alkalinity, pH, total iron, total manganese, sulfates, flows and other parameters required by the MDBOM.

COMAR 08.13.09.23E(4) is added. It requires that the permittee submit proof of filing forms for NPDES reporting requirements for the permit area; that discharges from the permit area be monitored in accordance with NPDES permits issued by The Maryland Department of Environment and that in those cases where analytical units of sample collections indicate noncompliance with a permit condition or applicable standard, the operator shall notify the MDBOM and immediately take action provided in regulation .020(12), .020(13) and .020(14) and regulation .05D(3).

COMAR 08.13.09.23E(5) is added. It establishes time frames for surface water monitoring within permit duration.

COMAR 08.13.09.23I(1) is revised by the insertion of the phrase "and in accordance with State and local laws" at the end of the first sentence.

COMAR 08.13.09.23J(1) is revised by appending the phrase "and prevent material damage outside the permit area" to the end of the paragraph.

COMAR 08.13.09.01B(42) is designated (43) and subsequent definitions are adjusted accordingly. A definition for the term "Impounding Structure" is inserted at 08.13.09.01B(42).

COMAR 08.13.09.01B(80) formerly, B(79) is modified by the insertion of the phrase "an impoundment used as" right after the term "means". The term "a" occurring after "means" is deleted.

COMAR 08.13.09.24B Subparagraphs (1) through (4) are deleted. Subparagraphs (5) through (9) are adjusted to (1) through (5) but are unchanged.

Appended to COMAR 08.13.09.24C is subparagraph (f) which requires that diversions be designed with regard to minimizing impacts to the hydrologic balance, prevention of material damage and assuring public safety.

Appended to COMAR 08.13.09.24D(1) is the following sentence fragment, "after making the finding relating to stream buffer zones that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream."

COMAR 08.13.09.24D(2)(c) is added requiring that the design and construction of diversions shall be certified by a qualified registered professional engineer as meeting performance standards and design criteria of the regulatory program.

COMAR 08.13.09.24E(3) is deleted.

COMAR 08.13.09.24F is renamed "Siltation Structures".

COMAR 08.13.09.24F(1) is redesignated F(2) and subsequent subparagraphs through F(21) are deleted.

Inserted into COMAR 08.13.09.24F(1) are definitions for: (a) "Siltation Structure", (b) "Disturbed Area" and (c) "Other Treatment Facilities."

COMAR 08.13.09.24F(2) is now titled "General Requirements for Siltation Structures."

New COMAR 08.13.09.24F(2)(a) through (g) define performance standards for siltation structures.

COMAR 08.13.09.24G is redesignated 08.13.09.24H. Subsequent sections are adjusted accordingly.

COMAR 08.13.09.24G. Sedimentation ponds is added. Design standards, construction standards and performance standards are added.

COMAR 08.13.09.24H is now COMAR 08.13.09.24I and is retitled "Impoundments". Subsections (1) through (9) are deleted.

COMAR 08.13.09.24I(1) is retitled. "General Requirements" to apply to both temporary and permanent impoundments.

COMAR 08.13.09.24I(1)(a) requires that impoundments meeting size and other requirements cited in 30 CFR 77.216(a) shall comply with 30 CFR 77.216 and this subsection.

COMAR 08.13.09.24I(1)(b) requires that the impoundments design shall be certified as designed to meet the requirements of this regulation using current, prudent engineering practices. The qualified registered professional engineer or land surveyor shall be experienced in the design and construction of impoundments.

COMAR 08.13.09.24I(2) requires impoundments to have:

(a) Minimum static safety factor of 1.5 for normal pool with steady seepage saturation conditions and a seismic safety factor of at least 1.2.

(b) Adequate freeboard.

(c) Foundation and abutments designed to be stable under the conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to ascertain design requirements for foundation stability.

(d) All vegetative and organic materials removed and foundations excavated and prepared to resist failure. Cufoff trenches shall also be installed if needed to insure stability.

(e) Slope protection to protect against surface erosion and sudden drawdown.

(f) Vegetated embankment faces and surrounding areas vegetated except that embankment faces where water is impounded *may* be riprapped or otherwise stabilized in accordance with accepted design practices.

(g) A combination of principal and emergency spillways designed and constructed to safely pass the specified design precipitation event.

(h) The vertical portion of any remaining highwall located sufficiently below the low water line to provide

adequate safety and access to proposed users.

COMAR 08.13.09.24I(3) requires inspection of the impoundment by a qualified experienced registered professional engineer (RPE) or other qualified specialist under direction of an RPE. The inspections shall be made at appropriate times during construction, upon completion of construction and at least annually until removal of the impoundment or release of performance bond.

COMAR 08.13.09.24I(4) requires submission of a certification statement signed and sealed by a Maryland RPE for each impoundment and impounding structure upon completion of construction which certifies that:

(a) The structure has been constructed in accordance with the plans and specifications in the approved permit application along with MDBOM approved modifications. As-built plans are to be provided with the certifications;

(b) Observations and measurements were made at appropriate times during and following construction by a RPE or experienced qualified person acting as a representative of, and reporting directly to, the RPE; and

(c) The completed impoundment and impounding structure meet performance and safety requirements of safe engineering practices, the regulatory program and the approved design.

COMAR 08.13.09.24I(4) also indicates that the MDBOM may require that color photographs be taken at appropriate times and submitted with the certification statement.

COMAR 08.13.09.24I(5) requires that after each annual inspection the RPE shall submit a certified report attesting that the impoundment has been maintained in accordance with the approved plan and this regulation. The report shall also discern any deficiencies, indicate depth and elevation of impounding waters, indicate existing storage capacity, explain monitoring procedures and instrumentation and/or other factors affecting stability. A copy of the report is be retained at or near the mine site.

COMAR 08.13.09.24I(6) requires that impoundments subject to 30 CFR 77.216 be examined in accordance with 30 CFR 77.216–3. Other impoundments are to be examined at least quarterly by qualified person(s) for appearance of structural weakness, etc.

COMAR 08.13.09.24I(7) requires that if examination discloses a potential hazard, the permittee shall notify the MDBOM and identify emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented the permittee shall notify the MDBOM who will notify "appropriate" agencies that other emergency procedures are required.

COMAR 08.13.09.24I(8) Permanent Impoundments. This section allows a permanent impoundment of water to be created if authorized by the MDBOM in the approved permit based upon demonstration that:

(a) The size and configuration of the impoundment will be adequate for its intended purposes.

(b) The impounded water quality will suit its permanent intended use and after reclamation, meet applicable water quality standards, and that discharges from the impoundment meet applicable effluent limitations and will not degrade receiving water quality below applicable water quality standards.

(c) The water level will be sufficiently stable to support its intended use.

(d) Final grading will provide for adequate safety and access for proposed water users.

(e) The impoundment will not diminish the quality and quantity of water use of adjacent users.

(f) The impoundment will be suitable for the approved postmining land use.

(g) The [design] spillway precipitation event will be a minimum of 25-year, 24-hour event; or larger if the MDBOM requires.

COMAR 08.13.09.24I(9) Temporary Impoundments. The MDBOM may allow temporary impoundment construction as part of a surface coal mining operation. The design precipitation event for the associated spillway shall be a 25-year, 24-hour precipitation event, or larger if required.

COMAR 08.13.09.35. Revegetation. Subsections A(1) through A(4) are deleted and replaced with revised requirements.

COMAR 08.13.09.35A(1) requires the permittee to establish a vegetative cover on regraded areas and on all other disturbed areas directed toward stabilizing the soil, minimizing downstream sediment and run-off damage and establishing permanent vegetative cover compatible with approved postmining land use (excluding roads and water areas) meeting specified performance standards.

COMAR 08.13.09.35A(2) requires that re-established vegetative cover:

(a) Be compatible with postmining land use;

(b) Have same seasonal growth characteristics as original vegetation;

(c) Be capable of self-regeneration and plant succession;

(d) Be compatible with the plant and animal species of the area; and

(e) Meet requirements of applicable laws and regulations regarding seed, poisonous and noxious plants and other introduced species.

COMAR 08.13.09.35A(3) allows exceptions to A(3)b and A(2)c when the species are necessary to get quick vegetation cover and where measures to establish permanent vegetation are included in approved permit and reclamation plans.

COMAR 08.13.09.35A(4) permits a waiver to requirements of sections A(1)a, A(1) (c), A(2)(b), and A(2)(c) when a cropland postmining land use is approved.

COMAR 08.13.09.35E is deleted.

COMAR 08.13.09.35F is deleted.

COMAR 08.13.09.35C is redesignated E.

COMAR 08.13.09.35D is redesignated G.

COMAR 08.13.09.35C is now entitled "Plant Species Selection and Land Treatment".

COMAR 08.13.09.35C(1) requires that all planting plans include provisions for a herbaceous cover coordinated with proposed postmining land use, elevation, and soil conditions.

COMAR 08.13.09.35C(2) defines treatment required for establishment of a temporary or permanent herbaceous vegetative cover.

COMAR 08.13.09.35D is now entitled "Revegetation Plan".

COMAR 08.13.09.35D(1) defines guidelines for use in development of a revegetation plan for the selected postmining land use.

COMAR 08.13.09.35E(1) allows the MDBOM to modify the mulch or other stabilizing practices if various factors result in conditions where a lower application rate is adequate.

COMAR 08.13.09.35E(5) is added to set a minimum hay or straw mulch application rate of three tons per acre.

COMAR 08.13.09.35E(6) permits substitutions of other mulching materials for hay or straw upon written request by the operator and approval by the MDBOM.

COMAR 08.13.09.35F. Backfilling and Planting Reports and Inspection is added.

COMAR 08.13.09.35F(1) requires that a backfilling and planting report be prepared by the permittee on furnished forms and filed no later than the time of submittal of mining and reclamation progress report required by Natural Resources Article 7–507B. The report shall include a location map.

COMAR 08.13.09.35F(2) requires that the permittee check all planted areas

prior to the recognized planting seasons and replant deficient areas.

COMAR 08.13.09.35F(3) provides that the MDBOM and the Land Reclamation Committee make a vegetation inspection when the planted areas have survived two years. If standards of success are met, the MDBOM would notify the operator and may reduce the amount of the bond in accordance with COMAR 08.13.09.15. If standards of success are not met, the MDBOM may order the operator to correct deficiencies.

COMAR 08.13.09.35F(4) provides that the MDBOM will make a final inspection of planted areas at the end of the five-year responsibility period. It would require the MDBOM to notify the permittee in writing of its approval or disapproval. On those areas approved, bond release procedures would be implemented. The MDBOM would be required to notify the permittee of reasons for disapproving revegetation areas.

Sections (1) and (2) of COMAR 08.13.09.35G are deleted.

COMAR 08.13.09.35G(1) requires that success of revegetation be judged on the effectiveness of the vegetation for the approved postmining land use, extent of cover when compared to cover occurring in natural vegetation of the area, and the general requirements of section A of this regulation. Success standard would be considered achieved when they are not less than 90% of the success standard using a 90% statistical confidence interval.

COMAR 08.13.09.35G(2). Success standards would be applied in accordance with the approved postmining land use and meet specified minimum standards.

Throughout COMAR 08.13.09.41, the terms "Violation Notice or Cease and Desist Order" are replaced with "Notice of Violation of Cessation Order" and the term "the operator" is replaced by "a person's".

COMAR 08.13.09.41A(3) requires that civil penalties shall be assessed whenever the MDBOM issues a cessation order for a violation that creates an imminent danger to the health and safety of the public; or is causing or can reasonably be expected to cause significant, imminent environmental harm.

COMAR 08.13.09.41B(2)(e) is added which requires the Notice to contain "a worksheet showing the computation of the proposed assessment".

COMAR 08.13.09.41B(3) is deleted and replaced with the statement that a "Service of the Notice of Proposed Assessment shall be complete upon mailing in accordance with Regulation .40H."

COMAR 08.13.09.41B(4) is deleted and replaced with the requirement that failure to serve any proposed assessment within 30 days of the issuance of a notice of violation or cessation order shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed (a) proves actual prejudice as a result of the delay; and (b) makes a timely objection to the delay.

COMAR 08.13.09.41B(5) through COMAR 08.13.09.41B(8) are deleted.

COMAR 08.13.09.41C "Penalty Assessment Criteria" is redesignated COMAR 08.13.09.41E.

COMAR 08.13.09.41D "Payment of Penalty Amount" is redesignated COMAR 08.13.09.41F.

COMAR 08.13.09.41C "Informal Review" is added.

In COMAR 08.13.09.41C(1), provision is made for allowing a person against whom a penalty has been assessed to request an assessment conference regarding the amount of penalty if the request is made within 15 days after the Notice of Proposed Assessment is service.

COMAR 08.13.09.41C(2) requires that an assessment conference be informal, conducted by the Director of the MDBOM or his designee, and that its purpose be restricted to discussion of the amount of penalty only.

COMAR 08.13.09.41C(3) requires that the assessment conference be held within 60 days from the date of issuance of the notice of proposed assessment, or the end of the abatement period, whichever is later. Failure to hold the conference within this time period will not be grounds for dismissal of all or part of the proposed assessment unless assessee can prove prejudice as a result of the delay.

COMAR 08.13.09.41C(4) requires posting of the date and time of the assessment conference a minimum of five days before the conference to any person who has the right to attend or participate in the conference.

COMAR 08.13.09.41C(5) indicates that an assessment conference may result in an increase or decrease in the amount of the penalty.

COMAR 08.13.09.41C(6) requires that a settlement agreement may be entered at the conference under which the operator waives all further rights of appeal except as stated in the agreement. If, within 30 days, the operator defaults on the agreement, the MDBOM may enforce it or rescind it and proceed with final assessment within 30 days from the date or rescission.

COMAR 08.13.09.41C(7) requires that the MDBOM send by certified mail a Notice of Final Assessment (NOFA) within 30 days of the conclusion of the assessment conference, if any, or within 30 days of issuance of the notice of proposed assessment. The notice shall contain the basis of the violation, the amount of penalty and a worksheet if the penalty has been adjusted.

COMAR 08.13.09.41C(8) requires that the service of the NOFA shall be complete upon mailing in accordance with Regulation O.40H.

COMAR 08.13.09.41D "Formal Review" is added.

COMAR 08.13.09.41D(1) permits formal review of final penalty assessment upon submittal of an escrow deposit equal to the final assessment amount along with a request for formal review within 30 days of receipt of the NOFA. The hearing is to be conducted in accordance with Regulation .43. The formal review of assessment may be combined with formal review of violation if the violator has requested formal review of the underlying violation under Regulation .40J and the fact of violation has not been adjudicated.

COMAR 08.13.09.41D(2) indicates that the fact of violation (FOV) may not be contested if no hearing to review the NOV or CO has been requested or if the FOV has been decided in a review proceeding under Regulation .40.

COMAR 08.13.09.41D(3) permits the hearing office to increase or decrease the final assessment at conclusion of an adjudicatory hearing.

COMAR 08.13.09.41E(1)(a) the maximum amount for the CO category is changed from $1,000 to $2,000.

In COMAR 08.13.09.41E(1)(c) and (d), the term "operator" is replaced with the term "person".

In COMAR 08.13.09.41E(1)(e), the maximum amount of penalty for effect of violation on reclamation is reduced from $1,500 to $500.

In COMAR 08.13.09.41F(3), the refunding time frame for appeals resulting in elimination or reduction of a penalty, is extended from 15 days to 30 days.

In COMAR 08.13.09.41G entitled "Individual Civil Penalties", definitions are provided in Subsection (1) for (a) "Knowingly", (b) "Violation, failure or refusal", and (c) "Willfully".

COMAR 08.13.09.41G(2) provides that the Department may assess an individual civil penalty against any corporate permittee officer, agent or director responsible for a violation, failure or refusal.

By COMAR 08.13.09.41G(3), an individual civil penalty due to a corporate permittee permit violation

cannot be assessed until a CO has been issued to the corporate permittee for the violation and the CO has remained unabated for 30 days.

COMAR 08.13.09.41G(4) defines the criteria for determining the amount of an individual civil penalty assessed.

By COMAR 08.13.09.41G(5), each penalty violation shall not exceed $5,000. Each day of a continuing violation may be deemed a separate violation and a separate individual civil penalty may be assessed for each day the violation, failure or refusal continues.

By COMAR 08.13.09.41G(6), a notice of proposed individual civil penalty assessment shall be served.

By COMAR 08.13.09.41G(7), the proposed individual civil penalty notice will become a final order 30 days afer service upon the individual unless:

(a) Individual files a petition for review within 30 days of the service, or

(b) The Department and involved parties agree within 30 days of the service to a schedule or a plan for abatement or correction of the violation.

By COMAR 08.13.09.41G(8), service of the Notice shall be complete upon mailing in accordance with Regulation .40H.

By COMAR 08.13.09.41G(9), if a notice of proposed individual civil penalty assessment becomes a final order without a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

COMAR 08.13.09.41G(10) requires that if an individual named in the notice of proposed individual civil penalty assessment files as petition for review, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

In COMAR 08.13.09.41G(11), upon execution of a written plan for compliance with an unabated order, an individual named in the notice may postpone payment until receipt of a final order stating that the penalty is due or written notice that abatement/compliance is satisfactory and penalty is withdrawn.

By COMAR 08.13.09.41G(12), following expiration of 30 days after the issuance of a final order assessing an individual civil penalty, a delinquent penalty shall be subject to interest at the rate of six percent per annum. The civil penalty is payable to the State and collectable in any manner provided by law for collection of debts.

III. Public Comment Period

In accordance with the provisions of 30 CFR 732.17(b), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.17. If the amendments are deemed adequate, they will become part of the Marylnd program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on February 6, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Person wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining

Dated: January 11, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-1362 Filed 1-19-90; 8:45 am]

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DEPARTMENTOF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Penile Implants, Testicular Prosthesis, Correction of Sex Gender Confusion

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This amendment proposes to revise the DoD Regulation 6010.8-R (32 CFR part 199) by establishing coverage under the CHAMPUS program for Food and Drug Administration (FDA) approved penile implants when performed for organic impotency, and for FDA approved penile implants and testicular prostheses when performed following disease, trauma, injury, radical surgery, for correction of a congenital anomaly, or sex gender confusion (that is, ambiguous genitalia) which has been documented to be present at birth. This amendment also removes the current regulatory restriction for completion of the correction of sex gender confusion by the age of ten.

DATES: Written public comments must be received on or before February 21, 1990.

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

FOR FURTHER INFORMATION CONTACT: Judy Carroll, Office of Program Development, OCHAMPUS, telephone (303) 361-3521.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title 32 CFR part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 42008) Currently, CHAMPUS does not extend benefits for penile implants or testicular prostheses. Current statutory provisions prohibiting CHAMPUS coverage for therapy or counseling for sexual dysfunctions or

inadequacies resulted in similar language being incorporated in the regulation and the specific mention of the penile implant and testicular prosthesis as CHAMPUS program exclusions. Historically, these exclusions have been interpreted to apply to all medical conditions and to prohibit CHAMPUS reimbursement in all instances.

However, the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) has recently reviewed the legislative history and intent of the existing statutory exclusion for therapy or counseling for sexual dysfunctions or inadequacies. The ASD(HA) review determined that the current statutory language was intended to exclude sex therapy, sexual advice, sexual counseling, sex behavior modification, and other similar activities, but was not intended to prohibit payment by CHAMPUS for otherwise appropriate medical (non-psychiatric) or surgical care provided to correct sexual dysfunctions or sexual inadequacies resulting from organic origin (i.e., certain medical diseases, radical surgical procedures, trauma, injury, etc.).

As a result of this review and interpretation, OCHAMPUS feels that continued denial of CHAMPUS program benefits for the penile implant and testicular prosthesis when performed as treatment for conditions of organic origin is inappropriate and no longer supportable under current statutory and regulatory language.

At this time, we are also proposing to amend the regulation to allow benefits for correction of sex gender confusion (that is, ambiguous genitalia) documented to be present at birth when determined to be medically appropriate. Current regulatory language allows benefits for sex gender confusion (that is, ambiguous genitalia), performed on a child 10 years of age and under. However, it has been brought to our attention through several recent case histories that many of the surgical procedures for the correction of sex gender confusion require a growth period, and as a result of this growth requirement, total correction cannot be completed by the age of ten. Therefore, OCHAMPUS feels removal of the age restriction to be more in keeping with general medical practice. We are including this proposed amendment now, since there may be instances in which correction of sex gender confusion may involve the penile implant or testicular prosthesis procedures.

In implementing this proposed amendment, we have chosen several effective dates which reflect either national endorsement by technology assessment bodies, specific case circumstances upon which an OCHAMPUS decision to implement was made, and employment of normal implementing OCHAMPUS procedures which are based on regulatory publication. The effective dates are as follows: For the penile implant procedure October 1, 1988 (date selected based on a recognized national assessment); for the testicular prosthesis (date of publication in the **Federal Register**, a date which is normally used to establish OCHAMPUS benefit coverage); and for correction of sex gender confusion (that is, ambiguous genitalia) after the age of ten, June 19, 1987 (date based on specific case circumstances necessitating this change).

This proposed rule offers coverage for services now unavailable to the CHAMPUS beneficiary population, but which are available to their civilian counterparts. It is an enhancement of military benefits.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues regulation which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation amendment will not have a significant impact on a substantial number of small businesses, organizations, or government jurisdictions. The proposed rule will broaden the scope of CHAMPUS benefits by extending benefits to include coverage for penile implants, testicular prostheses, in certain instances, and for the correction of sex gender confusion (that is, ambiguous genitalia) when documented to be present at birth when determined to be medically appropriate. It will not involve any significant burden on CHAMPUS beneficiaries or providers. Increase in program costs associated with this change are not substantial since we expect that less than one percent of the CHAMPUS population will require such services.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR, is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising paragraphs (e)(7), (e)(8)(ii)(A) and (D), (e)(8)(iv) (Q) and (R), (g) (29) and (30), by redesignating paragraph (e)(8)(i)(E) as (e)(8)(i)(F), adding a new paragraph (e)(8)(i)(E) and a note after (e)(8)(i)(E) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(7) *Transsexualism or such other conditions as gender dysphoria.* All services and supplies directly or indirectly related to transsexualism or such other conditions as gender dysphoria are excluded under CHAMPUS. This exclusion includes, but is not limited to, psychotherapy, prescription drugs, and intersex surgery that may be provided in connection with transsexualism or such other conditions as gender dysphoria. There is only one very limited exception to this general exclusion, that is, notwithstanding the definition of congenital anomaly, CHAMPUS benefits may be extended for surgery and related medically necessary services performed to correct sex gender confusion (that is, ambiguous genitalia) which has been documented to be present at birth.

(8) * * *

(i) * * *

(E) Penile implants and testicular prostheses for conditions resulting from organic origins (i.e., trauma, radical surgery, disease process, for correction of congenital anomoly, etc.). Also, penile implants for organic impotency.

Note: Organic impotence is defined as that which can be reasonably expected to occur following certain diseases, surgical procedures, trauma, injury, or congenital malformation. Impotence does not become organic because of psychological or psychiatric reasons.

* * * * *

(ii) * * *

(A) For the purposes of CHAMPUS, dental congenital anomalies such as absent tooth buds or malocclusion specifically are excluded. Also excluded are any procedures related to transsexualism or such other conditions as gender dysphoria, except as provided in subsection (e)(7) of the section.

* * * * *

(D) In addition, whether or not it would otherwise qualify for benefits under paragraph (e)(8)(i) of this section, the breast augmentation mammoplasty is specifically excluded.

(iv) * * *

(Q) Penile implant procedure for psychological impotency, transsexualism, or such other conditions as gender dysphoria.

(R) Insertion of prosthetic testicles for transsexualism, or such other conditions as gender dysphoria.

* * * * *

(g) * * *

(29) *Transsexualism or such other conditions as gender dysphoria.* Services and supplies related to transsexualism or such other conditions as gender dysphoria (including but not limited to intersex surgery, psychotherapy, and prescription drugs), except as specifically provided in paragraph (e)(7) of this section.

(30) *Therapy or counseling for sexual dysfunctions or sexual inadequacies.* Sex theraphy, sexual advice, sexual counseling, sex behavior modification, or other similar services, and any supplies provided in connection with therapy for sexual dysfunctions or inadequacies.

* * * * *

Dated: January 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-1219 Filed 1-19-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

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

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

ACTION: Notice of availability of an amendment to a fishery management plan and a minority report, and request for comments.

SUMMARY: NOAA announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have resubmitted previously disapproved proposals contained in Amendment 3 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) for review by the Secretary of Commerce (Secretary) and are requesting comments from the public. Also, the Gulf of Mexico Council has submitted a minority report.

DATE: Written comments will be accepted on or before February 20, 1990.

ADDRESSES: Copies of the amendment and the mnority report are available from the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407-4699.

Comments should be sent to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Mark envelopes, "Comments on Amendment 3."

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

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and subsequent approval or disapproval. The Magnuson Act also requires that the Secretary, upon receipt, immediately publish a notice that the document is available for public review and comment. Pertinent comments received during the prescribed public review period will be considered by the Secretary in determining the approvability of the proposed action.

In conformance with these requirements, the Councils previously submitted Amendment 3 on March 14, 1989. Subsequently, a notice of availability (54 FR 11252, March 17, 1989), proposed rule (54 FR 14256, April 16, 1989) and a final rule (54 FR 29561, July 13, 1989) announcing partial approval were published in the **Federal Register.** Prohibition of the use of drift gill nets on the overfished migratory groups of (king and Spanish mackerel in the Gulf and Spanish Mackerel in the Atlantic) were approved along with other measures to clarify the regulations. The proposed prohibitions of drift gill nets, run-around gill nets, and purse seines for the harvest of Atlantic group king mackerel were not approved, neither was the proposed prohibition of drift gill net use to take any managed coastal migratory pelagic species (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and in the Gulf of Mexico only, bluefish). A newly proposed FMP objective to minimize waste and bycatch in the fishery was also disapproved. Disapprovals were based upon insufficient justification for the proposed actions, and non-compliance with the Magnuson Act and other applicable law.

The Councils have resubmitted the previously disapproved proposals. The resubmitted proposals would (1) prohibit the use of drift gill nets for the taking of all managed coastal migratory pelagic fishes. The prohibition would apply throughout the management areas of the South Atlantic and Gulf of Mexico Fishery Management Councils and would additionally prohibit the retention of managed species taken by other drift gill net fisheries. Additionally, the amendment proposes prohibiting the use of (2) purse seines and (3) run-around gill nets in the fishery for Atlantic group king mackerel when the resource is declared overfished by the Stock Assessment Panel and, in the opinion of the Councils, the respective commercial quota can be harvested by existing gear (excluding drift gill nets). The amendment would also (4) add to the FMP a new objective to minimize waste and bycatch in the fishery.

The minority report by dissenting Gulf of Mexico Council members states their objections to the proposed prohibition of drift gill nets.

Regulations proposed by the Councils to implement previously disapproved Amendment 3 proposals are scheduled to be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: January 16, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management.

[FR Doc. 90-1330 Filed 1-16-90; 4:34 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 14
Monday, January 22, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of two meetings of the Committee on Regulation of the Administrative Conference of the United States.

Committee on Regulation

Date: Friday, February 2, 1990
Time: 10:00 am-1:00 pm
Location: Administrative Conference 2120 L Street NW., Suite 500, Washington, DC (Library, 5th floor).
Agenda: The committee will meet to discuss a study of disclosure of risk information, conducted by Professor Michael Baram of Boston University School of Law.
Contact: David M. Pritzker, 202-254-7065

Committee on Regulation

Date: Friday, February 23, 1990
Time: 10:00 am-1:00 pm
Location: Administrative Conference 2120 L Street NW., Suite 500, Washington, DC (Library, 5th floor).
Agenda: The committee will meet to discuss a study of the drug approval process of the Food and Drug Administration for AIDS drugs, conducted by James T. O'Reilly, adjunct professor of the University of Cincinnati. The Committee may also continue its consideration of Professor Michael Baram's study of disclosure of risk information.
Contact. David M Pritzker, 202-254-7065

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairman may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

Dated: January 17, 1990.

Michael W. Bowers,
Deputy Research Director.

[FR Doc. 90-1432 Filed 1-19-90; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Standing Rock Sioux Tribe of the Standing Rock Indian Reservation in North Dakota and South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11136, I have determined that:

1. The chronic economic distress of the needy members of the Standing Rock Sioux Tribe of the Standing Rock Reservation in North Dakota and South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Standing Rock Sioux Tribe for grazing purposes.

2. The use of feed grain or proudcts thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau opf Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands These donations by CCC may commence upon January 20, 1990, and shall be made available through May 15, 1990, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on January 16, 1990.

John A. Stevenson,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90-1380 Filed 1-19-90; 8:45 am]
BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 89-215]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or leasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The

regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application Number	Applicant	Date Received	Organism	Field Test Location
89-320-01	Calgene, Inc.	11-16-89	Tomato plants genetically engineered to contain the anti-sense polygalacturonase gene.	Florida.
89-326-03	Ciba-Geigy Corp.	11-22-89	Tobacco plants genetically engineered to contain the delta-endotoxin gene from *Bacillus thuringiensis* for insect resistance.	North Carolina.
89-339-01	Northrup King Company	12-05-89	Cotton plants genetically engineered for insect resistance using *Bacillus thuringiensis* or for tolerance to the herbicide glyphosate.	Mississippi.

Done in Washington, DC, this 17th day of January 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-1381 Filed 1-19-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-214]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in Isabela, Puerto Rico, of soybeans genetically engineered to tolerate the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of any plant pest and will not have any significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Cathy Joyce, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-208-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to tolerate the herbicide glyphosate. The field trial will take place in Isabela, Puerto Rico.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate has been inserted into the soybean chromosome. In nature, chromosomal genetic material of soybeans can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because soybean is predominantly a self-pollinating plant and the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvylshikimate-3-phosphate synthase gene itself, nor its gene product, confers on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvylshikimate-3-phosphate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvylshikimate-3-phosphate synthase gene does not provide the transformed soybean plants with any apparent selective advantage over nontransformed soybean in the ability to be dissemianted or to become established in the environment.

5. The vectors used to transfer the 5-enolpyruvylshikimate-3-phosphate synthase gene to soybean plants have been evalauted for their use in this specific experiment and do not pose a plant pest risk. Although two of the vectors contain DNA sequence that was derived from DNA sequence with known plant pest potential, the vectors have been disarmed by the removal of the genes that are necessary for producing plant disease.

6. The vector agent, a bacterium that was used to deliver the vector DNA and the 5-enolpyruvylshikimate-3-phosphate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene is not possible. The foreign DNA is stably integrated into the plant genome.

8. Glyphosate is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicide commonly used.

9. The field test site is small (less than 2.75 acres) and is located on a private research farm that is completely surrounded by a fence.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 17th day of January 1990.

Larry B. Slagle,

Acting Administrator Animal and Plant Health Inspection Service.

[FR Doc. 90–1382 Filed 1–19–90; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

Science and Education Competitive Research Grants Office Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, the Cooperative State Research Service announces the following meeting:

Name: Science and Education Competitive Research Grants Office Advisory Committee.

Date: March 1, 1990.

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 338–C, Aerospace Building, 901 D Street SW., Washington, DC 20521.

Type of Meeting: Open to the public. Persons may participate in the meeting as the time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedure to be followed in implementing those programs of research grants to be awarded competitively.

Contact Person for Agenda and More Information: Dr. William D. Carlson, Associate Administrator, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 324–A, Administration Building, Washington, DC 20250, telephone 202–475–5720.

Done at Washington DC., this 22 day of December, 1989.

William D. Carlson,

Associate Administrator.

[FR Doc. 90–1376 Filed 1–19–90; 8:45 am]

BILLING CODE 3410-MT-M

Farmers Home Administration

Rural Rental Housing Displacement Prevention; Solicitation to Non-Profit Organizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The interim rule published April 22, 1988, (53 FR 13244) based on the Tenant Displacement Prevention Provisions of the Housing and Community Development Act of 1987, provides that certain categories of rural rental housing (RRH) borrowers who wish to prepay their loans must first attempt to sell their projects to non-profit organizations. In order to expedite this process, FmHA maintains a list of non-profit organizations which may wish to purchase such projects. The intended effect of this notice is to invite non-profit organizations to be placed on this list in order to be notified when RRH borrowers request to prepay their loans.

ADDRESSES: Eligible regional and nationwide organizations should submit their names, addresses, contact persons and area(s) of interest to the Multiple Housing Servicing and Property Management Division, FmHA, Room 5321, South Agriculture Building, Washington, DC 20250. Information submitted will be compiled and forwarded to the States periodically.

SUPPLEMENTARY INFORMATION: Intergovernmental Consultation: This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.427, Rural Rental Assistance Payments (Rental Assistance); 10.415, Rural Rental Housing Loans; 10.405, Farm Labor Housing Loans and Grants and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

Discussion: By means of this Notice, FmHA is soliciting expressions of interest by local, regional, and National non-profit organizations interested in purchasing multifamily housing projects, in accordance with the procedures contained in Paragraph VI of Exhibit E of subpart B of part 1965. FmHA procedure provides that borrowers who wish to prepay rural rental housing (RRH) loans which FmHA determines are still needed for low- and moderate-income use must be offered an incentive to remain within the FmHA program. If the borrowers reject the incentive offer, they must try to sell the project to a non-profit organization which meets certain requirements. Prepayment may be accepted if a qualified non-profit purchaser is not found.

Local and Statewide non-profit organizations which meet the requirements contained in Paragraph VI C of Exhibit E of subpart B of part 1965 should submit their names, addresses and contact persons to the FmHA State Office(s) in the States in which they are eligible. State Offices will be responsible for compiling and forwarding the information provided by the eligible organizations to the appropriate District Offices. Borrowers will be required to update the information for inclusion on this list annually.

The following is a list of State Offices. All correspondence should be directed to the Multiple Housing Coordinator.

Dale N. Richey, State Director, FmHA, Aronov Building, Rm. 717, 474 South Court Street, Montgomery, AL 36104

Roger E. Willis, State Director, FmHA, 634 South Bailey, Suite 103, Palmer, AK 99645
Clark R. Dierks, State Director, FmHA, 201 East Indianola, Suite 275, Phoenix, AZ 85012
Robert L. Hankins, State Director, FmHA, 700 West Capitol, Post Office Box 2778, Little Rock, AR 72203
Richard E. Mallory, State Director, FmHA, 194 West Main Street, Suite F, Woodland, CA 95695-2195
Judy Jaklich, State Director, FmHA, Room E-100, 655 Parfet Street, Lakewood, CO 80215
G. Wallace Caulk, State Director, FmHA, 2319 South DuPont Highway, Dover, DE 19901
L. James Cherry, Jr., State Director, FmHA, 401 S.E. 1st Ave., Rm. 214, Gainesville, FL 32601-6805
Thomas M. Harris, Director, FmHA, Stephens Federal Building, 355 East Hancock Avenue, Athens, GA 30610
Daniel K. J. Lee, State Director, FmHA, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720
Mike A. Field, State Director, FmHA, 3232 Elder Street, Boise, ID 83705
Robert W. Chambers, Jr., State Director, FmHA, Illini Plaza III—Suite 103, 1817 South Neil Street, Champaign, IL 61820
George A. Morton, State Director, FmHA, 5975 Lakeside Boulevard, Indianapolis, IN 46278
Robert R. Pim, State Director, FmHA, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309
John R. Price, State Director, FmHA, 444 S. E. Quincy Street, Room 176, Topeka, KS 66683
Mary Ann Baron, State Director, FmHA, 333 Waller Avenue, Lexington, KY 40504
John C. McCarthy, State Director, FmHA, 3727 Government Street, Alexandria, LA 71302
Nathaniel A. Churchill, State Director, FmHA, USDA Office Building, Orono, ME 04473
Everett C. Paluska, State Director, FmHA, 451 West Street, Amherst, MA 01002
Calvin C. Lutz, State Director, FmHA, 1405 South Harrison Road, Room 209, East Lansing, MI 48823
Russ Bjorhus, State Director, FmHA, 410 Farm Credit Building, 375 Jackson Street, St. Paul, MN 55101-1853
James B. Huff, Sr., State Director, FmHA, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269
Douglas A. Elliott, State Director, FmHA, 555 Vandiver Drive, Columbia, MO 65202
Roger J. Meredith, Acting State Director, FmHA, Federal Building, Rm. 210, 10 East Babcock Street, Post Office Box 850, Bozeman, MT 59715
James L. Howe, State Director, FmHA, Federal Building, Rm. 308, 100 Centennial Mall N., Lincoln, NE 68508
Takashi Moriuchi, State Director, FmHA, 100 High Street, Suite 100, Mt. Holly, NJ 08060
Vivian G. Cordova, State Director, FmHA, Federal Building, Rm. 3414, 517 Gold Avenue, SW., Albuquerque, NM 87102
Pierrre L. Labourdette, State Director, FmHA, James M. Hanley Federal Building, Room 871, 100 South Clinton Street, Syracuse, NY 13260
Larry W. Godwin, Sr., State Director, FmHA, 310 New Bern Avenue, Rm. 525, Raleigh, NC 27601
Marshall W. Moore, State Director, FmHA, Federal Building, Rm. 208, Third and Rosser, Post Office Box 1737, Bismarck, ND 58502
Allen L. Turnbull, Acting State Director, FmHA, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215
Ernest Hellwege, State Director, FmHA, USDA Agricultural Center Building, Stillwater, OK 74074
David T. Chen, State Director, FmHA, Federal Building, Rm. 1590, 1220 S. W. 3rd Avenue, Portland, OR 97204
D. Elmer Hawbaker, State Director, FmHA, Federal Building, Rm. 730, Post Office Box 905, Harrisburg, PA 17108
Julia R. deVincenti, State Director, FmHA, Federico Degetau Federal Building, Rm. 623, Carlos Chardon Street, Hato Rey, PR 00918
Roy E. Pittman, State Director, FmHA, Strom Thurmond Federal Building, 1835 Assembly Street, Rm. 1007, Columbia, SC 29201
Marvis T. Hogan, State Director, FmHA, Federal Building, Rm. 308, 200 Fourth Street, SW., Huron, SD 57350
Randle B. Richardson, State Director, FmHA, Federal Building, U.S. Courthouse, Rm. 538, 801 Broadway, Nashville, TN 37203
J. Lynn Futch, State Director, FmHA, Federal Building, Suite 102, 101 South Main, Temple, TX 76501
E. Lee Hawkes, State Director, FmHA, Wallace F. Bennett Federal Building, 125 South State Street, Rm. 5438, Salt Lake City, UT 84138
Bernice R. Murray, State Director, FmHA, 141 Main Street, Post Office Box 588, Montpelier, VT 05602
Robert Boyd, Acting State Director, FmHA, Federal Building, Rm. 8213, 400 North 8th Street, Richmond, VA 23240
Earl F. Tilly, State Director, FmHA, Federal Building, Rm. 319, Post Office Box 2427, Wenatchee, WA 98807
John C. Musgrave, State Director, FmHA, Post Office Box 678, 75 High Street, Morgantown, WV 26505
Ronald W. Caldwell, State Director, FmHA, 1257 Main Street, Stevens Point, WI 54481
Michael F. Ormsby, State Director, FmHA, 100 East B, Federal Building, Rm. 1005, Post Office Box 820, Casper, WY 82602

Dated: January 12, 1990.

Neal Sox Johnson,

Acting Administrator Farmers Home Administration.

[FR Doc. 90-1332 Filed 1-19-90; 8:45 am]

BILLING CODE 3410-07-M

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 1990

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291 and has been classified as *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1990 Program. Adjustments are based on changes in

the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1988 through November 1989.

National Youth Sports Program Rates

Section 102 of Public Law 101-147, the Child Nutrition and WIC Reauthorization Act of 1989 amended section 13 of the National School Lunch Act to authorize the National Youth Sports Program (NYSP) to receive reimbursement under the SFSP for meals served to NYSP participants during the academic year (October through April) subject to certain conditions. As provided for in Public Law 101-147, meals served during the academic year will be reimbursed at rates established for the National School Lunch and School Breakfast Programs. However, meals served during the summer months (May through September) to participants in the NYSP will be reimbursed at the SFSP rates as indicated in this notice. Further discussion of the rates for participants in the academic year will appear in upcoming regulations governing the SFSP and rates notices dealing with those programs.

The new 1990 reimbursement rates in dollars are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs

Breakfast	1.0400
Lunch or Supper	1.8700
Supplement	.4900

Administrative Cosats

a. For meals served at rural or self-preparation sites:

Breakfast	.0975
Lunch or Supper	.1775
Supplement	.0475

b. For meals served at other types of sites:

Breakfast	.0775
Lunch or Supper	.1475
Supplement	.0375

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals for each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 4.69 per cent increase during 1989 (from 123.7 in November 1988 to 129.5 in November 1989) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: January 12, 1990.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 90-1398 Filed 1-19-90; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Bohemia Mountain Area Analysis; Stikine Area, Tongass National Forest, Petersburg, Alaska; Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) on the proposed Bohemia Mountain timber sale located on north Kupreanof Island, (Value Comparison Units 424, 441, and 442) on the Petersburg Ranger District. The analysis documented in the EIS may result in a decision to road a previously unroaded area and harvest timber in conformance with the Tongass Land Management Plan.

The Tongass Land Management Plan allocated most of this portion of Kupreanof Island to Land Use Designation (LUD) IV and a small portion to LUD II.

LUD II lands are to be managed in a roadless state to retain their wildland character. Roads will be permitted for specifically authorized uses only. The area allocated to LUD IV calls for intensive resource development where the emphasis is primarily on commodity or market resources.

Previous analysis of Kupreanof Island has resulted in Environmental Impact Statements and Records of Decision for timber harvest and road construction on south Lindenburg Penninsula and in the North Irish Creek drainage; and Environmental Assessments and Decisions Notices for timber harvest and road construction activity near Tonka Mountain, Todahl Creek, Totem Bay, Toncan (south Lindenberg Penninsula) and the Bohemia Range areas.

A range of alternative road and harvest unit locations and designs, including a "no action" alternative will be considered. The potential affects will be estimated and disclosed in the EIS. The total road network needed to access commercial timber will be examined as well as multi-entry timber harvest unit layout. The ID Team will also develop an alternative to explore the possibility of accessing and harvesting 30 to 40 MMBF of commercially forested lands (CFL) while meeting the minimum standards and guidelines in the Regional guide. This will be considered for several reasons including: Poor species composition, poor quality cedar, current high market values which may increase salability, and apparent low impacts to other resources including visual quality and wildlife in the proposed cutting areas.

Initial scoping has begun. Federal, State, and local agencies; potential contractors; and other individuals or organizations who may be interested in, or affected by, the decision are invited to participate in the scoping process.

The environmental analysis will take approximately 8 months. The Draft EIS should be available for public review by early September 1990. The Final EIS is scheduled for completion by mid July 1991.

Ronald R. Humphrey, Forest Supervisor, Stikine Area, Tongass National Forest, is the responsible official.

Written comments and suggestions concerning the analysis and Environmental Impact Statement should be sent to Tammy Skeens, ID Team Leader, Supervisor's Office, Stikine Area, Tongass National Forest, P.O. Box 309, Petersburg, Alaska, 99833, phone (907) 772-3841.

Dated: January 8, 1990.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 90-1321 Filed 1-19-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 1-90]

Foreign-Trade Zone 45—Portland, OR; Application for Expansion and Reorganization

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland, grantee of FTZ 45, requesting authority to expand its zone in Multnomah County, Oregon, within the Portland Customs port of entry. The application includes requests for manufacturing authority within the expanded zone on behalf of Oregon Steel Mills, Inc., and Tektronix, Inc., as well as authority for shipbuilding activity within the Port's shipyard facility. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part

400). It was formally filed on January 11, 1990.

FTZ 45 was approved by the Board on December 18, 1978 (Board Order 140, 43 FR 60323, 12/27/78). It currently consists of: 62 acres within the Port's Rivergate Industrial Park; a nearby warehouse (Northern Warehousing, Inc.); a 3-acre site at the Portland Ship Repair Yard; and, a temporary 3.7-acre warehouse/processing facility (Tektronix, Inc.) which expires August 30, 1990.

The grantee is now requesting authority to expand the zone and establish the following revised site plan:

Site 1—1,830 acres (including the existing 62 acres) within the 3000-acre Rivergate Industrial Park, including Port Terminal Nos. 5, 6 and the Oregon Steel Mills plant (including its nearby auxiliary facility).

Site 2—1,163 acres (5 parcels) at the Portland International Airport.

Site 3—254 acres at the Port-owned Portland Ship Repair Yard, 5555 N. Channel Avenue (including the existing 3 acres).

Site 4—Port Terminal No. 1, 2200 NW. Front Street (43 acres).

Site 5—Port Terminal No. 2, 3556 NW. Front Avenue (49 acres).

Site 6—Port Terminal No. 4, N. Terminal Road and N. Lombard Street (241 acres) and adjacent to Northern Warehousing facility (40,000 sq. ft.).

Site 7—Tektronix, Inc., facility (3.7 acres), 14400 SW Millikan Way, Beaverton (currently under temporary zone status).

The proposed manufacturing activity is as follows:

Oregon Steel Mills (OSM)—production of hot rolled, alloy and heat-treated steel plate (6.0% duty rate) from domestic- and foreign-sourced semi-finished slabs (4.2% duty rate). The mill exports a significant amount of its production. Zone procedures would exempt OSM from Customs duty payment on the foreign items that are reexported. On its domestic sales, OSM is seeking an exemption from Customs duties on scrap as well as duty deferral.

Portland Ship Repair Yard (PSRY)—construction and repair of oceangoing an inland waterway vessels. Foreign-sourced items include sheet, pipe and tubing of steel, copper, brass, bronze or aluminum, engines, propellers, gears, bearings, fittings, cable, chain, heating and cooling equipment, communication/navigation equipment, and miscellaneous vessel equipment and fabricated parts. Most of the imported items are subject to significant duties (up to 11%) while the finished products, as commercial vessels, are duty-free. The applicant is aware that the FTZ Board has required full payment of Customs duties on foreign steel in its past shipyard decisions.

Tektronix, Inc.—repair electronic equipment (such as oscilliscopes) for reexport (operation currently approved under temporary authority, A-11-89, 8/4/89). The Port is requesting permanent authority for the export activity.

The sites have a number of tenants who have expressed interest in using zone procedures for warehousing and processing operation. The manufacturing proposals are outlined above. Further requests for manufacturing authority would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Thomas Hardy, District Director, U.S. Customs Service, Pacific Region, 511 NW Boradway, Federal Building, Room 198, Portland, Oregon 97209; and, Colonel Charles E. Cowan, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, Oregon 97208-2946.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 1, 1990.

A copy of the application is available for public inspection at each of the following locations:

Office of the Director, U.S. Department of Commerce District Office, 1220 SW Third Avenue, Room 618, Portland, OR 97204.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: January 16, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-1413 Filed 1-19-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Emory University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 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 subsections 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 8:30 a.m. and 5 p.m. in Room 2841, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-261.

Applicant: Emory University, Atlanta, GA 30322.

Instrument: Integrated Surface Analysis System, Model ELS 22.

Manufacturer: Leybold, West Germany.

Intended Use: The instrument will be used for studies of the mechanisms of syntheses of groups III and V semiconductors (GaAs, InP and their heterostructures), II and VI semiconductors (HgCdTe, CdS, . . .) and the mechanisms of silicon, GaAs and InP etching (fabrication) chemistry. Experiments will consist of employing the state-of-the-art laser and electron ionization mass spectrometry to detect and analyze gas phase reaction products in the reaction chamber during the deposition or etching reaction and subsequently transferring the processed semiconductors to analysis chambers which contain XPS, AES, UPS, ISS, LEED and HREELS spectrometers, without being exposed to air. The instrument will also be used in the course: Advanced Research principles of experimental surface analysis techniques.

Application Received by Commissioner of Customs: October 31, 1989.

Docket Number: 89-266.

Applicant: University of Arizona, Department of Hydrology and Water Resources, Building 11, Tucson, AZ 85721.

Instrument: Mass Spectrometer, Model VG 336.

Manufacturer: VG Isotech, Ltd., United Kingdom.

Intended Use: The instrument will be used to study stable isotopic ratios in geologic materials and ground water. Experiments will involve fractionation of the isotopes of elements such as boron and lithium in natural and synthetic samples to determine the utility of this information in evaluating the movement of ground water.

Application Received by Commissioner of Customs: November 3, 1989.

Docket Number: 89–276.

Applicant: Boston Biomedical Research Institute, 20 Staniford Street, Boston, MA 02114.

Instrument: Stopped-flow Accessory for Spectrometer, Model RX.1000.

Manufacturer: Applied Photophysics, Ltd., United Kingdom.

Intended Use: The instrument will be used in biochemical experiments to observe complex interactions among muscle proteins and rapid interaction of protein components as these relate to disease processes. The instrument will also be used for research training of all levels of students.

Application Received by Commissioner of Customs: November 13, 1989.

Docket Number: 89–279.

Applicant: Auburn University, Department of Civil Engineering, 238 Harbert Engineering Center, Auburn University, AL 36849.

Instrument: Structural Test System, Model HST.1/12.

Manufacturer: Hi-Tech Scientific, Ltd., United Kingdom.

Intended Use: The instrument will be used in the following courses:

CE 360: Theory of Structures: Basic Structural analysis of determinant structure—To introduce the student to the fundamentals of determinant structural analysis.

CE 207: Mechanics of Solids: Principles of Strength of Materials—To introduce students to the mechanical properties of structural materials, and how to evaluate the stress and deformation states of bars, members and structural systems.

Application Received by Commissioner of Customs: November 20, 1989.

Docket Number: 89–280.

Applicant: Thomas Jefferson University, 11th and Walnut Streets, Philadelphia, PA 19107.

Instrument: Electron Microscope, Model JEM–100CX.

Manufacturer: JEOL Ltd., Japan.

Intended Use: The instrument will be used to study .1–.25 micrometer thick sections from decalcified and non-decalcified long bones in fetal, neonatal and adult mice during experiments to better understand the normal growth and development of bone and the abnormal growth and development of bone resulting in skeletal dysplasia.

Application Received by Commissioner of Customs: November 22, 1989.

Docket Number: 89–284.

Applicant: Emory University, 1441 Clifton Road, NE, Atlanta, GA 30322.

Instrument: Motion Analysis System: Optotrack.

Manufacturer: Northern Digital, Inc., Canada.

Intended Use: The instrument will be used to study normal and abnormal motor functions in humans. Experiments will examine the effects of:

(1) development on movement patterns of the trunk and extremities from birth

(2) physical therapy treatment modes on specific patient dysfunction

(3) dorsal rhizotomy on gait in children with cerebral palsy

(4) surgical, orthotic and prosthetic interventions on gait

(5) clinically used exercise regimens

(6) body motions and lifting on sacroiliac motion.

The instrument will also be used in courses on the dynamics of human movement.

Application received by Commissioner of Customs: November 29, 1989.

Docket Number: 89–285.

Applicant: VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77030.

Instrument: Electron Microscope, Model JEM—1200 EXII/SEG/DP/DP.

Manufacturer: JEOL, Ltd., Japan.

INTENDED USE: The instrument will be used for studies of pathological disorders that include cancer, infectious disease such as AIDS, heritable disorders, and the effect of toxins on the lungs, liver, heart, etc. Experiments to be conducted include studies of lungs from patients with asbestosis, hearts of patients of varying age, lymph nodes in poorly differentiated cancers and AIDS patients, multiple organ systems in viral illnesses, selected organs in rare diseases, etc. The objective will be to learn more about each disease in order to design corrective, compensatory, or preventative mechanisms. The instrument will also be used for the training of medical technologists in the preparation of materials for examination and for the training of pathology residents, fellows, and junior faculty.

Application Received by Commissioner of Customs: December 1, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–1414 Filed 1–19–90; 8:45 am]

BILLING CODE 3510–05–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 90–C0004]

Ames Department Stores, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Ames Department Stores, Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 6, 1990.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION: (attached).

Dated: January 16, 1990.

Sheldon D. Butts,

Deputy Secretary.

This Settlement Agreement and Order, entered into between Ames Department Stores, Inc., a corporation (hereinafter, "Ames"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

Ames and the staff hereby stipulate and agree:

1. The Consumer Product Safety Commission has jurisdiction over Ames and the subject matter of this Settlement Agreement and Order pursuant to 15 U.S.C. 2064, 2068, and 2069.

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory Commission of the United States of America (hereinafter "Commission") created

pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended 15 U.S.C. 2053.

3. Ames is a corporation organized and existing under the laws of the state of Delaware with its principal corporate offices located at 2418 Main Street, Rocky Hill, Connecticut. Ames owns and operates a group of over 700 department stores across the country.

4. In the course of its business operations before December 19, 1988, Ames distributed in commerce certain consumer products known as lawn darts. (See 16 CFR part 1306(c)

5. On November 18, 1988, the Consumer Product Safety Commission issued a regulation banning the manufacture, sale, offering for sale and importation of all lawn darts effective December 19, 1988, 53 FR 46828 (1988). Lawn darts were banned because the Commission found that they present an unreasonable risk of serious personal injury or death to children.

6. The staff alleges that on March 29, 1989, a Consumer Product Safety Commission investigator found ten sets of lawn darts offered for sale by Ames store number 273, located in Doylestown, Pennsylvania. It alleges that the goods were subject to 16 CFR part 1306, Ban of Hazardous Lawn Darts.

7. The staff alleges that on March 29, 1989, Ames sold and distributed in commerce three sets of lawn darts that were subject to 16 CFR part 1306, Ban of Hazardous Lawn Darts.

8. Ames has represented to the Commission staff that Ames has made diligent inquiries of its stores and, to its knowledge, banned lawn darts are no longer offered for sale. Ames also agrees that banned hazardous lawn darts will not be offered for sale in the future, in any of its stores.

9. The staff alleges that Ames, while being aware of the Ban, distributed in commerce, in one store located in Doylestown, Pennsylvania, consumer products which had been declared banned hazardous products by a rule under the CPSA, 16 CFR part 1306, and thereby, knowingly committed unlawful acts prohibited by section 19(a)(2) of the CPSA, 15 U.S.C. 2068(a)(2), each violation of which represents a separate offense with respect to each consumer product involved.

10. Further, the staff alleges that Ames, by failing to inform the Commission when they obtained or could have obtained, upon the exercise of due care, information which reasonably supported the conclusion that the lawn darts failed to comply with the applicable Consumer Product Safety Rule, violated the reporting requirements of section (15)(b) of the Consumer Product Safety Act which is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4). Each violation of section 19(a)(4) is a separate offense with respect to each consumer product involved.

11. For the reasons set forth above, the staff of the Commission seeks a civil penalty against Ames for allegedly violating 15 U.S.C. 2068(a) (2) and (4).

12. Ames denies that the company distributed in commerce banned hazardous products and/or knowingly failed to make reports and provide required information concerning lawn darts, in violation of 15 U.S.C. 2068(a)(2) and (4). Ames nonetheless, agrees to settle the Commission's claim for a civil penalty by paying the sum of $12,000.00 within 30 days of final acceptance of this Settlement Agreement by the Commission, and service upon Ames of the Commission's final order. This Settlement Agreement resolves all claims set forth in this document pertaining to alleged violations of 15 U.S.C. 2068(a) (2) and (4) and constitutes a release by the Commission from any further civil liability with respect to those alleged violations.

13. Upon final acceptance of this Settlement Agreement by the Commission, Ames knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 19(a)(2) and/or 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(2) and or (a)(4) has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

14. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 15 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

15. The provisions of this Agreement and Order shall apply to Ames and to each of its successors and assigns.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint has issued.

17. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Ames to appropriate legal action.

18. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Ames Department Stores, Inc.

Dated: September 29, 1989.

By:

Jay P. Urwitz,

Consented to on behalf of the Consumer Product Safety Commission staff by:

William J. Moore, Jr.,

Trial Attorney, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered, That Ames Department Stores, Inc. shall, pay within 30 days of final acceptance of this Settlement Agreement and service of this order, a civil penalty in the sum of $12,000.00 to the Consumer Product Safety Commission.

Provisionally accepted on the 16th day of January, 1990.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90-1400 Filed 1-19-90; 8:45 am]

BILLING CODE 6355-01-M

[CPSC Docket No. 90-C0005]

Caldor, Inc., a corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Caldor, Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with

the Office of the Secretary by February 6, 1990.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: (attached).

Dated: January 16, 1990.

Sheldon D. Butts,

Deputy Secretary.

This Settlement Agreement and Order, entered into between Caldor, Inc., a corporation (hereinafter, "Caldor"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

Caldor and the staff hereby stipulate and agree:

1. The Consumer Product Safety Commission has jurisdiction over Caldor and the subject matter of this Settlement Agreement and Order pursuant to 15 U.S.C. 2064, 2068 and 2069.

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory Commission of the United States of America (hereinafter "Commission") created pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

3. Caldor is a corporation organized and existing under the laws of the State of Connecticut with its principal corporate offices located at 20 Glover Avenue, Norwalk, Connecticut. Caldor owns and operates a group of general merchandise, family oriented retail department stores in 8 Middle Atlantic and New England states in the United States.

4. In the course of its business operations before December 19, 1988, Caldor distributed in commerce certain consumer products known as lawn darts. Lawn darts are devices with elongated tips that are used in an outdoor game by being thrown upward and striking the ground tip first. (See 16 CFR part 1306(c).

5. On November 18, 1988, the Consumer Product Safety Commission issued a regulation banning the manufacture, sale, offering for sale and importation of all lawn darts effective December 19, 1988. 53 FR 46,828 (1988) Lawn dars were banned because the Commission found that they present an unreasonable risk of skull puncture injury to children.

6. On March 21 and 22, 1989, Consumer Product Safety Commission investigators found several sets of lawn darts offered for sale by two Caldor stores located in Philadelphia, Pennsylvania and Mahopac, New York. In a third Caldor store located in Secaucus, New Jersey, lawn darts had been sold and/or offered for sale to consumers for approximately 90 days following the effective date of the lawn dart ban.

7. On March 21 and 22, 1989, Caldor sold and distributed in commerce several sets of lawn darts that were banned, hazardous products within the meaning of 16 CFR part 1306, Ban of Hazardous Lawn Darts.

8. Caldor has represented to the Commission staff that banned lawn darts are no longer offered for sale, and will not be offered for sale in the future, in any of its stores.

9. The staff alleges that Caldor, while being aware of the Ban, distributed in commerce consumer products which had been declared banned hazardous products by a rule issued under the CPSA and FHSA, 16 CFR part 1306, and thereby, knowingly committed unlawful acts prohibited by section 19(a)(2) of the CPSA, 15 U.S.C. 2068(a)(2), each violation of which represents a separate offense with respect to each consumer product involved.

10. Further, the staff alleges that Caldor, by failing to inform the Commission when they obtained or could have obtained, upon the exercise of due care, information which reasonably supported the conclusion that the lawn darts failed to comply with the applicable Consumer Product Safety Rule, violated the reporting requirements of section (15)(b) of the Consumer Product Safety Act, 15 U.S.C. 2064(b) which is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4). Each violation of section 19(a)(4) is a separate offense with respect to each consumer product involved.

11. For the reasons set forth above, the staff of the Commission seeks a civil penalty against Caldor for allegedly violating 15 U.S.C. 2068(a) (2) and (4).

12. Caldor denies that the company distributed in commerce banned hazardous products and/or knowingly failed to make reports and provide required information concerning lawn darts, in violation of 15 U.S.C. 2068(a) (2) and (4). Caldor nonetheless, agrees to settle the Commission's claim for a civil penalty by paying the sum of $50,000.00 within 30 days of final acceptance of this Settlement Agreement by the Commission, and service upon Caldor of the Commission's final order. In addition to the payment of a civil penalty, and in furtherance of settling the staff's allegations, Caldor has also mailed Lawn Dart Warning Posters to approximately 6,600 pediatricians in the eight (8) states where it does business. The posters, cover letters and transmitting envelopes are Attachment "A" to this Settlement Agreement and are hereby incorporated by reference. This Settlement Agreement resolves all claims set forth in this document pertaining to alleged violations of 15 U.S.C. 2068(a) (2) and (4).

13. Upon final acceptance of this Settlement Agreement by the Commission, Caldor knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 19(a)(2) and/or 19(a)(4) of the CPSA, 15 U.S.C. 2068 (a)(2) and or (a)(4) has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

14. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 15 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

15. The provisions of this Agreement and Order shall apply to Caldor and to each of its successors and assigns.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint has issued.

17. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Caldor to appropriate legal action.

18. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement

and Order may be used to vary or to contradict its terms.

Caldor, Inc.
Dated: November 6, 1989.
By:
Alan S. Kuller,
Senior Vice-President.
David Schmeltzer,
Associate Executive Director, Directorate for Compliance and Administrative Litigation.
William J. Moore, Jr.,
Trial Attorney, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered, that Caldor Inc. shall, pay within 30 days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the sum of $50,000.00 to the Consumer Product Safety Commission.

Provisionally accepted on the 16th day of January, 1990.

By order of the Commission.
Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 90-1422 Filed 1-19-90; 8:45 am]
BILLING CODE 6355-01-M

[CPSC Docket 90-C0007]

Contempo Futons, a Proprietorship and David Butitta, an Individual and the Proprietor of Contempo Futons; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR 1605.13, the Commisson must publish in the **Federal Register** consent agreements which it provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement with Contempo Futons, a proprietorship, and David Butitta, an individual and the proprietor of Contempo Futons.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by February 6, 1990.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: (Attached)

Dated: January 16, 1990.
Sheldon D. Butts,
Deputy Secretary

CONTEMPO FUTONS and DAVID BUTITTA, the proprietor of the Former (hereinafter, "Respondents") enter into this Consent Order Agreement (hereinafter, "Agreement") with the staff (hereinafter, "staff") of the Consumer Product Safety Commission (hereinafter "Commission") pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondents sold futon mattresses that are subject to the Flammable Fabrics Act, the Federal Trade Commission Act, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632, (hereinafter, "Mattress Standard"); and that those futon mattresses failed to comply with those Acts and the Mattress Standard issued thereunder, as more fully set forth in the complaint accompanying this Agreement.

Respondent and the Staff Agree:

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Contempo Futons is a proprietorship organized and existing under the laws of the State of Iowa with its principal place of business located at 527 South Gilbert Street, Iowa City, Iowa 52240.

3. Respondent David Butitta is the proprietor of Respondent Contempo Futons and in these capacities is responsible for the acts, practices, and policies of the respondent proprietorship.

4. Respondents are now and have been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632.

5. This Agreement is for settlement purposes only, does not constitute an admission by Respondents that either of them have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the Final Order upon Respondents.

6. Respondents waive (a) all requirements for findings of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings.

7. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196.

8. Violation of the provisions of the Order may subject Respondents to a civil penalty for each such violation, as prescribed by law.

9. The Commission may disclose the terms of this Consent Order Agreement.

10. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

11. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission shall issue the following Order:

Order

I

It Is Hereby Ordered That Respondents, and their successors and assigns, agents, representatives, and employees of the Respondents, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to

be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), amended, 16 CFR part 1632.

II

It Is Further Ordered That Respondents conduct prototype testing for each futon mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

III

It Is Further Ordered That Respondents prepare and maintain written records of the prototype testing specified in paragraph II of this Order and each futon mattress design, including photographs of the tested futon mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

It Is Further Ordered That Respondents prepare and maintain a written record of the manufacturing specifications of each futon mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

V

It Is Further Ordered That Respondents conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution or materials after prototype testing, in accordance with all applicable provisions of the Standards for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

VI

It Is Further Ordered That Respondents prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

VII

It Is Further Ordered That Respondents prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632, including:

(a) Records to support any determination that a particular material other than ticking or tape edge material did noty influence ignition resistance;

(b) Ticking classification test results or a certification from the ticking supplier;

(c) Tape edge substitution test results;

(d) Photographs of any futon mattress tested for purposes of making a tape edge substitution; and,

(e) Records describing the disposition of all failing or rejected prototype futon mattresses.

VIII

It is Further Ordered That Respondents shall forthwith distribute a copy of this Order to each of its operating divisions.

IX

It is Further Ordered That Respondents shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

X

It is Further Ordered That for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to any proposed change in the way Respondents do business which may affect their compliance obligations arising out of this Order.

XI

It is Further Ordered That the Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

Any agreement, understanding, representation, or interpretation that is not contained in this Agreement and in the incorporated Order may not be used to vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 8 day of July, 1989.

By:

David Butitta,

Proprietor, CONTEMPO FUTONS, 527 South Gilbert Street, Iowa City, Iowa 52240.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

By:

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

Consumer Product Safety Commission, Washington, DC 20207.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

So Ordered by the Commission, this 16th day of January, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90–1423 Filed 1–19–90; 8:45 am]

BILLING CODE 6355–01–M

[CPSC Docket 90–C0006]

Sun Tui, Ltd., a Domestic Corporation, and Daniel S. Weiss, Individually and as an Officer of the Corporation; Provisions Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR 1605.13, the Commission must publish in the **Federal Register** consent agreements which is provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement with Sun Tui, Ltd., a domestic corporation and Daniel S. Weiss, individually and as an officer of the corporation.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by February 6, 1990.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney,

Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: (attached).

Dated: January 16, 1990.

Sheldon D. Butts,

Deputy Secretary.

Sun Tui, Ltd. and Daniel S. Weiss, the president and the treasurer of Sun Tui, Ltd. (hereinafter, "Respondents"), enter into this Consent Order Agreement (hereinafter, "Agreement") with the staff (hereinafter, the "staff") of the Consumer Product Safety Commission (Commission) pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondents sold futon mattresses that are subject to the Flammable Fabrics Act, The Federal Trade Commission Act, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632, (hereinafter, the "Mattress Standard"); and that those futon mattresses failed to comply with those Acts and the Mattress Standard issued thereunder, as more fully set forth in the complaint accompanying this Agreement.

Respondent and the Staff Agree:

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Sun Tui, Ltd. is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 321 Cedar Avenue, Minneapolis, Minnesota 55454.

3. Respondent Daniel S. Weiss is the president and the treasurer of Respondent Sun Tui, Ltd.; and in these capacities, is responsible for the acts, practices, and policies of the respondent corporation.

4. Respondents are now and have been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632.

5. This Agreement is for settlement purposes only, does not constitute an admission by Respondents that either of them have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the Final Order upon Respondents.

6. Respondents waive (a) all requirements for findings of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings.

7. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196.

8. Violation of the provisions of the Order may subject Respondents to a civil penalty for each such violation, as prescribed by law.

9. The Commission may disclose the terms of this Consent Order Agreement.

10. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

11. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission shall issue the following Order:

Order

I

It is hereby ordered that Respondents, and their successors and assigns, agents, representatives, and employees of the Respondents, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), amended, 16 CFR part 1632.

II

It is further ordered that Respondents conduct prototype testing for each futon mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632.

III

It is further ordered that Respondents prepare and maintain written records of the prototype testing specified in paragraph II of this Order for each futon mattress design, including photographs of the tested futon mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632.

IV

It is further ordered that Respondents prepare and maintian a written record of the manufacturing specifications of each futon mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632.

V

It is further ordered that Respondents conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632.

VI

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632.

VII

It is further ordered that Respondents prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR part 1632, including:

(a) Records to support any determination that a particular material other than ticking or tape edge material did not influence ignition resistance;

(b) Ticking classification test results or a certification from the ticking supplier;

(c) Tape edge substitution test results;

(d) Photographs of any futon mattress tested for purposes of making a tape edge substitution; and,

(e) Records describing the disposition of all failing or rejected prototype futon mattresses.

VIII

It is further ordered that Respondents shall forthwith distrubute a copy of this Order to each of its operating divisions.

IX

It is further ordered That Respondents shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

X

It is further ordered That for a period of ten (10) years from the date this Order become final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to any proposed change in the way Respondents do business which may affect their compliance obligations arising out of this Order.

XI

It is further ordered That the Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

Any agreement, understanding, representation, or interpretation that is not contained in this Agreement and in the incorporated Order may not be used to vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 23d day of June, 1989.

By:

Daniel S. Weiss,

President and Treasurer, Sun Tui, Ltd., 321 Cedar Avenue, Minneapolis, Minnesota 55454.

By:

Daniel S. Weiss,

Individually Sun Tui, Ltd., 321 Cedar Avenue, Minneapolis, Minnesota 55454.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administration Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

By:

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Directorate of Compliance and Administrative Litigation.

Consumer Product Safety Commission, Washington, DC 20207

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90-1401 Filed 1-19-90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Education Statistics Advisory Council; Meeting

AGENCY: Department of Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: February 22, 1990, 9:00 a.m.—4:45 p.m. and February 23, 1990, 9:00 a.m.—Noon

ADDRESS: 555 New Jersey Avenue NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Carrol B. Kindel, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 308E, Washington, DC 20208-5574, telephone: (202) 357-6329.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- Planning Activities at NCES: Overview of Planning Initiatives, and Examples of Program Planning.
- Uses of NCES Data for Modelling-Variables with High Explanatory Power
- Findings from Recent NCES Releases.
- Reviews of Progress: Data Sharing and Confidentiality, and Performance Indicators.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW., Room 308E, Washington, DC 20208-5574.

Dated: January 16, 1990.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-1334 Filed 1-19-90; 8:45 am]

BILLING CODE 4000-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice to amend an existing system of records.

SUMMARY: The Deputy Under Secretary for Management amends the following Privacy Act system of records, "Debarment and Suspension Proceedings Under Executive Order 12549 (18-11-0026)." The purpose of this amendment is to notify the public of an additional system manager and system location in the Office of Postsecondary Education.

DATE: This change is effective January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Jane Kane, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3636, GSA Regional Office Building No. 3), Washington, DC 20202-4700. Telephone: (202) 732-7400.

SUPPLEMENTARY INFORMATION: On November 28, 1988, the Department of Education published in the **Federal Register** (53 FR 47855, November 28, 1988) a notice of a new system of records for the Debarment and

Suspension Proceedings Under Executive Order 12549. The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a system of records. This system of records notice is amended to inform the public that there are now two Department officials maintaining records regarding debarment and suspension proceedings against individuals.

The Office of Postsecondary Education, Title IV Debarring/Suspending Official (Title IV DSO) now has cognizance over all those actions where the preponderance of Department funds to a party are related to programs authorized under Title IV, Higher Education Act, as amended, 20 U.S.C. 1070, *et* seq. As a result, this official now maintains records regarding these actions. The Debarring/Suspending Official (DSO) in the Office of Management continues to have cognizance over all other debarment/suspension actions and to maintain records regarding these actions.

This change follows as the result of an amendment to an internal management directive for the Department and does not involve any substantive change in the management of the system of records, the number of individuals covered by this system, the kinds of data maintained about individuals, or the routine uses for the information in the system.

Prior to the amendment of the Department directive, the Title IV DSO could only take debarment/suspension actions against educational institutions, and the DSO had cognizance over all other actions. Now the Title IV DSO may take actions against individuals.

Because this amendment does not involve any changes to a routine use, there is no need for public comment. There are no new substantive changes for the Debarment or Suspension Proceedings Under Executive Order 12549 requiring an altered system of records report to OMB or to Congress. Therefore, this notice is effective upon publication in the **Federal Register**.

Dated: January 12, 1990.

Thomas E. Anfinson,

Deputy Under Secretary for Management.

The Deputy Under Secretary for Management amends the notice of a system of records by revising language under the following headings to read as follows:

18-11-0026

SYSTEM NAME:

Debarment or Suspension Proceedings Under Executive Order 12549.

* * * * *

SYSTEM LOCATION:

Grants Division, Grants and Contracts Service, Office of Management, U.S. Department of Education, Washington, DC, 400 Maryland Avenue, SW. (Room 3636, GSA Regional Office Building No. 3), Washington, DC 20202-4700.

Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3928, GSA Regional Office Building No. 3), Washington, DC 20202-5341.

* * * * *

SYSTEM MANAGER AND ADDRESS:

Director, Grants and Contracts Service, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571.

Deputy Assistant Secretary for Student Financial Assistance, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4624, GSA Regional Office Building No. 3), Washington, DC 20202-5132.

* * * * *

[FR Doc. 90-1307 Filed 1-19-90; 8:45 am]

BILLING CODE 4000-01-M

Privacy Act of 1974; System of Records

AGENCY: Department of Education.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, and the provisions of the National Center for Education Statistics authorization statute, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, the Department of Education publishes this notice of a new system of records known as: The National Center for Education Statistics Affidavits of Nondisclosure. This file contains individually identifiable information necessary for satisfying the requirements of section 406(d)(4) of the General Education Provisions Act (GEPA) regarding the confidentiality of individually identifiable data. The Department seeks comments on the proposed routine uses contained in this notice.

DATES: Comments on the proposed routine uses of this system of records must be submitted by February 21, 1990. The Department filed a report on the new system of records with the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Management and Budget (OMB) on January 16, 1990. This system of records will become effective after the period for OMB review of the system expires on (insert the 60th day after submission to OMB) unless OMB asks for additional time to review the system of records. The Department will publish any changes to the routine uses that are required as a result of the comments received.

ADDRESSES: Comments on the proposed routine uses should be addressed to the Susan Ahmed, Chief Mathematical Statistician, U.S. Department of Education, Room 400E, 555 New Jersey Avenue, NW., Washington, DC 20208. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, at the above address, in Room 400E, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Ahmed, Chief Mathematical Statistician, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208. Telephone: (202) 357-6831.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR Part 5b.

The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297, April 28, 1988) added a new subsection (d)(4) to section 406 of the General Education Provisions Act (GEPA), providing that no person may use any individually identifiable information acquired by or on behalf of the National Center for Education Statistics (NCES) other than for the statistical purposes for which the data were collected or publish any individually information. Also data collected by NCES for statistical purposes are immune from legal process under the new provision.

Since its establishment in 1965, NCES has conducted multiple series of institutional and longitudinal studies under section 406 of GEPA or that statute's predecessors. These studies have included individually identifiable data on recent college graduates, teachers and administrators, college and university faculty, high school students,

and, more recently, students enrolled in postsecondary education.

No personal identifiers were maintained in cross-sectional one-time surveys once the data acquisition phase was completed. To conduct the longitudinal studies, the National Center for Education Statistics (NCES) contracted with organizations, agencies, and firms to select samples of individuals enrolled in and employed by educational institutions, administer survey instruments to these individuals, produce computer data tapes containing the data collected and aggregate the data for reports. Most NCES surveys used various devices including scrambled identification codes to keep the data separate from the identification codes, and contracts prohibited the release of individually identifiable data, in some case, even on the NCES.

Section 406(d)(4) of GEPA, as amended, limits the uses to which individually identifiable data may be put, to wit: "* * * no person may use any individually identifiable information furnished under the provisions of this section for any purpose other than statistical purposes for which it is supplied; make any publication whereby the data furnished by a particular person * * * may be identified; (or) permit anyone other than the individuals authorized by the Commissioner to examine the individual reports." All employees of the National Center for Education Statistics, all employees of contractors who have access to individually identifiable data acquired for or from the National Center for Education Statistics, and any employees or officers of State and local educational agencies and any other persons given access to these individually identifiable data must be sworn to observe the limitations imposed by this act. Any person who violates his or her oath is subject to disciplinary action and criminal prosecution. The purpose of this system of records is to maintain information necessary for internal control and monitoring of those having access to individually identifiable information and to provide evidence in disciplinary actions or prosecution of individuals who disclose individually identifiable information protected from disclosure under section 406(d)(4) of the General Education Provisions Act. This system of records is also necessary to ensure that individuals utilized by the Commissioner of NCES protect individually identifiable data of NCES. Because the signed oaths must be maintained in alphabetical order for retrieval, the file constitutes a system of records subject to the Privacy Act of 1974.

Dated: January 16, 1990.

Christopher T. Cross,

Assistant Secretary, Office of Educational Research and Improvemenmt.

The Assistant Secretary for Education Research and Improvement publishes notice of a new system of records to read as follows:

18-42-0002

SYSTEM NAME:

National Center for Education Statistics Affidavits of Nondisclosure.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Center for Education Statistics (NCES) or other persons who assist NCES in the performance of its work, who have access to any record, response form, completed survey or aggregation thereof from which information about individual students, teachers, administrators, or other individual persons may be revealed, and who have signed a pledge not to disclose such information, are covered by this system of records.

Other persons who may assist NCES include employees of companies, profit or nonprofit organizations, State agencies, local agencies or instrumentalities having a contract, task order, interagency agreement, or some other formal agreement with NCES and who have access to individually identifiable information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following information is included in the system: The affidavit of nondisclosure, including name, place of work (company, agency, etc.), signature, and date signed. Also included in the system is the name of the project or survey in which the company, etc. employing the individual was involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 406(d)(4) of the General Education Provisions Act, as added by title III, part A, section 3001, of Pub. L. 100-297, April 28, 1988 (20 U.S.C. 1221e-1(d)(4)).

PURPOSE(S):

The purpose of this system of records is to maintain information necessary for internal control and monitoring of those having access to individually identifiable information and to provide evidence in disciplinary actions or prosecution of individuals who disclose individually identifiable information protected from disclosure under section 406(d)(4) of the General Education Provisions Act, as amended. This system of records is also necessary to ensure that individuals utilized by the Commissioner of NCES protect individually identifiable data of NCES.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF THOSE USES:

(1) *Contractor Disclosure.* A record may be disclosed from this system of records to employees of entities having a contract or other agreement with the Commissioner to assist in the collection of data on behalf of NCES to ensure that those entities maintain an accurate file of individuals who have access to individually identifiable information in performance of their duties under the contract or other agreement.

(2) *Enforcement Disclosure.* In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, particular program statute, or executive order, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or executive order or rule, regulation, or order issued pursuant thereto.

(3) *Subpoena Disclosure.* Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

(4) *Litigation Disclosure.*

(a) *Disclosure to the Department of Justice.* If the Department determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the Department of Justice. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) The Department, or any component of the Department;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any Department employee in his or her individual capacity where the Justice Department has agreed to represent the employee; or

(iv) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to a Court or Adjudicative Body.* If the Department determines that disclosure of certain records to a court or adjudicative body before which this Department is authorized to appear is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the court or adjudicative body. Such disclosure may be made in the event that one of the parties listed below is a party to the litigation, or has an interest in such litigation:

(i) The Department or any component thereof;

(ii) Any employee of the Department in his or her official capacity;

(iii) Any employee of the Department in his or her individual capacity where the agency has agreed to represent the employee; or

(iv) The United States, where the Department determines that litigation is likely to affect the Department or any of its components.

(5) *Employee Conduct Disclosure.* If a record maintained by the Department of Education is relevant to an employee discipline or competence determination proceeding of another agency of the Federal government, the Department of Education may disclose the record in the course of the proceeding.

(6) *FOIA Advice Disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

(7) *Contract Disclosure.* When the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information will be kept in file folders and on computer diskettes or computer tapes.

RETRIEVABILITY:

The records will be retrievable by name, date, and place of work (i.e. agency, company, etc.).

SAFEGUARDS:

The records will be kept in locked files. The computer tapes and diskettes will be accessible by authorized personnel through identification number and password.

RETENTION AND DISPOSAL:

Each affidavit will be kept for 5 years after the individual access to NCES confidential data has ceased and then will be transferred to the Federal Records Center, where it can remain up to 15 years before it is destroyed.

SYSTEM MANAGER AND ADDRESS:

Administrative Officer, National Center for Education Statistics, U.S. Department of Education, Washington, D.C. 20208, Telephone (202) 357-6839

NOTIFICATION PROCEDURE:

Contact the system manager and provide your name, place of work (i.e. company, agency, etc.), and the dates of employment in order to obtain access to your record. Requests must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

Contact the system manager and provide your name, place of work (i.e. company, agency, etc.), and the dates of employment in order to ascertain whether or not the system contains your record. Requests must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Contact system manager to contest the contents of your records in this system. Requests to amend a record must meet the requirements of 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in the records comes from individuals who have signed the affidavits of nondisclosure.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix: System Locations

National Center for Education Statistics, U.S. Department of Education, Washington, D.C. 20208-5574.

U.S. Bureau of the Census, Federal Office Building 3, Washington, D.C. 20233.

WESTAT, 1650 Research Boulevard, Rockville, Maryland 20850.

Research Triangle Institute, P.O. Box 12194, Research Triangle Park, North Carolina 27709.

National Opinion Research Center, 1155 E. 60th Street, Chicago, Illinois 60637-2799.

Educational Testing Service, 1825 Eye Street, N.W., Suite 475, Washington, D.C. 20006.

MPR Associates, 1995 University Avenue, Suite 225, Berkeley, California 94704.

Abt Associates, 55 Wheeler Street, Cambridge, Massachusetts 02138.

[FR Doc. 90-1309 Filed 1-19-90; 8:45 am]

BILLING CODE 4000-01

Privacy Act of 1974; Systems of Records

AGENCY: Department of Education.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, and the provisions of the National Center for Education Statistics authorization statute, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, the Department of Education publishes this notice of a new system of records known as: The National Center for Education Statistics Longitudinal Study and the School and Staffing Surveys. The Longitudinal Study system will be used to provide the National Center for Education Statistics information on a sample of young adults concerning their progress through high school and into and through college and their employment experiences. Sample surveys will also acquire data on financial aid and education experiences of students in postsecondary education. The School and Staffing Surveys will be used to provide the National Center for Education Statistics information on a sample of school districts, elementary and secondary level schools, both public and private, on the teachers who teach in those schools, and on the nonteaching administrators of those schools to measure and compare the different contexts and influences on educational delivery systems. The Department seeks comments on the proposed routine uses contained in this notice.

DATES: Comments on the proposed routine uses in this system of records must be submitted by February 21, 1990. The Department filed a report on the new system of records with the

Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Administrator, Office of Management and Budget (OMB) on January 16, 1990. This system of records will become effective after the 60 day period for OMB review of the system expires on (insert the 60th day after submittion to OMB), unless OMB gives specific notice within the 60 days that the system is not approved for implementation. The Department will publish any changes to the routine uses that are required as a result of the comments.

ADDRESSES: Comments on the proposed routine uses should be addressed to Susan Ahmed, Chief Mathematical Statistician, National Center for Education Statistics, 555 New Jersey Avenue, NW. (Room 400E), Washington, DC 20208. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, at that address in Room 400E, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Ahmed, Chief Mathematical Statistician, National Center for Education Statistics, 555 New Jersey Avenue, NW. (Room 400E), Washington, DC 20208. Telephone: (202) 357-6831.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR Part 5b.

The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Public Law 100-297, April 28, 1988) added a new subsection (d)(4) to section 406 of the General Education Provisions Act (GEPA), providing that no person may use or publish any individually identifiable information acquired by or on behalf of the National Center for Education Statistics (NCES) other than for the statistical purposes for which the data were collected. Also data collected by NCES for statistical purposes are immune from legal process.

NCES has conducted a series of longitudinal studies since 1968 under Section 406 of GEPA or that section's predecessor. The current series began with the National Longitudinal Study of the High School Class of 1972. The High School and Beyond Longitudinal Study began in 1980. The National Education Longitudinal Study of 1988 is the third in the series. Finally, the National Postsecondary Student Aid Study of 1990 will be the first data collection for two longitudinal projects: the Baccalaureate and Beyond and the Beginning Postsecondary Students studies.

The base School and Staffing Surveys were conducted in 1987-88, with the first follow-up scheduled for 1990-91, and subsequent follow-ups scheduled biennially.

Past practice in the longitudinal studies has been for the National Center for Education Statistics to impose on contractors requirements for the separation of files of identifiers and files of information, with links provided only by scrambled codes maintained at the contractor. The files containing identifying information and the scrambling procedures were never delivered to the National Center for Education Statistics.

To conduct the School and Staffing Surveys, the National Center for Education Statistics has contracted with the U.S. Bureau of the Census for the acquisition and tabulation of the data. Census staff are subject to security procedures identical to those imposed on staff of the National Center for Education Statistics.

The longitudinal nature of the teacher studies requires that the identifying information be maintained for recontacting the individuals for follow-up data collections. Following recontact, the identifying information is updated by the Bureau of the Census or the contractor, as the case may be.

When the first of these studies began, the Privacy Act of 1974 did not yet exist, and, when that Act became law, NCES was advised that its longitudinal surveys, conducted by contractors, were not subject to the Privacy Act, because NCES staff did not have direct access to individually identifiable information. As a result of the amendments made by Public Law 100-297, NCES instituted a thorough review of its procedures to protect the confidentiality of individually identifiable information collected by and for NCES. That review led NCES to conclude that 5 U.S.C. 522a(m) requires application of the Privacy Act to individually identifiable information whether maintained by a contractor or by NCES if that information is indexed by the identifiers and the information is necessary to accomplish an agency function. As a result, NCES must publish a notice covering all of its longitudinal surveys and such other surveys containing individually identifiable information.

Dated: January 16, 1990.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

The Assistant Secretary for Educational Research and Improvement publishes notice of a new system of records to read as follows:

18-42-0001

SYSTEM NAME:

National Center for Education Statistics Longitudinal Studies and the School and Staffing Surveys. OERI/NCES.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

See Appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Data exist within the National Center for Education Statistics Longitudinal Studies for the following groups:

1972 high school seniors who participated in the National Longitudinal Study of the High School Class of 1972.

Approximately 26,820 1980 high school seniors and sophomores from 1,015 U.S. high schools who participated in the High School and Beyond Survey.

Approximately 26,000 1988 eighth grade students in 1,050 U.S. schools who particpated in the National Education Longitudinal Study of 1988.

Approximately 60,000 1990 students enrolled in U.S. postsecondary institutions who will participate in the National Postsecondary Student Aid Study, the Baccalaureate and Beyond Study, or the Beginning Postsecondary Students Longitudinal Study.

Approximately 78,000 1987-88 teachers and administrators, who participated in the School and Staffing Surveys of NCES. Some of these surveys contain identifiable data regarding schools and agencies. However, these entities are not individuals subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain responses to survey instruments. In addition to background and demographic data, the survey instruments include sets of items concerning educational experiences, employment experiences, finances, aspirations, plans and goals, family formation variables, and attitudes. Cognitive test scores, financial aid records, and high school and college transcripts are appended to the records as well.

The records for schools and local education agencies contain information on numbers and characteristics of teaching staff, administrators, financial and demographic data, and data related to student performance.

The records related to teachers and administrators contain, in addition to the above, information on training and experience, salary history, and attitudes and opinions on educational and operational questions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1221e–1

PURPOSES:

All of the longitudinal and school and staffing studies sponsored by the National Center for Education Statistics are designed to describe the critical influences, contexts, and transitions of students in elementary, secondary, and postsecondary education and into employment and adult experience. This information is necessary to meet the statutory mandate of the National Center for Education Statistics to describe the condition of education.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under the authority of the Commissioner of Education Statistics, the National Center for Education Statistics will disclose individually identifiable information to individuals who:

1. Take the oath and sign an affidavit of nondisclosure required under Section 406(d)(4) of the General Education Provisions Act (GEPA) (20 U.S.C. 1221e–1(d)(4)), and

2. Work for a contractor, grantee, or party to a cooperative agreement or other entity that has an agreement with the Commissioner to do research for NCES, or

3. Work under a research contract, grant, or cooperative agreement with a Federal, State, or local agency that requires the use of indivdually identifiable information, and the research is compatible with the purpose for which NCES collected the data, or

4. Work under an agreement in writing, to:

a. Use the information for statistical purposes only,

b. Maintain the data in accordance with applicable Federal laws,

c. Prohibit redisclosure in identifiable form, and

d. Permit NCES' periodic inspection to determine adherence to the contract or agreement.

The Commissioner of NCES may disclose a record to an individual who has met the requirements above only for the statistical purposes for which the record was supplied, as follows:

(1) *Contract Disclosure.* When the National Center for Education Statistics intends to contract with a private firm for the purpose of collating, analyzing, aggregating, maintaining, appending, or otherwise refining records in this system, the Commissioner of Education Statistics may release relevant records to the contractor. The contractor will be required to maintain safeguards under the Privacy Act of 1974 and under Section 406(d)(4) of CEPA (20 U.S.C. 1221e–1(d)(4)) with respect to such records.

(2) *Research Disclosure.* Where the Commissioner of Education Statistics determines that an individual or organization is qualified to carry out specific research, the Commissioner may disclose information from these systems of records to that researcher solely for the purpose of carrying out that research. The researcher shall be required to maintain Privacy Act of 1974 and 20 U.S.C. 1221e–1(d)(4) safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The research files will be stored on computer tapes and diskettes. The location files will be kept on computer tapes.

RETRIEVABILITY:

The records will be retrievable by title of survey and name of person.

SAFEGUARDS:

The research files and location files are not directly mergeable in the form maintained and stored. The identification codes on each file are different. They can be related by use of an encryption algorithm known to only a few authorized staff. Copies of the computer tapes and discs containing the location files are stored with three levels of password protection. Hence, immediate access to the location files is possible only by authorized staff.

When in active use for editing, tabulation and analysis, files of information and identifiers will not be kept together unless necessary for processing the data. The files will be accessed only through approved identification of the user and the use of passwords. Passwords will be changed at the conclusion of each period of use and returned to storage. Tapes, discs and questionnaries will be kept in locked files in locked rooms.

RETENTION AND DISPOSAL:

The records will be kept for five years after the final survey administration, including the base year survey and any following surveys and then transferred to the Federal Records Center, where, after 15 years, they will be destroyed.

SYSTEM MANAGER AND ADDRESS:

Commissioner, National Center for Education Statistics, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 400, Washington, D.C. 20208–5574.

NOTIFICATION PROCEDURE:

Contact system manager. Requests from an individual for notification about whether the system of records contains information about that individual must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b 5.

RECORD ACCESS PROCEDURES:

Contact system manager. Requests by an individual for access to his/her record must meet the requirements in the Department's Privacy Act regulations at 34 CFR 5b 5.

CONTESTING RECORD PROCEDURES:

Contact system manager. Request to amend a record must meet the requirements of 34 CFR 5b 7.

RECORD SOURCE CATEGORIES:

Information in the records includes responses to survey instruments.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX: System Locations

National Center for Education Statistics, U.S. Department of Education, 555 New Jersey Avenue, NW. Rm. 400, Washington, D.C. 20298–5574.

U.S. Bureau of the Census, Federal Office Building 3, Washington, D.C. 20233.

WESTAT, 1650 Research Boulevard, Rockville, Maryland 20850.

Research Triangle Institute, P.O. Box 12194, Research Triangle Park, North Carolina 27709.

National Opinon Research Center, 1155 E. 60th Street, Chicago, Illinois 60637–2799.

Educational Testing Service, 1825 Eye Street, NW., Suite 475, Washington, D.C. 20006.

MPR Associates, 1995 University Avenue, Suite 225, Berkeley, California 94704.

Abt Associates, 55 Wheeler Street, Cambridge, Massachusetts 02138.

[FR Doc. 90–1310 Filed 1–19–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[ERA Docket No. 88-01-NG]

Project Orange Associates, L.P.; Order Granting Authorization To Import Natural Gas From Canada Using Existing Facilities

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting authorization to import natural gas from Canada using existing facilities.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order amending a conditional authorization granting Project Orange Associates, L.P. (Project Orange), authorization to import natural gas from Canada. The order issued in ERA Docket No. 88-01-NG authorizes Project Orange to import up to 120,000,000 MMBtu's (approximately 120 Bcf) of Canadian natural gas through existing facilities commencing about April 1, 1991, for a term of twenty years or until new pipeline facilities are available for firm service, whichever occurs first.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., January 16, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-1411 Filed 1-19-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice DE-PS07-90ER12937; Nuclear Engineering Research

AGENCY: Department of Energy (DOE), Idaho Operations Office.

ACTION: Notice inviting grant applications.

SUMMARY: DOE's Office of Energy Research announces its interest in receiving applications from colleges and universities for Special Research Grants in accordance with 10 CFR Part 605 that will support research efforts aimed at advancing the state-of-the-art in nuclear engineering and applied nuclear science. Applications should be directed to state-of-the-art research that contributes to the following areas: applied nuclear sciences, computer applications for reactor operation and control, reactor neutronics, nuclear thermal hydraulics and heavy water reactor safety research for Savannah River Site. The research to be supported should be innovative and revolutionary, rather than evolutionary. Incremental improvements in technologies related to conventional light water reactor (LWR) technologies or research typically supported by the Nuclear Regulatory Commission will not be supported.

(1) The *applied nuclear sciences* include research applications of radiation and research reactors, including improved instrumentation or measurement techniques for health physics or biomedical research, the use of research reactors for fundamental studies, and novel applications of radioisotopes.

(a) Improved instrumentation for health physics or biomedical applications focuses on the development of dosimetry techniques for monitoring of radiation exposures due to neutrons and other radiation in medical application of radiation sources.

(b) The use of research reactors for fundamental studies focuses on the development of novel research capabilities using research reactors or the application of radiation from reactors to probe matter in pursuit of basic knowledge in ares such as condensed matter physics, chemical kinetics, or biotechnology.

(c) Novel applications of radioisotopes.

(2) *Computer applications for reactor operation and control* research includes innovative application of computer systems and computational tools to improvements in the safety and reliability of nuclear reactor operation, including advances in reactor control and instrumentation, and real-time instrumentation to monitor component and system performance. Application to design and safety of advanced light water reactors is encouraged.

(a) Advances in reactor control and instrumentation includes the application of human factors engineering and/or expert systems to improve monitors and displays for the control room environment and the application of real-time signal analysis and processing to improve fault detection in reactor instrumentation and components.

(b) Real-time instrumentation includes the monitoring of component performance to optimize component maintenance and to minimize failure. The ability to detect the onset of embrittlement focuses on the development of nuclear or non-nuclear methods to detect in real time the radiation embrittlement of nuclear reactor vessel materials.

(3) *Reactor nuetronics* focuses on improvements in reactor computational methodologies in the light of continuing dramatic improvements in computational hardware. Research focus will be on improvements in core neutronics, reactor kinetics, radiation transport, fission product behavior, nuclear fuel management and fuel cycle optimization.

(4) *Nuclear thermal hydraulics* focuses on improvements of models and analysis of thermal hydraulic behavior in a nuclear reactor system, including applications to multiphase flow, convective and conductive heat transport, degraded core cooling and emergency coolant flow. Application to design and safety of advanced light water reactors is encouraged.

(5) *Heavy Water Reactor Safety Research for Savannah River Site* focuses on innovative concepts to enhance performance and safety of the DOE's existing and planned low temperature, low pressure production reactors at the Savannah River Site. Research areas of special interest are severe accident phenomena, thermal-hydraulics, reactor neutronics and human performance.

(a) Severe accident phenomena research includes understanding of reactor behavior during and following postulated accidents which go beyond fuel melting, including research in aluminum fuel melt morphology, interaction of molten uranium/aluminum with water and structural materials, related fission product chemistry, aerosol behavior of lithium and aluminum species, filter design for capture of aerosols and fission products in high-volumetric flow condition, and mathematical models of the above processes.

(b) Thermal hydraulic research includes improved understanding of the analysis capabilities of the RELAP5 and TRAC codes for SRS reactors, including the validation of constitutive relations for two-phase thermal hydraulics at near-atmospheric pressure conditions in annular geometry.

(c) Reactor neutronics research includes improved numerical methods, such as the extension of nodal diffusion code flux discontinuity factor methodologies to kinetics codes in three-dimensional hexagonal geometry with two energy groups.

(d) Human performance research includes improved understanding of operator response during routine and

accident situations, including human factors and control room design, and the application of robotics in emergency response to improve human performance.

DATE: To permit timely consideration for awarding during FY 1990, applications submitted in response to this Notice should be received by the Idaho Operations Office, Contracts Management Division by March 1, 1990.

ADDRESS: Applications should be forwarded to: U.S. Department of Energy, Idaho Operations Office, Contracts Management Division, 785 DOE Place, Idaho Falls, Idaho 83402, ATTN: Nuclear Engineering Research.

FOR FURTHER INFORMATION CONTACT: Ms. Trudy A. Thorne, R&D Contracts Branch, Idaho Operations Office, USDOE, Idaho Falls, Idaho, 83402.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately $1M will be available for grant awards during FY 1990, and that awards will range from $50K to $250K per year, with a typical requested project duration of two to three years. However, note that future fiscal year awards will be subject to the availability of funds. General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide in accordance with 10 CFR Part 605. The application kit and guide is available from the U.S. Department of Energy, Idaho Operations Office (see address above). It is specifically requested that the "Detailed Description of Research Work Proposed" section of the proposal not exceed fifteen double-spaced pages. An abstract of the proposed work should be included, along with a description of the scope of the work and an enumeration of the tasks to be performed. The Catalog of Domestic Assistance Number for this program is 81.049.

In accordance with the recommendation in the conference report to the Energy and Water Development Appropriation Act, 1990, eligibility for this solicitation is limited to university nuclear engineering programs.

Issued in Idaho Falls, Idaho, on January 10, 1990.

J. Roger Gonzales,

Director, Contracts Management Division, Idaho Operations Office, U.S. Department of Energy.

[FR Doc. 90-1412 Filed 1-19-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP-239-015]

Boundary Gas, Inc.; Compliance Filing

January 12, 1990

Take notice that on January 5, 1990, Boundary Gas, Inc. (Boundary) filed Third Revised Tariff Sheet No. 43 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 1, 1989.

Boundary states that this filing is made pursuant to Commission Staff's request and to the Commission's letter order issued on October 25, 1989. This filing replaces Second Revised Sheet No. 43, which stated that the effective date of that sheet was December 6, 1989, with Third Revised Tariff Sheet No. 43, which states that its effective date is November 1, 1989.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before January 22, 1990. 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. Persons that are already 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. 90-1312 Filed 1-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-30-030 and TQ90-1-32-001]

Colorado Interstate Gas, Co.; Filing

January 12, 1990

Take notice that on January 5, 1990, Colorado Interstate Gas Company (CIG) filed a certain revised tariff sheets to its FERC Gas Tariff.

In compliance with the Commission's Letter Order of December 29, 1989, CIG states that the tariff sheets having an effective date of January 1, 1990 reflect the "settlement" base rates in Docket No. RP87-30 and reflect its quarterly PGA adjustment.

In compliance with the Commission's order of December 29, 1989, CIG states that the tariff sheets having an effective date of October 1, 1989 reflect elimination of certain language previously included in a footnote on such sheets.

CIG states that copies of this filing have been served upon its jurisdictional customers and public bodies.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before January 22, 1990. 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. Persons that are already 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. 90-1313 Filed 1-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-21-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 12, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on January 9, 1990, in compliance with Ordering Paragraphs (C) and (D) of the Commission's order issued November 30, 1989, in the captioned docket, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Third Revised Sheet No. 120
Second Revised Sheet No. 127
First Revised Sheet No. 127-A

CNG requests that the Commission permit the filing to become effective on February 9, 1990.

Copies of the filing were served upon its Volume No. 1 customers as well as 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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All protests should be filed on or before January 22, 1990. 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. Persons that are already 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. 90-1314 Filed 1-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 12, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on January 5, 1990, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's regulations (18 CFR Part 154) and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Sixteenth Revised Sheet No. 31
Alternate Sixteenth Revised Sheet No. 31

The filing is an out-of-cycle PGA rate filing to become effective on February 1, 1990, or, alternatively on February 4, 1990. The purpose of the filing is to reflect in rates the effect of changed operating conditions and pipeline supplier rates caused by extraordinarily cold weather conditions in CNG's service territory.

This filing would increase CNG's RQ and CD commodity rates by 15.33 cents per dekatherm, increase D-1 demand rates by 14.00 cents per dekatherm and decrease D-2 demand rates by 0.97 cents per dekatherm. Other rates will change correspondingly.

CNG states that copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before January 19, 1990. 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. 90-1315 Filed 1-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 12, 1990.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on January 5, 1990 certain revised tariff sheets included in the filing. ESNG states that the proposed effective date is February 1, 1990.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.7117 per dt in the Commodity charge; an increase of $1.1917 per dt in the Demand Charge 1; and a decrease of $0.1217 per dt in the Demand Charge 2 all as measured against ESNG's previously scheduled PGA filing in Docket No. TA90-1-23-000 as filed on September 8, 1989 and approved to be effective November 1, 1989. The current purchased gas cost adjustment has been developed using a quarterly projection of gas supply (firm and spot) and requirements and the latest pipeline supplier rates on file with the Commission.

ESNG further states that its projected cost of gas reflects the continued implementation of settlement agreements as filed by Transcontinental Gas Pipe Line Corporation and Columbia Gas Transmission Corporation on August 7, 1989 and June 29, 1989, respectively. Such settlement agreements were subsequently approved by the Commission on September 29, and October 19, 1989, respectively, with an effective implementation date of November 1, 1989.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1316 Filed 1-19-90; 8:45 am]

BILLING CODE 6717-01-M

Transcontinental Gas Pipe Line Corp., et al.; Filing of Pipeline Refund Reports

[Docket No. RP88-68-024 et al.]

January 12, 1990.

Take notice that the pipelines listed below have submitted to the Commission for filing proposed refund reports.

Filing date	Company	Docket No.
Dec. 5, 1989.	Transcontinental Gas PL Corp.	RP88-68-024
Jan. 2, 1990.	Algonquin Gas Transmission Co.	RP72-110-051

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 5, 1990. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1317 Filed 1-19-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3706-9]

Science Advisory Board; Radiation Advisory Committee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Radiation Advisory Committee of the Science Advisory Board will meet February 15-16, 1990 at the U.S. Environmental Protection Agency's Headquarters, 401 M Street, SW., Washington, DC. The meeting will begin

at 8:30 a.m. on Thursday and adjourn no later than 5:00 p.m. on Friday. On the 15th the meeting will be held in Room 1103 West Tower and on the 16th in North Conference Room 1, near the Washington Information Center.

Purpose: The purpose of this meeting is to brief the Radiation Advisory Committee on the major radiation related activities—both ionizing and non-ionizing—of the Agency so that the Committee may determine its review plans for 1990–91.

FOR FURTHER INFORMATION: The meeting is open to the public; however seating is limited. Members of the public wishing to attend, provide oral public comment, or have written comment sent to the Committee in advance of the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, or Mrs. Dorothy Clark, Staff Secretary at (202) 382–2552 by COB February 13.

Dated: January 12, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90–1403 Filed 1–19–90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66139; FRL-3659-3]

Intent To Cancel Registrations for Failure To Submit an Up-to-Date Confidential Statement of Formula

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel and preliminary determination governing sale, distribution, and use of existing stocks.

SUMMARY: By letters dated September 29, 1988, EPA, under section 3(c)(1)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") required the registrants identified in this notice to submit to EPA within 30 days of receipt of the letter a complete and accurate Confidential Statement of Formula for each of the product registrations identified in an attachment to the letter. For the products that are listed in this notice, the Agency did not receive the required response from the registrants within the applicable time period, and, to date, the registrants have failed to provide the required Confidential Statements of Formula. Therefore, pursuant to its authority in section 6(b) of FIFRA, EPA is issuing a Notice of Intent to Cancel the affected product registrations. EPA has determined that no sale or use of existing stocks of affected products will be permitted following cancellation.

DATES: A request for a hearing on the cancellation of any affected product or a request to modify the preliminary determination governing disposition of existing stocks by a registrant must be received by February 21, 1990 or 30 days from receipt by mail of this notice, whichever is the later applicable deadline. A request for a cancellation hearing or a request for modification of the existing stocks determination from any other affected person must be received by February 21, 1990. Any other person who wishes to comment on whether the Agency should allow sale, distribution, or use of existing stocks of any affected product should provide those comments by February 21, 1990. Any registrant who wishes to seek to avoid cancellation of affected products through compliance with this notice, must submit all necessary amendments to registration and a current, accurate, and complete Confidential Statements of Formula by February 21, 1990.

ADDRESS: Three copies of any request for a hearing must be submitted to: Hearing Clerk (A–101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Tom Luminello (H–7508C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attn: Special CSF Call-In. Office location and telephone number: CM#2, Room 728, Crystal City, VA, (703) 557–2558. Requests for, or comments applicable to an existing stocks allowance and Confidential Statements of Formula and other materials required to comply must be submitted in triplicate to Tom Luminello at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

By letters dated September 29, 1988, EPA required the registrants identified below to submit within 30 days of their receipt of the letters complete and accurate Confidential Statements of Formula for each of their product registrations as identified in an attachment to the letters. With respect to the products listed below, EPA did not receive the required responses from the listed registrants within the applicable time period. Moreover, to date, the registrants have failed to provide the Agency with the required Confidential Statements of Formula. Under section 3(c)(1)(E) of FIFRA, registrants are required to submit the complete formula of their registered pesticide products. The September 29, 1988 letters required that this information be provided pursuant to section 3(c)(1)(E) and further indicated that failure to do so would subject affected product registrations to commencement of cancellation proceedings pursuant to section 6(b) of FIFRA. EPA has determined that, by their failure to submit the Confidential Statement of Formula as required, the registrants of the products identified below have not satisfied the requirement to submit required material which complies with the provisions of FIFRA. This notice is divided into three parts. Part I describes the background and basis for the cancellation of the products identified below. Part II describes the procedures which will be followed in implementing the regulatory actions set forth in this notice. Part III includes a list of the registrants and products affected by this notice.

II. Basis for Cancellation

Under section 3(c)(1)(E) of FIFRA, applicants for Registration are required to submit to EPA a complete formula of their pesticide products. EPA is mandated by FIFRA to assess the risks and benefits of registered pesticides. A substantial portion of EPA's ability to conduct and complete this assessment is dependent upon the completeness, accuracy, and up-to-date status of information supplied by registrants concerning the composition of their pesticide products. Compliance with the requirement to supply EPA an up-to-date and accurate statement of formula is an essential element of the requirements of product registration under FIFRA.

For formulators such as those listed below who purchase a pesticidal ingredient from another registered source for incorporation into their formulated product, EPA requires that the formulator include as a part of its product's statement of formula, the identity of the registered sources of supply and the EPA registration number of that ingredient of the formulator's product so EPA can determine with certainty the actual composition of the formulated product. For other registrants, the same requirement for an accurate and up-to-date statement of formula exists for the same reason.

Under section 6(b) of FIFRA, the Administrator may issue a Notice of Intent to Cancel any pesticide if, among other things, the "labeling or other material required to be submitted does not comply with the provisions of [FIFRA]." As noted, EPA believes that registrants have a continuing obligation under section 3(c)(1)(E) to provide EPA the complete formula of their pesticide products. As to the registrants affected by this notice, the Agency previously stated in correspondence referenced earlier that failure to provide a complete and accurate Confidential Statement of

Formula would constitute grounds for commencement of cancellation proceedings. This Cancellation Notice is being issued because of these registrants' failure to provide the required Confidential Statements of Formula. Compliance with the requirement to supply EPA an up-to-date statement of formula is a basic element of registration required of all registrants. Failure to fully identify the ingredients in a pesticide product greatly undermines the Agency's ability to assess the risks and benefits of a product pursuant to the mandate contained in FIFRA. This particular notice is not being issued because of any particular risk concerns about the safety of the affected products; however, as explained above, the very absence of an up-to-date and accurate Confidential Statements of Formula prevents EPA from determining the nature of the risks which might result from the use of the product. Cancellation is appropriate in this instance due to the registrants' failure to provide material required under FIFRA and because material previously submitted does not comply with the provisions of FIFRA (because existing Confidential Statements of Formula for the affected products have not been updated).

Before taking any cancellation action under section 6(b), the Administrator must consider alternatives to cancellation such as restricting a pesticide's use, and must further consider the effect of cancellation of the product on the agricultural economy.

As discussed earlier, this action is being taken because of the registrants' failure to submit complete and updated Confidential Statements of Formula, and not because of specific concerns about the safety of the use of the products. Restricting the use of a pesticide product pursuant to section 3(d) is not an appropriate response in this instance in which there has been a failure to provide EPA correct information required to be submitted under FIFRA.

As to the effect of a cancellation of any of the products listed below on the agricultural economy, it is possible that certain agricultural pesticide uses might be affected. EPA has not conducted an exhaustive economic impact analysis in this case. EPA did inform the registrants that this information must be submitted to avoid cancellation, and the registrants, after having been made aware of the consequences, have failed to provide the information. This notice itself allows the registrants one additional opportunity to submit the information and avoid cancellation of their affected products. EPA believes that it is likely that any registrant who risks cancellation of an affected product rather than complying by providing the required information must have done so following its determination that the nominal cost of submitting an updated and accurate Confidential Statements of Formula would exceed any profit to be gained from the continued marketing of the product. If this were true, it would appear that the impact of the loss of the product on the agricultural economy would be nil. Finally, it should be noted that the Agency frequently requires information from registrants to perform its regulatory responsibilities. Where a registrant fails to provide EPA even the most basic of information--its product's formula--it would in most circumstances be inappropriate for the Agency to allow the registration to continue even if some hardship to the agricultural economy might result from its loss.

A draft of this Notice of Intent to Cancel was sent to the Department of Agriculture (USDA) for their review as required by section 6(b) of FIFRA. The USDA had no objection to the proposed cancellation. The text of the USDA response follows: "the Department has no objection to proceeding with your proposed notice. If the registrants still fail to respond after publication of this proposal, we do not object to a final order."

The draft document was also sent to the FIFRA Scientific Advisory Panel (SAP) for their review as required by section 25(d) of FIFRA. The Panel was asked to waive its review of the notice since there were no risk data or scientific issues at issue. The Panel granted a waiver of its review of the notice. The text of the SAP's response follows: "attached please find the concurrence for waiver by the FIFRA Scientific Advisory Panel for the scientific review and comment on the Notice of Intent to Cancel [* * *] registrations."

Under section 6(a)(1) of FIFRA, the Administrator may permit the continued sale and use of existing stocks of pesticide products whose registrations have been canceled pursuant to section 6(b) to such extent, under such conditions, and for such uses as he or she may specify if he or she determines that such sale or use is not inconsistent with the purposes of FIFRA and will not have unreasonable adverse effects on the environment. While this Notice of Intent to Cancel is not based on any particular risk based concerns arising from the use of the affected pesticides, the absence of the information on the composition of the products precludes EPA from reaching any determination regarding the nature or acceptability of any risk which might result from the use of such product on account of ingredients other than those listed on the product label. At this time, EPA has not made a finding pursuant to section 6(a)(1) that would allow continued sale or use of the affected products.

Under these circumstances, no further sale or use of the affected products will be permitted following cancellation pursuant to this notice. It is EPA's preliminary determination that neither sale nor use of existing stocks of the products will be allowed after the cancellation of the product registrations. Existing stocks are defined as any stocks of the affected products which are in existence and are within the possession or control of the registrant or any agent of the registrant at the time this notice is received by the registrant or published in the **Federal Register**, whichever occurs later.

III. Procedures

A. Request for Cancellation Hearing

Under section 6(b) of FIFRA, registrants or other adversely affected persons are entitled to respond by the deadlines noted above to this notice by requesting a hearing on whether the product registration should be canceled. Additionally, by the deadlines noted above, the registrant may seek to avoid cancellation by making the necessary corrections. In the case of this Notice of Intent to Cancel, to make the necessary corrections, a registrant must submit to EPA, before the applicable deadline passes, complete and accurate Confidential Statements of Formula for each of such registrant's registered products listed below. Unless, by the applicable deadline, a hearing is properly requested or the necessary corrections are made so that the affected products comply with the applicable requirements, the cancellation will become final and effective by operation of law 30 days after this notice is published in the **Federal Register** or 30 days after the registrant receives a copy of this notice, whichever occurs later.

To contest the cancellation action set forth in this notice, the registrant must request a hearing within 30 days of receipt of this notice, or within 30 days from publication of this notice in the **Federal Register**, whichever occurs later. Any other person adversely affected by the cancellation action set forth in this notice who wishes to contest such action must request a hearing within 30 days of publication of this notice in the **Federal Register**.

A registrant or another adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR part 164. These procedures require, among other things, that all requests identify the specific product for which a hearing is requested, and all requests must be received by the Hearing Clerk within the applicable 30-day period as noted above. Failure to comply with these requirements may result in denial of the request for a hearing. Requests for a hearing must also be accompanied by specific objections to the portions of this notice that a party seeks to challenge.

Requests for a hearing must be submitted to the Hearing Clerk at the address specified under the ADDRESS unit. If a hearing on the action initiated by this notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA section 6 (40 CFR part 164). Any such hearing shall be held in the Washington, DC metropolitan area. If, with respect to any of the affected products, either no hearing is properly requested by the end of the applicable 30-day period or the necessary corrections (that is, submission of the required Confidential Statements of Formula) are not made within that time, the affected product registrations will be canceled by operation of law.

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing arising from this Notice of Intent to Cancel: the Office of the Administrative Law Judge, the Office of the Judicial Officer, the Administrator, and the Deputy Administrator.

None of the persons designated as the judicial staff may have any *ex parte* communication on the merits of any of the issues involved in his or her proceeding with the trial staff or any interested person not employed by EPA, without fully complying with the applicable regulations.

B. Existing Stocks

As noted above, the Administrator has made a preliminary determination that no sale or use of existing stocks of the products listed below should be permitted if the registrations are canceled. To challenge this preliminary determination and receive permission to sell or use existing stocks of such product or products following cancellation, a person must submit a request within 30 days of publication of this notice to Tom Luminello at the address listed earlier in this notice under the heading **"FOR FURTHER INFORMATION CONTACT."**

Any such request should include information concerning the extent of existing stocks of the product and should contain factual information sufficient to support a finding that continued sale or use of such stocks will not be inconsistent with the purposes of FIFRA and will not result in unreasonable adverse effects on the environment. Any person wishing to comment on whether continued sale or use of existing stocks of any product listed below should be permitted must also supply such comments within 30 days of publication of this notice in the **Federal Register** to Tom Luminello.

If a timely request to allow sale or use of existing stocks is received and the product's registration is canceled, the Agency will consider the request and make a final determination as to whether sale or use of existing stocks should be permitted. If no request is received within 30 days from publication of this notice in the **Federal Register**, the preliminary determination will become final upon cancellation of the registration of the product, and no sale or use of existing stocks of the product will be permitted after cancellation of the registration.

IV. List of Registrants and Products Affected by this Notice

Registration number	Company name	Location
00538-0191	OM Scott and Sons Co.	Marysville, OH 43041
02496-0005	General Pest Control Co.	Cleveland, OH 44111
02517-0027	Conagra Pet Products	Omaha, NE 68105
02693-0088	International Paint (USA) Inc.	Union, NJ 07083
10370-0047	Ford's Chemical and Service	Pasadena, TX 77502
10806-0033	Contact Industries Inc.	Elizabeth, NJ 07201
23486-0041	Inland Labs. Inc.	Miami, FL 33143
23486-0051	.....do	Do.
23486-0061	.....do	Do.
43954-0018	Stewart Sanitary Supply Co.	St Louis, MO 63110
44215-0057	John Kennedy Consultants, Inc.	Laurel, MD 20708
44215-0102	.....do	Do.
45084-0008	Stewart Industries, Inc.	Ft Worth, TX 76112
45084-0018	.....do	Do.
45084-0019	.....do	Do.
47332-0001	Enviro-Chem Inc.	Walla Walla, WA 99362
58284-0033	Campbell Chemicals Inc.	Fenton, MO 63026

Dated: January 10, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-1404; Filed 1-19-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Providing Guidance on External Auditing Procedures for State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of policy.

SUMMARY: The FDIC is adopting a statement of policy which identifies the auditing procedures which the FDIC recommends that an independent external auditor should perform annually at each state nonmember bank. The procedures cover the following areas: loans, allowance for loan losses, securities, insider transactions, and internal controls. The policy statement also describes the extent of testing that is appropriate when carrying out these procedures and the information recommended to be included in the report of the independent auditor. It permits a bank in a state with auditing requirements that correspond to or exceed these basic procedures to satisfy this statement of policy when the bank has the state-mandated external auditing program performed. The policy statement also reiterates that banks are requested to file copies of auditors' reports with the FDIC. In addition, it states that state nonmember banks, which are owned by another company (such as a bank holding company) and are directly or indirectly included in the audit of the consolidated financial statements of the parent company, need not have separate external auditing procedures performed by independent accountants.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, telephone (202) 898-8914.

SUPPLEMENTARY INFORMATION: On May 16, 1989, the FDIC Board of Directors approved the issuance of a proposed statement of policy on Minimum Recommended External Auditing Procedures for State Nonmember Banks for a sixty-day comment period (54 FR 22360, May 23, 1989). Under the proposed statement of policy, a state nonmember bank that did not engage an independent public accountant to conduct an annual audit of its financial statements would be strongly encouraged to have its independent external auditor include the minimum recommended auditing procedures in the annual external auditing program performed for the bank. The minimum recommended procedures covered the following areas: securities, loans, allowance for loan losses, insider transactions, and internal controls. The proposed policy statement also described the extent of testing that is considered appropriate when carrying out these procedures and reiterated the request that banks submit copies of auditors' reports to the FDIC.

On November 16, 1988, the FDIC Board of Directors adopted a Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks, effective December 28, 1988 (53 FR 47868, November 28, 1988). This policy statement strongly encourages each state nonmember bank to have an annual audit of its financial statements performed by an independent public accountant, but it also identifies alternatives that may be acceptable for those banks that find that the external auditing program that will best meet their individual needs is other than an audit. These alternatives may include directors' examinations, "engagement audits," specified auditing procedures, balance sheet audits, and "operational audits."

In proposing a statement of policy on minimum recommended auditing procedures, the FDIC stated that no widely accepted national standards exist for the specific procedures that must be performed in many of the acceptable alternatives. Thus, when notified by a bank that one of these alternative reviews has been performed, the FDIC has no assurance as to the actual procedures which have been performed. For that reason, the FDIC, with input from the accounting profession, identified a proposed set of minimum auditing procedures as an alternative annual external auditing program for state nonmember banks.

The vast majority of banks use a calendar year for accounting and reporting purposes. Thus, the FDIC has chosen to make this statement of policy effective for 1990 auditing programs that banks adopt after the policy statement's issuance and for subsequent years' programs.

Comments

The FDIC received 57 comment letters on its proposed statement of policy. Four were from bank holding companies, five were from banking/thrift or accounting/auditing trade groups, one was from a national bank, ten were from firms that perform auditing work for banks, two were from federal/state bank supervisory agencies, and one was from the academic community. The remaining 34 written comments came from state nonmember banks and were primarily from smaller banks, many of which are located in midwestern states.

Of the 57 comments received, 13 were generally supportive of the statement of policy largely as proposed and 33 could be characterized as generally opposed. The remaining 11 commented on specific points of the proposal without indicating a view on the statement of policy as a whole.

After giving due consideration to the comments received, the FDIC has decided to proceed with the implemention of the statement of policy after making certain revisions to the policy as it was originally proposed.

Changes From the Proposal

Several of the commenters appeared to misunderstand the intent of the statement of policy and expressed concern that the FDIC was in reality requiring all state nonmember banks to have these auditing procedures performed annually by an independent auditor. To alleviate this misunderstanding and the resulting apprehension, the FDIC has adjusted the title of the policy statement and added a paragraph explaining the role of these procedures and how bank external auditing programs are evaluated during FDIC examinations of banks.

Numerous commenters expressed concern that the FDIC was requiring more extensive auditing procedures in certain areas than would be perfomed if the bank were to engage an independent public accountant to perform an audit. Thus, these commenters believe that the FDIC was expecting more of auditors (especially those who are not independent public accountants) at institutions where financial statements were not being audited than at institutions whose statements were being audited. Other bankers expressed the opinion that accountants may not be trained to perform some of the compliance procedures included in the proposal and some commenters indicated that certain procedures would be very costly to perform. For those reasons, some of the procedures have been eliminated, particularly in the Insider Transactions section, and numerous other procedures have been revised throughout the policy statement. To clarify the scope of the procedures included in the policy statement, a paragraph has been added stating that these auditing procedures should be among those performed by the external auditor whether or not the bank chooses to have an audit of its financial statements by an independent public accountant. Thus, a bank that has an annual audit of its finanical statements performed by an independent public accountant will generally satisfy the objectives of this policy statement.

Commenters questioned the FDIC's definition of "independent auditor" as used in this policy statement. For that reason, a footnote reference to Appendix A of the Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks was added which provides definitions for the terms used in this statement of policy.

Some bankers objected to the recommendation that the independent auditor be informed of and permitted access to examination reports and other supervisory communications, but the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) has mandated this type of disclosure. Thus, the paragraph containing this recommendation has been revised to footnote the specific language and requirements of FIRREA.

Some commenters suggested that the policy statement's apparent preference for statistical sampling be eliminated and stated that the minimum judgmental sampling sizes may be too large for many banks. For that reason, the section on testing has been revised to permit judgmental sampling based on generally accepted auditing standards or as agreed upon by the auditor and bank client. In addition, several respondents mentioned that a materiality standard should be included with regard to the areas of the bank for which testing must be carried out and such a standard has been incorporated in the Extent of Testing section.

Numerous commenters suggested that some guidance be provided on the type

of auditor's report that should be prepared for the bank's board of directors (a copy of which should be forwarded to the FDIC) and others recommended that the method of sampling and sample sizes be included in the auditor's report. Therefore, a new section has been added to the policy statement in response to these comments. The information to be included in the report is listed, including a statement in response to a comment that the reader of the report should be informed as to whether the accounting basis used for the accounts being audited is generally accepted accounting principles or the instructions for the preparation of Reports of Condition and Income. As suggested by another respondent, reference is also made to the requirements of Statement on Auditing Standards No. 35, Special Reports—Applying Agreed-upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement which are applicable to certified public accountants and may be referred to for additional guidance by other auditors.

Many commenters indicated that the FDIC should not request that copies of reports pertaining to the external auditing program be submitted to the appropriate Regional Office of the FDIC, but that examiners should instead review them at the bank as part of the examination process. However, the paragraph in the proposed auditing procedures policy statement requesting submission of auditors' reports is simply a reiteration of the language contained in Paragraphs 11 and 12 of the FDIC's Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks, which became effective December 28, 1988. Thus, clarification that this is not a new request has been added to the auditing procedures statement of policy. Other respondents pointed out that the proposal changed the wording with respect to the time period for submitting auditors' reports to "within 15 days after their receipt" from "as soon as possible after their receipt" as indicated in the external auditing programs policy statement. These respondents observed that a 15-day submission period may not allow time for the report to be reviewing by the Board of Directors before it would be submitted to the FDIC. For that reason, the wording of this paragraph was revised to use the same language on this point as in the earlier statement of policy.

One state bank supervisor and several bankers commented on the possible duplication in cost and effort if banks are requested to have these auditing procedures performed as well as those required by the state banking authority. To minimize any duplication, a paragraph was added indicating that a bank may satisfy this policy statement when it has the state-mandated external auditing program performed if the state requirement correspond to or exceed those recommended by the FDIC.

Numerous respondents questioned whether the intent of this statement of policy was to have these basic external auditing procedures performed at each subsidiary bank of a holding company. Thus, an explanatory section has been added to clarify that additional external auditing procedures for subsidiary banks that are directly or indirectly audited as a result of the audit of the holding company were not intended.

Many commenters questioned some of the proposed procedures on electronic data processing (EDP) systems and particularly the wisdom of entering erroneous transactions through the system as a testing procedure. As a result of these and other concerns expressed, the portion of the Internal Controls section dealing with EDP systems has been substantially revised and the erroneous transactions procedure has been eliminated.

In addition, numerous other specific comments on wording relating to various procedures were received. Several wording changes have made to the auditing procedures in response to these concerns.

Other Comments

In addition to comments on the policy statement that resulted in changes, the FDIC received and considered other comments on the May proposal.

The vast majority of the respondents discussed the cost burden of these external auditing procedures as the primary reason for their opposition to the statement of policy. Some stated their belief that these procedures would be about as costly as an audit. The FDIC is very conscious of the cost burden to small banks, and one of the purposes for identifying these procedures was to provide a less costly alternative to a financial statement audit for a small bank. Their cost depends on the types of businesses the bank operates, the assistance bank personnel are able to provide auditors, the time of year in which the external auditing procedures are performed, and numerous other factors. Nevertheless, accounting industry sources have indicated to the FDIC that the cost of having the external auditing procedures specified in the final policy statement performed should approximate one-third to one-half of the cost of an audit.

Other commenters said that the FDIC should permit a bank's internal auditor to perform these procedures and report directly to his/her board of directors. As a matter of sound banking policy, the FDIC expects internal auditors at all banks to report their findings directly to the bank's board of directors or a designated Audit Committee of the board. Furthermore, the FDIC believes that an external auditing program and the internal auditing function complement one another. However, one is not a substitute for the other, but rather, the external auditing program acts in part as a check on the internal auditing function. Thus, the FDIC believes that a bank should maintain both internal and external auditing programs.

Some respondents suggested that the policy guidance should provide banks with more flexibility to determine the auditing procedures that should be performed or to permit alternate testing procedures based on the judgment of the auditor. One reason for identifying these procedures is to provide the FDIC with assurance as to the actual procedures which have been performed when Regional Office staff review external auditors' reports because of the absence of national standards for bank external auditing programs that are not financial statement audits. At the same time, this policy statement is not a regulation or a requirement, but provides guidance on the external auditing procedures that the FDIC believes are basic to any bank's annual external auditing program. If the board of directors or the audit committee determines that the external auditing program of a particular bank would be better served by certain additional procedures or alternative ones, the FDIC examiner should review the reasons for such a decision and using his/her judgment, decide whether to comment. Nevertheless, the examiner is not expected to criticize the bank simply for deciding to have different external auditing procedures performed.

Similarly, if an auditor, based on his/her professional judgment, determines for reasons of materiality or other valid reasons that a specific procedure is not necessary or that alternate procedures should be performed and the bank expresses no objection to the substitution, the examiner is not expected to criticize the bank simply because its auditor has made such a decision. However, the examiner may review and comment upon this decision if he/she does not consider it prudent for the safe and sound operation of the

bank. Nevertheless, the auditors' report to the FDIC should indicate if any of the recommended procedures were omitted or if any alternate agreed-upon procedures were performed.

Several commenters suggested that more emphasis be placed on loans and less on securities and one suggested that auditors should specifically review loan quality and determine that the allowance for loan losses is adequate since poor loan quality is what jeopardizes the safety and soundness of banks. On the other hand, another respondent stated that auditors are not as qualified as examiners to review loan quality and recommended that the section on the allowance for loan losses be eliminated entirely.

Under both generally accepted accounting principles and the instructions for the preparation of Reports of Condition and Income, banks are required to maintain an adequate allowance for loan losses. The maintenance of an adequate allowance for loan losses is the responsibility of each bank's management regardless of whether the bank's financial statements are audited. The independent public accountant is not responsible for calculating the amount of the allowance or determining the collectibility of each loan in the portfolio, but rather for obtaining reasonable assurance that management has recorded an adequate allowance. Auditing procedures normally associated with the allowance for loan losses are performed primarily on a test basis and designed to determine the overall collectibility of the loan portfolio.[1] Since substantial time, effort, and expertise are required to properly test loan quality and the adequacy of the allowance for loan losses, the cost of requiring the same level of auditing work in this area as would be performed in a financial statement audit is inconsistent with the objectives of this policy statement. However, since this area is of utmost importance to the safety and soundness of a bank, the auditing procedures that review the loan policies and the bank's calculation of the allowance for loan losses have been retained.

Other comments that were evaluated and not adopted include: FDIC examiners should review all auditors' workpapers to assure that sound auditing procedures were followed; risk analysis by auditors to determine the minimum auditing procedures should be incorporated in the policy statement; and the FDIC should establish standards for internal control in banks. In addition, several commenters suggested specific language changes or additional procedures that were evaluated and not adopted.

Some respondents pointed out that audits of financial statements do not prevent bank failures, complained that accounting firms often send inexperienced personnel as bank auditors, and suggested that the external auditing program for a bank should be carried out less often than annually and depend on the examination rating of each individual bank. However, since these comments as well as several similar ones relate more closely to the FDIC policy encouraging all state nonmember banks to establish annual external auditing programs and because that policy became effective in December 1988, they are beyond the scope of this statement of policy.

The text of the statement of policy follows:

STATEMENT OF POLICY PROVIDING GUIDANCE ON EXTERNAL AUDITING PROCEDURES FOR STATE NONMEMEBER BANKS

In its Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks that became effective December 28, 1988, the FDIC strongly encourages each state nonmember bank to have an annual audit [1] of its financial statements performed in accordance with generally accepted auditing standards by an independent public accountant. Nevertheless, the board of directors of each state nonmember bank is ultimately responsible for safeguarding the bank's assets and ensuring the integrity of its financial statements. The audit committee or board of directors of the bank may determine not to engage an independent public accountant to perform an audit for various reasons. In those instances, the FDIC recommends that each state nonmember bank have an independent external auditor [2] (who need not be an independent public accountant) annually perform the auditing procedures [3] set forth below as part of its external auditing program.

Although the purpose of this policy statement is to encourage certain basic external auditing procedures as a less costly alternative for banks choosing not to have a financial statement audit, the auditing procedures recommended in this guidance are basic to any sound external auditing program. For that reason; they should also be among the procedures performed by an independent public accountant in an audit in which an opinion is expressed on a bank's financial statements. Thus, if a bank chooses to have an audit of its financial statements performed by an independent public account, such an opinion audit will generally satisfy the objectives of this statement of policy.

The auditing procedures contained in this statement of policy are intended to address high risk areas common to all banks. However, they do not address all possible risks in a banking organization and each bank must review the risks inherent in its particular business to determine if additional procedures are needed to cover other high risk areas in which it has activities. For example, if a bank or its subsidiaries has significant real estate investments, securities broker-dealer or similar activities (including those described in § 337.4 of the FDIC rules and regulations), or trust department operations, among others, the FDIC urges the bank to consider expanding the scope of its external auditing program so that it includes auditing procedures in these other high risk areas. (Information on external auditing procedures applicable to other banking activities is available from banking industry trade associations and auditing organizations.)

The independent auditor (or the public accountant) should be informed of and permitted access to all examination reports, administrative orders, and any additional written communication between the bank and the FDIC or state banking authorities. [4] The auditor

[1] American Institute of Certified Public Accountants, Auditing Procedure Study, *Auditing the Allowance for Credit Losses of Banks*, 1986, p. 13.

[1] Preference is made to Appendix A to the Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks for the definitions of terms used in this statement of policy.

[2] Ibid.

[3] When a bank engages an independent public accountant to perform less than a full financial statement audit, the engagement letter describing the procedures for which the bank has contracted generally refers to the work as "agreed-upon procedures." The term "auditing procedures" used throughout this statement of policy in meant to encompass these "agreed-upon procedures."

[4] In this regard, section 931 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 provides that "Each insured depository institution which has engaged the services of an independent auditor to audit such depository institution within the past 2 years shall transmit to such auditor * * * a copy of the most recent report of examination received by such depository institution." In addition, each depository institution is required by section 931 to provide such auditor with a copy of any supervisory memorandum of understanding with the depository institution, any written agreement between any federal or state banking agency and the institution, and any report of any action initiated or taken by a federal banking agency under Section 8 of the Federal Deposit Insurance Act (or similar state action) or any civil money penalty assessed against the depository institution or any institution-affiliated party.

should obtain bank management's written represxentation that he has been informed of and granted access to all such documents prior to the completion of his field work.

A review of both a bank's internal and external auditing programs will continue to be part of the FDIC's examination procedures, but examiners will not automatically comment negatively upon a bank that does not have an audit or all of these auditing procedures performed annually by an independent auditor. The examiner will review the risks in each bank's business and operations, and will comment negatively if internal auditing is deficient and/or sufficient external auditing procedures are not performed as often as necessary to assure the safe and sound operation of the bank under examination.

Extent of Testing

Where the procedures set forth below require testing or determinations to be made, sampling may be used. Both judgmental and statistical sampling may be acceptable methods of selecting samples to test. Judgmental sampling may be particularly suitable for small banks, and sample sizes should be selected consistent with generally accepted auditing standards (for the certified public accountant) or as agreed upon by the auditor and bank client. In any event, the sampling method and extent of testing (including the minimum sample size(s) used) should be disclosed in the auditor's report.

As with any auditing program under generally accepted auditing standards or otherwise, if an auditing procedure that is set forth below deals with an area or account of the bank in which the amounts and/or risks are not material to the bank's operations and financial results based on the experience and judgment of the auditor, the procedure may be omitted from that year's auditing program. Nevertheless, the auditor would have to review each such area or account each year in order to determine whether to reaffirm his/her conclusion.

Reports to be Filed with the FDIC

The FDIC's Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks requests that each bank that undergoes any external auditing work, regardless of the scope of the work, furnish a copy of the reports pertaining to the external auditing program, including any management letters, to the appropriate FDIC regional office as soon as possible after their receipt by the bank. In addition, that policy statement requests each bank to promptly notify the appropriate FDIC regional office when any independent public accountant or other external auditor is initially engaged to perform external auditing procedures and when a change in its accountant or auditor occurs.

External Auditing Procedures Required by State Banking Regulators

Some state statutes or state banking authorities require certain auditing procedures (often called "Directors' Examinations") to be performed each year with a report submitted to the state authority. Assuming the state requirements on scope and reporting correspond to or exceed those recommended in this statement of policy and the auditing procedures are performed by an independent external auditor, the bank may satisfy this statement of policy when its state-mandated external auditing program is performed. A copy of the auditor's report prepared for the state may be submitted in lieu of a separate report to the FDIC.

Holding Company Subsidiaries

When the audit committee or board of directors of any state nonmember bank owned by another company (such as a bank holding company) considers its external auditing program, it may find it appropriate to express the scope of its program in terms of the bank's relationship to the consolidated group. If the state nonmember bank is directly or indirectly included in the audit of the consolidated financial statements of its parent company performed by an independent public accounting firm, this statement of policy is not intended to imply that the bank is expected to have separate external auditing procedures performed. Nevertheless, if the board of directors of the subsidiary bank determines that the bank has activities that involve unusual risks to the subsidiary and these activities were not addressed by the audit of the consolidated entity (because these risks may be immaterial to the consolidated entity), appropriate additional external auditing procedures may need to be considered for the subsidiary bank.

As provided in the FDIC's Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks, where a bank is directly or indirectly included in the audit of a consolidated entity's financial statements, the bank may send one copy of the comparable reports by the public accountant or the notification of a change in accountants for the consolidated company to the appropriate regional director. If several banks supervised by the same FDIC regional office are owned by one parent company, a single copy of each report applicable to the consolidated company may be submitted to the regional office on behalf of all of the affiliated banks.

Basic External Auditing Procedures

Loans

1. Inquire as to whether the bank has policies that address the lending and collection functions. Review the bank's loan policies to ascertain whether they address the following items:

a. General fields of lending in which the bank will engage and the types of loans within each field;

b. Descriptions of the bank's normal trade area and circumstances under which the bank may extend credit to borrowers outside of such area;

c. Limitations on the maximum volume of each type of loan product in relation to total assets;

d. Responsibility of the board of directors in reviewing, ratifying or approving loans;

e. Leading authority of the loan or executive committee (if such a committee exists) and individual loan officers or classes of officers;

f. Adherence to legal lending limits;

g. Types of loans, specifying whether secured and unsecured, which will be granted;

h. Circumstances under which extensions or renewals of loans are permitted;

i. Guidelines for rates of interest and terms of repayment for loans;

j. Documentation required by the bank for each type of loan;

k. Limitations on the amount advanced in relation to the value of various types of collateral;

l. Limitations on the extension of credit through overdrafts;

m. Level or amount of loans granted in specific industries or specific geographic locations;

n. Guidelines for participations purchased and/or sold;

o. Guidelines for documentation of new loans prior to approval, updating loan files throughout the life of the loan, and maintenance of complete and current credit files on each borrower;

p. Guidelines for loan review procedures by bank personnel including:

i. An identification or grouping of loans that warrant the special attention of management;

ii. For each loan identified, a statement or indication of the reason(s) why the particular loan merits special attention; and

iii. A mechanism for reporting periodically to the board on the status of

each loan identified and the action(s) taken by management.

q. Collection procedures, including, but not limited to, actions to be taken against borrowers who fail to make timely payments;

r. Guidelines for nonaccrual loans (i.e., when an asset should be placed in nonaccrual status, individuals responsible for identifying nonperforming assets and placing them in nonaccrual status, and circumstances under which an asset will be placed back on accrual);

s. Guidelines for loan charge-offs;

t. Guidelines for in-substance foreclosures.

2. Read the board of directors' minutes to determine that the loan policies have been reviewed and approved. Through review of the board of directors' minutes and through inquiry of executive officers, determine whether the board of directors revises the policies and procedures periodically as needed.

3. Obtain the minutes of the board of directors and/or loan committee, as appropriate, and, through a comparison of a sample of loans made throughout the period with lending policies, test whether loans funded during the previous year were properly authorized by the appropriate committee or loan officer(s) and within the bank's lending limits.

4. Select a sample of borrowers (including loans from each major secured and unsecured loan company) and determine through examination of loan files and other bank reports whether lending and collection policies are being followed (e.g., type of loan and any extension or renewal of a previous loan are in accordance with loan policy, funds were not advanced until after loan approval was received from proper loan authorization level, and insurance coverage is adequate with the bank named as loss payee).

5. Using the sample of borrowers selected from each major category of secured loans, determine through examination of files and other bank reports whether collateral policies are being followed (e.g., loan is adequately collateralized, documentation is present and properly prepared, and assignments are perfected).

6. If material, review policies for lending on floor plan merchandise, warehouse inventory, and accounts receivable to determine that limitations on such loans and directions on verification of collateral by bank inspection are included in the policies. Ascertain that implementing procedures have been established and test for compliance by responsible bank personnel.

7. Determine whether participations purchased and participations sold transactions have been reported to and authorized by the board of directors or loan committee, if applicable, through review of appropriate minutes.

8. Confirm a sample of participations purchased and participations sold with participating banks to verify that they are legitimate transactions and that they are properly reflected as being with or without recourse in the bank's records.

9. Balance detail ledgers or reconcile computer-generated trial balances with the general ledger control accounts for each major category of loans, including loans carried as past due or in a nonaccrual status.

10. Confirm a sample of all loans within each major category, including past due and nonaccrual loans.

11. From reports to the board on the status of loans identified as warranting special attention, review the disposition of a sample of loans no longer appearing on these reports.

12. Test loan interest income and accrued interest by:

a. determining the bank's method of calculating and recording interest accruals;

b. obtaining trial balances of accrued interest;

c. testing the reconciliation of the trial balances to the general ledger;

d. determining that interest accruals are not made on nonaccrual loans;

e. select sample items from each major category of loans and:

i. determining the stated interest rate and appropriate treatment of origination fees and costs,

ii. testing receipt of payments and correctness of entries to applicable general ledger accounts,

iii. calculating accrued interest and comparing it to the trial balance, and

iv. reviewing recorded book value for appropriate accretion of discount (net origination fees) and amortization of premium (net origination costs); and

f. performing an analytical review of yields on each major category of loan for reasonableness.

Allowance for Loan Losses

1. Test charge-offs and recoveries for proper authorization and/or reporting by reference to the board of directors' minutes. Review charged-off loans for any relationship with bank insiders or their related interests.

2. Review the bank's computation of the amount needed in the allowance for loan losses as of the end of the most recent quarter. Documentation should include consideration of the following matters:

a. General, local, national and international (if applicable) economic conditions;

b. Trends in loan growth and depth of lending staff with expertise in these areas;

c. Concentrations of loans (e.g., by type, borrower, geographic area, and sector of the economy);

d. The extent of renewals and extensions to keep loans current;

e. The collectibility of nonaccrual loans;

f. Trends in the level of delinquent and classified loans compared with previous loan loss and recovery experience;

g. Results of regulatory examinations; and

h. The collectibility of specific loans on the "watch list" taking into account borrower financial status, collateral type and value, payment history, and potential permanent impairment.

Securities

1. Review the investment policies and procedures established by the bank's board of directors (BOD). Review the BOD (or investment committee) minutes for evidence that these policies and procedures are periodically reviewed and approved. The policies and procedures should include, but not be limited to:

a. Investment objectives, including use of "held for sale" and trading activities;

b. Permissible types of investments;

c. Diversification guidelines to prevent undue concentration;

d. Maturity schedules;

e. Limitation on quality ratings;

f. Hedging activities and other uses of futures, forwards, options, and other financial instruments;

g. Handling exceptions to standard policies;

h. Valuation procedures and frequency;

i. Limitations on the investment authority of officers; and

j. Frequency of periodic reports to the BOD on securities holdings.

2. Test the investment procedures and ascertain whether information reported to the BOD (or investment committee) for securities transactions is in agreement with the supporting data by comparing the following information on such reports to the trade tickets for a sample of items (including futures, forwards, and options):

a. Descriptions

b. Interest rate

c. Maturity

d. Par value, or number of shares

e. Cost

f. Market value on date of transaction (if different than cost).

3. Using the same sample items, analyze the securities register for accuracy and confirm the existence of the sample items by examining securities physically held in the bank and confirming the safekeeping of those securities held by others.

4. Balance investment subledger(s) or reconcile computer-generated trial balances with the general ledger control accounts for each type of security.

5. Review policies and procedures for controls which are designed to ensure that unauthorized transactions do not occur. Ascertain through reading of policies, procedures, and BOD minutes whether investment officers and/or appropriate committee members have been properly authorized to purchase/sell investments and whether there are any limitations or restrictions on delegated responsibilities.

6. Obtain a schedule of the book, par, and market values of securities as well as their rating classifications. Test the accuracy of the market values of a sample of securities and compare the ratings listed to see that they correspond with those of the rating agencies. Review the bank's documentation on any permanent declines in value that have occurred among the sample of securities to determine that any recorded declines in market value are appropriately computed. Examine the bank's computation of the allowance account for securities, if any, for proper presentation and adequacy.

7. Test securities income and accrued interest by:

a. determining the bank's method of calculating and recording interest accruals;

b. obtaining trial balances of accrued interest;

c. testing the reconciliation of the trial balances to the general ledger;

d. determining that interest accruals are not made on defaulted issues;

e. selecting items from each type of investment and money market holdings and:

i. determining the stated interest rate and most recent interest payment date of coupon instruments by reference to sources of such information that are independent of the bank,

ii. testing timely receipt of interest payments and correctness of entries to applicable general ledger accounts,

iii. calculating accrued interest and comparing it to the trial balance,

iv. reviewing recorded book value for appropriate accretion of discount and amortization of premium;

f. performing an analytical review of yields on each type of investment and money market holdings for reasonableness.

8. Review investment accounts for volume of purchases, sales activity and length of time securities have been held. Inquire as to the bank's intent and ability to hold securities until maturity. (If there is frequent trading in an investment account, such activity may be inconsistent with the notion that the bank has the intent and ability to hold securities to maturity.) Test gains and losses on disposal of investment securities by sampling sales transactions and:

a. determining sales prices by examining invoices or brokers' advices;

b. checking for the use of trade date accounting and the computation of book value on trade date;

c. determining that the general ledger has been properly relieved of the investment, accrued interest, premium, discount and other related accounts;

d. recomputing the gain or loss and compare to the amount recorded in the general ledger; and

e. determining that the sales were approved by the BOD or a designated committee or were in accordance with policies approved by the BOD.

Insider Transactions

1. Review the bank's policies and procedures to ensure that extensions of credit to and other transactions with insiders [5] are addressed. Ascertain that these policies include specific guidelines defining fair and reasonable transactions between the bank and insiders and test insider transactions for compliance with these guidelines and statutory and regulatory requirements. Ascertain that the policies and procedures on extensions of credit comply with the requirements of Federal Reserve Regulation O.

2. Obtain a bank-prepared list of insiders, including any business relationships they may have other than as a nominal customer. Also obtain a list of extensions of credit to and other transactions that the bank, its affiliates, and its subsidiaries have had with insiders that are outstanding as of the audit date or that have occurred since the prior year's external auditing procedures were performed. Compare these lists to those prepared for the prior year's external auditing program to test for completeness.

3. Review the board of directors' minutes, loan trial balances, supporting loan documentation, and other appropriate bank records in conjunction with the list of insiders obtained from the bank to verify that a sample of extensions of credit to and transactions with insiders were:

a. in compliance with bank policy for similar transactions and were at prevailing rates and terms at that time;

b. subjected to the bank's normal underwriting criteria and deemed by the bank to involve no more than a normal degree of risk or present no other unfavorable features;

c. approved by the board of directors in advance with the interested party abstaining from voting; and

d. within the aggregate lending limits imposed by Regulation O or other legal limits.

4. Review the bank's policies and procedures to ensure that expense accounts of individuals who are executive officers, directors, and principal shareholders are addressed and test a sample of the actual expense account records for compliance with these policies and procedures.

Internal Controls

General Accounting and Administrative Controls

1. Review the board of directors' minutes to verify that account reconciliation policies have been established and approved and are reviewed periodically by the BOD. Determine that management has implemented appropriate procedures to ensure the timely completion of reconciliations of accounting records and the timely resolution of reconciling items.

2. Determine whether the bank's policies regarding segregation of duties and required vacations for employees (including those involved in the EDP function) have been approved by the BOD, and verify that these policies and the implementing procedures established by management are periodically reviewed, are adequate, and are followed.

3. Confirm a sample of deposits in each of the various types of deposit accounts maintained by the bank. Inquire about controls over dormant deposit accounts.

4. Test to determine that reconciliations are prepared for all significant asset and liability accounts and their related accrued interest

[5] For purposes of this section of the auditing procedures, insiders include all affiliates of the bank (including its parent holding company) and all subsidiaries of the bank, as those terms are defined in section 23A of the Federal Reserve Act, as well as the bank's executive officers, directors, principal shareholders, and their related interests, as those terms are defined in section 215.2 of Federal Reserve Regulation O.

accounts, if any, such as "due from" accounts; demand deposits; NOW accounts; money market deposit accounts; other savings deposits; certificates of deposits; and other time deposits. Review reconciliations for:

a. timeliness and frequency;

b. accuracy and completeness; and

c. review by appropriate personnel with no conflicting duties.

5. Compare a sample of balances per reconciliations to the general ledger and supporting trial balances.

6. Examine detail and aging of a sample of reconciling items from those accounts whose reconciliations have been tested and reviewed and a sample of items in suspense, clearing, and work-in-process accounts by:

a. testing aging;

b. determining whether items are followed up on and appropriately resolved on a timely basis; and

c. discussing items remaining on reconciliations and in the suspense account with appropriate personnel to ascertain whether any should be written off.

Review a sample of charged-off reconciling and suspense items for proper authorization.

7. Verify through inquiry and observation that the bank maintains adequate records of its off-balance sheet activities, including, but not limited to, its outstanding letters of credit and its loan commitments. Review the bank's procedures for monitoring the extent of its credit exposure from such activities to determine whether probable or reasonably possible losses exist.

Electronic Data Processing Controls

1. Read the BOD's minutes to determine whether the BOD has reviewed and approved the bank's electronic data processing (EDP) policies (including those regarding outside servicers, if any, and the in-house use of individual personal computers (PCs) and personalized programs for official bank records) at least annually, confirm that management has established appropriate implementing procedures, and verify the bank's compliance with these policies and procedures.

a. The policies and procedures for either in-house processing or use of an outside service center should include:

i. a contingency plan for continuation of operations and recovery when power outages, natural disasters, or other threats could cause disruption and/or major damage to the institution's data processing support (including compatibility of servicer's plan with that of the bank); [6]

ii. requirements for EDP-related insurance coverage which include the following provisions:

(1) extended blanket bond fidelity coverage to employees of the bank or servicer;

(2) insurance on documents in transit, including cash letters; and

(3) verification of the insurance coverage of the bank or service bureau and the courier service;

iii. review of exception reports and adjusting entries approved by supervisors and/or officers;

iv. controls for input preparation and control and cutput verification and distribution;

v. "back-up" of all systems, including off-premises rotation of files and programs;

vi. security to ensure integrity of data and system modifications; and

vii. necessary detail to ensure an audit trail.

b. When an outside service center is employed, the policies and procedures should address the following additional items:

i. the requirement for a written contract for each automated application detailing ownership and confidentiality of files and programs, fee structure, termination agreement, and liability for documents in transit;

ii. review of each contract by legal counsel; and

iii. review of each third party review of the service bureau, if any.[7]

2. In the area of general EDP controls, determine through inquiry and observation that policies and procedures have been established for:

a. Management and user involvement and approval of new or midfield application programs;

b. Authorization, approval and testing of system software modifications;

c. The controls surrounding computer operations processing;

d. Restricting access to computer operations facilities and resources including:

i. off-premises storage of master disks and PC disks;

ii. security of the data center and bank's PCs; and

iii. use and periodic changing of passwords.

3. With respect to EDP applications controls, inquire about and observe:

a. The controls over:

i. Input submitted for processing,

ii. Processing transactions,

iii. Output,

iv. Applications on PCs, and

v. Telecommunications both between and within bank offices;

b. The security over unissued or blank supplies of potentially negotiable items; and

c. The control procedures on wire transfers including:

i. Authorizations and agreements with customers, including who may initiate transactions,

ii. Limits on transactions, and

iii. Call back procedures.

Auditor's Report to the Bank's Board of Directors

After the completion of the auditing procedures (or agreed-upon procedures) set forth above, the independent auditor should evaluate the results of his/her auditing work. The auditor should prepare and promptly submit a report addressed to the board of directors (or audit committee) of the bank detailing the findings and suggestions resulting from the performance of these auditing procedures.

Independent auditors should include in their report, as a minimum, (1) the accounts or items on which the procedures were applied; (2) the sampling method(s) used; (3) the procedures and agreed-upon extent of testing performed; (4) the accounting basis (either generally accepted accounting principles [GAAP] or the instructions for the preparation of the Reports of Condition and Income [Call Reports]) on which the accounts of items being audited are reported; (5) the auditor's findings; and (6) the date as of which the procedures were performed. The auditor should sign and date the report, which should also disclose the auditor's business address. The report submitted by an independent auditor who is a certified public accountant should be rendered in accordance with the requirements of Statement on Auditing Standards (SAS) No. 35, "Special Reports—Applying Agreed-upon Procedures to Specified Elements, Accounts, or Items of a Financial Statement," and SAS No. 62, "Special Reports." Other independent auditors may wish to refer to these auditing standards for guidance in preparing their reports.

The bank is requested to send a copy of this report to the appropriate FDIC regional office as soon as possible after its receipt.

[6] For further guidance, see the July 1989, FFIEC Policy on Contingency Planning for Financial Institutions and Section 7 of the FFIEC EDP Examination Handbook.

[7] For further guidance on using a third-party report, see the American Institute of Certified Public Accountant's Audit and Accounting Guide, *Audits of Service-Center Produced Records.*

By order of the Board of Directors. Dated at Washington, DC., this 16th day of January, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-1408 Filed 1-19-90; 8:45 am]

BILLING CODE 6714-01-M

Notice of Compliance With Section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The Federal Deposit Insurance Corporation hereby gives notice of compliance with section 212(h) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires that the FDIC fully consider the adverse economic impact on local communities, including businesses and farms, of actions taken by it during the administration and liquidation of loans of a depository institution in default, and that the FDIC adopt and publish guidelines to minimize such adverse economic effects.

FOR FURTHER INFORMATION CONTACT: Arthur F. Lorentzen, Jr., Associate Director, Division of Liquidation, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898-7362.

SUPPLEMENTARY INFORMATION: Compliance with section 212(h) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989:

On August 9, 1989 President Bush signed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Section 212(a) of the Act amends section 11 of the Federal Deposit Insurance Act by revising subsection (h). This new subsection requires the FDIC to consider the adverse economic impact of its actions on local communities, including businesses and farms, during the administration and liquidation of the loans of a depository institution in default.

Subsection 212(h)(3) of the statute requires the FDIC to adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community. Further, subsection 212(h)(2) provides that the Corporation shall consider releasing proceeds from the sale of products and services for family living and business expenses, and shortening the decision making process for the acceptance of offers contingent upon third party financing.

The FDIC Division of Liquidation's policies and guidelines as contained in its Delegations of Authority and the Credit and Agricultural Manuals address these concerns. Specifically, Bank Liquidation Specialists are directed to refer to the following:

1. *Release of Proceeds* (I.C.5.1, Agricultural Manual). This section governs FDIC policies permitting the Release of Proceeds resulting from the sale of livestock or crops, and permits release of such proceeds when it is in the interest of the Corporation, either in protecting the ongoing business or the FDIC's collateral position. Additionally, releases of proceeds for living expenses may be considered when the loans remain secured. This section discusses the information necessary to make these decisions and provides an expedited format to assure quick approval of appropriate releases. In those situations when time is of the essence, the policy allows verbal approval from the regional office.

2. *Borrower Requests for Additional Funding* (I.C.6.1, Agricultural Manual; III-B-3, Credit Manual). While there are few instances in which the FDIC will advance money for anything other than the protection of collateral, these sections provide alternatives to advancing funds which apply to agricultural and other business situations and procedures for the few situations in which FDIC will advance funding for the continuation of ongoing business projects. Assisting the borrower in securing advances from another financial insitution is one such alternative. Additionally, in the event of an Emergency Crop Advance Request, emergency case forms are provided to facilitate analysis and achieve expedited approvals.

3. *Debt Workout and Compromise Programs* (VI-D and III-F, Credit Manual). These sections provide guidelines and procedures for extensions, renewals and compromises of loans when in the mutual interest of the Corpporation and the debtor. To shorten the approval process, approval of such actions is allowed under delegated authority. Case forms are provided to facilitate analysis and expedite the review/approval process.

4. *Asset Sales Which Enable the Refinancing of Debt by a Third Party Insitution* (VI-E, Credit Manual). This section interprets the delegations of authority to allow a broader section of the delegations to apply to loan sales which automatically facilitate the refinancing of acquired debt. This interpretation speeds the decision making process so that most note sales which consitute settlement or refinancing by third parties are approved at the field office level. This section also provides guidelines and procedures for all other loan sales, resulting in the return of a considerable portion of the Corporation's loan inventory to the private sector.

5. *Asset and Real Estate Appraisal Procedures* (VI-C, Credit Manual). The FDIC requires that the values determined in appraisal reports are set in accordance with the existing conditions within particular markets and sub-markets. This policy ensures that the appraised value for a given real estate asset represents a full market value, and not a liquidation value. Therefore, the sales proceeds form FDIC controlled real estate assets will not deviate from prevailing market sales comparables.

6. *Mortgage Servicing and Sales Guidelines* (VI-J, Credit Manual). This section provides guidelines for the Corporation's ongoing program to expedite the sale of conforming mortgage loans to prviate sector concerns.

7. *Delegations of Authority* (VII-A of the Credit Manual and I.C.7.1. of the Agicultural Manual). The FDIC's Board of Directors amended its delegations of authority to enable the Division of Liquidation to expedite the decision making process for credit related issues. Specifically, the Division of Liquidation strives to maintain a reasonable limit on the number of decisions requiring approval beyond the Field site level. Washington or Regional Office approval is required only for decisions involving large dollar amounts and/or complicated assets. These delegations have enhanced the ability of Bank Liquidation Specialists and liquidation site staffs to obtain the necessary approvals for all credit actions in a timely fashion.

Copies of the Division of Liquidation's Delegations of Authority, Credit Manual and Agricultural Manual are available upon request, pursuant to the Feedom of Information Act, at the following location: Federal Deposit Insurance Corporation, Office of the Executive Secretary, 550 17th Street NW., Washington, DC 20429.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of January, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-1409 Filed 1-19-90; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0136]

Storz Ophthalmics, Inc.; Premarket Approval of Models KRO, KR1O, KBO, KB1O, OF1O, OB1O, KN1O, and NB1O Posterior Chamber

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Storz Ophthalmics, Clearwater, FL, for premarket approval, under the Medical Device Amendments of 1976, of the Models KRO, KR1O, KBO, KB1O, OF1O, OB1O, KN1O, and NB1O Posterior Chamber Intraocular Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 31, 1989, of the approval of the application.

DATES: Petitions for administrative review by February 21, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8261.

SUPPLEMENTARY INFORMATION: On November 18, 1987, Storz Ophthalmics, Inc., Clearwater, FL 34616, submitted to CDRH an application for premarket approval of the Models KRO, KR1O, KBO, KB1O, OF1O, OB1O, KN1O, and NB1O Posterior Chamber Intraocular Lenses. The devices are indicated for primary implantation for the visual correction of aphakia in patients 60 years of age and older where a cataractous lens has been removed by extracapsular cataract extraction methods. The devices are available in a range of powers from 4 diopters (D) through 34 D in 0.5-D increments.

On April 21, 1988, the Opthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a n otice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 21, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 11, 1990.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-1359 Filed 1-19-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0523]

Abbott Laboratories; Premarket Approval of TDx® Cyclosporine and Metabolites Serum Assay

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott Laboratories, Abbott Park, IL, for premarket approval, under the Medical Device Amendments of 1976, of the TDx® Cyclosporine and Metabolites Serum Assay. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 14, 1989, of the approval of the application, by letter of December 14, 1989, of the approval of the application.

DATES: Petitions for administrative review by February 21, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

SUPPLEMENTARY INFORMATION: On April 10, 1989, Abbott Laboratories, Abbott Park, IL 60064-5300, submitted to CDRH an application for premarket approval of the TDx® Cyclosporine and Metabolites Serum Assay. The TDx® Cyclosporine and Metabolites Serum Assay is an in vitro reagent system for the quantitative measurement of cyclosporine (Sandimune®, Cyclosporin A) and some of its metabolites in human serum samples as an aid in the management of cardiac and renal transplant patients.

On August 11, 1989, the Clinical Chemistry and Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of

the application. On December 14, 1989, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 21, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 11, 1990.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-1425 Filed 1-19-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under Guidelines—Correction

AGENCY: National Institutes of Health, PHS, DDHS.

Correction: Correction to the Notice of Proposed Action Under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules published in the **Federal Register** on January 4, 1990, Separate Part II. The subject heading under Section I should read: "I. Amendment to Appendix D-XIII of the NIH Guidelines."

FOR FURTHER INFORMATION: Contact Dr. Nelson Wivel, Director, Office of Recombinant DNA Activities, Building 31, Room 4B11, National Institutes of Health, Bethesda, Maryland 20892. (301) 496-9838.

Dated: January 12, 1990.

Jay Moskowitz,

Associate Director, Office of Science Policy and Legislation, National Institutes of Health.

[FR Doc. 90-1335 Filed 1-19-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38418-24, August 31, 1982, as amended most recently at 53 FR 46944, November 21, 1988) is amended to reflect the abolishment of the Office of Program Support within the Bureau of Health Care Delivery and Assistance (BHCDA) and the establishment of the Office of Management within BHCDA, Health Resources and Services Administration (HRSA).

Under HB-10, Organization and Functions, make the following changes under the Bureau of Health Care Delivery and Assistance (HBC):

(1) Delete the organization title and functional statement for the Office of Program Support (HBC14), and

(2) Add the following functional statement after the functional statement for the Office of Financing Services (HBC16):

Office of Management (HBC17). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; coordinates and monitors program policy implementation; and maintains close liaison with officials of the Agency, the Office of the Assistant Secretary for Health, and the Office of the Secretary on matters relating to these activities. Specifically: (1) Provides or serves as liaison for providing program support services and resources, including procurement of equipment and supplies, printing, property, etc.; (2) provides leadership on intergovernmental activities of the Bureau which require central direction or which cross program lines; (3) provides liaison between the Bureau Director and the Regional Health Administrators; (4) coordinates the activities of Headquarters program divisions and regional staff; (5) directs, conducts, and coordinates manpower management activities and advises on the allocation of personnel resources; (6) provides organization and management analysis, develops policies and procedures for internal operations, and interprets and implements the Bureau's management policies, procedures, and systems; (7) develops and coordinates program and administrative delegations of authority activities; (8) is responsible for the Bureau's paperwork management functions including the development and maintenance of manual issuances; (9) is responsible for planning, directing, coordinating, and evaluating Bureau-wide grants management activities; (10) coordinates the development and processing of Bureau contract procurement activities and maintains liaison with the Division of Grants and Procurement Management, HRSA, and with the Office of the Assistant Secretary for Health; (11) develops and carries out a full range of financial management activities, including development of the annual budget; (12) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; and (13) conducts Bureau-wide activities associated with the management of national committees.

This reorganization is effective upon date of signature.

Dated: January 9, 1990.

John H. Kelso,

Acting Administrator.

[FR Doc. 90-1298 Filed 1-19-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-90-3001]

Privacy Act of 1974; Revision of Addresses

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Revision of Addresses.

SUMMARY: This notice updates addresses previously published as the Department's Appendix A—Officials to Receive Inquiries, Requests for Access and Requests for Correction or Amendment, in the **Federal Register** at 48 FR 38681, August 25, 1983, and Privacy Act Issuances 1987 Compilation, Volume II, pages 92-94. Due to the many changes required to update this Appendix, it is revised in its entirety. These revisions will provide an up-to-date listing of offices, with addresses, of officials to receive Privacy Act inquiries.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Donna Eden, Departmental Privacy Act Officer, Department of Housing and Urban Development, Room 4142, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755-6050. (This is not a toll-free number).

Dated: January 17, 1990.

Claire E. Freeman,

Assistant Secretary for Administration.

Appendix A—Officials to Receive Inquiries, Requests for Access and Requests for Correction or Amendment.

Headquarters

Privacy Act Officer, 451 Seventh Street, SW, Washington, DC 20410.

Region I

Regional Administrator-Regional Housing Commissioner, 10 Causeway Street, Room 375, Federal Building, Boston, Massachusetts 02222-1092.

Manager, 330 Main Street, 1st Floor, Hartford, Connecticut 06106-1860.

Manager, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101-2487.

Chief, Casco Northern Bank Building, 23 Main Street, 1st Floor, Bangor, Maine 04401-4318.

Manager, Room 330, John O. Pastore Federal Building and U.S. Post Office, Kennedy Plaza, Providence, Rhode Island 02903-1785.

Chief, Federal Building, 11 Elmwood Avenue, Room B-31, Burlington, Vermont 05402-0879.

Region II

Regional Administrator-Regional Housing Commissioner, 26 Federal Plaza, New York, New York 10278-0068.

Manager, the Parkade Building, 519 Federal Street, Camden, New Jersey 08103-9998.

Manager, Military Park Building, 60 Park Place, Newark, New Jersey 07102-5504.

Manager, 465 Main Street, Lafayette Court, Buffalo, New York 14203-1780.

Manager, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918-1804.

Manager, Leo W. O'Brien Federal Building, North Pearl Street and Clinton Avenue, Albany, New York 12207-2395.

Region III

Regional Administrator-Regional Housing Commissioner, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106-3392.

Manager, HUD Building, 451 Seventh Street, SW, Room 3158, Washington, District of Columbia 20410-5500.

Manager, the Equitable Building, 3rd Floor, 10 North Calvert Street, Baltimore, Maryland 21202-1865.

Manager, Old Post Office Courthouse Building, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219-1906.

Manager, 400 North Eighth Street, Richmond, Virginia 23240.

Chief, Federal Building, 844 King Street, Room 1304, Wilmington, Delaware 19801-3519.

Manager, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301-1795.

Region IV

Regional Administrator-Regional Housing Commissioner, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303-3388.

Manager, Beacon Ridge Tower, 600 Beacon Parkway West, Birmingham, Alabama 35233-3144.

Manager, 325 West Adams Street, Jacksonville, Florida 32202-4303.

Manager, P.O. Box 1044, 601 West Broadway, Louisville, Kentucky 40201-1044.

Manager, Doctor A. H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269-1096.

Manager, 415 North Edgeworth Street, Greensboro, North Carolina 27401-2107.

Manager, Strom Thurmond Federal Building, 1835-45 Assembly Street, Columbia, South Carolina 29201-2480.

Manager, 3rd Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, Tennessee 37902-2526.

Manager, Gables One Tower, 1320 South Dixie Highway, Coral Gables, Florida 33146-2911.

Manager, 700 Twiggs Street, Room 527, P.O. Box 17910, Tampa, Florida 33672-2910.

Manager, One Memphis Place, 200 Jefferson Avenue, Suite 1200, Memphis, Tennessee 38103-2335.

Manager, Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228-1803.

Manager, Langley Building, 3751 Maguire Boulevard, Suite 270, Orlando, Florida 32803-3032.

Region V

Regional Administrator-Regional Housing Commissioner, 626 West Jackson Boulevard, Chicago, Illinois 60606-5601.

Manager, 151 North Delaware Street, Indianapolis, Indiana 46205-2526

Manager, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226-2592.

Manager, 220 Second Street, South, Minneapolis, Minnesota 55401-2195.

Manager, 200 North High Street, Columbus, Ohio 43215-2499.

Manager, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203-2289.

Chief, 524 South Second Street, Suite 672, Springfield, Illinois 62701-1774.

Manager, Amitec Building-Local, 352 South Saginaw Street, Room 200, Flint, Michigan 48502-1953.

Manager, 2922 Fuller Avenue, NE, Grand Rapids, Michigan 49505-3499.

Manager, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202-3253.

Manager, One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, Ohio 44114-1670.

Region VI

Regional Administrator-Regional Housing Commissioner, 1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113-2905.

Manager, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201-3707.

Manager, Fisk Federal Building, 1661 Canal Street, New Orleans, Louisiana 70112-2887.

Manager, 525 Griffin Street, Room 860, Dallas, Texas 75202-5007.

Manager, Washington Square, 800 Dolorosa Street, San Antonio, Texas 78207-4563.

Manager, Joe D. Waggoner Federal Building, 500 Fannin Street, Room 6B04, Shreveport, Louisiana 71101-3077.

Manager, 625 Truman Street, NE, Albuquerque, New Mexico 87100-6443.

Manager, Murrah Federal Building, 200 NW 5th Street, Oklahoma City, Oklahoma 73102-3202.

Manager, 1516 S. Boston Avenue, Suite 110, Tulsa, Oklahoma 74119-4032.

Manager, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098-4096.

Manager, Federal Office Building, 1205 Texas Avenue, Lubbock, Texas 79401-4093.

Region VII

Regional Administrator-Regional Housing Commissioner, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106-2496.

Manager, 210 North Tucker Boulevard, St. Louis, Missouri 63101-1997.

Manager, Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102-1622.

Manager, Federal Building, 210 Walnut Street, Room 239, Des Moines, Iowa 50309-2155.

Chief, Frank Carlson Federal Building, 444 SE Quincy Street, Room 256, Topeka, Kansas 66683-0001.

Region VIII

Regional Administrator-Regional Housing Commissioner, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202-2349.

Manager, Federal Office Building Drawer 10095, 301 S. Park, Room 340, Helena, Montana 59626-0095.

Chief, Federal Building, P.O. Box 2483, 653 2nd Avenue North, Fargo, North Dakota 58108-2483.

Chief, 300 Building, 300 North Dakota Avenue, Suite 116, Sioux Falls, South Dakota 57102-0311.

Manager, 324 South State Street, Suite 220, Salt Lake City, Utah 84111-2321.

Chief, 4225 Federal Office Building, 100 East B Street, Post Office Box 580, Casper, Wyoming 82602-1918.

Region IX

Regional Administrator-Regional Housing Commissioner, Federal Building, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, California 94102-3448.

Manager, 1615 W. Olympic Boulevard, Los Angeles, California 90015-3801.

Manager, One North First Street, Suite 300, Post Office Box 13468, Phoenix, Arizona 85002-3468.

Manager, Pioneer Plaza, 100 North Stone Avenue, Suite 410, Tucson, Arizona 86701-1467.

Manager, 1630 East Shaw Avenue, Suite 138, Fresno, California 93710-8193.

Manager, 777 12th Street, Suite 200, Sacramento, California 95809-1997.

Manager, Federal Office Building, 880 Front Street, Room 5S3, San Diego, California 92188-0100.

Manager, 34 Civic Center Plaza, P.O. box 12850, Santa Ana, California 92712-2850.

Manager, 300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96850-4991.

Manager, 1500 East Tropicana Avenue, 2nd Floor, Las Vegas, Nevada 89119-6516.

Manager, 1050 Bible Way, Post Office Box 4700, Reno, Nevada 89505-4700.

Region X

Regional Administrator-Regional Housing Commissioner, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 89101-2058.

Manager, 520 Southwest Sixth Avenue, Portland, Oregon 97204-1596.

Manager, 222 West 8th Avenue, #64, Anchorage, Alaska 99513-7537.

Manager, FB/USCH, Box 042, 550 West Fort Street, Boise, Idaho 83724-0420.

Manager, 8th Floor East, Farm Credit Bank Building, West 601 First Avenue, Spokane, Washington 99204-0317.

[FR Doc. 90-1407 Filed 1-19-90; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed Construction of BIA Route 48 on the Fort Apache Indian Reservation, Navajo County, Arizona

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Intent and Public Scoping Meeting.

SUMMARY: This notice advises the public that the Bureau intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the proposed construction of 14.6 Miles of BIA Route 48 on the Fort Apache Indian Reservation, Apache County; Arizona. The proposed construction would change Route 48 from a logging and ranch road to a paved highway.

Public scoping meetings will be held to solicit suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. This notice is required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7).

DATES: Written comments should be received on or before March 12, 1990.

ADDRESS: Comments should be addressed to: Mr. Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, Branch of Roads, Attention: Ralph Harris, P.O. Box 10, Phoenix, Arizona, 85002.

The scoping meetings to identify issues and alternatives will be held at the following locations: February 7, 1990, 7:00 p.m., at Show Low High School, 500 W. O'Linden Rd., Showlow, Arizona; February 8, 1990, 7:00 p.m., at Blue Ridge High School, 1200 S. White Mountain Blvd., Lakeside, Arizona; February 9, 1:00 p.m., at White Mountain Apache Tribal, Council Chambers, State Route 73, Whiteriver, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Harris, Supervisory Civil Engineering Technician, Bureau of Indian Affairs, P.O. Box 10, Phoenix, Arizona, 85001. Telephone (602) 376-6782 or FTS 8-261-6782.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs (BIA), Department of the Interior, proposes to grade, drain and surface a 40 foot wide roadway (route 48) across a portion of the Fort Apache Indian Reservation, Arizona. Route 48 begins on State Highway 77 at Forestdale and extends east 14.6 miles to the junction of State Highways 73 and 260 at Hondah.

The construction of route 48 may have impacts on water resources, air, living resources, cultural resources, resource use patterns, existing resources, and socio-economic conditions.

The Fort Apache Tribe by Tribal Resolution No. 08-88-202 established Route 48 as their No. 1 road construction priority to encourage economic development on the reservation.

This notice is published pursuant to § 1501.7 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4347 *et. seq.*), Department of the Interior Manual (516 DM I-6) and is in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

We estimate that the Draft EIS will be made available to the public by October 1990.

Dated: January 12, 1990.

Walter R. Mills,

Assistant Secretary—Indian Affairs.

[FR Doc. 90-1341 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[UT-020-00-4410-8]

Pony Express Resource Area Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: Notice of availability of the Record of Decision (ROD)/Rangeland Management Program Summary (RPS) and designation of one Area of Critical Environmental Concern for the Pony Express Resource Area Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management (BLM), Salt Lake District, Pony Express Resource Area hereby notifies all interested parties that the ROD/RPS and designation of the Horseshoe Springs ACEC is completed and available upon request. The Pony Express RMP includes lands in Tooele, Utah, and Salt Lake Counties, Utah. Included in this ROD are five decisions that are involved with a protest that has not been resolved. The affected decisions include Lands Decision 2 and 5, Minerals Decision 3, Recreation Decision 1, and Areas of Critical Environmental Concern Decision 1. The ROD clearly identifies that portion of each decision being protested. These

decisions cannot be implemented until the protest is resolved.

Horseshoe Springs, a 769-acre area of open water, riparian and wetland habitat, is designated as an Area of Critical Environmental Concern (ACEC).

SUPPLEMENTARY INFORMATION: To obtain a copy of the RMP, contact Mr. Howard Hedrick, Bureau of Land Management. Salt Lake City, Utah 84119, or by calling Mr. Hedrick by phone at (801) 977–4300. Office hours are 7:45 to 4:30 weekdays.

Dated: January 12, 1990.

James M. Parker,

State Director.

[FR Doc. 90–1390 Filed 1–19–90; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-942-00-4730-12]

Filing of Plats of Survey; Idaho

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 A.M., January 12, 1990.

The plat representing the dependent resurvey of a portion of the subdivision of section 1 and the adjusted traverse of a portion of the flow line of Magic Reservoir, and the survey of lots 5, 19, 34, and 73, T. 2 S., R. 17 E., Boise Meridian, Idaho, Group No. 709, was accepted January 5, 1990.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 10, and the metes-and-bounds survey in section 10, T. 3 N., R. 26 E., Boise Meridian, Idaho, Group No. 786, was accepted January 5, 1990

The supplemental plat representing the reversed lottings in sections 11, 14, 15, 23, and 26, T. 22 N., R. 5 E., Boise Meridian, Idaho, was accepted January 10, 1990.

These surveys were executed and the supplemental plat prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: January 12, 1990.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 90–1344 Filed 1–19–90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-050-4333-04-2411]

Shoshone District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Wednesday, February 28, 1990.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: K Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

Proposed Craters of the Moon National Park
Public access across private land
Water rights application for private domestic use of springs on public lands
Planning schedule for the Bennett Hills Resource Management Plan (RMP)
Proposal for Riverwood Ranch
Idaho Riparian Coalition

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 43 U.S.C. 1701 et seq.) as amended. Operation and administration of the Council will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. appendix 1) and Department of Interior regulations, including 43 CFR part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council at 9:15 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the District Manager by February 27, 1990. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K Lynn Bennett,

District Manager.

[FR Doc. 90–1358 Filed 1–19–90; 8:45 am]

BILLING CODE 4310-66-M

Bureau of Land Management

[WAOR 45733; OR-130-00-4212-13:GPO-099]

Realty Action: Exchange of Public Lands in Ferry, Lincoln, Pend Oreille and Stevens Counties, Washington

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 23 N., R. 32 E.,
Sec. N^{2}N^{2}.
T. 24N., R. 32 E.,
Sec. 28, S^{2}SW^{4}, SE^{4}.
T. 36N., R. 32 E.,
Sec. 14, W^{2}SW^{4}, SE^{4}SW^{4};
Sec. 24, SW^{4}NE^{4}.
T. 37 N., R. 32 E.,
Sec. 11, NE^{4}SW^{4}; Sec. 20, SE^{4}SE^{4}.
T. 40 N., R. E.,
Sec. 9, NW^{4}NE^{4};
Sec. 14, NW^{4}NE^{4}, SE^{4}NE^{4};
Sec.19, SW^{4}SE^{4};
Sec. 24, NE^{4}, E^{2}NW^{4}.
T. 40 N., R. 33 E.,
Sec. 7, Lots 1, 6 and 12;
Sec. 11, SW^{4}NE^{4}.
T. 38 N., R. 34 E.,
Sec. 18, NW^{4}NE^{4};
Sec. 20, SW^{4}SW^{4}.
T 35 N., R. 36 E.,
Sec. 24, NW^{4}SW^{4}.
T. 35 N., R. 37 E.,
Sec. 10, Lot 6;
Sec. 18, NW^{4}NE^{4}, SW^{4}NW^{4};
Sec. 34, E^{2}SW^{4}SE^{4}.
T. 37 N., R. 37 E.,
Sec. 17, SW^{4}NW^{4};
Sec. 32, Lot 1.
T. 38 N., R. 37 E.,
Sec. 18, Lot 9, SW^{4}SE^{4}.
T. 32 N., R. 38 E.,
Sec. 19, (portion of SW^{4}).
T. 34 N., R. 38 E.,
Sec. 29, SE^{4}SE^{4};
Sec. 30, Lot 3;
Sec. 33, NW^{4}NE^{4}, NE^{4}NW^{4}, SE^{4}SE^{4}.
T. 35 N., R. 38 E.,
Sec. 18, Lots 3 & 4;
Sec. 19, SE^{4}NE^{4}.
T. 36 N., R. 38 E.,
Sec. 8, SW^{4}SW^{4};
Sec. 17, N^{2}SW^{4}.
T. 39 N., R. 38 E.,
Sec. 3, W^{2}SW^{4};
Sec. 10, NW^{4}.
T. 36 N., R, 39 E.,
Sec. 18, SW^{4}NE^{4};
Sec. 19, E^{2}SW^{4}.
T. 37 N., R. 39 E.,
Sec. 26, E^{2}E^{2}.
T. 39 N., R. 39 E.,
Sec. 35, SW^{4}SE^{4}.

T. 35 N., R. 40 E.,
Sec. 4, SE¼NE¼;
Sec. 9, Lots 3, 4, 8, & 9.
T. 38 N., R. 40 E.,
Sec. 1, SE¼SW¼;
Sec. 28, SW¼NW¼.
T. 39 N., R. 40 E.,
Sec. 31. Lot 2, SE¼NW¼;
Sec. 35, SW¼NW¼, NE¼SW¼, NE¼SE¼.
T. 32 N., R. 41 E.,
Sec. 32, E½SW¼, SW¼SW¼.
T. 35 N., R. 41 E.,
Sec. 15, SW¼NE¼, NE¼SW¼, portions North of St. Hwy. 20.
T. 38 N., R. 41 E.,
Sec. 18, E½NE¼.
T 39 N., R. 41 E.,
Sec. 13, SE¼SE¼;
Sec. 35 NW¼NE¼
T 38 N., R. 42 E.,
Sec. 1, Lot 5.
T. 40 N., R. 42 E.,
Sec. 5, Lot 7.
T. 38 N., R. 43 E.,
Sec. 18, Lot 2, E½NW¼;
Sec. 31, Lot 9, E½SE¼NW¼, NE¼NE¼SW¼, N½NW¼SE¼.
T. 35 N., R. 44 E.,
Sec. 30, Lots 2, 3, & 4, SE¼NW¼.

The area described aggregates approximately 3,578 (±) acres in Ferry, Lincoln, Pend Oreille, and Stevens Counties Washington.

In exchange for all or part of these lands, the Federal Government will acquire all or part of the following described private lands from several landowners using Clearwater Investments, Inc. to facilitate the exchange:

T. 22 N., R. 31 E.,
Sec. 26, N½SW¼ less Lincoln Co. Rd # 1220, SE¼SW¼, SW¼SE¼;
Sec. 35, N½.
T. 21 N., R. 32 E.,
Sec. 3, S½SW¼ lying south of Great Northern railroad right-of-way;
Sec. 4, Lots 1 & 2, S½NW¼, SW¼;
Sec. 5, All, except that portion conveyed to G.N. Railway by deed recorded in Bk 86, pg. 450, Aud. No. 225643.
Sec. 6, NE¼;
Sec. 7, E½, E½W½;
Sec. 9, All;
Sec. 10, All;
Sec. 11, N½, SW¼;
Sec. 12, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼;
Sec. 13, NW¼ lying north of State Hwy. 28.
T. 22 N., R. 32 E.,
Sec. 4, Lots 1, 2, & 3, SE¼NW¼;
Sec. 9, All;
Sec. 23, W½W½E½NE¼, W½E½, W½, W½NE¼SE¼, SE¼SE¼;
Sec. 26, W½, SE¼;
Sec. 29, N½NE¼, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼;
T 22 N., R. 32 E.,
Sec. 30, W½SW4NE¼, S½SE¼NE¼, half of the SE¼SW¼, SE¼;
Sec. 31, a portion of the north half described in the recorded plat of Irbydale;
Sec. 32, NW¼NE¼, S½NE¼, NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 33, All.
T. 23 N., R. 32 E.,
Sec. 26, SW¼NW¼, NW¼SW¼;
Sec. 27, S½NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 33, NE¼, N½NW¼, SW¼NW¼, S½;
Sec. 34, Portion of the N½NE¼, N½NW¼, SW¼NW¼, W½SW¼.
T. 22 N., R. 33 E.,
Sec. 4, All.
Sec. 5, S½, E½NE¼, E½NW¼NE¼, NW¼NW¼NE¼, SW¼NE¼;
Sec. 6, SE¼SW¼, S½SE¼;
Sec. 8, E½E½, W½E½ lying north and east of St. Hwy. 21.
T. 22 N., R. 34 E.,
Sec. 25, S½SE¼ lying south of St. Hwy 28;
Sec. 36, Portion of N½N½ lying between St. Hwy. 28 and Great Northern railroad right-of-way.
T. 22 N., R. 35 E.,
Sec. 29, portion of SW¼ lying south of Lincoln Co. Rd. # 2225, less Wa. St. gravel pit and Great Northern railroad right-of-way;
Sec. 32, N½N½, N½N½S½NE¼;
Sec. 33, NW¼.

The area described above aggregates approximately 10,750 acres (±) in Lincoln County, Washington.

The Bureau of Land Management (BLM) and Clearwater Investments, Inc. have grouped the exchange of these public and private lands into priorities based on the opportunity to exchange individual properties and through land-use planning. Completion of the total exchange of these lands is expected to occur in several stages over the next few years.

The purpose of the land exchange is to facilitate resource management opportunities in eastern Washington as identified in the Spokane District's Resource Management Plan. The exchange will significantly reduce the number of widely scattered parcels of public land that are difficult and unecomonic to manage, and acquire blocks of unique private property in the Channelled Scabland areas of Lincoln County. The private lands being offered have very important values for recreation, fish and wildlife habitat, riparian and watershed management. The public interest will be highly served by making the exchange.

The value of the lands to be exchanged in each stage will be approximately equal. The proponent may be required to make payments to equalize the values of the lands based upon the approved appraisal.

The Exchange is subject to:

(1) The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

(2) All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

(3) All other valid existing rights, including but not limited to any right-of-way, permit, or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Detailed information concerning the exchange, is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For a period of 45 days, interested parties may submit comments to the Spokane District Manager at the above address. Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, this reality action will become a final determination of the Department of the Interior.

Dated: January 12, 1990.

Joseph K. Buesing,

District Manager.

[FR Doc. 90-1342 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

[OR-130-00-4212-12; GPO-100]

Realty Action: Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands in Clallam, King, Okanogan, San Juan, Skagit, and Skamania Counties are being considered 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):

	Acres
Clallam County	
T30N R9W WM:	
Section 7: Lot 15	40.00
King County	
T23N R9E WM:	
Section 6: N½SE¼	80.00
Okanogan County	
T40N R24E WM:	
Section 13: S½NW¼	80.00
Section 14: N½NW¼	80.00
San Juan County	
T37N R1W WM:	
Section 25: Lots 2, 3	77.25

	Acres
Skagit County	
T34N R10E WM:	
Section 19: Lot 7	40.00
T36N R1E WM:	
Section 31: Lot 2	9.50
Skamania County	
T3N R7E WM:	
Section 19: Lot 1, NE¼NW¼	84.17
Total	490.92

In exchange for all or a portion of these lands, the Federal Government could acquire from the State of Washington, Department of Natural Resources, the following described State lands in San Juan County:

T34N R1W WM:	
Section 16: NE¼SW¼, S½SW¼	120.00
T34N R2W WM:	
Section 25: Lots 1, 2	20.00
Total	140.40

The purpose of this exchange is to acquire two parcels of State land adjacent to and within close proximity of BLM's Iceberg Point and Point Colville Areas of Critical Environmental Concern, by trading up to 8 tracts of scattered and isolated lands.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, WA 99202. No particular form of comment is required.

SUPPLEMENTARY INFORMATION: The publication of this notice in the **Federal Register** segregates the Federal lands described above from appropriation under the public lands laws, including the minimg laws, but not from the mineral leasing laws nor from exchange under the above cited statute, for 2 years or until transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The final determination on the disposal of the Federal lands will await the completion of an appraisal, environmental analysis, and other investigations and reports which will analyze potential impacts associated with the disposal of the Federal lands and determine whether the exchange is in compliance with regulations, statutory laws, and executive orders, and that the public interest will be served. Detailed information concerning this proposed exchange is available at the above address.

Dated: January 10, 1990.

Joseph K. Buesing,

District Manager.

[FR Doc. 90-1343 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-33-M

Ukiah District Advisory Council, Meeting

[CA-050-4410-04]

AGENCY: Bureau of Land Management.

ACTION: Notice of meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Pub. L. 94-579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Redding, California, February 14-15, 1990. Agenda items will include the Redding Resource Management Plan and the South Fork Eel River Activity Plan. A complete agenda is available from the Ukiah BLM Office.

DATES: February 14, 8:00 a.m. to 5:00 p.m. and February 15, 8:00 a.m. to 3:00 p.m.

ADDRESS: Wednesday, February 14, the meeting will take place in the Conference Room of the BLM Office, 355 Hemsted Drive, Redding, Thursday, February 15, will be spent on-the-ground viewing a number of BLM management areas in Shasta and Trinity counties.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

SUPPLEMENTARY INFORMATION: All meetings of the Ukiah District Advisory Council are open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 4:00 p.m. Wednesday, February 14. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: January 11, 1990.

Alfred W. Wright,

District Manager.

[FR Doc. 90-1323 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-84-M

[Alaska AA-48734-X]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48734-X has been received covering the following lands:

Copper River Meridian, Alaska

T. 4 S., R. 2 E.,
Sec. 29, NE¼NW¼.
(40 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from September 1, 1989, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48734-X as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective September 1, 1989, subject to the terms and conditions cited above.

Dated: December 28, 1989.

Ruth Stockie,

Chief, Branch of Mineral Adjudication.

[FR Doc. 90-1322 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-JA-M

[ID-030-09-4212-14]

Realty Action (I-27218); Noncompetitive Sale of Public Lands in Butte County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Noncompetitive sale of public lands in Butte County, Idaho.

SUMMARY: The following described public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the fair market value.

Boise Meridian

T. 3 N., R. 26 E.
Sec. 10, SW¼SW¼ (a portion).
Containing approximately 2 acres.

The land described is hereby segregated from appropriation under the public land use including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to The City of Arco/Butte County for airport expansion. The sale will include the surface and mineral estates.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning

these reservations, as well as specific conditions of the sale, is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of Interior.

Dated: January 11, 1990.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 90-1318 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-GG

[CA-940-00-4520-12; C-5 and 10-89]

Plat and Survey Correction; California

January 12, 1990.

In notice document 89-16887 appearing on page 30278 in the issue of Wednesday, July 19, 1989, is to be cancelled in its entirety and replaced with the following:

[CA-940-00-4520-12]
C-5 and 10-89
Filing of Plat of Survey
Correction
January 12, 1990

1. The supplemental plats of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Nevada County

T. 16 N., R. 9 E.,
Sec. 8, NE¼NE¼.
Accepted May 4, 1989.
T. 17 N. R. 9 E.,
Sec. 12, E½NE¼.
Accepted May 8, 1989.

2. These supplemental plats will immediately become the basic record of 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. These supplemental plats were executed to meet certain administrative needs of the Bureau of Land Management.

4. All inquiries relating to this notice should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California, 95825.

Patricia L. Porter,

Chief, Public Information Section.

[FR Doc. 90-1324 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-00-4520-12; Group 985]

Plat of Survey Correction; California

January 12, 1990.

In notice document 89-16896 appearing on page 30280 in the issue of Wednesday, July 19, 1989, make the following correction:

The county name is corrected to read "Riverside County" instead of Madera County.

All inquiries relating to this should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California, 95825.

Patricia L. Porter,

Chief, Public Information Section.

[FR Doc. 90-1325 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-00-4520-12; Group 985]

Plat of Survey Correction; California

January 12, 1990.

In notice document 89-16894 appearing on page 30279 in the issue of Wednesday, July 19, 1989, make the following correction:

The county name is corrected to read "San Bernardino County" instead of Madera County.

All inquiries relating to this should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California, 95825.

Patricia L. Porter,

Chief, Public Information Section.

[FR Doc. 90-1326 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-00-4212-22]

Filing of Plats of Survey; Nevada

January 12, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filings were effective as shown below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-328-6345.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, on the dates shown.

Mount Diablo Meridian, Nevada

	Filed
T. 45 N., R. 25 E.—Supplemental Plat, Sec. 25, Lot 2	10/25/89
T. 14 S., R. 66 E.—Dependent Resurvey and Subdivision of Sections	12/29/89

The Supplemental Plat was accepted on October 12, 1989, and was executed to meet certain administrative needs of the Bureau of Land Management.

The survey for T. 14 S., R. 66 E., was accepted on December 14, 1989, and was executed to meet certain administrative needs of the Bureau of Indian Affairs. The above-listed supplemental plat and survey are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 90-1320 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-010-41-5410-10-ZFKD; N-52424]

Realty Action; Mineral, Interest Application; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of receipt of conveyance of mineral interest application.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Heguy Bros., a general partnership has applied for conveyance of the mineral estate described as follows:

Mount Diablo Meridian

T. 42 N., R. 57 E.,
Sec. 5, Lots, 1, 3, 4, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 6, Lot 1;
Sec. 9, S½SW¼;
Sec. 16, N½N½, SE¼NE¼, SW¼NW¼, S½.
T. 43 N., R. 57 E.,
Sec. 31, Lots 2-4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 32, SW¼, W½SE¼.
Containing approximately 1749.830 acres.

Additional information concerning this application may be obtained from the Area Manager, Elko Resource Area,

Elko District Office, 3900 E. Idaho St., Elko, NV 89801.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, January 11, 1992 whichever occurs first.

Dated: January 11, 1990.

Rodney Harris,

District Manager.

[FR Doc. 90-1319 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Lincoln Boyhood National Memorial; Logo Prescription

I hereby prescribe the Lincoln Boyhood National Memorial "LINCOLN BOYHOOD" logo which is depicted below as the official Insignia of the Lincoln Boyhood National Memorial, a unit of the National Park System, United States Department of the Interior.

In making this prescription, I give notice that, under section 701 of Title 18 of the United States Code, whoever manufactures, sells, or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both.

Notice is given that in order to prevent proliferation of the distinctive "LINCOLN BOYHOOD" Insignia and to assure against its use for purposes other than marking informational signs, interpretive exhibits, and informational literature for park visitors and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the Memoral was established, the National Park Service will proceed to secure trademark registration under section 1115 of Title 15 of the United States Code for the Lincoln Boyhood National Memorial "LINCOLN BOYHOOD" Insignia.

Dated: January 11, 1990.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 90-1391 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of proposed contractual actions pending through March 1990.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and to § 426.20 of the rules and regulations published in the **Federal Register** dated December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of repayment and water service contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the Interior or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** dated February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during January, February, or March of 1990. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein:

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724-0043, telephone (208) 334-1894

1. Cascade Reservoir water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 29,221 acre-feet of stored water in Cascade Reservoir.

2. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

3. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

4. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Irrigation districts and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97.293).

6. Forty-four Palisades Reservoir spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

7. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

8. Three IDs, Flathead Indian Irrigation Project, Montana: Repayment of costs associated with rehabilitation of irrigation facilities.

9. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

10. Individual irrigators and the North Unit ID, Crooked River Project, Oregon: Repayment or water service contracts for up to 25,000 acre-feet of storage space in Prineville Reservoir (Arthur R. Bowman Dam).

11. Various Projects, Pacific Northwest Region: R&B contracts for replacement of needle valves at storage dams.

12. Palisades Water Users, Inc., Minidoka-Palisades Project, Idaho: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

13. Individual irrigators, Willow Creek Project, Oregon: Repayment or water service contracts for up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

14. Four project spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.

15. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

16. Five irrigation districts, Arrowrock Division, Boise Project, Idaho: Repayment contract for Safety-of-Dams repair to Deer Flat Dam.

17. State of Wyoming, Palisades Project, Idaho: Repayment contract for the sale of 33,000 acre-feet of uncontracted space in Palisades Reservoir.

18. Hermiston ID, Umatilla Project, Oregon: Repayment contract for Safety-of-Dams repair to Cold Springs Dam.

19. Ochoco ID and various individual spaceholders, Crooked River Project, Oregon: Repayment contract for Safety-of-Dams repair to Arthur Bowman Dam.

20. The Dalles ID, SRPA, Oregon: Loan repayment contract for $2,000,000.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone (916) 978–5030.

In accordance with the Energy and Water Development Appropriations Act of 1990 (Pub. L. 101–101), new long-term contracts for a water supply from the Central Valley Project of California cannot be executed prior to October 1, 1990, unless otherwise exempted from the provisions of this law.

1. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, CVP, California: Water service contract; up to 2,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts for use of project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

Note: Copies of the standard form of temporary water service contracts for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant Unit Contractors, CVP, California: Renewal of existing long-term water service contract with numerous contractors on the Friant-Kern Canal whose contracts expire 1990–1997 with two contracts expiring later. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. State of California, CVP, California: Contract(s) for, (1) Sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operation Agreement.

8. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

9. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

10. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

11. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

12. City of Redding, CVP, California: Amendatory M&I water supply contract.

13. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

14. Contra Costa Water District, CVP, California: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Los Vaqueros Project Amendment will also conform contract to current water ratesetting policies.

15. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–200–152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Public Law 99–546.

16. Centerville Community Services District, CVP, California: Water service contract for up to 800 acre-feet of M&I water annually.

17. Shasta County Water Agency, CVP, California: Amendatory water

service contract to provide for reduction in annual entitlement of 800 acre-feet.

18. Central Valley Project, California: Amendatory contract to include the provision of the Act of July 2, 1956 (70 Stat. 483) in existing water service contracts.

19. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

20. Beneficiaries of Link River Dam, Klamath Project, California/Oregon: Contract to provide for repayment of reimbursable costs associated with Safety of Dam expenditures.

21. Redwood Valley Water District, SRPA, California: Amendatory SRPA loan repayment contract.

22. Placer County Water Agency, CVP, California: Amendatory Contract No. 14-06-200-5082A to provide for the current CVP water rates.

23. Broadview Water District, CVP, California: Amend Contract No. 14-06-200-8092 to provide for change in point of diversion and right to construct new turnout on the San Luis Canal.

24. Sutter Butte Mutual Water Company, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure water user of an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

25. Paramount Citrus Association, CVP, California: Contract to convey non-project water through Federal facilities. Up to 4,000 acre-feet of water to be transferred through Friant-Kern Canal for delivery to the Southern San Joaquin Municipal Utility District.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293-8536

1. Amendatory contract to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. State of Arizona, BCP, Arizona: Contract for an undetermined amount of Colorado River water for M&I use on State-owned land.

9. State of Arizona, BCP, Arizona: Contract for an undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; and Kennedy Livestock Company, for 480 acre-feet per year.

11. Imperial ID and/or the Coachella Valley Water District, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal (AAC) for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

12. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the AAC from a well field to be constructed adjacent to the canal.

13. Hutchison present perfected rights contract amendment to reflect the transfer of part of the right to Winterhaven, California. Supreme Court Decree in *Arizona* v. *California* and BCP.

14. Winterhaven present perfected rights contract for a portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in *Arizona* v. *California* and BCP.

15. County of San Bernardino, SRPA, California: Repayment contract for a $28.6 million loan.

16. Wellton-Mohawk IDD and Gold Dome Mining Corporation (Corporation), Gila Project, Arizona: Contract for delivery of 7 acre-feet of water per year to the Corporation through Wellton-Mohawk Division facilities.

17. Wellton-Mohawk IDD, Gila Project, Arizona: Exchange agreement providing for a 22,000 acre-feet per year reduction in Wellton-Mohawk IDD's statutory and contractual right to consumptively use 300,000 acre-feet of Colorado River water annually, providing for discharge of the IDD's repayment obligation and exemption from the full-cost pricing and acreage limitation provisions of Federal Reclamation law; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

18. Tohono O'odham Nation, SRPA, Tucson, Arizona: Repayment contract for an $8.2 million loan to the Schuk Toak District.

19. Sturges Trust, Supreme Court Decree in *Arizona* v *California* and BCP, Arizona: Contract for delivery of 8,500 acre-feet of Colorado River water per year for agricultural use as recommended by the State of Arizona and to recognize a 780 acre-feet present perfected right to the use of Colorado River water.

20. Phoenix Area Cities, CAP, Arizona: Amendment to the CAP Plan 6 Funding Agreement to extend the deadline to demand the return of funds contributed for the Cliff Dam alternative water supply.

Fort Mohave Indian Reservation, Supreme Court Decree in *Arizona* v. *California* and BCP, Arizona: Contract for delivery of Colorado River water for their federal establishment present perfected right, totaling 122,648 acre-feet of diversions annually.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568, 125 South State Street, Salt Lake City, Utah 84147, telephone (801) 524-5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir, CRSP, New Mexico: Water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

2. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 30,800 acre-feet per year; terms consistent with binding cost-sharing agreement, dated June 30, 1986.

3. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement, in principle.

4. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract for 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

5. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract; 7,600 acre-feet per year for M&I use.

6. State of Colorado, Animas-La Plata Project, Colorado: Escrow Account Agreement.

7. State of Colorado, Animas-La Plata Project, Colorado: Cost Sharing Agreement of $5,600,000.

8. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and repayment obligation.

9. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Public Law 96–550.

10. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Contract to place operation, maintenance, and replacement costs on a variable basis commensurate with the availability of project water.

11. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for R&B of selected project facilities.

12. Ogden River Water Users Association, Ogden River Project, Utah: Repayment contract for R&B of portions of the Pineview Dam, Ogden Canyon Conduit, Ogden-Brigham Canal and South Ogden Highline Canal.

13. South Cache Water User's Association, Hyrum Project, Utah: Repayment contract for R&B of portion of Hyrum Dam, Hyrum/Mendon Canal, Hyrum Feeder Canal, Wellsville Canal, and other miscellaneous work.

14. Miscellaneous M&I and irrigation water users in New Mexico, San Juan, Chama Project, New Mexico-Colorado: Repayment contracts for remaining project water allocated in 1975 or before. Contract amounts vary from 60 to 3,000 acre-feet.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract.

3. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

4. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for the marketable yield to water users within the Colorado River Basin of Western Colorado.

5. Colorado Water Conservation Board, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round negotiations of a water service contract for sale of the regulatory capacity of Ruedi Reservoir up to 10,000 acre-feet of water annually for the protection of threatened and endangered fishes in the Upper Colorado River Basin.

6. East Slope Storage system, Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir, Fryingpan-Arkansas Project, Colorado: Contract for temporary and long-term storage and exchange contracts.

7. Cedar Bluff ID No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Amendatory repayment contract to relieve all contract obligations. The reservoir storage capacity has been sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

8. Mirage Flats ID and the Nebraska Game and Parks Commission, Mirage Flats Project, Nebraska: Agreement to retain storage in Box Butte Reservoir for fish, wildlife and recreation purposes.

9. Frenchman Valley Irrigation District, Frenchman Unit, P–SMBP, Nebraska: Pending passage of legislation, renegotiate District's existing contract to reduce payments based on payment ability and reduced water supply.

10. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Colorado-Big Thompson Project, Colorado: Contract for storage and conveyance of water for the Windy Gap Project; Amendatory contract to make administrative and technical revisions to conform the contract terms and conditions to the Windy Gap Project as actually constructed and operated.

11. Department of Natural Resources and Conservation, SRPA, Montana: Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

12. Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

13. Gray Goose ID, Gray Goose Unit, P–SMBP, South Dakota: Contract negotiations to integrate Gray Goose ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

14. Hilltop ID, Hilltop Unit, P–SMBP, South Dakota: Contract negotiations to integrate Hilltop ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

15. Corn Creek ID, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

16. Hidalgo County ID No 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,017,000 plus reimbursable interest.

17. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

18. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant.

19. Highland-Hanover ID, Boysen Unit, P–SMBP, Wyoming: R&B loan repayment.

20. Upper Bluff ID, Boysen Unit, P–SMBP, Wyoming: R&B loan repayment.

21. Board of Water Commissioners of the City and County of Denver, the Colorado River Water Conservation District, and the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Operating agreement for substitution of water in the proposed Muddy Creek or

Rock Creek Reservoir for Green Mountain Reservoir water.

22. City of Dickinson, Heart River Unit, P–SMBP, North Dakota: Renegotiate a M&I water service contract which expired September 24, 1989.

23. Malta ID, Milk River Project, Montana: R&B loan repayment.

24. Glasgow ID, Milk River Project, Montana: R&B loan repayment.

25. Twin Loups ID, North Loup Project, P–SMBP, Nebraska: Amendatory D&MC contract to increase ceiling from $500,000 to $2,500,000.

26. Midvale ID, Riverton Unit, P–SMBP, Nebraska: Long-term contract for water service from Boysen Reservoir.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Dated: January 12, 1990.

Dennis B. Underwood,

Commissioner of Reclamation.

[FR Doc. 90–1367 Filed 1–19–90; 8:45 am]

BILLING CODE 4310–09–M

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Monongahela National Forest

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

ACTION: Notice of request for determination and invitation for interested persons to participate.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received a request for a determination that Cecil E. Nichols has valid existing rights (VER) to surface mine coal on Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. By this notice, OSM is inviting interested persons to participate in the proceeding and to submit relevant factual material on the matter. OSM intends to develop a complete Administrative Record and will render a final agency decision on whether Cecil E. Nichols has VER.

DATES: OSM will accept written materials on this request for a VER determination until 5:00 p.m. local time on March 8, 1990.

ADDRESSES: Hand deliver or mail written materials to Carl C. Close, Assistant Director, Eastern Field Operations at the address listed below. Documents contained in the Administrative Record are available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Room 246, Ten Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2897.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, WV 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION: Section 522(e) of SMCRA prohibits surface coal mining operations in certain areas, subject to VER and except for those operations in certain areas, subject to VER and except for those operations which existed on August 3, 1977. Under section 522(e)(2), the prohibition is applied to any Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic or other values that may be incompatible with such surface coal mining operations and the surface operation and impacts are incident to an underground coal mine. National forest land west of the 100th meridian that does not have significant forest cover as determined by the Secretary of Agriculture may be surface coal mined.

The term "VER" is not defined in SMCRA. On September 14, 1983 (48 FR 41312–41356), OSM adopted a regulatory definition of VER at 30 CFR 761.5 which defined VER as those rights, which if affected by the prohibitions in section 522(e), would entitle the owner to payment of just compensation under the Fifth and Fourteenth Amendments to the United States Constitution, the so-called "takings" test.

On March 22, 1985, the United States District Court for the District of Columbia held that the promulgation of the VER definition in 30 CFR 761.5 violated the Administrative Procedures Act and remanded the definition to the Secretary of the Interior (In re: Permanent Surface Mining Regulation Litigation II No. 79–1144).

In the November 20, 1986, **Federal Register** (51 FR 41952), OSM suspended the Federal definition of VER insofar as it incorporates a takings test. OSM announced that during the period of suspension it would make VER determinations on Federal lands within the boundaries of national forests using the VER definition contained in the appropriate state regulatory program.

The term VER is defined in section 2.126 of the West Virginia Surface Mining Reclamation Regulations. Section 2.126 provides that VER exists, except for haulroads, in each case in which a person demonstrates that the limitation provided for in Section A–3–22(d) of the West Virginia Surface Coal Mining and Reclamation Act would result in the unconstitutional taking of that person's rights.

By letter dated December 27, 1989, Cecil E. Nichols requested that OSM make a determination of VER for his planned surface coal mining operation on Federal lands within the Monongahela National Forest in the Little Levels District of Pocahontas County, West Virginia. Mr. Nichols

purchased from Walter E. Helmick on December 14, 1989, certain mineral rights to the properties in question. Mr. Helmick requested on June 24, 1988, that OSM determine that he had VER for these properties. OSM gave notice of this request and invited interested persons to participate in the proceeding in the December 12, 1989, **Federal Register** (54 FR 51083). Mr. Helmick has withdrawn his request to OSM for a VER determination on the properties in question. Mr. Nichols has filed a request that incorporates all documents previously submitted to OSM by Mr. Helmick.

Mr. Nichols states that he owns mineral rights on two adjacent tracts of land, the surface of which is owned by the United States of America and managed by the United States Forest Service. Tract 574 contains 1,045.3 acres and is situated seven miles west of Hillsboro, West Virginia on the waters of Hills Creek and the waters of Robins Run, a tributary of Spring Creek. The second track, known as the Killingsworth Tract, contains 179 acres and is situated on the headwaters of Spruce Run, a tributary of the Greenbrier River. Both properties are located on Briery Knob.

In order to establish that the requestor has VER for surface coal mining on the properties in question, OSM must first determine that the requestor has demonstrated all necessary rights to mine the coal. OSM particularly invites interested persons to provide factual information as to whether the requestor has the property right to mine by the proposed method, and other factual information concerning whether the requestor has VER under the applicable standards.

OSM will make a final decision on Cecil E. Nichol's VER request as soon as it is practicable following completion of the Administrative Record. If OSM determines that Cecil E. Nichols has VER, the West Virginia Department of Energy may issue a permit to Mr. Nichols authorizing the surface mining of coal on the two tracts in question. If it is determined that Mr. Nichols does not have VER, no permit will be issued.

Dated: January 9, 1990.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 90-1363 Filed 1-19-90; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31580]

Aberdeen & Rockfish Railroad Co.; Merger Exemption

Aberdeen and Rockfish Railroad Company (AR), Dunn-Erwin Railway Corporation (DE), and Pee Dee River Railway Corporation (PDR) have filed a notice of exemption to merge DE and PDR into AR. The merger was expected to be consummated before December 31, 1989.

DE and PDR are wholly owned subsidiaries of AR. After the merger, AR will become the owner or lessor of DE's and PDR's rail properties, but service will continue to be provided under their respective trade names. The common control of DE and PDR by AR was authorized in Finance Docket Nos. 31182 and 31119.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

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: William C. Evans, Verner, Liipfert, Bernhard, McPherson and Hand Chartered, Suite 700, 901 15th Street NW., Washington, DC 20005.

Decided: January 17, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1392 Filed 1-19-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31582]

CSX Transportation, Inc.; Merger Exemption

The Baltimore and Ohio Connecting Railroad Company The Baltimore and Philadelphia Railroad Company, The Chesapeake and Curtis Bay Railroad Company, The Cincinnati, Indianapolis & Western Railroad Company, Dayton and Union Railroad Company, Kentucky Central Railroad Company, Nashville and Decatur Railroad Company, Port Huron and Detroit Railroad Company, Savannah River Terminal Company, and The Toledo Terminal Railroad Company (collectively, the subsidiaries), CSX Transportation, Inc. (CSXT), and CSX Corporation (CSX) have filed a notice of exemption to merge the subsidiaries into CSXT, with CSXT as the surviving corporation. The merger was expected to be consummated by December 27, 1989.

CSXT, a Class I rail common carrier, owns 100 percent of the stock of all the subsidiaries except Baltimore and Philadelphia (of which it owns 99.85 percent) and Dayton and Union (of which it owns 95.60 percent). The voting equity securities of CSXT, in turn, are 100 percent owned by CSX. CSX will thus control the merged entity.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

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: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201; and Peter J. Shudtz, CSX Corporation, 901 East Cary Street, P.O. Box C-32222, Richmond, VA 23219.

Decided: January 16, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1393 Filed 1-19-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31527]

Indiana Harbor Belt Railroad Co. Joint Project for Relocation of a Line of Railroad and Trackage Rights Exemptions

On December 18, 1989, Indiana Harbor Belt Railroad Company (IHB) filed a notice of exemption under 49 CFR 1180.2(d)(5) for the relocation of a portion of its line and operations in Chicago, IL, from the present location to those tracks owned by the Belt Railway of Chicago (BRC), and those owned by Grand Trunk Western Railway Company (GTW) and being acquired by Consolidated Rail Corporation (CR).[1] The City of Chicago (City) is in the process of purchasing certain track and right-of-way from IHB, GTW, and CR. The relocation will enable IHB to continue to operate and provide the services for which its property is now used and to accommodate the construction of a local transit project by the City. The trackage rights granted to IHB by BRC extend over a line between South Central Park Avenue and South Lamon Avenue in Chicago. The trackage rights to be granted IHB by CR involve the GTW line to be acquired under the exemption in Finance Docket No. 31552 extending generally from just east of Oakley Avenue for 1.48 miles to just east of St. Louis Avenue.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers and the incidental abandonment of IHB's existing line. The Commission will assume jurisdiction over the abandonment and discontinuance components of a relocation project only in cases where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN,* 4 I.C.C.2d 95 (1987). Under these standards, the abandonment of the involved line is not subject to the Commission's jurisdiction. The remainder of the joint relocation project qualifies under the class exemption procedures at 49 CFR 1180.2(d) (5) and (7).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreements will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as midified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

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: Roger A. Serpe, Indiana Harbor Belt Railroad Company, 175 West Jackson Blvd., Suite 1460, Chicago, IL 60604.

Dated: January 16, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1394 Filed 1-19-90; 8:45 am]

BILLING CODE 7035-01-M

[1] *See* Finance Docket No. 31552, *Consolidated Rail Corporation—Joint Project for Relocation of a Line of Railroad Exemption—The Grand Trunk Western Railroad Company* (not printed), served November 17, 1989. 54 FR 47840.

[Finance Docket No. 31586]

L I Acquisition Corp.; Acquisition and Operation Exemption

L I Acquisition Corp. (LIAC) has filed a notice of exemption to acquire and operate approximately 8 miles of rail line currently owned by Upper Merion and Plymouth Railroad Company (UMP) in Plymouth Township, Montgomery County, PA, consisting of: (1) all of the rail line, including side tracks, between milepost 15.85 on the main line of the Consolidated Rail Corporation (Conrail), at Swedeland, PA, and the point of interchange between UMP and Conrail at approximately milepost 1.5 on Conrail's Plymouth Branch Line; (2) all of the rail line between Brook Road and the Blue Route (Rte. 476); and (3) all of the rail line, including side tracks and storage yards, between the Blue Route and the UMP Engine House. The transaction was expected to be consummated on or about January 9, 1990.

This transaction is related to a notice of exemption filed concurrently in Finance Docket No. 31587, *Lukens Inc. and Sponsor's Plan Asset Management, Inc.—Continuance in Control Exemption—L I Acquisition Corp.* under 49 CFR 1180.2(d)(2) for the continued control of LIAC by its corporate parents that control a nonconnecting carrier.

Any comments must be filed with the Commission and served on: Andrew D. Koblenz, Richardson, Berlin & Morvillo, 2300 N Street NW., Suite 625, Washington, DC 20037.

LIAC shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[1]

This notice is filed under 49 FR 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 17, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1395 Filed 1-19-90; 8:45 am]

BILLING CODE 7035-01-M

[1] LIAC has certified to the Pennsylvania Historical and Museum Commission that this transaction will not lead to the transfer of properties qualifying for inclusion in the *National Register of Historic Places.*

[Finance Docket No. 31587]

Lukens Inc. and Sponsor's Plan Asset Management, Inc.; Continuance in Control Exemption

Lukens Inc. (Lukens) and Sponsor's Plan Asset Management, Inc. (SPAM), noncarriers, filed a notice of exemption to continue to control L I Acquisition Corp. (LIAC) once it becomes a carrier. Lukens is the corporate parent of SPAM, which, in turn, is the parent of LIAC. SPAM already controls Brandywine Valley Railroad Company (BVRY), through 100 percent ownership of all of the stock of Lukens Steel Company, BVRY's corporate parent.

LIAC concurrently filed a notice of exemption in Finance Docket No. 31586, *L I Acquisition Corp.—Acquisition and Operation Exemption—Upper Merion and Plymouth Railroad Company,* to acquire and operate approximately 8 miles of rail line of Upper Merion and Plymouth Railroad Company located in Upper Merion and Plymouth Township, Montgomery County, PA.

Lukens and SPAM state that: (1) LIAC and BVRY will not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other; and (3) the transaction does not involve a class I carrier.

Accordingly, this transaction involves the continuance in control of a nonconnecting carrier, and comes within the class exemption in 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the

conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

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. Pleadings must be filed with the Commission and served on: Andrew D. Koblenz, Richardson, Berlin & Morvillo, Suite 625, 2300 N Street NW., Washington, DC 20037.

Decided: January 17, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

][FR Doc. 90-1396 Filed 1-19-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub 329X)]

CSX Transportation, Inc.; Abandonment Exemption in Boone County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.8-mile line of railroad between milepost 21.36, at Big Coal Junction, and milepost 18.56, at Ferndale, Boone County, WV.

Appliant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 21, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 1, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 12, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 26, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 16, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1397 Filed 1-19-90; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H-022H]

Chemical Safety/Hazard Communication; International Issues

AGENCY: Occupational Safety and Health Administration (OSHA).

ACTION: Request for comments and information.

SUMMARY: OSHA is soliciting public input on proposed conclusions of the International Labor Organization (ILO) which address "Safety in the Use of Chemicals at Work." These proposals include provisions for the classification of chemicals as to their hazards, labels, material safety data sheets, training, and other elements of an appropriate chemical safety program, such as exposure monitoring and medical surveillance.

OSHA is also requesting comments and information from the public regarding the impact of differing international requirements for chemical hazard information transmittal, and possible international harmonization of such requirements.

DATE: Comments and information should be submitted in quadruplicate, and must be received by March 23, 1990.

ADDRESS: Comments and information should be submitted to the Docket Office, Docket H-022H, OSHA, Room N2625, 200 Constitution Avenue, NW, Washington, DC, 20210; (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Office of Information and Consumer Affairs, OSHA, Room N3647, 200 Constitution Avenue, NW, Washington, DC, 20210; (202) 523-8151.

Copies of International Labor Organization (ILO) publications referred to in the text may be obtained from: ILO Publications Center, 49 Sheridan Avenue, Albany, New York 12210; (518) 436-9686.

SUPPLEMENTARY INFORMATION:

International Labor Organization (ILO): Proposed Conclusions Regarding Chemical Safety

The ILO was created in 1919 to bring government, employer, and trade union representatives together to improve labor and living conditions for working people worldwide. To accomplish these objectives, the ILO performs four functions: it establishes and supervises the implementation of international labor standards; it produces, collects, and disseminates information: it serves

as a forum for international dialogue; and it provides technical training and assistance.

The 150 countries that belong to the ILO, including the United States, participate in the development of international labor standards during the annual International Labor Conference held each June. Standards emerge from the International Labor Conference in the form of conventions and recommendations.

Conventions are similar to international treaties, and are subject to ratification. When a country ratifies a convention, it pledges to bring national legislation into conformity with its terms and provisions. Recommendations, on the other hand, do not require ratification; they are intended to serve as more specific guidelines for national policy in given fields. Together, ILO conventions and recommendations comprise the *International Labor Code* that serves as a model and stimulus for national legislation and practice in member countries.

"Safety in the Use of Chemicals at Work" is currently being considered in the ILO for the purpose of adopting an international convention and recommendation to address the issues identified. In accordance with the procedures of the ILO, an initial report on this subject was distributed to member countries in 1988. The report summarized current practices worldwide regarding chemical safety, and included a survey to which interested countries responded. A second report summarizing the responses, and including a proposed text to address the concerns raised, was distributed in 1989, and formed the basis for discussions of a technical committee at the 1989 International Labor Conference. Subsequent to the Conference, a revised text of the conclusions was distributed to the member countries for comments. The text of these conclusions is being published herein to solicit public input. A second discussion of the issue will be convened at the 1990 International Labor Conference, and it is expected that a convention and recommendation will be adopted at that time.

These proposed international instruments include requirements for a number of issues that are already addressed in OSHA standards, either for individual chemical substances or on a generic basis. Comments are invited on all aspects of the ILO's proposed conclusions. Of particular interest, however, are the proposals for the classification of chemicals as to their hazards, labels, and material safety data sheets. It appears that adoption of such provisions will impact chemical hazard information in all countries importing and exporting chemicals. Thus although a country may choose not to ratify or adopt the conclusions when finalized, the provisions may nevertheless affect the chemical hazard information received by that country, and sent by that country to other nations.

OSHA is inviting comments on the proposed provisions, and the potential impact if the United States decides to ratify these requirements. How do these proposals relate to current practices regarding chemical safety in U.S. workplaces? How would these proposals relate to current U.S. practice to provide MSDS information to community representatives for purposes of community right-to-know and emergency response? What changes would be required in U.S. laws to implement the provisions? Are there alternatives to changing U.S. laws that would ensure that U.S. practices are consistent with the international approach? What suggestions do you have for amending the ILO proposals? Comments received will be shared with the U.S. worker and employer representatives to the ILO's committee on chemical safety.

Other International Issues Related to Hazard Communication

As mentioned above, the chemical safety issues that appear to have the greatest international impact are those involving chemical hazard information transmittal. Extensive international trade results in considerable worker exposure to imported chemicals in many countries. In order for employees to be protected from such hazardous chemicals, importers must receive appropriate information from the country that exported the product.

From an international perspective, the issue is currently addressed through a patchwork of conflicting and diverse national laws. It appears that international harmonization of requirements for classifying chemicals as to their hazards, labels, and material safety data sheets, would enhance worker protection, community awareness and preparedness, and facilitate international trade.

OSHA's Hazard Communication Standard (HCS), codified at 29 CFR 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59, is the primary U.S. rule in this area, and it requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import. After completing a hazard evaluation, they must prepare appropriate labels and material safety data sheets to convey the hazard information and associated protective measures to employees and other employers using their products. The HCS was the first national regulation which adopted a comprehensive approach to communicating information, and providing workers with the right-to-know the hazards and identities of the chemicals in their workplaces.

The rule is generic, covering all hazardous chemicals and all types of employment. It is also performance-oriented, *i.e.*, it tells employers what they have to do to comply, but gives them the flexibility to determine how they will do it. In terms of labeling, the performance-orientation means that the employer can determine what text to use to convey the hazards, whether to include symbols or pictograms, the size and placement of the label, and the color. As long as the label conveys an identity which links the product to the relevant data sheet (any chemical or common name), indicates the hazards of the chemical, and is legible and prominently displayed, compliance has been achieved.

With regard to material safety data sheets, OSHA has specified certain data elements that must be included on them. But chemical manufacturers and importers may use whatever format they choose, add information if desired, and determine what text to use to convey the information.

The HCS also does not include a specific hazard categorization or classification scheme for health hazards, although physical hazards are specifically defined. The OSHA rule covers all health hazards, acute and chronic, and any statistically significant evidence of a potentially adverse health effect must be reported. The HCS is based on available information regarding potential hazards, and does not require testing of chemicals for purposes of classification.

Other countries have also adopted regulations regarding chemical labeling and material safety data sheets that are different than the U.S. approach in a number of respects. For example, Canada has implemented the Workplace Hazardous Materials Information System (WHMIS), which has requirements for labels, MSDSs, and training. However, the provisions are less performance-oriented than the HCS requirements, and thus American companies have had to change their labels and MSDSs in order to ship chemicals to Canada. Labels under WHMIS, for example, must include specified symbols, and the symbols must be in a defined circle. No U.S. labels included such symbols within

circles prior to implementation of WHMIS, and thus all U.S. labels have to be changed to ship to Canada.

Member states of the European Communities (EC) (Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, United Kingdom, and West Germany) have had community-wide labeling requirements since 1967, and are in the process of adopting community-wide MSDS requirements (some member states already have such national requirements). The labeling requirements of the EC are specific, indicating the exact text to be included, as well as other design elements. A U.S. company shipping to both Canada and the EC would be likely to have to develop two separate labels to comply with both laws.

So although there are similarities between the United States' approach in the HCS and these other existing national laws, there are also significant differences that pose potential problems. These include variations in the scope of substances covered, definitions of hazards, the degree of specificity used to delineate requirements (for example, specification of format or text to be used), and the use of symbols.

These differences may affect the protection of workers in this country. Imported chemicals may not be accompanied by sufficient information to protect workers handling them, or the information presented may conflict with the requirements of the importing country. For example, chemicals which are considered to be carcinogens in the United States for the purposes of hazard communication, may not be in a country exporting to the United States. The importer in this country will have difficulty ascertaining the hazards according to U.S. laws if insufficient information is received from the exporter.

Even if the hazard information is the same, differences in presentation may increase the employers' burden of training workers in this country. Unfamiliar symbols, for example, will reduce the effectiveness of the label in transmitting information to the exposed workers.

In addition to these primary concerns about worker protection, there is also a concern that companies exporting products have an extensive compliance burden in preparing different labels and MSDSs for different countries. This presents a possible technical barrier to trade.

OSHA is interested in information related to the impact of international hazard communication laws on hazard communication practices in this country. It has been the U.S. Government's policy for some years to work towards intenational harmonization of requirements for chemical hazard communication. To date, little progress has been made in this regard, although it does appear that there is increasing recognition internationally that such an approach would be desirable.

In particular, it would be useful to have internationally agreed criteria for the classification of hazards. Many of the criteria currently in use include arbitrary delineations of hazards, but various countries have chosen different delineations. Furthermore, specific and rigid requirements for language, symbols, and format, may result in having to prepare different labels and MSDSs for every country a product is shipped to, even though the information presented is very similar. Harmonization of such requirements would improve the communicability of the information, as well as facilitating international trade.

OSHA is interested in receiving information concerning the experiences of U.S. workers and companies dealing with chemicals involved in international trade:

(1) Has chemical hazard information been routinely received with imported chemicals? If so, is it comprehensible? Do you know if the hazard information is consistent with what is required under U.S. law? How did you determine if the chemical was or was not covered under U.S. law? Did you do your own hazard determination? If you haven't been able to obtain information, what steps have you been required to take to ensure protection of exposed workers? How did you determine what steps were appropriate?

(2) When shipping overseas, have you encountered problems in determining what is necessary to comply with the laws of other countries? Where do you obtain information regarding these laws? Have you had to change your labels or MSDSs to comply? In what manner have you made changes? Did it involve more than simply translating the U.S. label information into the language of the country to which the material was being shipped?

(3) If international laws in this area are harmonized, each country with existing laws will have to be willing to compromise and change its requirements to some extent. What requirements do you suggest to be harmonized? Are there particular definitions of hazards that are of concern? Symbols? Label format or elements of information required? MSDS format or elements of information required?

(4) In what way would you suggest that U.S. law could be changed to accommodate international concerns? If changes are made to standardize information internationally, how much time would be needed to phase-in the new requirements?

(5) Have you encountered problems regarding trade secret or confidential business information claims, either in terms of chemicals you import or chemicals you export? How have these problems been resolved?

(6) Any other information you can provide to assist OSHA in this area would be appreciated. For example, samples of different labels and MSDs for the same substance when being shipped to different countries would be helpful.

Text of the ILO Proposed Conclusions

As noted above, OSHA is requesting comments regarding ILO's proposed conclusions regarding chemical safety that will be discussed at its June 1990 conference. The text of the proposed convention and recommendation follows:

Proposed Convention concerning safety in the use of chemicals at work

The General Conference of the International Labour Organisation.

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 77th Session on 6 June 1990, and

Noting the relevant international labour Conventions and Recommendations and, in particular, the Benzene Convention and Recommendation, 1971; the Occupational Cancer Convention and Recommendation, 1974; the Working Environment (Air Pollution, Noise and Vibration) Convention and Recommendation, 1977; the Occupational Safety and Health Convention and Recommendation, 1981; the Occupational Health Services Convention and Recommendation, 1985; the Asbestos Convention and Recommendation, 1986, and the list of occupational diseases, as amended in 1980, appended to the Employment Injury Benefits Convention, 1964, and

Noting that the protection of workers from the harmful effects of chemicals also enhances the protection of the general public and the environment, and

Considering that it is essential to reduce the incidence of chemically induced illnesses and injuries at work by—

(a) ensuring that all chemicals are evaluated to determine their hazards;

(b) providing employers with a mechanism to obtain from suppliers information about the chemicals used at work so that they can implement effective programmes to protect workers from chemical hazards;

(c) providing workers with information, which they have a need and right to know, about the chemicals at their workplaces, and about appropriate preventive measures so that they can effectively participate in protective programmes; and

(d) establishing principles for such programmes to ensure that chemicals are used safely, and

Referring to the need for co-operation within the International Programme on Chemical Safety between the International Labour Organisation, the United Nations Environment Programme and the World Health Organisation as well as with the Food and Agriculture Organisation of the United Nations and the United Nations Industrial Development Organisation, and

Having decided upon the adoption of certain proposals with regard to safety in the use of chemicals at work, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this ——— day of June of the year one thousand nine hundred and ninety the following Convention, which may be cited as the Safety in the Use of Chemicals Convention, 1990.

Part I. Scope and Definitions

Article I

1. This Convention applies to all branches of economic activity in which chemicals are used.

2. The competent authority of a Member ratifying this Convention may, after consulting the most representative organisations of employers and workers concerned, and on the basis of an assessment of the hazards involved and the protective measures to be applied—

(a) exclude particular branches of economic activity, undertakings or products from the application of the Convention, or certain provisions thereof, when—

(i) special problems of a substantial nature arise; and

(ii) the overall protection afforded is not inferior to that which would result from the full application of the provisions of the Convention;

(b) make special provision to protect genuine confidential business information, so long as the safety and health of workers are not compromised thereby.

Article 2

For the purpose of this Convention—

(a) the term "chemicals" means chemical elements, and compounds and mixtures thereof, whether natural or synthetic, but does not include articles or organisms;

(b) the term "hazardous chemical" includes any chemical which has been classified as hazardous in accordance with Article 6 or for which information exists to indicate that the chemical constitutes a physical or health hazard;

(c) the term "use of chemicals at work" includes—

(i) the production of chemicals;

(ii) the handling of chemicals;

(iii) the storage of chemicals;

(iv) the transport of chemicals;

(v) the disposal and treatment of chemicals;

(vi) the release of chemicals resulting from work activities;

(vii) the maintenance, repair and cleaning of equipment and containers for chemicals;

(d) the term "branches of economic activity" means all branches in which workers are employed, including the public service;

(e) the term "article" means an object which is formed to a specific shape or design during its manufacture or which exists in its natural shape; whose use in that form is dependent in whole or in part on its shape or design; and which, under normal or reasonably foreseeable conditions of use, will not release or otherwise cause a worker to be exposed to a hazardous chemical.

Part II. General Principles

Article 3

The most representative organisations of employers and workers concerned shall be consulted on the measures to be taken to give effect to the provisions of the Convention.

Article 4

In the light of national conditions and practice and in consultation with the most representative organisations of employers and workers, each Member shall formulate, implement and periodically review a coherent policy on safety in the use of chemicals at work.

Article 5

The competent authority shall have the power to prohibit or restrict the use of certain hazardous chemicals, or to require advance notification and authorisation before such chemicals are used.

Part III. Classification and Related Measures

Article 6

Classification

1. Specific criteria and systems appropriate for the classification of all chemicals according to the type and degree of their intrinsic hazards shall be applied and progressively extended.

2. Criteria and systems for such classification shall be established by the competent authority, or by a body approved or recognised by the competent authority, in accordance with national or international standards.

Article 7

Labelling

1. Hazardous chemicals shall be labelled so as to provide essential information regarding their identity, their classification, the hazards they present and the safety precautions to be observed.

2. Chemicals not covered by paragraph 1 of this Article shall be marked so as to provide essential information concerning their identity and important properties relevant to workers' safety and health.

3. Requirements for labelling or marking chemicals pursuant to paragraphs 1 and 2 of this Article shall be established by the competent authority, or by a body approved or recognised by the competent authority, in accordance with national or internationaldf standards.

Article 8

Chemical Safety Data and Information Sheets

1. For hazardous chemicals, chemical safety data sheets containing detailed essential information regarding their identity, classification, hazards, safety precautions and emergency procedures shall be provided to employers.

2. Criteria for the preparation of chemical safety data sheets shall be established by the competent authority, or by a body approved or recognised by the competent authority, in accordance with national or international standards procedures.

3. For chemicals not covered by paragraph 1 of this Article, information sheets indicating their identity and important properties relevant to worker safety and health shall be provided to employers through new or existing documentation.

Article 9

Responsibility of Suppliers

1. A supplier of hazardous chemicals shall ensure that—

(a) such chemicals are labelled in accordance with Article 7, paragraph 1;

(b) employers are provided with chemical safety data sheets in accordance with Article 8, paragraph 1.

2. A supplier of hazardous chemicals shall revise labels and chemical safety data sheets when new information becomes available and provide revised labels and chemical safety data sheets to the employer for subsequent shipments.

3. A supplier of chemicals which have not been classified in accordance with Article 6 shall identify the chemicals he supplies, assess their properties on the basis of a search of available information in order to determine whether they are hazardous chemicals, and classify them in accordance with any system established pursuant to Article 6.

4. A supplier of chemicals which are not covered by paragraph 1 of this Article shall ensure that—

(a) such chemicals bear essential information in accordance with Article 7, paragraph 2;

(b) employers are provided with information sheets in accordance with Article 8, paragraph 3.

Part IV. Responsibility of Employers

Article 10

Identification

1. Employers shall ensure that all chemicals used at work are labelled or marked as required by Article 7 and that chemical safety data sheets or information sheets have been provided as required by Article 8 and are made available to workers and their representatives.

2. Employers receiving chemicals that have not been labelled or marked as required under Article 7, or for which chemical safety data sheets or information sheets have not been provided as required under Article 8, shall obtain the relevant information from the supplier or from other reasonably available sources as soon as possible, and shall not use the chemical until such information is obtained.

3. Where hazards chemicals are used at work, employers shall ensure that only chemicals which are classified in accordance with Article 6 and labelled in accordance with Article 7 are used and that the necessary precautions are taken when they are used.

4. Employers shall maintain a register of hazardous chemicals used at the workplace, cross-referenced to the appropriate chemical safety data sheets. This register shall be accessible to all workers.

Article 11

Re-labelling

Employers shall ensure that when chemicals are transferred from labelled containers into other containers or equipment, the contents are identified in a manner which will make known to workers the hazardous associated with their use, the methods of using them safely and emergency procedures.

Article 12

Monitoring of Exposure

Employers shall—

(a) ensure that workers are not exposed to chemicals to an extent which exceeds exposure limits established by the competent authority, or by a body approved or recognised by the competent authority, in accordance with national or international standards;

(b) monitor and record the exposure of workers to hazardous chemicals when this is necessary to safeguard their safety and health;

(c) ensure that the records of the monitoring of the working environment and of the exposure of workers using hazardous chemicals are kept for a period prescribed by the competent authority and are accessible to the workers.

Article 13

Operational Control

1. Employers shall protect workers against risks arising from the use of chemicals by appropriate means, such as—

(a) the choice of chemicals that minimise the risk;

(b) the choice of safe technology;

(c) the adoption of safe working systems and practices;

(d) the use of engineering control measures;

(e) the adoption of adequate occupational hygiene measures;

(f) where recourse to the above measures does not suffice to eliminate the risk, the provision and proper maintenance of personal protective equipment and clothing at no cost to the worker, and the implementation of measures to ensure their use.

2. Employers shall—

(a) limit exposure to hazardous chemicals to a level compatible with the protection of the health of workers;

(b) provide first aid;

(c) make arrangements to deal with emergencies.

Article 14

Disposal of Empty Containers

Empty containers of hazardous chemicals shall be handled or disposed of in a safe manner, in accordance with national law and practice.

Article 15

Information and Training

Employers shall—

(a) inform the workers of the hazards associated with exposure to chemicals used at the workplace;

(b) instruct the workers how to obtain and use the information provided on labels and chemical safety data sheets;

(c) train the workers on a continuing basis in the practices and procedures to be followed in order to use chemicals safely.

Article 16

Co-operation

Employers, in discharging their duties, shall co-operate as closely as possible with workers or their representatives with respect to safety in the use of chemicals at work.

Part V. Rights and Duties of Workers

Article 17

1. Workers shall co-operate as closely as possible with their employers in the discharge of their duties and comply with all procedures and practices relating to safety in the use of chemicals at work.

2. Workers shall take all reasonable steps to minimise risk to themselves, other workers and their employers from the use of chemicals at work.

Article 18

1. A worker shall have the right to remove himself from danger resulting from the use of chemicals when he has reasonable jurisdiction to believe there is an imminent and serious risk to his safety and health, and shall have the duty to inform his supervisor immediately.

2. Workers and their representatives shall have the right to information on—

(a) the identity of chemicals used at work;

(b) the hazardous properties of such chemicals;

(c) precautionary measures;

(d) education and training;

(e) labels and chemical safety data sheets;

(f) any other information required to be kept by this Convention.

3. Paragraph 2 of this Article shall not be construed as requiring an employer to disclose genuine confidential

business information, as long as the safety and health of workers are not compromised as a result.

Proposed Recommendation Concerning Safety in the Use of Chemicals at Work

The General Conference of the International Labour Organisation.

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 77th Session on 6 June 1990, and

Having decided upon the adoption of certain proposals with regard to safety in the use of chemicals at work, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Safety in the Use of Chemicals Convention, 1990:

adopts this ——— day of June of the year one thousand nine hundred and ninety the following Recommendation, which may be cited as the Safety in the Use of Chemicals Recommendation, 1990.

I. General Provisions

1. The provisions of this Recommendation should be applied in conjunction with those of the Safety in the Use of Chemicals Convention, 1990 (hereafter referred to as "the Convention").

2. The most representative organisations of employers and workers concerned should be consulted on the measures to be taken to give effect to the provisions of the Recommendation.

3. The competent authority should specify categories of workers who are not allowed to use specified chemicals or are allowed to use them only under conditions prescribed in accordance with national laws and regulations.

II. Classification and Related Measures

Classification

4. The criteria for the classification of chemicals established pursuant to Article 6, Paragraph 2, of the Convention should be based upon the characteristics of chemicals such as—

(a) toxic properties including both acute and chronic health effects in all target organs;

(b) chemical or physical characteristics, including inflammable, explosive, oxidising and dangerously reactive properties;

(c) corrosive and irritant properties;

(d) carcinogenic effects;

(e) allergenic and sensitising effects;

(f) teratogenic and mutagenic effects;

(g) effects on the reproductive system.

5. (1) As far as is reasonably practicable, the competent authority should compile and periodically update a consolidated list of the chemical elements and compounds used at work, stating their classification.

(2) The manufacturer or importer of chemicals not yet included in the consolidated list should be required to transmit to the competent authority, prior to use at work, and in a manner consistent with the protection of genuine confidential business information, such information as is necessary for the maintenance of the list.

Labelling and Marking

6. (1) The requirements for the labelling of hazardous chemicals established pursuant to Article 7, Paragraph 3. of the Convention, should be such as to enable persons handling or using chemicals to recognize and distinguish between them both when receiving and when using them, so that they may be used safely.

(2) The labelling requirements should, in conformity with existing national or international systems, cover—

(a) the information to be given on the label such as:

(i) trade names;

(ii) identity of the chemical;

(iii) name, address and telephone number of the supplier;

(iv) danger symbols;

(v) nature of the special risks associated with the use of the chemical;

(vi) safety advice including first aid;

(vii) identification of the batch;

(viii) the statement that a data sheet giving additional information is available from the employer;

(b) the legibility, durability and size of the label;

(c) the uniformity of labels, including colors.

(3) The label should be easily understandable by workers.

(4) In the case of chemicals not covered by subparagraph 1 above, the marking may be limited to the matters specified in subparagraph (2)(a)(i), (ii) and (iii) above.

7. Where it is impracticable to label a chemical in view of the size of the container or the nature of the package, provision should be made for other effective means of recognition such as tagging or accompanying documents. However, all containers should indicate the hazards of the contents through appropriate wording or symbols.

Chemical Safety Data and Information Sheets

8. (1) The criteria for the preparation of chemical safety data sheets for chemicals classified as hazardous pursuant to Article 8, paragraph 2, of the Convention should ensure that they contain essential information including, if applicable—

(a) the trade or common name of the chemical;

(b) the names and concentrations of the ingredients in a way that clearly identifies them for the purpose of conducting a hazard evaluation;

(c) potential physical and health hazards as well as signs and symptoms of exposure;

(d) potential routes of entry into the body;

(e) the possibility of synergism with other chemicals commonly used at work;

(f) exposure limits;

(g) possible methods of monitoring workplace exposure;

(h) generally applicable precautions for safe use including storage, treatment and disposal of wastes;

(i) engineering controls and work practices;

(j) personal protective equipment and clothing;

(k) procedures for dealing with spills, leaks and fire;

(l) emergency measures;

(m) first-aid procedures;

(n) information to medical personnel on medical treatment;

(o) sources of additional information;

(p) the name, address, and telephone number of the supplier or manufacturer;

(q) physical and chemical characteristics, such as flashpoint, odour threshold and vapour pressure;

(r) reactivity hazards;

(s) the date of preparation of the chemical safety data sheet;

(t) other information as decided by the competent authority.

(2) In the case of chemicals not covered by paragraph 6(1) above, the information sheets should contain—

(a) the trade or common name of the chemical;

(b) the names and concentrations of the ingredients in a way that clearly identifies them for the purpose of conducting a hazard evaluation;

(c) the properties important to workers' safety and health;

(d) the name, address and telephone number of the supplier or manufacturer.

(3) Where the names or concentrations of the ingredients referred to in subparagraph (1)(b) or subparagraph (2)(b) above constitute genuine confidential business information, they may be omitted from the chemical safety data sheet or information sheet. In such cases, the information should be disclosed on request and in writing to the competent authority and to concerned employers, workers and their representatives who

agree to use the information only for the protection of workers' safety and health and not otherwise to disclose it.

III. Responsibility of Employers

Monitoring of Exposure

9. (1) Where workers are exposed to hazardous chemicals, the employer should be required, through methods in accordance with national law and practice, to—

(a) limit exposure to such chemicals to a level compatible with the protection of the health of workers;

(b) measure and record, as necessary, the concentration of airborne chemicals at the workplace.

(2) Workers and their representatives should have access to these records in accordance with national law and practice.

(3) Employers should keep the records provided for in this Paragraph for a period of time determined by the competent authority.

Operational Control within the Workplace

10. (1) Measures should be taken by employers to protect workers against hazards arising from the use of chemicals, based upon the criteria established pursuant to Paragraphs 11 to 14 below.

(2) In accordance with the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labor Office, a national or multinational enterprise with more than one establishment should be required to provide safety measures relating to the prevention and control of, and protection against, health hazards due to occupational exposure to hazardous chemicals, without discrimination, to the workers in all its establishments regardless of the place or country in which they are situated.

11. The competent authority should ensure that criteria are established for safety in the production, handling and use of hazardous chemicals, including provisions covering, if applicable—

(a) the risk of acute or chronic disease due to entry into the body by inhalation, skin absorption or ingestion;

(b) the risk of injury from skin or eye contact;

(c) the risk of injury from fire, explosion or chemical reactivity;

(d) the precautionary measures to be taken through—

(i) the choice of chemicals that minimize the risk;

(ii) the choice of safe technology and safe installations;

(iii) the adoption of safe work systems and practices;

(iv) the use of engineering control measures;

(v) the provision, maintenance and use of suitable personal protective equipment and clothing where the above measures are not sufficient to eliminate the risk;

(vi) the use of signs and notices.

12. The competent authority should ensure that criteria are established for safety in the storage of hazardous chemicals, including provisions covering, if applicable—

(a) the compatibility of stored chemicals;

(b) the properties and quantity of chemicals to be stored;

(c) the security and siting of and access to storage;

(d) the construction, nature and integrity of storage containers;

(e) loading and unloading of storage containers;

(f) labelling and re-labelling requirements;

(g) precautions against accidental release, fire, explosion and chemical reactivity;

(h) temperature, humidity and ventilation;

(i) precautions and procedures in case of spillage;

(j) emergency procedures;

(k) possible physical and chemical changes.

13. The competent authority should ensure that criteria consistent with national or international transport regulations are established for the safety of workers involved in the transport of hazardous chemicals, including provisions covering, if applicable—

(a) the properties and quantity of chemicals to be transported;

(b) the nature, integrity and protection of containers used in transport, including pipelines;

(c) the specifications of the vehicle used in transport;

(d) the routes to be taken;

(e) the training and qualifications of transport workers;

(f) labelling requirements;

(g) loading and unloading;

(h) procedures in case of spillage.

14. (1) The competent authority should ensure that criteria consistent with national or international regulations regarding disposal of hazardous waste are established for procedures to be followed in the disposal and treatment of hazardous chemicals and hazardous waste products with a view to ensuring the safety of workers at their workplaces.

(2) These criteria should include provisions covering, if applicable—

(a) the method of identification of waste products;

(b) the handling of contaminated containers;

(c) the identification, construction, nature, integrity and protection of waste containers;

(d) the effects on the working environment;

(e) the demarcation of disposal areas;

(f) the provision, maintenance and use of personal protective equipment and clothing;

(g) the method of disposal or treatment.

15. (1) The criteria for the use of chemicals at work established pursuant to the provisions of the Convention and this Recommendation should be as consistent as possible with any criteria established for the protection of the general public and the environment.

(2) The criteria established pursuant to the provisions of the Convention and this Recommendation should be harmonised with the criteria established under any other instruments in force intended to protect the general public and the environment.

Medical Surveillance

16. (1) The employer, or the institution competent under national law and practice, should be required to arrange such medical surveillance of workers as is necessary—

(a) for the assessment of the health of workers in relation to hazards caused by exposure to chemicals;

(b) for the diagnosis of work-related diseases and injuries caused by exposure to hazardous chemicals, in accordance with national law and practice.

(2) Where the results of medical tests or investigations reveal clinic or preclinical effects, measures should be taken to prevent or reduce exposure of the workers concerned, and to prevent further deterioration of their health.

(3) The results of medical examinations should be used to determine health status with respect to exposure to chemicals, and should not be used to discriminate against the worker.

(4) Workers should have access to their own medical records, either personally or through their own physicians.

(5) Workers and their representatives should have access to the results of studies prepared from medical records, where individual workers cannot be identified.

(6) The confidentiality of individual medical records should be respected in accordance with generally accepted principles of medical ethics.

(7) The results of medical examinations should be clearly explained to the workers concerned.

First Aid and Emergencies

17. In accordance with any requirements laid down by the competent authority, employers should be required to maintain procedures, including first-aid arrangements, to deal with emergencies and accidents resulting from the use of hazardous chemicals at work and to ensure that workers are trained in these procedures.

IV. Co-operation

18. (1) Employers, workers and their representatives should co-operate as closely as possible in the application of measures prescribed pursuant to this Recommendation.

(2) The term "workers' representatives" should mean persons who are recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

19. Workers should be required to—

(a) take care as possible of their own safety and health and of that of other persons affected by their acts or omissions at work in accordance with their training and with instructions given by their employer;

(b) use properly all devices provided for their protection or the protection of others:

(c) report forthwith to their immediate supervisor any situation which they believe could present a risk, and which they cannot properly deal with themselves.

20. When in an exporting country hazardous chemicals are prohibited or severely restricted by laws or regulations with respect to their use at work, this fact and the reason for it should be communicated by the exporting country or the exporter to the importer and the importing country.

21. Publicity material concerning hazardous chemicals intended for use at work should call attention to their hazards.

V. Rights of workers

22. (1) Workers and their representatives should have the right to—

(a) obtain chemical safety data sheets, information sheets and other information from the employer so as to enable them to take adequate precautions, in co-operation with their employer, to protect workers against risks from the use of hazardous chemicals at work;

(b) request and participate in an investigation by the competent authority of possible risks resulting from the use of chemicals at work.

(2) These provisions should not release the employer from the obligation to provide safe working conditions for the workers.

(3) Where the information requested includes genuine confidential business information, the employer may require the workers or workers' representatives to limit its use to the evaluation and control of possible risks arising from the use of chemicals at work, and to take reasonable steps to ensure that this information is not disclosed to potential competitors.

(4) In the case of multinational enterprises, workers should be able to obtain on request information regarding procedures related to safety in the use of hazardous chemicals in the home country.

23. (1) A worker should have the right—

(a) to remove himself from danger resulting from the use of chemicals when he has reasonable justification to believe there is an imminent and serious risk to his safety and health, and should have the duty to inform his supervisor immediately;

(b) in the case of chemical sensitisation, or medical conditions placing a worker at increased risk of harm from a hazardous chemical, to alternative work not involving that chemical, if such work is available and if the worker has the qualifications for the position;

(c) to adequate medical treatment and compensation for injuries and diseases resulting from the use of chemicals at work.

(2) A woman worker should have the right, in the case of pregnancy, to alternative work, where available, not involving the use of chemicals hazardous to reproductive health, where available.

24. Workers should receive—

(a) information on the classification and labelling of chemicals and on chemical safety data sheets in forms and languages which they easily understand;

(b) information on the risks which may arise from the use of chemicals in the course of their work;

(c) training and, where necessary, retraining in the methods which are available for the prevention and control of, and for protection against, such risks.

Signature and Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary for Occupational Safety and Health, under authority of sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655 and 657), and Secretary of Labor Order No. 9-83 (48 FR 35736).

Signed at Washington, DC this 12th day of January 1990.

Gerard F. Scannell,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 90-1303 Filed 1-19-90; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-07)]

Aerospace Safety Advisory Panel; 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 Aerospace Safety Advisory Panel.

DATES: March 22, 1990, 1 p.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 400 Maryland Avenue, SW., Room 7002, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Roth, Code Q-1, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8971).

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of manned flight. The major subjects covered will be the National Space Transportation System, Space Station, and Aeronautical Operations. The Aerospace Safety Advisory Panel is chaired by Joseph F. Sutter and is composed of 8 members and 5 consultants. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including members of the Panel).

Type of Meeting: Open.

Agenda:

Thursday, March 22

1 p.m.—Presentation of the findings and recommendations of the

Aerospace Safety Advisory Panel.
2:30 p.m.—Adjourn.

Dated: January 16, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-1374 Filed 1-19-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

January 16, 1990.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 8-9, 1990.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for the carrying out the her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 8-9, 1990, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commerical or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on February 8, 1990, will be as follows:

COMMITTEE MEETINGS

8:30-9:00 a.m.	Coffee for Council Members. (Open to the Public).	Room 527.
9:00-10:00 a.m.	Committee Meetings—Policy Discussion.	

COMMITTEE MEETINGS—Continued

	Education Programs.	Room M-14.
	Fellowship Programs.	Room 316-2.
	General Programs	Room 415.
	Research Programs/Preservation Grants.	Room 315.
	State Programs/Challenge Grants.	Room M-07.
10:00 a.m. until adjourned.	(Closed to the Public for the reasons stated above)—Consideration of specific applications. (Closed to the Public).	
1:30 p.m. until adjourned.	Joint Meeting of the State and General Committees to review Frankel Awards. (Closed to the Public).	Room 415.
3:30 p.m. until adjourned.	Jefferson Lecture Committee to review Jefferson Lecture nominees.	Room 430.

The morning session on February 9, 1990, will convene at 9:00 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30-9:00 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous Quarter

D. Application Report and Matching Report

E. Status of Fiscal Year 1990 Funds

F. Committee Reports on Policy and General Matters

1. Education Programs
2. Fellowship Programs
3. Research Programs
4. General Programs
5. State Programs
6. Challenge Grants
7. Jefferson Lecture
8. Preservation Grants

Preservation by Grantee: Dr. Ann Russell, Director of the Northeast Document Conservation Center Andover, Massachusetts

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Ms. Catherine Wolhowe, Alternate Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

Catherine Wolhowe,

Advisory Committee, Management Officer (Alternate).

[FR Doc. 90-1405 Filed 1-19-90; 8:45 am]

BILLING CODE 7538-01-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this Notice of information collection that will affect the public.

Title: National Science Foundation Proposal/Award Information.

Affected Public: Any institution/individual submitting a proposal to the National Science Foundation.

Respondents/Burden/Hours: NSF expects to receive 37,000 proposals during FY 1990. NSF estimates that 120 hours are required to submit a proposal.

Generic Clearance Request: The National Science Foundation supports research in all scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, non-profit, small business and other research organizations. These awards are based on proposals submitted to the Foundation in accordance with the requirements contained in NSF Publication "Grants for Research and Education in Science and Engineering." The provisions of this brochure apply to all NSF programs and related activities, such as foreign travel, conferences, symposia, and research or education equipment and facilities. Some programs operate from more specific program announcements or solicitations which elaborate on the provisions of this brochure.

Public Comment: Interested persons may receive additional information from and are invited to submit written data, views or arguments to: Herman G. Fleming, Reports Clearance Officer, Rm. 208, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, and to: Office of Management and Budget, Paperwork Reduction Project (3145-0058, Washington, DC, 20503, by February 22, 1990. All comments will be available for public inspection in Rm. 208, at the above NSF address between the hours of 9:00 a.m. and 4:00 p.m.

Dated: January 16, 1990.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 90-1301 Filed 1-19-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-137 and 50-318]

Baltimore Gas and Electric Co., Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 139 and 122 to Facility Operating License Nos. DPR-53 and DPR-69, respectively, to the Baltimore Gas and Electric Company which revised the Technical Sepcifications (TS) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Calvert County, Maryland.

The amendments are effective 30 days after the date of issuance.

The amendments changed the Units 1 and 2 TS 5..6.1 enrichment limits for spent fule storage to 5.0 weight percent U-235.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

A Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on August 8, 1988 (53 FR 29791). No requests for a hearing or petition for leave to intervene were filed following this notice.

The Commission has prepared an Environmental Assessment related to the increase in spent fuel U-235 enrichment limit and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated June 9, 1988, as supplemented on October 25, November 25, November 17, and December 28, 1988 (2) Amendment Nos. 139 and 122 to License Nos DPR-53 and DPR-69, respectively, and (3) the Commission's related Safety Evaluation and Environmental Assessement. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland, this 10th day of January, 1990.

For the Nuclear Regulatory Commission.

Scott Alexander McNeil,

Project Manager, Project Directorate I-1, Division of Reactor Projects—I/II.

[FR Doc. 90-1378 Filed 1-19-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., et al. (Crystal River Unit 3); Exemption

I.

Florida Power Corporation, et al. (FPC, the licensee) is the hodler of Facility Operating License No. DPR-72, which authorizes operation of Crystal River Unit 3 (CR-3, the facility) at steady-state power levels not in excess of 2544 megawatts thermal. The license provides, among other things, that the facility is subject to all the rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor (PWR) located at the licensee's site in Citrus County, Florida.

II.

10 CFR Part 50, Appendix A, General Design Criterion-2 (GDC-2) requires that structures, systems, and components important to safety be designed to withstand the effects of natural phenomena, such as tornados, without loss of capability to perform their safety functions.

III.

The two emergency diesel generators (EDGs) provide emergency on-site power to safety-related equipment in the event of loss of offsite power. The EDGs are housed in a Class I structure, one of whose functions is to protect the EDGs and their safety-related appurtenances from tornado-borne missiles. Openings at the south end of the building for each EDG provide access for major equipment and a source of outside ambient air for combustion and ventilation. These openings are normally covered with steel enclosures which provide missile protection and allow satisfaction of functional requirements.

FPC intends to upgrade the EDGs to improve their reliability and capacity mergin in performing their safety functions. EDG "A" upgrades will definitely be completed and every effort will be made to complete the EDG "B" upgrades during the next refueling outage, currently scheduled to begin in March 1990. As part of this upgrade, the licensee will install in the EDG building two new lube oil coolers and a new intake air filter for each EDG. Because of the large size of this new equipment, it must be moved into the EDG rooms through the openings discussed above. In order to do this, the steel enclosures must be removed. The licensee has determined that, because of the complexity of the modifications, the work cannot be completed within the scheduled outage duration of 77 days unless significant pre-outage work is accomplished. Therefore, an exemption from the requirements of GDC-2, as they apply to missile protection at the sout end of the EDG building, is necessary for the period from January 15, 1990 until the start of the next refueling outage, currently scheduled for March 14, 1990, to permit removal of the steel enclosures prior to the outage, while the plant is still operating.

As discussed in the enclosed Safety Evaluation, even with the steel enclosures removed, an existing concrete wall provides protection against tornado missiles and eliminates any direct missile path to an EDG. Missile protection provided by the EDG building on the roof and other three sides remains unchanged. Objects in the area of the EDG building which could become damaging missiles in a tornado will be removed. The steel enclosures will be removed from only one EDG at a time. In addition, in the event of issuance of a tornado watch for the plant site, reinstallation of the steel enclosures will be initiated. Considering the existing design features and the compensatory measures proposed by the licensee, the likelihood of unacceptable damage to the EDGs due to tornado missiles during the proposed period of about 60 days is low and, therefore, there is reasonable assurance that the proposed exemption will present no undue risk to public health and safety.

This case involves special circumstances as set forth in 10 CFR 50.12(a)(2)(v). This exemption "would provide only temporary relief from the applicable regulations" (GDC-2). The

exemption is requested for a specific time period, after which the facility would again be in conformance with all the requirements of GDC-2. FPC has made good faith efforts to provide missile protection for the EDGs in accordance with GDC-2 during the period when the steel enclosures would be removed by utilizing existing design features which provide a significant degree of missile protection, by removing potential missiles from the area near the EDGs, by removing the steel enclosures from only one EDG at a time, and by committing to initiate their replacement upon issuance of a tornado watch.

IV.

Based on the above, and on review of the licensee's submittals as summarized in the enclosed Safety Evaluation, the NRC staff concludes that the likelihood of unacceptable damage to the EDGs due to tornado-borne missiles during the proposed exemption period is low. Therefore, the NRC staff finds the proposed exemption from the requirements of GDC-2, as they apply to missile protection at the south end of the EDG building, to be acceptable.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption, namely that the exemption would provide only temporary relief from the applicable regulation and that FPC has made good faith efforts to comply with the regulation.

Therefore, the Commission hereby approves the following exemption: The facility may operate without conforming to the requirements of GDC-2 as they apply to the steel enclosures providing missile protection at the south end of the EDG building, providing that compensatory measures as described herein are continued for the period of the exemption. This exemption shall be in effect from January 15, 1990 and shall expire at the start of Refuel 7 (currently scheduled for March 14, 1990), or by April 1, 1990, whichever is earlier.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant effect on the quality of the human environment (January 12, 1989, 55 FR 1298).

For further details with respect to this action, see the licensee's request dated December 12, 1989, as supplemented on December 22, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC and at the Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

This exemption is effective from January 15, 1990 until the start of the Refuel 7 outage, or by April 1, 1990, whichever is earlier.

Dated at Rockville, Maryland this 12 day of January 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-1377 Filed 1-19-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences: Information on Imports During First 10 Months of 1989 and Invitation of Comments

This notice is for information only and has no legal effect. It is provided to inform the public of certain import statistics covering the period January through October 1989 and to afford the public an opportunity to comment on certain discretionary decisions the President must make with respect to the GSP program. These decisions concern the GSP "competitive need" limits set forth in section 504(c) and section 504(d)(2) of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2464 (c) and (d)(2)), and possible redesignation of beneficiaries for articles for which the beneficiary is currently ineligible for GSP duty-free treatment. Presidential decisions concerning the application of competitive need limits and other product-related decisions stemming from the 1989 Annual Review are expected to be announced on or about April 1, and implemented on July 1, 1990. Presidential decisions of specific interest to Bolivia, Colombia, Ecuador and Peru are expected to be implemented on or about May 1, 1990.

Pursuant to section 504(c), any GSP eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any one GSP eligible article in excess of (1) $25 million indexed to the U.S. Gross National Product (GNP) since 1974, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility not later than July 1 of the next calendar year. Based on preliminary data and subject to revision, the dollar limit is expected to be approximately $89,964,693 for calendar year 1989.

As a result of the Trade and Tariff Act of 1984, (19 U.S.C. 2464(c)(2)), a general review of the GSP was initiated in 1985 and the results of the review announced on January 2, 1987 (52 FR 389). The purpose of the review was to determine whether beneficiary countries have become sufficiently competitive in GSP-eligible products, on a product and country sepcific basis. For beneficiaries found to be sufficiently competitive with respect to a product, the percentage competitive need limit was reduced to 25 percent and the dollar limit was reduced to $25 million, indexed to the nominal growth of U.S. GNP since 1984. Based on preliminary data and subject to revision, the dollar limit for beneficiaries found to be sufficiently competitive is expected to be approximately $35,125,391 for the calendar year 1989.

Section 504 (d)(2) of the Trade Act, permits the President to disregard the 50 percent "competitive need" limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed $5 million, adjusted annually to reflect changes in the U.S.GNP. This *de minimis* level is expected to be approximately $10,565,346 dollars for calendar year 1989.

A proclamation will be issued to be effective July 1, 1990, making the adjustments that are required by section 504(c) of the Trade Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1989.

It should be emphasized that the information set forth below covers only the first 10 months of 1989. Partial year data is being published now to provide the maximum possible advance indication of adjustments that may be made to meet the requirements of section 504(c) of the Trade Act and to afford the opportunity for comment on potential discretionary decisions.

List I below shows specific GSP-eligible articles for beneficiaries which have already exceeded estimated competitive need limitations (i.e., a beneficiary supplied over $89,964,693, or $35,125,391 in the case where a beneficiary has been found sufficiently competitive in the product, during January-October 1989) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows beneficiaries which are approaching the competitive need limitations (i.e., beneficiary

accounted for over 47 percent of the value of total U.S. imports and/or over $64 million, or in the case where a beneficiary has been found to be sufficiently competitive, over 22 percent and/or $26 during January-October 1989).

List III below shows beneficiaries which, despite accounting for more than 50 percent (or 25 percent in the case of a beneficiary found sufficiently competitive in a product) of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the *de minimis waiver* (i.e., where a beneficiary accounted for more than the applicable percentage limit and the value of total U.S. imports of the item was less than $10,565,346 during January-October 1989).

List IV below shows beneficiaries which are currently ineligible for GSP duty-free treatment but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (i.e., a beneficiary accounted for less than 50 percent, or 25 percent in the case of products determined to be sufficiently competitive, of the value of U.S. imports and the value of total U.S. imports was less than the applicable dollar limit during January-October 1989).

At the request of the Office of the United States Trade Representative (USTR), the U.S. International Trade Commission (USITC) instituted an investigation of the probable economic effects of redesignating certain articles for duty free treatment under the GSP. A public notice by the USITC initiating its investigation was published in the **Federal Register** on November 22, 1989 (54 FR 224), and invited comment to the USITC on its investigation. List IV printed below is a revised version of the list which appeared in the USITC notice. Differences between the two lists reflect changes in the eligibility of certain products based on additional trade data for 1989. A number of products on the USITC list appear here on List III rather than List IV. In addition, the USITC list did not include items eligible for redesignation which were the subject of current petition requests; these items are included in List IV.

As noted in the November 22, 1989 notice, as part of this year's redesignation decisions, the past policy of denying redesignation for products from newly industrialized ecomomies (NIEs) is being reconsidered. Regarding *de minimis* waivers, the current policy of providing such a waiver unless a negative impact on U.S. producers is demonstrated will be continued. Comment is invited on these policy issues. As noted above, the decisions that the President will make on whether to waive the percentage limit in cases where trade is *de minimis* and whether to redesignate beneficiaries with respect to products are discretionary.

All written comments with regard to these decisions should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street NW., Room 517, Washington, DC 20506. All submissions should conform to the information requirements of 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2) and 2007.1(a)(3). Furthermore, each party providing comments should indicate on the first page of the submission its name, HTS subheading(s), beneficiary country or territory(s) of interest, and the type of action (i.e., the use of the President's *de minimis* waiver authority, etc. . .) in which the party is interested.

These statements must be accompanied by twenty copies, in English, of all comments and must be received by the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m., Wednesday, February 21 at the address listed above. If the comments contain business confidential information, twenty copies of a non-confidential version of the comments along with twelve copies of the confidential version must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with these decisions will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. The USTR Public Reading Room is located at the address listed above. The phone number is (202) 395-6186. Other requests and questions should be directed to the GSP Information Center at USTR; the phone number is (202) 395-6971.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3910-01-M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
1989 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
* R	0603.10.70	Colombia	80,657,103	88.8%
	1701.11.00	Dominican Republic	91,496,394	18.5%
G R	2203.00.00	Mexico	128,923,161	18.1%
G	2825.90.15	Brazil	0	0.0%
G	2827.59.05	Israel	0	0.0%
G	2903.40.00	Israel	0	0.0%
G	2903.59.40	Israel	0	0.0%
G	2918.22.10	Turkey	0	0.0%
*	2918.90.30	Bahamas	222,226,318	93.1%
G	2933.40.10	Israel	0	0.0%
G	2933.90.47	Mexico	0	0.0%
*	4818.50.00	Mexico	112,983,824	88.1%
G	4823.20.10	Brazil	0	0.0%
G D R	6810.11.00	Mexico	397,449	22.7%
*	7113.19.50	Thailand	106,302,423	10.0%
G	7202.21.10	Brazil	0	0.0%
G R	7202.21.50	Brazil	12,588,046	20.6%
G R	7202.30.00	Brazil	12,558,420	9.8%
G	7307.21.50	Brazil	0	0.0%
G	7307.91.50	Brazil	0	0.0%
G	7323.94.00	Mexico	0	0.0%
G	7604.10.30	Venezuela	0	0.0%
G	7604.29.30	Venezuela	0	0.0%
G	7605.11.00	Venezuela	0	0.0%
G	7605.21.00	Venezuela	0	0.0%
*	8407.34.20	Mexico	298,391,778	24.8%
* R	8408.20.20	Brazil	118,082,147	39.8%
* R	8409.91.91	Mexico	50,981,628	6.0%
* R	8409.91.91	Brazil	43,717,315	5.1%
* R	8409.99.99	Brazil	44,126,835	17.8%
* R	8415.82.00	Mexico	35,470,396	45.0%
* R	8415.90.00	Mexico	79,544,552	29.0%
* R	8431.49.90	Brazil	39,997,798	8.5%
*	8471.91.00	Mexico	172,470,765	9.1%
*	8471.99.30	Mexico	100,074,519	16.6%
*	8501.40.40	Mexico	120,780,208	83.6%
*	8504.40.00	Mexico	99,516,999	16.8%
* R	8523.11.00	Mexico	43,295,091	27.2%
* R	8523.20.00	Mexico	57,790,066	28.3%
*	8527.21.10	Mexico	280,438,643	25.8%
* R	8527.21.10	Brazil	85,843,328	7.9%
R	8529.90.50	Mexico	35,534,598	14.4%
*	8536.50.00	Mexico	141,873,465	26.7%
*	8536.90.00	Mexico	142,574,375	28.7%
* R	8543.80.90	Mexico	35,875,416	7.9%
*	8544.30.00	Mexico	867,631,455	70.2%
*	8544.51.80	Mexico	197,969,285	53.4%
*	8708.21.00	Mexico	299,822,334	72.2%
*	8708.99.50	Mexico	255,328,989	4.8%
*	8802.30.00	Brazil	172,663,754	17.1%
*	9401.20.00	Mexico	151,114,011	70.5%
G D R	9401.30.40	Yugoslavia	48,206	0.9%
G R	9401.61.40	Yugoslavia	1,968,393	1.8%
G R	9401.69.60	Yugoslavia	64,582,111	25.4%
*	9401.90.10	Mexico	91,689,610	17.3%
G	9401.90.40	Yugoslavia	0	0.0%
	9405.30.00	Thailand	90,459,266	30.9%
2 R	9503.90.60	Mexico	57,179,347	9.7%

FLAGS: 'G'=Graduated; '*'=Excluded full year; '1'=Excluded Jan/Jun; '2'=Excluded Jul/Dec; 'R'=Reduced limits apply; 'D'=De minimis

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1989 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0210.20.00	Uruguay	969,264	51.4%
D	0302.61.00	Thailand	109,055	67.5%
D	0302.69.10	Uruguay	337,585	86.9%
*	0702.00.60	Mexico	82,867,241	99.7%
* D	0704.10.40	Mexico	913,754	94.0%
* D	0704.10.60	Mexico	68,475	100.0%
* D	0704.20.00	Mexico	2,096,864	97.3%
* D	0705.11.40	Mexico	3,870,857	96.5%
* D	0705.19.40	Mexico	3,327,898	97.5%
D	0706.90.20	Mexico	3,482,399	94.7%
D	0706.90.30	Mexico	145,322	54.5%
*	0707.00.20	Mexico	37,531,775	97.5%
1	0707.00.40	Mexico	18,510,926	94.4%
D	0708.10.20	Guatemala	1,271,423	79.7%
* R	0708.10.40	Mexico	5,510,782	51.0%
D	0708.90.30	Dominican Republic	412,518	70.0%
* D	0709.30.20	Mexico	1,507,923	98.0%
* D	0709.30.40	Mexico	5,526,163	99.3%
D	0709.40.40	Mexico	320,076	77.4%
*	0709.60.00	Mexico	73,893,346	78.1%
D	0709.90.05	Mexico	2,744,837	65.3%
* D	0709.90.13	Mexico	3,667,437	99.7%
D	0709.90.16	Mexico	1,677,127	95.3%
*	0709.90.20	Mexico	26,813,179	96.7%
D	0710.29.05	Mexico	23,550	57.6%
D	0710.29.15	India	31,425	96.8%
D	0710.29.30	Dominican Republic	2,179,703	94.4%
* D	0710.80.50	Mexico	16,745	65.8%
D	0710.80.70	Guatemala	4,720,730	60.2%
D	0712.90.65	Israel	327,502	63.9%
D	0713.20.10	Mexico	69,000	74.4%
D	0713.20.20	Mexico	6,110,934	85.8%
D	0713.31.40	Thailand	2,607,566	66.4%
D	0713.90.10	India	1,001,810	98.7%
D	0714.20.00	Dominican Republic	1,443,377	96.0%
D	0714.90.10	Dominican Republic	4,606,780	63.2%
D	0802.90.15	Mexico	1,564,924	100.0%
*	0804.50.40	Mexico	13,303,172	76.5%
D	0804.50.80	Philippines	272,231	54.9%
D	0805.90.00	Israel	327,789	92.4%
*	0807.10.20	Mexico	49,613,156	74.5%
D	0807.10.30	Mexico	9,413,154	94.0%
* R	0807.10.70	Mexico	15,055,781	53.0%
* D R	0810.90.40	Mexico	3,276,422	77.7%
*	0811.10.00	Mexico	1,520,719	73.5%
D	0811.90.55	Guatemala	1,495,664	68.4%
*	0813.10.00	Turkey	7,641,424	57.9%

List II (cont.)

*	D	R	0813.30.00	Argentina	1,671,614	38.8%
	D		0813.40.10	Thailand	623,559	97.6%
	D		0910.40.30	Jamaica	73,291	70.6%
	D		0910.99.40	Mexico	604,042	74.7%
		R	1005.90.20	Argentina	4,820,116	29.7%
*	D		1005.90.40	Argentina	1,484,733	75.5%
	D		1006.30.10	Brazil	379,399	84.6%
	D		1007.00.00	Mexico	40,200	85.2%
	D		1102.20.00	Mexico	1,198,009	70.6%
2	D		1102.30.00	Thailand	763,332	81.7%
2	D		1103.14.00	Thailand	71,622	80.7%
	D		1106.30.20	Ecuador	890,169	97.9%
	D		1403.90.40	Mexico	1,441,713	59.6%
*			1515.30.00	Brazil	13,630,560	53.9%
	D		1515.60.00	Mexico	980,336	100.0%
	D		1518.00.40	Brazil	981,281	47.1%
	D		1519.11.00	Malaysia	568,922	77.0%
	D		1602.31.00	Israel	1,739,983	82.5%
	D		1602.49.90	Yugoslavia	566,119	70.6%
	D		1602.50.09	Argentina	628,216	61.9%
	D		1604.14.50	Costa Rica	37,461	47.5%
	D		1604.16.30	Morocco	2,363,668	61.8%
	D		1701.91.20	Thailand	144,914	48.8%
	D		1701.91.40	Dominican Republic	319,440	67.9%
	D		1702.40.00	Dominican Republic	3,137,852	82.8%
	D		1702.90.35	Dominican Republic	1,921,855	88.3%
	D		1702.90.40	Brazil	1,129,650	56.7%
	D		1703.90.30	Brazil	1,074,780	98.5%
	D		1905.90.90	Mexico	5,886,106	58.4%
*			2001.90.40	Mexico	20,613,704	69.0%
	D		2001.90.45	India	127,953	48.1%
	D		2005.80.00	Thailand	7,120,037	78.8%
*	D	R	2005.90.55	Mexico	1,278,356	39.6%
*	D	R	2007.99.50	Brazil	1,082,934	26.7%
	D		2008.19.25	Israel	2,070	100.0%
	D		2008.99.35	Thailand	1,849,766	59.2%
	D		2103.20.20	Venezuela	468,756	70.8%
	D		2106.90.10	Jamaica	4,797	57.4%
		R	2202.10.00	Mexico	18,746,135	33.9%
	D		2208.90.05	Trinidad and Tobago	240,244	55.6%
	D		2208.90.75	Colombia	610,927	47.5%
	D		2306.20.00	Trinidad and Tobago	2,235,046	86.4%
	D		2306.30.00	Argentina	1,345,063	90.0%
	D		2306.50.00	Marshall Islands	15,471	86.8%
	D		2401.20.20	Cameroon	1,894,853	54.3%
2			2402.10.80	Dominican Republic	16,459,875	54.6%
	D		2403.91.20	Mexico	298,246	94.5%
	D		2516.22.00	India	229,041	48.4%
	D		2520.20.00	Mexico	114,343	49.0%
			2603.00.00	Mexico	24,245,273	66.2%
	D		2607.00.00	Peru	1,615,363	48.4%
*	D		2620.20.00	Mexico	164,709	55.5%
	D		2620.30.00	Zaire	280,512	51.2%
	D		2707.60.00	Brazil	6,236,676	72.9%
*		R	2804.69.10	Brazil	9,322,795	31.5%
*	D		2824.10.00	Mexico	6,090,879	96.1%
*	D		2824.20.00	Mexico	236,144	54.6%
	D		2825.50.30	Mexico	1,281,251	98.8%

List II (cont.)

	D		2827.41.00	Mexico	866,466	63.8%
	D		2827.51.10	Israel	1,423,983	97.2%
	D		2827.51.20	Israel	596,342	77.4%
	D		2827.60.20	India	119,580	78.7%
	D		2833.26.00	Mexico	907,629	56.9%
	D		2833.29.30	Zaire	84,882	60.4%
	D		2833.29.50	Mexico	2,930,648	56.4%
	D		2834.29.20	Mexico	453,363	87.2%
	D		2836.92.00	Mexico	5,180,669	60.1%
*	D	R	2843.21.00	Mexico	3,739,280	98.5%
	D		2903.69.30	Israel	2,817,566	50.2%
	D		2904.90.50	Mexico	2,889,480	65.5%
	D		2905.14.00	Mexico	2,017,171	81.8%
	D		2905.15.00	Brazil	511,561	64.6%
	D		2905.44.00	Mexico	2,067,669	61.8%
	D		2907.11.00	Mexico	4,536,677	56.9%
	D		2908.10.20	Mexico	1,913,947	99.3%
	D		2909.44.00	Mexico	834,270	68.9%
	D		2912.49.10	Israel	1,033,775	50.5%
*	D	R	2915.31.00	Brazil	1,832,202	49.8%
	D		2915.39.47	Israel	2,048	100.0%
	D		2915.90.20	Brazil	44,658	56.3%
	D		2916.31.20	Mexico	183,092	53.1%
	D		2917.19.15	Israel	261,891	100.0%
	D		2917.32.00	Brazil	1,843	100.0%
	D		2917.35.00	Mexico	3,360,333	59.1%
	D		2917.39.20	Brazil	1,222,664	54.6%
	D		2918.22.50	Israel	12,022	51.1%
	D		2920.10.10	Israel	204,589	67.2%
	D		2920.90.10	Israel	235,994	93.5%
	D		2933.19.25	Guatemala	8,006,667	75.8%
	D		2933.39.21	Israel	265,446	47.0%
			2933.39.25	Brazil	22,802,259	90.6%
	D		2933.39.27	Israel	193,017	59.2%
	D		2933.59.15	Venezuela	2,159,000	50.8%
	D		2933.90.18	Israel	1,103,194	47.1%
	D		2934.90.14	Brazil	4,376,106	66.6%
	D		2935.00.05	India	593,335	94.4%
	D		2935.00.31	Yugoslavia	5,755,509	55.8%
		R	2937.92.10	Mexico	6,680,988	29.2%
	D		2939.10.50	India	47,547	86.6%
	D		2939.70.00	India	131,219	56.2%
	D		2939.90.10	Brazil	2,407,307	55.1%
	D		3001.10.00	Argentina	488,949	50.0%
*			3203.00.50	Mexico	11,375,623	79.1%
	D		3206.49.30	Mexico	2,798,089	73.5%
*	D	R	3207.40.10	Mexico	3,530,779	44.2%
*	D		3301.12.00	Brazil	4,820,055	69.2%
	D		3401.11.10	Philippines	620,388	48.2%
			3402.90.30	Mexico	12,470,680	62.4%
	D		3702.91.00	Mexico	146,940	69.8%
*		R	3703.10.30	Brazil	26,533,107	26.1%
	D		3802.90.20	Mexico	1,972,184	59.4%
	D		3806.30.00	Argentina	339,776	49.1%
	D		3808.30.20	Israel	54,450	51.4%
	D		3823.90.32	Argentina	1,784,409	91.7%
	D		3904.21.00	Brazil	5,429,529	55.4%
	D		3920.59.50	Mexico	4,332,967	62.9%

List II (cont.) page A-5

	D	3920.61.00	Israel	2,844,321	56.0%
	D	3921.14.00	Mexico	7,059,184	90.6%
	D	3926.90.87	Mexico	4,563,372	49.3%
	D	4008.19.10	Malaysia	3,835,219	55.0%
		4013.10.00	Mexico	13,678,484	51.8%
		4015.11.00	Malaysia	70,776,183	62.0%
	D	4104.10.40	India	1,867,976	56.0%
*	D	4104.21.00	Argentina	6,013,614	71.6%
*	D	4104.29.50	Argentina	1,085,008	53.7%
	D	4104.31.20	Thailand	2,398,983	66.7%
*		4104.39.80	Argentina	41,925,532	55.7%
2		4106.20.60	India	12,010,301	62.0%
	D R	4107.21.00	Argentina	319,432	34.2%
	R	4107.29.30	Argentina	6,698,375	36.7%
	D	4109.00.70	India	202,093	59.6%
	D	4202.22.35	Philippines	289,012	99.4%
	D	4409.10.20	Thailand	556,445	49.2%
*		4409.10.40	Mexico	53,663,209	94.2%
	D R	4409.10.60	Mexico	881,393	40.4%
*	R	4411.11.00	Brazil	12,831,755	70.9%
*	D R	4411.19.20	Brazil	2,129,311	23.2%
*	D R	4411.29.60	Brazil	1,003,918	22.7%
	D	4412.12.15	Brazil	3,171,447	60.2%
	D	4412.19.10	Brazil	399,163	77.5%
	D	4412.19.30	Indonesia	52,713	100.0%
*	D	4412.19.40	Indonesia	4,206,467	56.6%
	D	4412.99.10	Brazil	292,654	96.4%
	D	4412.99.30	Brazil	23,363	86.3%
	D R	4421.90.10	Mexico	296,715	33.4%
	D	4421.90.10	Honduras	482,259	54.3%
	D	4802.51.10	Mexico	5,812,314	58.6%
	D	4804.31.20	Colombia	1,407,785	54.6%
		4804.31.60	Mexico	7,711,455	52.4%
	D	4804.49.00	Mexico	117,721	84.7%
	D	4808.10.00	Mexico	1,487,575	72.3%
	D	4809.10.20	Venezuela	4,535	50.0%
*		4818.10.00	Mexico	26,160,577	64.3%
	D	4818.40.40	Mexico	1,920,424	54.9%
		4818.90.00	Mexico	30,445,560	83.2%
	D	4823.90.20	Philippines	4,390,114	54.6%
*	D	5208.31.20	India	1,227,687	100.0%
*	D	5208.32.10	India	708,047	92.8%
*	D	5208.41.20	India	5,859,390	99.7%
*	D	5208.42.10	India	2,552,427	98.6%
*	D	5208.51.20	India	112,799	98.6%
	D	5209.31.30	India	547,579	79.6%
	D	5209.41.30	India	540,291	95.9%
	D	5209.51.30	Guatemala	103,600	50.2%
	D	5308.90.00	Philippines	215,977	51.6%
	D	5311.00.60	Mexico	481,113	53.5%
	D	5607.10.00	Thailand	690,932	50.6%
	D	5607.30.20	Philippines	2,996,265	89.9%
	D	5702.20.10	India	418,259	85.6%
*	D	6307.90.60	Mexico	758,381	100.0%
*	D	6405.90.20	Mexico	4,892,616	88.1%
2	R	6702.90.60	Thailand	6,466,326	42.8%
	D	6802.29.00	Mexico	1,142,419	81.8%
	D R	6802.99.00	Mexico	1,748,818	25.4%

List II (cont.) page A-6

	D	6806.20.00	Mexico	1,065,479	87.0%
	D	6811.30.00	Mexico	415,636	71.3%
	D	6814.90.00	India	577,949	47.1%
	D	6905.90.00	Mexico	3,140,309	50.2%
	D	6906.00.00	Mexico	814,453	70.6%
2	R	6908.10.20	Thailand	6,240,169	32.4%
	D	7008.00.00	Mexico	5,227,612	61.1%
	D	7012.00.00	India	834,030	69.9%
	D	7107.00.00	Philippines	135,520	87.3%
2		7113.11.20	Thailand	6,793,294	61.8%
		7113.19.10	Peru	42,122,476	48.4%
		7113.19.50	Israel	67,914,534	6.3%
	D	7113.20.10	Peru	4,469,700	82.0%
		7113.20.21	Dominican Republic	12,201,867	71.5%
	D	7115.10.00	Mexico	22,440	49.6%
*	D	7202.11.10	Mexico	107,593	100.0%
*		7202.19.50	Mexico	21,343,756	49.1%
	D	7307.99.10	Mexico	3,792,615	48.2%
	D	7319.20.00	Malaysia	1,448,459	58.8%
	D	7325.91.00	Brazil	376,701	51.1%
*	D	7401.10.00	Mexico	2,962,974	98.6%
*	D	7403.12.00	Peru	4,049,459	82.2%
	D	7408.11.30	Peru	3,038,006	57.6%
2		7413.00.10	Peru	12,697,640	74.1%
	D	7413.00.50	Mexico	4,659,088	70.6%
	D	7413.00.90	Mexico	1,229,828	68.7%
		7605.19.00	Venezuela	9,837,559	66.2%
		7605.29.00	Brazil	7,681,719	48.8%
	D	7606.12.60	Yugoslavia	1,954,244	49.5%
	D	7614.10.50	Brazil	5,770,373	59.8%
		7614.90.50	Venezuela	7,657,013	63.4%
	D	7801.99.30	Mexico	3,661,793	95.9%
	D	7803.00.00	Mexico	1,626,151	49.6%
	D	7905.00.00	Peru	3,348,353	74.1%
	D	8104.90.00	Mexico	2,599,332	93.5%
	D	8113.00.00	Brazil	354,226	57.6%
		8301.40.60	Mexico	64,929,474	40.6%
	D	8301.50.00	Mexico	2,237,103	75.2%
		8302.10.90	Mexico	30,001,635	55.3%
	D	8302.49.20	Mexico	531,977	62.7%
*	R	8414.59.80	Mexico	34,768,049	17.3%
		8419.19.00	Mexico	14,279,108	54.4%
*	R	8421.31.00	Mexico	18,338,059	26.0%
*		8424.20.10	Mexico	11,100,701	64.4%
*	R	8429.11.00	Brazil	10,303,064	28.8%
*	R	8429.20.00	Brazil	7,780,791	30.1%
*	R	8429.30.00	Brazil	11,091,019	52.9%
		8474.20.00	Philippines	44,577,361	61.9%
*	D	8501.40.50	Mexico	6,390,931	88.0%
*		8503.00.60	Mexico	65,404,207	26.3%
*		8504.10.00	Mexico	47,295,577	75.9%
		8504.32.00	Mexico	13,536,891	53.4%
*		8504.50.00	Mexico	65,122,746	48.0%
*	R	8505.19.00	Mexico	11,666,698	30.7%
	R	8507.20.00	Mexico	19,133,288	22.5%
	D R	8507.90.40	Mexico	2,724,168	27.4%
	D	8509.20.00	Mexico	1,746,656	68.6%
*		8509.90.20	Mexico	24,869,628	57.3%

* D	8509.90.30	Mexico	325,002	63.9%
*	8512.40.40	Mexico	81,332,655	81.6%
D	8513.90.20	Thailand	1,176,521	62.6%
	8516.80.80	Mexico	15,884,205	53.6%
	8520.20.00	Malaysia	66,257,358	22.7%
	8521.10.00	Thailand	86,550,437	3.5%
	8522.10.00	Mexico	8,873,796	67.4%
	8525.20.30	Malaysia	67,066,501	15.6%
	8527.11.11	Malaysia	78,949,101	14.4%
*	8536.61.00	Mexico	14,302,364	48.8%
*	8536.69.00	Mexico	89,089,195	30.3%
*	8538.90.00	Mexico	77,712,674	19.4%
* R	8539.90.00	Mexico	9,309,153	50.1%
	8544.30.00	Thailand	72,173,865	5.8%
	8544.30.00	Philippines	73,622,634	5.9%
D	8546.10.00	Brazil	1,448,254	64.7%
D	8713.10.00	Mexico	2,324,889	48.8%
	9006.52.10	Mexico	18,700,465	61.7%
D	9013.10.30	Israel	675,956	52.5%
D	9014.80.10	Israel	3,349,082	72.0%
D	9015.10.80	Israel	679,285	51.1%
	9019.20.00	Mexico	34,591,962	50.3%
	9022.29.40	Mexico	9,755,222	78.7%
* D R	9025.11.20	Brazil	1,320,335	30.3%
D	9025.11.20	India	2,530,572	58.1%
	9026.80.60	Mexico	43,478,051	50.9%
	9031.40.00	Israel	20,848,752	57.8%
D	9031.90.40	Israel	4,118,694	59.9%
D	9107.00.40	Mexico	1,078,570	53.2%
D	9303.30.40	Philippines	209,300	84.3%
D	9305.10.80	Mexico	742,081	55.4%
D	9306.29.00	Peru	1,476,749	61.2%
2 R	9403.60.80	Thailand	28,031,263	3.4%
D	9405.91.40	Mexico	1,429,333	82.1%
D R	9503.80.80	Mexico	2,582,439	34.9%
2 R	9503.90.50	Mexico	6,371,264	29.1%
* D R	9504.20.60	Brazil	1,900,539	39.2%
D	9506.61.00	Indonesia	866,669	48.8%
	9603.30.40	Mexico	15,913,352	84.3%
D	9614.20.60	Turkey	83,918	88.4%
D	9614.20.80	Turkey	261,072	62.8%

FLAGS: 'G'=Graduated; '*'=Excluded full year; '1'=Excluded Jan/Jun; '2'=Excluded Jul/Dec; 'R'=Reduced limits apply; 'D'=De minimis

LIST III : POSSIBLE de MINIMIS ITEMS
1989 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0210.20.00	Uruguay	969,264	51.4%
D	0302.61.00	Thailand	109,055	67.5%
D	0302.69.10	Uruguay	337,585	86.9%
* D	0704.10.40	Mexico	913,754	94.0%
* D	0704.10.60	Mexico	68,475	100.0%
* D	0704.20.00	Mexico	2,096,864	97.3%
* D	0705.11.40	Mexico	3,870,857	96.5%
* D	0705.19.40	Mexico	3,327,898	97.5%

D	0706.90.20	Mexico	3,482,399	94.7%
D	0706.90.30	Mexico	145,322	54.5%
D	0708.10.20	Guatemala	1,271,423	79.7%
D	0708.90.30	Dominican Republic	412,518	70.0%
* D	0709.30.20	Mexico	1,507,923	98.0%
* D	0709.30.40	Mexico	5,526,163	99.3%
D	0709.40.40	Mexico	320,076	77.4%
D	0709.90.05	Mexico	2,744,837	65.3%
* D	0709.90.13	Mexico	3,667,437	99.7%
D	0709.90.16	Mexico	1,677,127	95.3%
D	0710.29.05	Mexico	23,550	57.6%
D	0710.29.15	India	31,425	96.8%
D	0710.29.30	Dominican Republic	2,179,703	94.4%
* D	0710.80.50	Mexico	16,745	65.8%
D	0710.80.70	Guatemala	4,720,730	60.2%
D	0712.90.65	Israel	327,502	63.9%
D	0713.20.10	Mexico	69,000	74.4%
D	0713.20.20	Mexico	6,110,934	85.8%
D	0713.31.40	Thailand	2,607,566	66.4%
D	0713.90.10	India	1,001,810	98.7%
D	0714.20.00	Dominican Republic	1,443,377	96.0%
D	0714.90.10	Dominican Republic	4,606,780	63.2%
D	0802.90.15	Mexico	1,564,924	100.0%
D	0804.50.80	Philippines	272,231	54.9%
D	0805.90.00	Israel	327,789	92.4%
D	0807.10.30	Mexico	9,413,154	94.0%
* D R	0810.90.40	Mexico	3,276,422	77.7%
D	0811.90.55	Guatemala	1,495,664	68.4%
* D R	0813.30.00	Argentina	1,671,614	38.8%
D	0813.40.10	Thailand	623,559	97.6%
D	0910.40.30	Jamaica	73,291	70.6%
D	0910.99.40	Mexico	604,042	74.7%
* D	1005.90.40	Argentina	1,484,733	75.5%
D	1006.30.10	Brazil	379,399	84.6%
D	1007.00.00	Mexico	40,200	85.2%
D	1102.20.00	Mexico	1,198,009	70.6%
2 D	1102.30.00	Thailand	763,332	81.7%
2 D	1103.14.00	Thailand	71,622	80.7%
D	1106.30.20	Ecuador	890,169	97.9%
D	1403.90.40	Mexico	1,441,713	59.6%
D	1515.60.00	Mexico	980,336	100.0%
D	1518.00.40	Brazil	981,281	47.1%
D	1519.11.00	Malaysia	568,922	77.0%
D	1602.31.00	Israel	1,739,983	82.5%
D	1602.49.90	Yugoslavia	566,119	70.6%
D	1602.50.09	Argentina	628,216	61.9%
D	1604.14.50	Costa Rica	37,461	47.5%
D	1604.16.30	Morocco	2,363,668	61.8%
D	1701.91.20	Thailand	144,914	48.8%
D	1701.91.40	Dominican Republic	319,440	67.9%
D	1702.40.00	Dominican Republic	3,137,852	82.8%
D	1702.90.35	Dominican Republic	1,921,855	88.3%
D	1702.90.40	Brazil	1,129,650	56.7%
D	1703.90.30	Brazil	1,074,780	98.5%
D	1905.90.90	Mexico	5,886,106	58.4%
D	2001.90.45	India	127,953	48.1%
D	2005.80.00	Thailand	7,120,037	78.8%
* D R	2005.90.55	Mexico	1,278,356	39.6%

List III (cont) page A-9

*	D R	2007.99.50	Brazil	1,082,934	26.7%
	D	2008.19.25	Israel	2,070	100.0%
	D	2008.99.35	Thailand	1,849,766	59.2%
	D	2103.20.20	Venezuela	468,756	70.8%
	D	2106.90.10	Jamaica	4,797	57.4%
	D	2208.90.05	Trinidad and Tobago	240,244	55.6%
	D	2208.90.75	Colombia	610,927	47.5%
	D	2306.20.00	Trinidad and Tobago	2,235,046	86.4%
	D	2306.30.00	Argentina	1,345,063	90.0%
	D	2306.50.00	Marshall Islands	15,471	86.8%
	D	2401.20.20	Cameroon	1,894,853	54.3%
	D	2403.91.20	Mexico	298,246	94.5%
	D	2516.22.00	India	229,041	48.4%
	D	2520.20.00	Mexico	114,343	49.0%
	D	2607.00.00	Peru	1,615,363	48.4%
*	D	2620.20.00	Mexico	164,709	55.5%
	D	2620.30.00	Zaire	280,512	51.2%
	D	2707.60.00	Brazil	6,236,676	72.9%
*	D	2824.10.00	Mexico	6,090,879	96.1%
*	D	2824.20.00	Mexico	236,144	54.6%
	D	2825.50.30	Mexico	1,281,251	98.8%
	D	2827.41.00	Mexico	866,466	63.8%
	D	2827.51.10	Israel	1,423,983	97.2%
	D	2827.51.20	Israel	596,342	77.4%
	D	2827.60.20	India	119,580	78.7%
	D	2833.26.00	Mexico	907,629	56.9%
	D	2833.29.30	Zaire	84,882	60.4%
	D	2833.29.50	Mexico	2,930,648	56.4%
	D	2834.29.20	Mexico	453,363	87.2%
	D	2836.92.00	Mexico	5,180,669	60.1%
*	D R	2843.21.00	Mexico	3,739,280	98.5%
	D	2903.69.30	Israel	2,817,566	50.2%
	D	2904.90.50	Mexico	2,889,480	65.5%
	D	2905.14.00	Mexico	2,017,171	81.8%
	D	2905.15.00	Brazil	511,561	64.6%
	D	2905.44.00	Mexico	2,067,669	61.8%
	D	2907.11.00	Mexico	4,536,677	56.9%
	D	2908.10.20	Mexico	1,913,947	99.3%
	D	2909.44.00	Mexico	834,270	68.9%
	D	2912.49.10	Israel	1,033,775	50.5%
*	D R	2915.31.00	Brazil	1,832,202	49.8%
	D	2915.39.47	Israel	2,048	100.0%
	D	2915.90.20	Brazil	44,658	56.3%
	D	2916.31.20	Mexico	183,092	53.1%
	D	2917.19.15	Israel	261,891	100.0%
	D	2917.32.00	Brazil	1,843	100.0%
	D	2917.35.00	Mexico	3,360,333	59.1%
	D	2917.39.20	Brazil	1,222,664	54.6%
	D	2918.22.50	Israel	12,022	51.1%
	D	2920.10.10	Israel	204,589	67.2%
	D	2920.90.10	Israel	235,994	93.5%
	D	2933.19.25	Guatemala	8,006,667	75.8%
	D	2933.39.21	Israel	265,446	47.0%
	D	2933.39.27	Israel	193,017	59.2%
	D	2933.59.15	Venezuela	2,159,000	50.8%
	D	2933.90.18	Israel	1,103,194	47.1%
	D	2934.90.14	Brazil	4,376,106	66.6%
	D	2935.00.05	India	593,335	94.4%

List III (cont) page A-10

	D	2935.00.31	Yugoslavia	5,755,509	55.8%
	D	2939.10.50	India	47,547	86.6%
	D	2939.70.00	India	131,219	56.2%
	D	2939.90.10	Brazil	2,407,307	55.1%
	D	3001.10.00	Argentina	488,949	50.0%
	D	3206.49.30	Mexico	2,798,089	73.5%
*	D R	3207.40.10	Mexico	3,530,779	44.2%
*	D	3301.12.00	Brazil	4,820,055	69.2%
	D	3401.11.10	Philippines	620,388	48.2%
	D	3702.91.00	Mexico	146,940	69.8%
	D	3802.90.20	Mexico	1,972,184	59.4%
	D	3806.30.00	Argentina	339,776	49.1%
	D	3808.30.20	Israel	54,450	51.4%
	D	3823.90.32	Argentina	1,784,409	91.7%
	D	3904.21.00	Brazil	5,429,529	55.4%
	D	3920.59.50	Mexico	4,332,967	62.9%
	D	3920.61.00	Israel	2,844,321	56.0%
	D	3921.14.00	Mexico	7,059,184	90.6%
	D	3926.90.87	Mexico	4,563,372	49.3%
	D	4008.19.10	Malaysia	3,835,219	55.0%
	D	4104.10.40	India	1,867,976	56.0%
*	D	4104.21.00	Argentina	6,013,614	71.6%
*	D	4104.29.50	Argentina	1,085,008	53.7%
	D	4104.31.20	Thailand	2,398,983	66.7%
	D R	4107.21.00	Argentina	319,432	34.2%
	D	4109.00.70	India	202,093	59.6%
	D	4202.22.35	Philippines	289,012	99.4%
	D	4409.10.20	Thailand	556,445	49.2%
	D R	4409.10.60	Mexico	881,393	40.4%
*	D R	4411.19.20	Brazil	2,129,311	23.2%
*	D R	4411.29.60	Brazil	1,003,918	22.7%
	D	4412.12.15	Brazil	3,171,447	60.2%
	D	4412.19.10	Brazil	399,163	77.5%
	D	4412.19.30	Indonesia	52,713	100.0%
*	D	4412.19.40	Indonesia	4,206,467	56.6%
	D	4412.99.10	Brazil	292,654	96.4%
	D	4412.99.30	Brazil	23,363	86.3%
	D R	4421.90.10	Mexico	296,715	33.4%
	D	4421.90.10	Honduras	482,259	54.3%
	D	4802.51.10	Mexico	5,812,314	58.6%
	D	4804.31.20	Colombia	1,407,785	54.6%
	D	4804.49.00	Mexico	117,721	84.7%
	D	4808.10.00	Mexico	1,487,575	72.3%
	D	4809.10.20	Venezuela	4,535	50.0%
	D	4818.40.40	Mexico	1,920,424	54.9%
	D	4823.90.20	Philippines	4,390,114	54.6%
*	D	5208.31.20	India	1,227,687	100.0%
*	D	5208.32.10	India	708,047	92.8%
*	D	5208.41.20	India	5,859,390	99.7%
*	D	5208.42.10	India	2,552,427	98.6%
*	D	5208.51.20	India	112,799	98.6%
	D	5209.31.30	India	547,579	79.6%
	D	5209.41.30	India	540,291	95.9%
	D	5209.51.30	Guatemala	103,600	50.2%
	D	5308.90.00	Philippines	215,977	51.6%
	D	5311.00.60	Mexico	481,113	53.5%
	D	5607.10.00	Thailand	690,932	50.6%
	D	5607.30.20	Philippines	2,996,265	89.9%

	D		5702.20.10	India	418,259	85.6%
*	D		6307.90.60	Mexico	758,381	100.0%
*	D		6405.90.20	Mexico	4,892,616	88.1%
	D		6802.29.00	Mexico	1,142,419	81.8%
	D	R	6802.99.00	Mexico	1,748,818	25.4%
	D		6806.20.00	Mexico	1,065,479	87.0%
	D		6811.30.00	Mexico	415,636	71.3%
	D		6814.90.00	India	577,949	47.1%
	D		6905.90.00	Mexico	3,140,309	50.2%
	D		6906.00.00	Mexico	814,453	70.6%
	D		7008.00.00	Mexico	5,227,612	61.1%
	D		7012.00.00	India	834,030	69.9%
	D		7107.00.00	Philippines	135,520	87.3%
	D		7113.20.10	Peru	4,469,700	82.0%
	D		7115.10.00	Mexico	22,440	49.6%
*	D		7202.11.10	Mexico	107,593	100.0%
	D		7307.99.10	Mexico	3,792,615	48.2%
	D		7319.20.00	Malaysia	1,448,459	58.8%
	D		7325.91.00	Brazil	376,701	51.1%
*	D		7401.10.00	Mexico	2,962,974	98.6%
*	D		7403.12.00	Peru	4,049,459	82.2%
	D		7408.11.30	Peru	3,038,006	57.6%
	D		7413.00.50	Mexico	4,659,088	70.6%
	D		7413.00.90	Mexico	1,229,828	68.7%
	D		7606.12.60	Yugoslavia	1,954,244	49.5%
	D		7614.10.50	Brazil	5,770,373	59.8%
	D		7801.99.30	Mexico	3,661,793	95.9%
	D		7803.00.00	Mexico	1,626,151	49.6%
	D		7905.00.00	Peru	3,348,353	74.1%
	D		8104.90.00	Mexico	2,599,332	93.5%
	D		8113.00.00	Brazil	354,226	57.6%
	D		8301.50.00	Mexico	2,237,103	75.2%
	D		8302.49.20	Mexico	531,977	62.7%
*	D		8501.40.50	Mexico	6,390,931	88.0%
	D	R	8507.90.40	Mexico	2,724,168	27.4%
	D		8509.20.00	Mexico	1,746,656	68.6%
*	D		8509.90.30	Mexico	325,002	63.9%
	D		8513.90.20	Thailand	1,176,521	62.6%
	D		8546.10.00	Brazil	1,448,254	64.7%
	D		8713.10.00	Mexico	2,324,889	48.8%
	D		9013.10.30	Israel	675,956	52.5%
	D		9014.80.10	Israel	3,349,082	72.0%
	D		9015.10.80	Israel	679,285	51.1%
*	D	R	9025.11.20	Brazil	1,320,335	30.3%
	D		9025.11.20	India	2,530,572	58.1%
	D		9031.90.40	Israel	4,118,694	59.9%
	D		9107.00.40	Mexico	1,078,570	53.2%
	D		9303.30.40	Philippines	209,300	84.3%
	D		9305.10.80	Mexico	742,081	55.4%
	D		9306.29.00	Peru	1,476,749	61.2%
	D		9405.91.40	Mexico	1,429,333	82.1%
	D	R	9503.80.80	Mexico	2,582,439	34.9%
*	D	R	9504.20.60	Brazil	1,900,539	39.2%
	D		9506.61.00	Indonesia	866,669	48.8%
	D		9614.20.60	Turkey	83,918	88.4%
	D		9614.20.80	Turkey	261,072	62.8%

FLAGS: 'G'=Graduated; '*'=Excluded full year; '1'=Excluded Jan/Jun; '2'=Excluded Jul/Dec; 'R'=Reduced limits apply; 'D'=De minimis

LIST IV : POSSIBLE REDESIGNATION ITEMS
1989 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS		HTSUS	PARTNER	IMPORTS	SHARE
*		0703.20.00	Mexico	5,506,722	42.9%
*	R	0710.21.40	Mexico	802,915	4.8%
*		0710.80.65	Mexico	452,817	30.2%
*		0710.80.70	Mexico	16,436	0.2%
*		0711.40.00	Mexico	456,762	29.8%
*		0711.90.60	Mexico	1,008,127	25.0%
2		0804.50.80	Mexico	0	0.0%
*		1006.30.10	Mexico	0	0.0%
*		1007.00.00	Argentina	0	0.0%
*		1701.11.00	Brazil	22,511,131	4.5%
*		1701.12.00	Brazil	0	0.0%
*		1701.91.20	Brazil	0	0.0%
*		1701.99.00	Brazil	0	0.0%
*		1806.10.40	Brazil	0	0.0%
*		1904.90.00	Mexico	0	0.0%
*		2001.10.00	Mexico	20,102	0.6%
*		2005.10.00	Mexico	0	0.0%
*	R	2005.90.90	Mexico	1,377,750	10.8%
*	R	2208.90.45	Mexico	9,118,111	5.0%
*		2529.22.00	Mexico	15,469,584	34.3%
2		2603.00.00	Papua New Guinea	0	0.0%
*		2620.19.60	Mexico	0	0.0%
*		2620.30.00	Mexico	48,344	8.8%
*		2843.29.00	Mexico	0	0.0%
*	R	2905.19.00	Brazil	920,647	4.7%
*		2906.11.00	Brazil	4,748,499	26.3%
*		2909.19.10	Brazil	2,367,941	15.0%
2		2915.21.00	Mexico	43,344	0.6%
*		2915.39.10	Mexico	273,790	22.6%
*		2915.70.00	Brazil	0	0.0%
*		2916.15.50	Brazil	0	0.0%
*		2916.19.50	Brazil	0	0.0%
*		2916.39.15	Bahamas	0	0.0%
*		2917.13.00	Brazil	0	0.0%
*		2917.14.10	Brazil	0	0.0%
*		2917.19.50	Brazil	0	0.0%
2	R	2917.35.00	Brazil	417,337	7.3%
*	R	2918.11.10	Brazil	1,250,446	15.1%
*		2918.22.50	Bahamas	0	0.0%
1		2924.29.39	Bahamas	0	0.0%
*		2933.19.35	Bahamas	0	0.0%
*		2933.90.31	Bahamas	0	0.0%
*		3201.90.50	Mexico	159,435	13.3%
*	R	3703.20.30	Brazil	1,964,631	1.8%
*		3703.90.30	Brazil	0	0.0%
*	R	3823.90.40	Brazil	1,307,353	19.7%
2		3903.19.00	Mexico	2,680,560	13.8%
*	R	3904.10.00	Mexico	862,644	3.5%
*	R	3904.21.00	Mexico	20,278	0.2%
*	R	3904.22.00	Mexico	381	0.0%
*		3909.10.00	Israel	4,645,064	41.2%
*	R	3921.13.50	Mexico	458,174	6.1%
*		3921.90.50	Mexico	298,497	1.0%

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*		3922.10.00	Mexico	1,523,070	9.4%
*		3922.20.00	Mexico	42,671	1.6%
*		3922.90.00	Mexico	67,826	1.2%
*		4011.10.00	Brazil	50,035,177	4.5%
*		4011.20.00	Brazil	26,252,278	2.9%
*		4011.40.00	Brazil	17,558	0.0%
*		4011.91.50	Brazil	81,812	4.6%
*		4011.99.50	Brazil	1,808,402	4.5%
*		4012.10.50	Brazil	0	0.0%
*		4104.22.00	Argentina	2,385,551	16.1%
*		4104.29.90	Argentina	1,886,456	7.3%
*		4104.31.50	Argentina	1,422,384	13.1%
*		4104.31.60	Argentina	15,928,169	29.4%
*		4104.31.80	Argentina	32,720,861	37.5%
*		4104.39.50	Argentina	548,120	12.1%
*		4104.39.60	Argentina	14,690,247	34.7%
*		4105.20.60	Argentina	22,652	0.1%
*		4106.12.00	India	6,236	1.8%
*		4106.19.00	India	357,664	9.2%
*		4106.20.30	India	3,270,184	46.6%
*		4107.29.60	Argentina	2,094,533	23.9%
*		4107.90.60	Argentina	969,923	8.9%
*		4109.00.70	Argentina	40,909	12.0%
*	R	4411.19.20	Brazil	2,129,311	23.2%
*		4411.19.40	Brazil	4,068,595	44.4%
*	R	4411.21.00	Brazil	170,492	14.1%
*	R	4411.29.60	Brazil	1,003,918	22.7%
*		4411.29.90	Brazil	97,578	9.1%
*		4818.20.00	Mexico	101,670	0.6%
*		4818.30.00	Mexico	74,306	1.9%
*		4823.90.65	Mexico	312,847	3.0%
*		5208.52.10	India	82,580	18.4%
*		5607.30.20	Mexico	0	0.0%
*		6210.10.20	Mexico	0	0.0%
*	R	6406.10.65	Brazil	21,767,862	15.0%
*		6406.99.60	Argentina	5,209,662	34.3%
*		6905.10.00	Mexico	4,152,234	41.6%
*		6909.19.10	Mexico	0	0.0%
*		6910.10.00	Mexico	22,730,269	39.1%
*	R	6910.10.00	Brazil	10,020,446	17.2%
*		6910.90.00	Mexico	190,656	6.0%
*	R	6910.90.00	Brazil	185,253	5.8%
*		6911.90.00	Mexico	225,810	0.5%
*	R	6911.90.00	Brazil	73,838	0.1%
*		6912.00.44	Brazil	10,325,360	12.1%
*	R	7004.10.20	Mexico	14,134	0.4%
*		7113.11.50	Thailand	33,633,179	25.3%
*		7113.19.21	Israel	51,921	0.1%
*		7113.20.21	Israel	50,479	0.2%
*		7113.20.50	Thailand	2,203,291	7.0%
*	R	7114.11.70	Mexico	69,211	1.9%
*	R	7114.20.00	Mexico	31,985	0.2%
*	R	7115.90.20	Mexico	22,125	0.2%
*		7116.10.10	Thailand	4,267	0.6%
*		7116.20.10	Thailand	45,178,635	32.2%
*		7202.19.50	Mexico	21,343,756	49.1%
*	R	7314.19.00	Mexico	2,244,661	18.9%
*		7320.10.00	Mexico	26,262,292	28.4%
*		7320.20.10	Mexico	5,596,314	4.4%

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*	R	7402.00.00	Mexico	22,219,860	11.6%
*		7403.11.00	Peru	15,656,046	2.4%
*		7403.11.00	Zambia	0	0.0%
*		7403.12.00	Zambia	0	0.0%
*		7403.13.00	Peru	125,959	1.5%
*		7403.13.00	Zambia	0	0.0%
*		7403.19.00	Peru	0	0.0%
*		7403.19.00	Zambia	0	0.0%
*		7403.21.00	Peru	0	0.0%
*		7403.21.00	Zambia	0	0.0%
*		7403.22.00	Peru	0	0.0%
*		7403.22.00	Zambia	0	0.0%
*		7403.23.00	Peru	0	0.0%
*		7403.23.00	Zambia	0	0.0%
*		7403.29.00	Peru	0	0.0%
*		7403.29.00	Zambia	0	0.0%
*		7608.10.00	Brazil	21,462	0.4%
*		7608.20.00	Brazil	0	0.0%
*		7609.00.00	Brazil	0	0.0%
*	R	7903.10.00	Mexico	2,723,165	21.9%
*	R	7903.90.30	Mexico	3,880	0.3%
*		8406.11.90	Israel	0	0.0%
*		8406.19.90	Israel	3,641	0.4%
*		8406.90.90	Israel	0	0.0%
*		8407.32.20	Mexico	847,930	0.1%
*		8407.32.20	Brazil	72,503	0.0%
*		8407.33.20	Mexico	2,300	0.0%
*		8407.33.20	Brazil	54,556	0.0%
*		8407.34.20	Brazil	2,930,765	0.2%
*		8408.10.00	Brazil	125,903	0.3%
*	R	8408.20.90	Brazil	283,264	0.7%
*	R	8408.90.90	Brazil	9,603,259	4.4%
*	R	8409.91.92	Mexico	9,104,683	9.2%
*		8409.91.92	Brazil	1,600,074	1.6%
*	R	8409.91.99	Mexico	8,063,703	3.7%
*	R	8409.91.99	Brazil	12,803,703	5.9%
*	R	8409.99.91	Brazil	12,250,244	9.6%
*	R	8409.99.92	Brazil	6,191	0.0%
*		8411.91.90	Brazil	684,422	0.0%
*	R	8411.99.90	Brazil	2,839,543	1.1%
*	R	8414.51.00	Mexico	78,812	0.0%
*	R	8414.59.80	Mexico	34,768,049	17.3%
*		8414.60.00	Mexico	0	0.0%
*	R	8414.90.10	Mexico	7,253,319	6.7%
*	R	8415.10.00	Mexico	8,363,031	4.4%
*	R	8415.81.00	Mexico	308,581	1.0%
*	R	8415.83.00	Mexico	4,968,320	9.1%
*		8419.11.00	Israel	0	0.0%
*		8419.19.00	Israel	99,931	0.3%
*		8419.90.10	Israel	0	0.0%
*	R	8421.23.00	Mexico	637,851	0.7%
*	R	8421.23.00	Brazil	320,051	0.3%
*	R	8421.31.00	Brazil	65,382	0.0%
*		8424.90.10	Mexico	123,036	2.0%
*		8425.20.00	Mexico	0	0.0%
*		8425.31.00	Mexico	0	0.0%
*		8425.41.00	Mexico	0	0.0%
*	R	8425.42.00	Mexico	357,480	0.5%

*		8426.11.00	Mexico	0	0.0%
*		8426.12.00	Mexico	0	0.0%
*		8426.19.00	Mexico	0	0.0%
*		8426.20.00	Mexico	0	0.0%
*		8426.30.00	Mexico	0	0.0%
*		8426.41.00	Mexico	0	0.0%
*		8426.49.00	Mexico	0	0.0%
*		8426.91.00	Mexico	0	0.0%
*		8426.99.00	Mexico	0	0.0%
*	R	8428.10.00	Mexico	138,000	2.0%
*	R	8428.20.00	Mexico	42,724	0.0%
*		8428.31.00	Mexico	25,504	0.3%
*		8428.32.00	Mexico	0	0.0%
*		8428.33.00	Mexico	20,396	0.0%
*		8428.39.00	Mexico	10,450,698	4.9%
*		8428.40.00	Mexico	0	0.0%
*		8428.50.00	Mexico	0	0.0%
*		8428.60.00	Mexico	0	0.0%
*	R	8428.90.00	Mexico	15,735,412	7.4%
*	R	8429.19.00	Brazil	27,441	0.3%
*	R	8429.40.00	Brazil	1,564,901	2.4%
*		8429.51.50	Brazil	39,000	0.0%
*		8429.52.50	Brazil	0	0.0%
*	R	8429.59.50	Brazil	548,090	2.8%
*		8430.10.00	Brazil	0	0.0%
*		8430.20.00	Brazil	0	0.0%
*		8430.31.00	Brazil	0	0.0%
*		8430.39.00	Brazil	0	0.0%
*		8430.41.00	Brazil	0	0.0%
*	R	8430.49.80	Brazil	81,780	0.4%
*	R	8430.50.50	Brazil	918,842	3.4%
*		8430.61.00	Brazil	0	0.0%
*	R	8430.62.00	Brazil	16,000	4.1%
*	R	8430.69.00	Brazil	302,970	1.7%
*	R	8431.10.00	Mexico	663,956	1.4%
*	R	8431.31.00	Mexico	5,448,039	9.9%
*	R	8431.39.00	Mexico	7,377,846	3.6%
*	R	8431.41.00	Brazil	173,883	0.3%
*	R	8431.42.00	Brazil	333,039	2.3%
*	R	8431.43.80	Brazil	11,323	0.0%
*	R	8431.49.10	Mexico	4,762,958	8.6%
*	R	8465.94.00	Brazil	28,256	0.2%
*		8465.94.00	Mexico	0	0.0%
*		8470.40.00	Mexico	68,759	0.3%
*		8471.20.00	Mexico	518,207	0.1%
*		8473.21.00	Mexico	841,220	6.2%
*		8473.29.00	Mexico	237,142	0.2%
*		8473.30.80	Mexico	5,297,062	1.5%
*		8473.40.20	Mexico	0	0.0%
*		8473.40.40	Mexico	641,565	1.1%
*		8479.10.00	Mexico	0	0.0%
*		8479.10.00	Brazil	0	0.0%
*		8479.30.00	Mexico	0	0.0%
*		8479.30.00	Brazil	0	0.0%
*		8479.81.00	Mexico	36,165	0.2%
*		8479.81.00	Brazil	0	0.0%
*		8479.82.00	Mexico	4,864	0.0%
*	R	8479.82.00	Brazil	19,150	0.0%

*		8479.89.70	Mexico	0	0.0%
*		8479.89.70	Brazil	0	0.0%
*		8479.89.90	Mexico	28,419,168	3.2%
*	R	8479.89.90	Brazil	5,550,216	0.6%
*		8479.90.40	Brazil	0	0.0%
*	R	8479.90.80	Brazil	3,049,059	0.5%
*	R	8483.10.10	Mexico	4,255,172	2.7%
*	R	8483.10.10	Brazil	2,662,464	1.7%
*	R	8483.10.30	Brazil	4,864,877	5.2%
*		8501.20.40	Mexico	10,089,297	31.2%
*		8501.20.50	Mexico	0	0.0%
*		8501.31.40	Mexico	9,443,481	11.9%
*		8501.31.50	Mexico	8,271	0.5%
*		8501.31.80	Mexico	2,626	0.0%
*		8501.32.60	Mexico	88,556	1.7%
*		8501.33.60	Mexico	37,714	5.4%
*		8501.34.60	Mexico	13,440	0.2%
*		8501.51.40	Mexico	592,537	7.8%
*		8501.51.50	Mexico	6,044	1.0%
*		8501.61.00	Mexico	42,361	0.5%
*		8501.62.00	Mexico	80,750	1.6%
*		8501.63.00	Mexico	0	0.0%
*		8501.64.00	Mexico	0	0.0%
*		8502.11.00	Mexico	0	0.0%
*		8502.12.00	Mexico	32,104	0.0%
*		8502.13.00	Mexico	0	0.0%
*		8502.20.00	Mexico	199,727	0.2%
*		8502.30.00	Mexico	24,000	0.0%
*		8502.40.00	Mexico	185,753	1.3%
*		8503.00.60	Mexico	65,404,207	26.3%
*		8504.50.00	Mexico	65,122,746	48.0%
*		8504.90.00	Mexico	13,507,489	12.8%
*		8507.30.00	Mexico	60,223,444	24.1%
*		8507.40.00	Mexico	28,750	4.3%
*		8507.80.00	Mexico	628,102	2.9%
*		8507.90.80	Mexico	338,422	3.6%
*		8511.10.00	Mexico	3,053,880	3.9%
*		8511.20.00	Mexico	317,684	4.6%
*		8511.30.00	Mexico	159,501	0.5%
*		8511.40.00	Mexico	4,481,011	2.7%
*		8511.50.00	Mexico	9,904,361	6.7%
*		8511.80.60	Mexico	1,466,027	2.3%
*		8511.90.60	Mexico	32,471,086	16.9%
*		8512.40.40	Brazil	74,480	0.0%
*		8512.90.70	Mexico	0	0.0%
*		8512.90.90	Mexico	97,730	0.4%
*		8512.90.90	Brazil	121,702	0.5%
*		8516.90.60	Mexico	14,336,412	30.5%
*		8519.91.00	Mexico	27,887,617	17.0%
*		8519.91.00	Brazil	3,807	0.0%
*		8519.99.00	Brazil	0	0.0%
*	R	8523.12.00	Mexico	1,675,972	0.9%
*	R	8523.13.00	Mexico	816,130	0.1%
*	R	8523.90.00	Mexico	1,627,880	3.0%
*		8527.11.11	Mexico	1,576	0.0%
*		8527.11.11	Brazil	0	0.0%
*		8527.31.40	Mexico	21,104,131	5.3%
*	R	8527.31.40	Brazil	2,832	0.0%

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*		8534.00.00	Mexico	32,959,160	3.8%
*		8535.10.00	Mexico	1,309,143	19.2%
*		8535.21.00	Mexico	354,927	8.0%
*		8535.29.00	Mexico	24,631	0.0%
*		8535.30.00	Mexico	917,702	3.0%
*		8535.40.00	Mexico	11,294,707	44.5%
*		8535.90.00	Mexico	23,964,842	11.0%
*		8536.10.00	Mexico	12,147,574	42.5%
*		8536.20.00	Mexico	14,915,187	17.8%
*		8536.30.00	Mexico	8,759,259	20.6%
*		8536.41.00	Mexico	39,980,380	22.8%
*		8536.49.00	Mexico	14,886,322	11.8%
*		8536.61.00	Mexico	14,302,364	48.8%
*		8536.69.00	Mexico	89,089,195	30.3%
*		8537.10.00	Mexico	23,435,440	9.4%
*		8537.20.00	Mexico	7,175,947	18.1%
*		8538.10.00	Mexico	1,184,439	8.6%
*		8538.90.00	Mexico	77,712,674	19.4%
*		8539.10.00	Mexico	9,243,685	40.5%
*		8543.10.00	Mexico	0	0.0%
*	R	8543.20.00	Mexico	83,729	0.3%
*		8543.30.00	Mexico	0	0.0%
*	R	8543.90.80	Mexico	8,562,821	11.3%
*		8544.20.00	Mexico	3,898,322	4.4%
*		8544.41.00	Mexico	30,041,319	25.0%
*		8544.51.40	Mexico	3,629,155	19.7%
*		8544.60.20	Mexico	611,155	6.5%
*		8547.90.00	Brazil	0	0.0%
*	R	8548.00.00	Mexico	17,394,005	12.7%
*		8605.00.00	Mexico	0	0.0%
*		8606.10.00	Mexico	0	0.0%
*		8606.20.00	Mexico	0	0.0%
*		8606.30.00	Mexico	0	0.0%
*		8606.91.00	Mexico	0	0.0%
*		8606.92.00	Mexico	0	0.0%
*		8606.99.00	Mexico	0	0.0%
*		8708.10.00	Mexico	4,749,042	1.0%
*		8708.10.00	Brazil	1,166,169	0.2%
*		8708.21.00	Brazil	12,578	0.0%
*		8708.29.00	Mexico	27,914,858	3.1%
*		8708.29.00	Brazil	4,101,556	0.4%
*		8708.31.50	Mexico	323,195	0.3%
*		8708.31.50	Brazil	9,312,991	9.8%
*		8708.39.50	Mexico	49,606,454	5.2%
*		8708.39.50	Brazil	48,506,537	5.1%
*		8708.40.10	Mexico	482,555	0.3%
*		8708.40.10	Brazil	6,284,734	4.5%
*		8708.40.20	Mexico	866,848	0.1%
*		8708.40.20	Brazil	426,169	0.0%
*		8708.40.50	Mexico	143,632	0.4%
*		8708.40.50	Brazil	6,058,545	17.5%
*		8708.50.50	Mexico	1,320,640	3.3%
*		8708.50.50	Brazil	204,715	0.5%
*		8708.50.80	Mexico	18,354	0.0%
*		8708.50.80	Brazil	1,583,561	3.0%
*		8708.60.50	Mexico	5,506,749	10.5%
*		8708.60.50	Brazil	1,664,658	3.1%
*		8708.60.80	Mexico	228,022	0.2%

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*		8708.60.80	Brazil	22,933,429	24.6%
*		8708.70.80	Mexico	14,144,759	2.7%
*		8708.70.80	Brazil	35,749,512	6.9%
*		8708.80.50	Mexico	798,228	0.4%
*		8708.80.50	Brazil	9,068,499	4.8%
*		8708.91.50	Mexico	36,455,211	21.4%
*		8708.91.50	Brazil	787,830	0.4%
*		8708.93.50	Mexico	2,596,959	2.2%
*		8708.93.50	Brazil	7,427,645	6.5%
*		8708.99.50	Brazil	43,111,835	0.8%
*		8716.90.50	Mexico	6,355,381	12.5%
*		8716.90.50	Brazil	519,241	1.0%
*		9008.90.40	Mexico	0	0.0%
*		9009.90.00	Mexico	1,368,973	0.1%
*		9013.20.00	Mexico	20,000	0.0%
*		9018.39.00	Mexico	20,657,954	26.5%
*		9021.90.80	Mexico	0	0.0%
*		9025.19.00	Mexico	4,847,983	16.1%
*		9028.90.00	Mexico	5,841,470	44.3%
*		9113.10.00	Thailand	0	0.0%
*		9303.30.40	Brazil	0	0.0%
2	R	9401.40.00	Thailand	76,762	0.4%
2	R	9401.61.60	Thailand	1,565,698	1.0%
2	R	9401.69.80	Thailand	2,425,167	8.6%
2	R	9403.30.80	Thailand	315,061	0.2%
*		9403.40.60	Mexico	0	0.0%
2	R	9403.40.90	Thailand	6,089,413	5.4%
*		9403.50.60	Mexico	20,034	11.7%
2	R	9403.50.90	Thailand	699,851	0.3%
2	R	9403.60.80	Thailand	28,031,263	3.4%
*		9403.90.10	Mexico	4,820,022	10.1%
*	R	9405.10.80	Mexico	5,492,721	10.0%
*	R	9405.20.80	Mexico	1,054,242	2.2%
*	R	9405.40.80	Mexico	4,722,400	6.6%
*		9405.91.20	Mexico	7,448,879	29.5%
*		9508.00.00	Mexico	55,094	0.2%
*	R	9508.00.00	Brazil	116,110	0.4%
*		9613.80.20	Mexico	0	0.0%
*		9613.90.40	Mexico	0	0.0%

FLAGS: 'G'=Graduated; '*'=Excluded full year; '1'=Excluded Jan/Jun; '2'=Excluded Jul/Dec; 'R'=Reduced limits apply; 'D'=De minimis

Identification of Priority Foreign Countries; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public on policies and practices that should be considered with respect to designation of countries under section 182 of the Omnibus Trade and Competitiveness Act of 1988 (Act).

SUMMARY: Section 182 of the Act requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or which deny fair and equitable market access to U.S. persons that rely on intellectual property protection. (19 U.S.C. 2242) In addition, USTR is required to determine which of those countries identified are priority foreign countries. Such priority countries could be subject to self-initiation of a section 301 investigation. USTR is requesting written submissions from the public concerning foreign countries' policies and practices that should be considered under section 182.

DATES: Submissions must be received on or before 12 noon on Friday, February 23, 1990.

FOR FURTHER INFORMATION CONTACT: Carmen Suro-Bredie, Deputy Assistant USTR (202) 395-7230, Emery Simon, Director, Intellectual Property (202) 395-6864, or Catherine Field, Associate General Counsel (202) 395-3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Section 182(a) requires the USTR, no later than April 30, 1990, to identify countries that deny adequate and effective protection of intellectual property rights or which deny fair and equitable market access to U.S. persons that rely on intellectual property protection.

Requirements for Submissions

Submissions should consist of a description of the problems experienced and their effect on U.S. industry. Submissions should be as detailed as possible. Interested persons must provide twenty copies of any submission to Dorothy Balaban, staff assistant to the Section 301 Committee, room 222, 600 17th Street NW., Washington, DC 20506 no later than 12 noon on Friday, February 23, 1990. Because submissions will be placed in a public file, open to public inspection at USTR, business-confidential information should not be submitted.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in room 101, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

S. Bruce Wilson,

Assistant USTR for Investment, Services and Intellectual Property.

[FR Doc. 90-1419 Filed 1-19-90; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27615; File No. SR-NYSE-90-01]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Basket Trading

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on January 3, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 the Exchange Stock Portfolio [1] ("Basket") Rules 803 and 815, and the Basket Guidelines governing (i) the institution of call markets and (ii) component stock quotations. Specifically, the proposed rule change would require initiating a call market when certain futures market "circuit breakers" take effect or when there would be a Basket execution significantly away from the value of the underlying index. In addition, the Exchange proposes to cease disseminating component stock "Tier" quotations two minutes prior to the close of trading.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*

Call Markets

In recent years, there has been unprecedented volatility in the stock markets, as well as in the markets for certain derivative products, such as futures and options on stocks and stock indices. Both the Exchange and other market centers continue to take steps to address this volatility and to help ensure investor confidence in the fairness and orderliness of the nation's financial markets. A number of these initiatives address one specific area of potential volatility: "Program trading," as defined in Exchange Rule 80A.

The Exchange recently submitted amendments to Rule 80A to expand the use of the Exchange's "sidecar" procedures in an effort of further channel program trades into a separate file at times of market volatility.[2] In addition, the Chicago Mercantile Exchange recently has announced the adoption of new rules intended to address the volatility in the futures market. These rules would amend current price limits on the movement of futures on stock, indices, as well as impose additional limits.

The purpose of the proposed rule change is to amend the Exchange's Basket call market rules to ensure that those rules are coordinated with the rules governing the trading of (i) the Basket component stocks and (ii) the futures contracts on the same index on which the Basket is based, both as those

[1] "Exchange Stock Portfolio" is a service mark of the New York Stock Exchange, Inc.

[2] File No. SR-NYSE-89-41. The discussion of the purpose of that proposed rule change is, in large part, also relevant to this proposed rule change, and is therefore incorporated into this filing.

rules are currently in effect, and as they are proposed to be amended. Specifically, the proposed rule change:

—Amends Rule 815 to clarify the Exchange's authority to declare a Basket call market at the opening of Basket trading;

—Amends the Basket call market guidelines to specify that a call market is mandatory if:

—The primary futures contract on the S&P 500 [3] has opened down its price limit, has declined to an interim or daily price limit, or has been halted; or

—A Basket execution, other than at the opening, would result in a transaction at a price three or more points below the then-current S&P 500 Index value.

By establishing a mandatory Basket call market when the futures market has opened down, or declined to, a price limit, or when the Basket market would be trading at a price significantly below the market for the component stocks, the Exchange seeks to ensure that the Basket will not trade in a destabilizing manner and lead to increased market volatility. While the Basket can continue to trade in the call mode, all executions must be approved by a Floor Governor, who can evaluate proposed executions in the light of then-existing market conditions.

The proposed amendments leave intact the current call market guideline that allows, but does not require, the institution of a call market when the "sidecar" provisions of Rule 80A have been triggered.[4] This flexibility will continue to allow the Exchange to determine whether a basket call market would be appropriate based on the market conditions at the time the sidecar procedures took effect.

Component Stock Quotations

Basket Rule 803 currently provides that, whenever all the Basket's component stocks listed on the Exchange are open for trading, the Exchange includes "aggregate Tier 1" and "aggregate Tier 2" quotations as part of the Basket market. These quotations represent the weighted summation of bids and offers furnished by the specialists in the component stocks, as well as quotations for the "mini-basket" of non-Exchange listed stocks.[5]

The Exchange is proposing that it cease disseminating these "tier" quotations two minutes prior to the close of trading. Currently, if there is an execution of a "tier" trade during the last two minutes, specialists may receive notice of the execution after the close of the trading day. The proposed rule change will help ensure that they receive notices of "tier" executions prior to the close of trading.

(b) *Basis*—The basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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 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 filings 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 12, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 12, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1329 Filed 1-19-90; 8:45 am]

BILLING CODE 8010-01-M

[3] "S&P 500" is a service mark of Standard and Poor's Corporation.

[4] In the event there is both a futures price limit and a sidecar triggered at the same price level, there would be a mandatory call market.

[5] For a further description of the "tier" market, see File No. SR-NYSE-89-05, Exhibit D, page I-11.

[Rel. No. IC-17304; 812-7267]

Retirement System for Savings Institutions et al.; Notice of Application

January 12, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Retirement System for Savings Institutions ("System"), The Retirement System Inc. (the "Company"), RSI Investors Inc. (the "Investment Adviser"), RSI Consultants Inc. (the "Service Company"), and RSI Distributors Inc. (the "Broker-Dealer").

Relevant Act Sections: Order requested under sections 6(c) and 17(b) for relief from sections 2(a)(19) and 17(a), and under section 17(d) and Rule 17d-1 permitting certain joint transactions.

Summary of Application: Applicants seek an order that would permit them to effect a proposed reorganization (the "Proposed Reorganization") that would "externalize" all of the investment advisory, administrative, distribution, and consulting services now performed

for System and its unitholders by the employees of System.

Filing Dates: The application was filed on March 8, 1989, and was amended and restated on August 11, 1989, and January 5, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 8, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, 41 East 42nd Street, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847 or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. System is a non-profit, common law trust, exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"). System is available as an investment vehicle exclusively to pension and profit-sharing plans qualified under section 401(a) of the Code, and is subject to the Employee Retirement Income Security Act of 1974 ("ERISA"). System also is a diversified open-end management investment company registered under the Act that presently has eight different series of investment funds.

2. As of the date of the application, 127 pension and profit-sharing plans (the "Participating Plans") invest their assets in, and are unitholders of, System. Of the Participating Plans, 94 are defined benefit plans ("DB Plans") and 33 are defined contribution plans ("DC Plans"). The Participating Plans are sponsored by savings banks and similar organizations.

3. System's employees currently manage all of the assets of four of System's eight investment funds and, as of January 1, 1990, began to manage a portion of the assets of a fifth fund. The assets in the remaining funds are managed by outside investment advisers registered under the Investment Advisers Act of 1940 (the "Advisers Act"). System's employees also provide pension plan design and consulting, actuarial support, record keeping, and other ERISA-related services to System and the Participating Plans, on a cost-based, non-profit, fee-for-services basis.

4. The Company is a Delaware corporation formed to hold all of the outstanding common stock of the Investment Adviser, the Service Company, and the Broker-Dealer (collectively, the "Subsidiaries"), each of which is a recently-formed Delaware corporation with no current operations. The Investment Adviser proposes to register under the Advisers Act and to serve as investment adviser to System and third parties. The Service Company proposes to provide general administrative, transfer agent and registrar, and pension and profit-sharing administrative and consulting services to System, the Participating Plans, and third parties. The Broker-Dealer proposes to register as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act"), with the National Association of Securities Dealers, Inc., and under state securities laws, and to provide distribution services to System and other investment companies.

5. Applicants propose that System's current "internalized" arrangements be reorganized so that the services currently performed by the employees of System will be provided to System by the Subsidiaries pursuant to contract. To effect the Proposed Reorganization, the operating assets and business (*e.g.*, office furniture, computers, files, goodwill, etc.) of System will be transferred to the Subsidiaries in exchange for shares of the common stock of the Company (the "Common Stock"). The shares of Common Stock will then be distributed pro rata to the Participating Plans (the "Distributed Shares"). The Company and the Subsidiaries will assume all of the liabilities of System.

6. System decided to reorganize principally because: (i) System has an eroding client base which it has had difficulty replacing because participation in System is limited to Section 401(a) qualified pension and profit-sharing plans; (ii) System's current structure constrains the development of new products and services, because System is prohibited under the Code from servicing entities other than section 401(a) plans; (iii) System's inability to offer equity participation in a profit-making enterprise to management has inhibited its ability to attract and retain highly capable management personnel; and (iv) the value of System's operating assets and business is considerably larger than the depreciated book value at which such assets are carried and, under the current structure, cannot be "unlocked" for the benefit of the Participating Plans.

7. To address the foregoing concerns, on September 10, 1987 the Board of Trustees of System established a Special Committee (the "Special Committee") to investigate the feasibility of a reorganization of System to externalize its investment advisory, administrative, distribution, and consulting services. Each member of the Special Committee is a trustee of System, but none is an employee of System or any Participating Plan. The terms and the fairness of the Proposed Reorganization have been considered during a period of approximately 2¼ years at 35 formal meetings of the Special Committee and at 6 meetings of the full Board of Trustees.

8. Under the Proposed Reorganization, System will distribute the Distributed Shares to the Participating Plans by transferring such shares to an eligible trustee or trustees unaffiliated with System or the Participating Plans (the "Trustee/Custodian"). The Trustee/Custodian will hold the Distributed Shares on behalf of the Participating Plans in a new trust or trusts exempt from taxation under section 501(a) of the Code. All investment and voting decisions with respect to shares of Common Stock of the Company owned by a Participating Plan will be made by the plan administrator of such Participating Plan.

9. Persons employed by System immediately prior to consummation of the Proposed Reorganization (the "Closing") will, thereafter, be employed by the Company or the Subsidiaries. System's Incentive Bonus Plan and two Participating Plans currently sponsored by System for its own employees will be transferred to, and thereafter sponsored by the Company. In addition, the Company will adopt a stock option plan for its directors and key employees. A number of shares of Common Stock equal to 8% of the aggregate number of the Distributed Shares will be reserved for issuance under the stock option plan, with options for approximately 4% of the

aggregate number of the Distributed Shares to be granted initially.

10. The Participating Plans will enter into a stockholders' agreement (the "Stockholders' Agreement") with the Company, System, and the Trustee/Custodian that will provide for significant restrictions on transfers and ownership of the Common Stock for three to five years after Closing (depending on the particular provision), and which will provide opportunities for Participating Plans (with priority given to DC Plans) to transfer their Distributed Shares immediately following the Closing and during three subsequent offer periods (the "Offer Periods"). If members of the Company's Board of Directors, management, or other persons acquire Common Stock, they will take such shares subject to the terms of, and will be required to become parties to, the Stockholders' Agreement.

11. System will enter into an investment management agreement (the "Management Agreement") with the Investment Adviser under which the Investment Adviser initially will manage the assets of the four investment funds of System that currently are managed by employees of System, as well as the portion of the fifth investment fund that is managed by employees of System. The Management Agreement is substantially similar in form and substance to the existing investment management agreements between System and its outside investment advisers. As compensation for its services under the Management Agreement, including any expenses incurred by it in connection therewith, the Investment Adviser will be paid a monthly fee equal to a specified percentage of the average daily net assets of each of the funds under management, which percentage will decline in relationship to increases in the net assets of each of such funds.

12. System will enter into a service agreement (the "Service Agreement") with the Service Company which will obligate the Service Company to provide System with general administrative and other management services. System will pay the Service Company a fee equal to a specified percentage of the average daily net assets of each of System's funds, except that for three years after Closing, there will be a maximum and a minimum aggregate administrative fee payable by System with respect to all of the funds.[1] The Service Agreement will remain in effect for two years, and from year to year thereafter if (i) continuance is approved in the manner required for investment advisory contracts under the Act, and (ii) certain findings specified in the application are made by a majority of the members of System's Board of Trustees who are not interested persons of System.

13. System will enter into a distribution agreement (the "Distribution Agreement") with the Broker-Dealer, which will obligate the Broker-Dealer to distribute and promote the sale of units in System's investment funds in accordance with System's Rule 12b-1 Plan. As consideration for its services under the Distribution Agreement, including any expenses incurred in connection therewith, the Broker-Dealer will be paid a monthly fee at the annual rate of .10 of 1% of the average daily net assets of each of System's investment funds. The amount of such fee is the maximum amount that System is authorized to spend on distribution under its current Rule 12b-1 plan.

14. If the proposed Management Agreement, Service Agreement, and Distribution Agreement had been in effect during each of the fiscal years of System ended September 30, 1986, 1987, 1988, and 1989, aggregate operating expenses (including pass-through expenses) of System would have increased in fiscal 1986, 1987, 1988, and 1989 by 30.4%, 26.3%, 13.5%, and 13.1%, respectively. During the same periods, aggregate expense ratios would have increased as a percentage of the average daily net assets of System's investment funds by .25% of 1%, .22 of 1%, .12 of 1%, and .12 of 1%, respectively. Applicants believe that the benefits to be realized by System and the Participating Plans as a result of the Proposed Reorganization outweigh these increases.

15. The Service Company will also provide certain pension and profit-sharing administrative and consulting services to the Participating Plans and other unitholders that are currently provided by employees of System. If the projected fee schedule for such services had been in effect during each of the fiscal years of System ended September 30, 1986, 1987, 1988, and 1989, aggregate fees charged to the Participating Plans for such services would have increased by 30.6% and 17 5% in fiscal 1986 and 1987 respectively, and would have decreased by 5 of 1% in fiscal 1988 and by 7 5% in fiscal 1989. Applicants believe that any increases in fees would be modest in relation to the benefits to be realized by the Participating Plans

Applicants' Legal Analysis

1. Section 17(a) generally makes it unlawful for an affiliated person of a registered investment company, or any affiliated person thereof, acting as principal, to knowingly purchase from or sell any security or other property to such company. Rule 17d-1 implements section 17(d) by generally making it unlawful for any affiliated person of a registered investment company, or any affiliated person thereof, acting as principal, to effect any joint transaction with such company absent an order of the SEC. The transfer of System's operating assets and business to the Subsidiaries in exchange for the Company's Common Stock may be prohibited by section 17(a). The Proposed Reorganization may also be a joint transaction for which an order of the SEC is necessary under section 17(d) and Rule 17d-1. For the reasons set forth in the application, applicants submit that the requested relief meets the standards for relief from section 17(a) under section 17(b) and for an order under section 17(d) and Rule 17d-1.

2. Under section 2(a)(19), an "interested person" of System includes any "affiliated person" of System, any "interested person" of the Investment Adviser or the Broker-Dealer, and any "affiliated person" of the Investment Adviser or the Broker-Dealer. Under section 2(a)(19)(B)(iii), an "interested person" of the Investment Adviser or the Broker-Dealer includes any "affiliated person" of the Investment Adviser or Broker-Dealer, respectively, and any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the Investment Adviser or Broker-Dealer, respectively or by a controlling person thereof. Therefore, any person who owns shares of stock of the Company, even if substantially less than 5%, may be an "interested person" of System, the Investment Adviser, and the Broker-Dealer, and any person who has any "beneficial" or "legal" interest in those shares may also be an "interested person."

3. Since all Participating Plans will have shares of the Common Stock distributed to them in connection with the Closing, all of them may be "interested persons" of System, the Investment Adviser, and the Broker-Dealer In addition, all persons who "control" such Participating Plans or have any "beneficial" or "legal" interest in such Participating Plans may be "interested persons" of System, the

[1] Applicants are not seeking an order under Rule 17d-1 with respect to the terms of the Service Agreement

Investment Adviser, and the Broker-Dealer

4. Most of the persons who currently serve on System's Board of Trustees are the chairmen of the board and/or the chief executive officers of sponsors of Participating Plans. Each such person currently is not an "interestd person" of System, but might be rendered such following the Closing because of his position with the sponsor of a Participating Plan which will beneficially own an interest in the Company's shares. This may be especially true in the case of a chief executive officer of a sponsor, who may have a measure of "control" over the Participating Plan sponsored by his company and the decisions made by the sponsor's plan administrator. Such chief executive officer also may, as an employee of the sponsor, be a participant in such Participating Plan and, therefore, have an indirect beneficial interest in shares of the Company's stock.

5. In light of the possibility that many of the current members of the Board of Trustees may technically be "interested persons" of System following the Closing, applicants request an order pursuant to section 6(c) of the Act determining that, during the three-year period following the Closing, a maximum of three of the fourteen members of System's Board of Trustees (or two if the size of the Board of Trustees is reduced to thirteen members), each of whom is a director and/or a chief executive office of a sponsor of a Participating Plan and may be an individual participant in such Participating Plan, but none of whom is either the plan administrator of such Participating Plan or has any other connection with System, the Company, or any of its subsidiaries, will not be deemed to be "interested persons" of System or the Subsidiaries within the meaning of section 2(a)(19) of the Act by virtue of their positions with the sponsors of their respective Participating Plans.

Applicants' Conditions

Applicants agree that any order issued on the Application will be expressly conditioned on the following:

1. The sale of the operating assets and business of the System to the Subsidiaries in exchange for shares of the Common Stock, and any initial sales by Participating Plans of the Distributed Shares immediately following the Closing, will be made at a price equal to the fair market value per share of the Common Stock as established by Merrill Lynch Capital Markets ("Merrill Lynch").

2. All subsequent sales of the Common Stock by Participating Plans during the three-year period following the Closing in connection with the Offer Periods provided for in the Stockholders' Agreement will be made at a price equal to the fair market value per share most recently established by Merrill Lynch (or another investment banking firm selected by System).

3. Except for sales of Distributed Shares by Participating Plans in connection with the initial resale opportunity following the Closing and during the Offer Periods provided for in the Stockholders' Agreement, no stockholder of the Company will be permitted to voluntarily transfer such stockholder's shares of the Common Stock during the three-year period following the Closing.

4. During the five-year period following the Closing, there will be restrictions on the ownership of the Common Stock and the ownership of securities convertible into or exercisable or exchangeable for shares of the Common Stock ("Convertible Securities") as follows: (i) no Participating Plan will be permitted to own more than 10% of the Common Stock (including any shares issuable pursuant to Convertible Securities); (ii) no other stockholder will be permitted to own more than 5% of the Common Stock (including any shares issuable pursuant to Convertible Securities); (iii) no "affiliated group" of stockholders will be permitted to own more than 20% of the Common Stock (including any shares issuable pursuant to Convertible Securities); and (iv) the members of the Company's Board of Directors and management will not be permitted to own in the aggregate more than 20% of the Common Stock (including any shares issuable pursuant to Convertible Securities). Shares issued by the Company in connection with mergers, consolidations, acquisitions and similar transactions entered into by the Company or any subsidiary (collectively, "acquisitions") to persons who thereafter become members of the Board of Directors or management of the Company will not be counted for purposes of the 20% limitation in clause (iv) above because such issuances will only be made as a result of arm's-length negotiations to persons not identified as potential members of the Board of Directors or management as of the Closing.

5. During the three-year period following the Closing, the Company may make sales of the Common Stock and Convertible Securities to any person (other than a DC Plan or other defined contribution plan) in connection with acquisitions. The Company will otherwise only be able to make sales of the Common Stock during the three-year period following the Closing to DB Plans, New DB Plans, members of the Company's Board of Directors and management and to persons (other than DC Plans or other defined contributions plans) who acquired shares of the Common Stock or Convertible Securities in connection with acquisitions. All sales of the Common Stock and Convertible Securities by the Company will be subject to the restrictions contained in conditions number 4, 11, and 13.

6. Except in connection with acquisitions and pursuant to stock options granted under the Stock Option Plan, during the three-year period following the Closing, sales of the Common Stock by the Company will only be made during the four-month period following the initial resale opportunity following the Closing and the three subsequent Offer Periods provided for in the Stockholders' Agreement at a price not less than the fair market value per share most recently established with respect to such periods by Merrill Lynch (or another investment banking firm selected by System). Any such sales during such periods may be made to all stockholders, except DC Plans, of the Company.

7. During the three-year period following the Closing, sales of the Common Stock by the Company in connection with acquisitions will only be made at a price not less than the fair market value per share most recently established by Merrill Lynch (or another investment banking firm selected by System) on or prior to the date of execution of the acquisition agreement.

8. During the three-year period following the Closing, each share of the Common Stock purchased by any person upon exercise of any option, warrant or similar right will be purchased at a price not less than the fair market value per share of the Common Stock most recently established by Merrill Lynch (or another investment banking firm selected by System) on or prior to the date of grant of such option, warrant or similar right.

9. During the three-year period following the Closing, each Convertible Security (other than any option, warrant or similar right) purchased by any person will be purchased at a price not less than the aggregate fair market value of the shares of the Common Stock issuable upon conversion or exchange of such Convertible Security most recently established by Merrill Lynch (or another

investment banking firm selected by System) on or prior to the date of issuance of such Convertible Security

10. During the three-year period following the Closing, the Company will sell shares of its preferred stock and Convertible Securities only in connection with acquisitions.

11. During the three-year period following the Closing, the Company will limit the aggregate amount of the Common Stock and Convertible Securities issued by it in connection with acquisitions to no more than an amount equal to 30% of the shares of the Common Stock outstanding as of the Closing. For purposes of this condition, the aggregate amount of Convertible Securities issued will equal the aggregate shares of the Common Stock issuable upon conversion, exchange or exercise of such Convertible Securities.

12. During the three-year period following the Closing, any issuance of shares of Common Stock (whether directly, pursuant to stock options or upon conversion, exchange or exercise of Convertible Securities) in an amount equal to or greater than 20% of the Common Stock will require approval of the Company's stockholders.

13. Approval of System's Board of Trustees will be required before the aggregate amount of the Common Stock and Convertible Securities issued by the Company in connection with acquisitions during the three-year period following the Closing can exceed an amount equal to 10% of the shares of the Common Stock outstanding as of the Closing. Approval of System's Board of Trustees will also be required before such aggregate amount can exceed an amount equal to 20% of the shares of the Common Stock outstanding as of the Closing. For purposes of this condition, the aggregate amount of Convertible Securities issued will equal the aggregate shares of the Common Stock issuable upon conversion, exchange or exercise of such Convertible Securities.

14. The Company will be required to purchase Distributed Shares from the Trustee/Custodian following the termination of employment of individual vested participants in DC Plans who have elected to withdraw from such DC Plans. Each such purchase will be made at a price equal to the fair market value per share most recently established by Merrill Lynch (or another investment banking firm selected by System) on or prior to the date of receipt by the Trustee/Custodian of such participant's election to withdraw. Such requirement will not terminate until such time as the Company registers the class of the Common Stock under Section 12 of the Exchange Act, or merges with and into another entity or sells all or substantially all of its assets.

15. The Investment Adviser will not, absent a material breach by System, terminate the Management Agreement prior to the third anniversary of the Closing; the Service Company will not, absent a material breach by System, terminate the Service Agreement prior to the third anniversary of the Closing; and the Broker-Dealer will not, absent a material breach by System, terminate the Distribution Agreement prior to the third anniversary of the Closing. In addition, the Investment Adviser will not propose any increase in the fee schedule set forth in the Management Agreement for services to be rendered by it to System during the three-year period following the Closing; the Service Company will not propose any increase in the fee schedule set forth in the Service Agreement for services to be rendered by it to System during the three-year period following the Closing; and the Broker-Dealer will not propose any increase in the fee schedule set forth in the Distribution Agreement for services to be rendered by it to System during the three-year period following the Closing.

16. For a three-year period following the Closing, each of the Subsidiaries will give advance notice in writing to the Board of Trustees of System of the taking on of new clients or ventures of material significance, including any related information required in order to enable the Board of Trustees of System to determine whether the taking on of the new business by such Subsidiaries will impair their ability to carry out their respective obligations under the Management Agreement, the Service Agreement and the Distribution Agreement and, following such determination, to take such steps as the Board deems appropriate.

17. For a three-year period following the Closing, at least a majority of the members of the Board of Trustees of System will not be "interested persons" of System, the Investment Adviser, the Service Company or the Broker-Dealer, and such members who are not "interested persons" will constitute a majority of and retain control over System's audit committee, proxy machinery, nominating committee and brokerage allocation policies.

18. For a three-year period following the Closing, there will be a review by the Board of Trustees of System no less frequently than quarterly of the Investment Adviser's performance under the Management Agreement, of the Service Company's performance under the Service Agreement and of the Broker-Dealer's performance under the Distribution Agreement. Each of the Subsidiaries will provide such reports and other information as the Board reasonably requests in order to enable the Board to perform such reviews.

19. The Service Agreement will not be entered into or continued unless, in each case, it is approved and reviewed in the manner required for investment advisory contracts under the Act, and certain findings with respect to it listed in the application are made.

20. The Proposed Reorganization will be described in detail in a proxy statement of System, and a 66⅔% vote of the units held by Participating Plans, a majority vote of the units held by DC Plans, a majority vote of the units held by DB Plans and a vote of "a majority of the outstanding voting securities" (as defined in section 2(a)(42) of the Act) in each of System's investment funds will be required to approve the Proposed Reorganization. In addition, such proxy statement will be combined with a registration statement of the Company under the Securities Act registering the shares of the Common Stock to be issued in connection with the Proposed Reorganization.

21. Applicants acknowledge that the grant of any order requested by the application will not imply SEC approval, authorization or acquiescence for any particular level of payments that System may make to the Company or to any of its "affiliated persons."

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1369 Filed 1-19-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0253]

Business Capital Corp.; Filing of Application for Transfer of Control of a Licensed Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the SBA Regulations (13 CFR 107.601 (1989)) governing SBIC's for the transfer of control of Business Capital Corporation (Licensee), 4809 Cole Avenue, Dallas, TX 75205 (BCC) a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*).

Currently Mr. James E. Sowell is the sole stockholder of BCC.

Under the Purchase and Sale Agreement, the stock of BCC will be owned as follows:

James E. Sowell, 77,500 shares
Keith D. Martin, 2,500 shares
Franklin National Bankshares, Inc., 10,000 shares
Gino T. D'Amalfi Trustee for Emilio Daglio de Amthor Trust, 220,000 shares

The proposed new officers and directors are:

Joe Dan Coe, P.O. Box 540, Mt. Vernon, TX 75457: President, Director, Investment Advisor, Manager.
Elizabeth Sowell, 4809 Cole Avenue, Dallas, TX 75205: Secretary
Keith D. Martin, 4809 Cole Avenue, Dallas, TX 75205: Director.
Gino T. D'Amalfi, Rt. 1, Campbell, TX 75522: Director

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owners and management, and the probability of successful operations of BCC under their management and control, including adequate profitability and financial soundness, in accordance with the Act and the SBA Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit to SBA, in writing, comments on the transfer of control. Any such communication should be addressed to the Deputy Associate Administrator for Investment, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Dallas, TX area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 9, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-1340 Filed 1-19-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

President's Commission on Aviation Security and Terrorism; Open and Closed Meetings

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of open and closed meetings of the President's Commission on Aviation Security and Terrorism.

SUMMARY: The Commission will be holding an open public hearing on Friday, February 2, 1990 at 10 AM ET to discuss research, development, and production of detection equipment. The public is invited to attend. The Commission will also be holding a series of meetings in closed session to discuss matters relating to national security; Commission organization, personnel, and related matters; matters exempt from mandatory disclosure by statute; civil and administrative law enforcement investigations and proceedings; and information whose premature disclosure would likely significantly frustrate agency action.

DATES: The open meeting will be held February 2, 1990 beginning at 10 AM ET at the Reserve Officers Association, Fifth Floor, One Constitution Avenue, NE, Washington, DC Persons wishing to speak before the Commission should contact the information person listed below by Monday, January 29, 1990.

The closed meetings will be held on the following dates:

January 18, 1990, 10 AM to 12 noon ET
January 31, 1990, 3 PM to 5 PM, ET
February 2, 1990, 9 AM to 10 AM, ET
February 7, 1990, 9 AM to 11 AM, ET
February 28, 1990, 3 PM to 5 PM, ET
March 23, 1990, 9 AM to 11 AM ET
March 30, 1990, 9 AM to 11 AM ET
April 4, 1990, 9 AM to 11 AM ET
April 18, 1990, 9 AM to 11 AM ET
April 23, 1990, 9 AM to 11 AM ET

The address for each closed meeting is either the Reserve Officers Association, Fourth Floor, One Constitution Avenue, NE, Washington, DC, or 1825 K Street, NW, Suite 203, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry R. Van Cleve, President's Commission on Aviation Security and Terrorism, 1825 K Street, NW, Suite 519, Washington, DC 20036; telephone (202) 254-3166; FAX (202) 254-3359.

SUPPLEMENTARY INFORMATION: The Commission will be holding its third public hearing. Interested members of the public are invited to attend and address the Commission. Persons wishing to submit information to the Commission must do so by January 29, 1990. At the first two public hearings, the Commissioners heard from representatives of the families of those lost on Pan American Flight 103 over Lockerbie, Scotland in December 1988 and the UTA flight over Africa in September 1989; and representatives of federal agencies and others involved in aviation security and related subjects. This hearing will be devoted to research, development, and production of detection equipment.

In accordance with section 10 of the Federal Advisory Committee Act, each of the closed meetings will be closed to the public because matters will be discussed that come within the following provisions of 5 U.S.C. 552b(c): (1) Matters required to be kept secret in the interest of national security; (2) internal personnel rules and practices of the Commission; (3) matters exempt from mandatory disclosure by statute, principally Section 316, Federal Aviation Act of 1958, as amended; (7) matters related to civil and administrative law enforcement investigations; and (9) information whose premature disclosure would likely lead to significant furstration of actions proposed by DOT or other agencies.

Issued in Washington, DC on January 17, 1990.

Harry R. Van Cleve,

Commission General Counsel.

[FR Doc. 90-1410 Filed 1-19-90; 1:29 pm]

BILLING CODE 4910-62-M

Coast Guard

[CGD 90-001]

The Boat Safety Account of the Aquatic Resources Trust Fund; Availability of Fiscal Year 1990 Financial Assistance

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of availability of FY 90 financial assistance.

SUMMARY: Pursuant to title 46, United States Code, section 13103(c), the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities. The Coast Guard has fiscal year 1990 funds available to subsidize selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level.

DATES: Proposals must be submitted to the following address by April 2, 1990.

ADDRESSES: Specific information on organization eligibility, proposal requirements, award procedures, financial administration procedures and application packages may be obtained from Commandant (G-NAB-5), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes by telephone at (202) 267-0954 or at U.S. Coast Guard Headquarters (G-NAB-5), 2100 Second Street SW., Washington, DC 20593-0001.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504 establishes the Boat Safety Account of

the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $1,495,500, is available for the fiscal year ending September 30, 1990. Nineteen awards totaling $1,500,000 were made in fiscal year 1989; awards ranged from $10,000 to $166,800. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard. Applicants must be responsible, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope.

Some general areas of particular interest include:

- Boating accident studies and analyses.
- Projects to research, design and develop training aids for boating education programs, including films, tapes, books, classroom materials and other items.
- Projects to design and develop boating safety education media and materials (films, tapes, books) for use by the boating public, including the boater, marine enforcement personnel, and the boating industry.
- Projects to support national boating safety media efforts, e.g. National Safe Boating Week, education seminars, public service announcements.
- Technical or engineering projects to research suspected safety problems on specific boat or associated equipment types.
- Projects to educate the boating public on the legal rights and obligations of the boat manufacturer, the dealer, the boat purchaser and the boat operator, with respect to boating safety.
- Projects designed to help the boat and engine manufacturers understand and comply with Coast Guard standards and other manufacturer requirements.

This list should not constrain submission of proposals addressing other boating safety concerns. Innovative approaches are welcome. This fiscal year, discussions of specific projects of interest to the Coast Guard will be included in the information packages discussed in **ADDRESSES**, above.

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 16, 1990.

R.T. Nelson,

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

[FR Doc. 90-1328 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Syracuse Hancock International Airport, New York

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Syracuse, New York, for the Syracuse Hancock International Airport (SYR) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for SYR under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before July 23, 1990.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 22, 1990. The public comment period ends March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA Eastern Regional Office, Airports Division, AEA-610, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430; telephone number (718) 917-0902.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the SYR Airport are in compliance with applicable requirements of Part 150, effective January 22, 1990. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 23, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The City of Syracuse submitted to the FAA on September 22, 1988 noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from September 15, 1986 to June 4, 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Syracuse. The specific maps under consideration are "Existing Condition Map" (Figure 4-2) and the "Five Year Map" (Figure 8-1). These figures are included as attachments to the Hancock International Airport, Syracuse, New York—Syracuse Noise Compatibility Plan of the part 150 Study. The FAA has determined that these maps for SYR are in compliance with applicable requirements. This determination is effective on January 22, 1990. FAA's determination on an airport operator's noise exposure maps are limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to find the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consulation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA formally received the noise compatibility program for SYR, also effective on September 22, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 23, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonable consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. The public comment period ends March 8, 1990. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Ave., SW, Room 617, Washington, DC

Eastern Regional Office, FAA, Fitzgerald Federal Building, Airports Division, JFK International Airport, Jamaica, NY

New York Airports District Office, FAA, 181 South Franklin Ave., Room 305, Valley Stream, NY 11561

New York State Department of Transportation, Airport Development Section 1220 Washington Ave., State Campus Building #4, Albany New York, 12232

Mr. Ralph E. Napolitano, Commissioner of Aviation, Department of Aviation, Terminal Building, Main Lobby, Hancock International Airport, Syracuse, New York

Questions may be directed to the individuals named above under the heading "FOR FURTHER INFORMATION CONTACT".

Louis P. DeRose,

Assistant Manager, Airports Division.

[FR Doc. 90-1346 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-4]

Petition for Exemption; Summary and Disposition

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 invovled and must be received on or before: February 12, 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 16, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26034.

Petitioner: Joseph E. Purves.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To allow petitioner to operate as a pilot on airplanes engaged in part 121 operations beyond his 60th birthday.

Docket No.: 25724.

Petitioner: Jet Express, Inc.

Sections of the FAR Affected: 14 CFR 93.123, 93.125, and 93.129.

Description of Relief Sought-Disposition: To extend Exemption No. 5004A that allows petitioner to conduct two operations during two of the five high-density hours at the John F. Kennedy (JFK) International Airport using separate access landing procedures by aircraft capable of conducting short takeoff and landing operations. Partial Grant, December 1, 1989, Exemption No. 5004B.

Docket No.: 25980.

Petitioner: Air Transport Association.

Sections of the FAR Affected: 14 CFR 121.337(f).

Description of Relief Sought-Disposition: To allow nine of petitioner's member airlines and all other part 121 operators who are similarly situated to extend for a maximum of 6 months the January 31, 1990, compliance date of amendment No. 121-204 that requires installation of protective breathing equipment for use in combatting in-flight fires on board airplanes. *Partial Grant, January 10, 1990, Exemption No. 5132.*

Docket No.: 26012.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.583(a).

Description of Relief Sought-Disposition: To allow petitioner to transport medical personnel assigned to Project Orbis, a non-profit, Douglas DC-8 flying eye hospital, which operates throughout the world, without complying with the passenger-carrying requirements specified in part 121. *Partial Grant, January 4, 1990, Exemption No. 5129.*

Docket No.: 26101.

Petitioner: America West Airlines, Inc.

Sections of the FAR Affected: 14 CFR 93.123.

Description of Relief Sought-Disposition: To allow petitioner to operate four flights daily at Washington National Airport in excess of the limits specified in the High Density Traffic Airport Rule. *Partial Grant, January 12, 1990, Exemption No. 5133.*

[FR Doc. 90-1345 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 7]

Surety Companies Acceptable on Federal Bonds; Termination of Authority to The Hawaiian Insurance & Guaranty Co., Ltd.

Notice is hereby given that the Certificate of Authority issued by the Treasury to The Hawaiian Insurance & Guaranty Co., LTD., under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective December 28, 1989.

The Company was last listed as an acceptable surety on Federal bonds at 54 FR 27812, June 30, 1989.

With respect to any bonds currently in force with The Hawaiian Insurance & Guaranty Co., LTD., bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: January 17, 1990.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 90-1386 Filed 1-19-90; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Services and Research Administration (136E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-2282.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: December 28, 1989.

Direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Health Services and Research Administration
2. Blood Donor Registration
3. VA Forms 10-2420
4. The medical information collection on the blood donor's medical history is used by the hospital medical personnel in the blood bank to determine if a prospective volunteer blood donor is free from illnesses that might cause harm to a VA patient if transfused with the donor's blood.
5. On occasion
6. Individuals or household
7. 36,000 responses
8. .12 minutes
9. Not applicable

[FR Doc. 90-1370 Filed 1-19-90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Reinstatement

1. Veterans Benefits Administration
2. Statement of Termination of Marital Relationship
3. VA Form 21–8796
4. Use of this form will allow VA to confirm the termination of a marital relationship which precludes eligibility for benefits as surviving spouse or unmarried child of a veteran.
5. On occasion
6. Individuals or households
7. 2,900 responses
8. ½ hour
9. Not applicable

[FR Doc. 90–1371 Filed 1–19–90; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: December 28, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Reinstatement

1. Veterans Benefits Administration.
2. Appointment of Veterans Service Organization as Claimant's Representative.
3. VA Form 21–22.
4. Use of this form will allow VA to recognize representatives of service organizations in assisting beneficiaries in the prosecution of VA claims.
5. On occasion.
6. Individuals or households.
7. 325,000 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90–1372 Filed 1–19–90; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Readjustment Problems on Vietnam Veterans; Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held February 10, 1990. The purpose of the meeting is to enable the Committee to gain first hand experience of VA health care services for Vietnam veterans through review of treatment units, and discussions with VA service providers and veteran clientele. This meeting will be a field meeting primarily conducted at the San Antonio, Texas, VA Vet Center and Medical Center. The San Antonio Vet Center is located at 107 Lexington Avenue, San Antonio, Texas 78205. The San Antonio VA Medical Center is located at 7400 Metron Minter Boulevard, San Antonio, Texas 78284. The meeting on February 8 will begin at 8:30 a.m. and conclude at 5 p.m. The day's agenda will consist of direct observations of VA mental health services and programs at the San Antonio Medical Center to include Post-Traumatic Stress Disorder Clinical Team, the Alcohol Treatment Unit, the Mental Hygiene Clinic, and General Psychiatry Wards. The first day's agenda will also consist of a stationary meeting at San Antonio VAMC in conference with several VA officials regarding overall mental health services for Vietnam veterans. Participating VA officials include the Medical Center Director, the Chief of Staff, and the Chiefs of Psychiatry, Psychology, and Social Work Services.

The meeting on February 9 will begin at 8 a.m. and conclude at 5 p.m. The morning portion of the agenda will consist of direct observations of VA Readjustment Counseling Service programs, facilities and staff at the San Antonio Vet Center. The afternoon portion of the meeting will consist of a local forum meeting and group discussion with non VA officials and service providers regarding the post-war readjustment and service needs of area Vietnam veterans with special emphasis on Hispanic veterans. The meeting will be conducted at the Sheraton Gunter Hotel, 205 East Houston Street, San Antonio, Texas 78205. The meeting on February 10 will begin at 8 a.m. and conclude at 1 p.m. The third day's agenda will consist of a committee executive meeting regarding committee deliberations, recommendations, and future work plans. The meeting will be conducted at the Sheraton Gunter Hotel.

The meeting will be closed from 8 a.m. to 5 p.m. on Thursday, February 8, and from 8 a.m. to 11:30 a.m. on Friday, February 9, in accordance with the provisions cited in 5 U.S.C. 552b(c)(6) pursuant to subsection 10(d) of the Federal Advisory Committee Act. During this portion of the meeting the Committee will be engaging in discussions with VA mental health professionals and veterans. These discussions will disclose information of a personal nature for veterans patients which would constitute a clearly unwarranted invasion of personal privacy. The meeting on February 9 from 1 p.m. to 5 p.m. and on February 10 from 8 a.m. to 1 p.m. will be open to the public to the seating capacity of the room.

Anyone having questions concerning the meeting may contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs Central Office at (202) 233–3317/3303.

Dated: January 16, 1990.

By direction of the Secretary:

Laurence M. Christman,

Executive Assistant.

[FR Doc. 90–1373 Filed 1–19–90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 14
Monday, January 22, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 2, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–1494 Filed 1–18–90; 11:29 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 9, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–1495 Filed 1–18–90; 11:29 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 16, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–1496 Filed 1–18–90; 11:29 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, February 23, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89–1497 Filed 1–18–90; 11:29 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 23, 1990.

LOCATION: Room 556, Westwood Towers, 4401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. *Compliance Status Report*

The staff will brief the Commission on the status of various compliance matters.

2. *Enforcement Matter OS# 3083*

The staff will brief the Commission on the enforcement matter OS# 3083.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

January 16, 1990.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 90–1439 Filed 1–17–90; 4:26 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 25, 1990.

LOCATION: Room 556, Westwood Towers, 4401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Adult Nightwear*

The Commission will consider options to address risks of burn injuries to persons 65 years of age and older associated with nightwear (robes, nightgowns, and pajamas).

2. *Fiscal Year 1990 Operating Plan*

The Commission will consider issues related to the operating plan for fiscal year 1990.

3. *Hair Dryer Petition CP 89–3*

The staff will brief the Commission on petition CP 89–3 from the Michele Snow Foundation to require detection circuit interrupters for hand-held hair dryers in order to protect against electrocution if the dryer falls into a bathtub or other accumulation of water, whether the switch that operates the hair dryer is in the on or off position.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

January 16, 1990.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 90–1440 Filed 1–17–90; 4:26 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

January 17, 1990.

The following notice of meeting is published pursuant to section 3(a) of the Government in the sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

DATE AND TIME: January 24, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street N.E., Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *Associated Gas Distributors, et al. v. FERC,* Nos. 88–1385, *et al.* (D.C. Cir., decided December 28, 1989)

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

Lois D. Cashell,
Secretary.

[FR Doc. 90–1541 Filed 1–18–90; 3:51 pm]

BILLING CODE 6717-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, January 29, 1990.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement to Notation Vote(s).
2. A Report on Commission Operations.
3. Proposed Addition to § 631.7 of Volume II of the Compliance Manual, Employment Agencies.
4. Proposed Revision to the EEOC Management Directive 107, Chapter 2, Section 1, Annual Report on Federal Equal Employment Opportunity Complaints Processing (EEOC Form 462) and Instructions.

Closed Session

1. Litigation Authorization: General Counsel Recommendations.
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals.
3. Discussion of a Certain Commissioner Charge.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663-7100 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-7100.

This Notice Issued January 17, 1990.

Dated: January 17, 1990.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 90-1498 Filed 1-18-90; 11:29 am]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, January 16, 1990, the Corporation's Board of Directors determined, on motion of chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of: (1) A memorandum regarding guard service; and (2) a memorandum and resolution regarding delegation to consent to installment payments, interest free, on entrance/exit fees.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: January 17, 1990.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 90-1512 Filed 1-18-90; 12:44 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, January 16, 1990, the corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director M. Danny Wall (Director of the Office of Thrift Supervision) and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Chas. Schreiner Bank, Kerrville, Texas, for consent to merge, under its charter and with the title, "Schreiner Bank," with Ingram State Bank, Ingram, Texas, First State Bank, Bandera, Texas, Southwest National Bank, Austin, Texas, and First National Bank, Fredericksburg, Texas, and for consent to establish the five offices of the aforementioned banks as branches of Schreiner Bank.

Matters relating to the Corporation's corporate activities.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: January 17, 1990.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 90-1513 Filed 1-18-90; 12:44 pm]

BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

Amendment of Agenda

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published on January 19, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: An open meeting will commence at 9:30 a.m. on Friday, January 26, 1990, and continue until 5:00 p.m.

EXPLANATION OF CHANGE: A new agenda item, Item #8, is being added.

STATUS OF MEETING: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board of Directors to discuss privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b(c) (4, (5), (7), and (10) and 45 CFR 1622.5 (c), (d), (f), and (h)].

MATTERS TO BE CONSIDERED: A portion of the meeting may be closed for the reasons cited above, subject to an advance recorded vote of a majority of the Board of Directors.

1. Approval of Agenda.
2. Approval of Minutes.
   —December 15, 1989
3. Discussion of LSC FY 1991 Budget Proposals and Action Thereon.
4. Discussion of the Corporation's Annual Audit and Action Thereon.
5. Discussion of the Corporation's Fiscal Year 1990 Consolidated Operating Budget and Action Thereon.
6. Report on Requests for Emergency Funding and Action Thereon.
7. Discussion of Board Member Requests for Information in Connection with a Pending Investigation Being Conducted by the Corporation's Inspector General and Action Thereon.
8. Discussion of Motion to Request that the Office of Management and Budget Designate the Corporation's Board of Directors, in lieu of the Corporation's

president, as "head" of the Legal Services Corporation for purposes of the Inspector General Act of 1978, as Amended, and Action Thereon. (Note: This motion was tabled at the Corporation's board meeting on December 15, 1989).

9. Discussion of the July 7–8, 1989, LSC Client Self-Help Conference.
10. Election of Board Chairman and Vice Chairman.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: Janaury 18, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90–1516 Filed 1–18–90; 2:04 pm]

BILLING CODE 7050-01-M

Corrections

Federal Register
Vol. 55, No. 14
Monday, January 22, 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.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 229

[Docket No. 81140-9231]

RIN 0648-AA65

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commerical Fisheries

Correction

In rule document 89-29068 beginning on page 51718 in the issue of Friday, December 15, 1989, make the following corrections:

1. On page 51718, in the first column, under **SUMMARY:**, in the eighth line, "Production" should read "Protection".

§ 229.7 [Corrected]

2. On page 51723, in the third column, in § 229.7(b), in the fourth line, "Museum" should read "Marine".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 90524-9274]

RIN 0648-AC44

Atlantic Sea Scallop Fishery

Correction

In rule document 90-276 beginning on page 433 in the issue of Friday, January 5, 1990, make the following corrections:

1. On page 433, in the second column, under **EFFECTIVE DATE**, "February 5, 1990" should read "February 1, 1990".

§ 650.7 [Corrected]

2. On page 435, in the second column, in § 650.7(b), in the last line, "§ 650.2(c)" should read "§ 650.21(c)".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3696-2]

Federal Agency Hazardous Waste Compliance Docket

Correction

In notice document 89-28976 beginning on page 51472 in the issue of Friday, December 15, 1989, make the following corrections:

1. On page 51472, in the third column, in the last line, "CRECLA" should read "CERCLA".
2. On page 51473, in the 2nd column, under III., in the 2nd paragraph, in the 13th line, "tract" should read "track".
3. On page 51475, in the Federal Facilities Docket Additions table, in the fifth entry, in the second column, "Cerman" should read "German".
4. On the same page, in the same table, in the last entry, in the third column, the facility address should read "T22SR1ESECS3&4NMPH".
5. On page 51476, in the additions table, in the first entry, in the third column, the facility address should read "T2SR1WSECS13&24".
6. On the same page, in the same table, in the second entry, in the eighth column, insert "X".
7. On the same page, in the same table, in the ninth entry, in the fourth column, "Velgarde" should read "Velarde".
8. On the same page, in the same table, in the 20th entry, in the 2nd column, "Willamette" should read "Williamette".
9. On the same page, in the same table, in the 27th entry, in the 3rd column, the facility address should read "T14NR9WSEC32SLM".
10. On page 51477, in the Federal Facilities Docket Removals table, in the fourth entry, in the fourth column, the entry should read "Laguna Niguel".
11. On the same page, in the same table, in the last entry, in the third column, the facility address should read "15ABW".
12. On the same page, in the Federal Facilities Docket Corrections table, in the second entry, in the 11th column, insert "10".
13. On page 51478, in the corrections table, in the seventh entry, in the second column, "USA" should read "USAF>>.
14. On the same page, in the same table, in the 15th entry, in the 6th column, the zip code should read "99740".
15. On the same page, in the same table, in the 27th entry, in the 2nd column, "Tatina" should read "Tatalina".
16. On the same page, in the same table, in the 33rd and 34th entries, in the 4th column, "Elmendorf AFB" should read "Elmendorf".
17. On the same page, in the same table, in the last entry, in the second column, "Lisbourne" should read "Lisburne".
18. On page 51479, in the corrections table, in the fourth entry, in the second column, "Arsenal" was misspelled.
19. On the same page, in the same table, in the 17th entry, in the 3rd column, the facility address should read "314 CSG/CG".
20. On the same page, in the same table, in the 21st entry, in the 2nd column, "Guard" should read "Gaurd".
21. On page 51480, in the corrections table, in the second and fourth entries, in the fourth column, remove "Diego".
22. On the same page, in the same table, in the fifth and sixth entries, in the second column, "Doe" should read "DOE".
23. On the same page, in the same table, in the 31st and 32nd entries, in the 3rd column, "Nalf" should read "NALF".
24. On page 51481, in the corrections table, in the 17th entry, in the 3rd column, "1-25" should read "I-25".
25. On the same page, in the same table, in the 34th entry, in the last column, insert "20A".
26. On page 51482, in the corrections table, in the ninth entry, in the third column, "Autec" should read "AUTEC".
27. On the same page, in the same table, in the 25th and 26th entries, in the 2nd column, "Elgin" should read "Eglin".
28. On the same page, in the same table, in the 32nd entry, in the 3rd column, "Sabin" should read "Sabine".
29. On page 51483, in the corrections table, in the 16th entry, in the 2nd column, "Anderson" should read "Andersen".
30. On page 51484, in the corrections table, in the 21st entry, in the 2nd

column, the facility name should read "Ft. Riley 1st Infantry Div (M)".

31. On page 51485, in the corrections table, in the 18th entry, in the 3rd column, "Barc" should read "BARC.".

32. On the same page, in the same table, in the 24th entry, in the 2nd column, "NSEC" should read "NSWC" and in the 3rd column, "Department" was misspelled.

33. On page 51486, in the corrections table, in the seventh entry, in the sixth column, the zip code should read "64051-0330".

34. On the same page, in the same table, in the 15th entry, in the 3rd column, the facility address should read "442 CSG".

35. On the same page, in the same table, in the 17th entry, in the 3rd column, the facility address should read "351 CSG/DEEV".

36. On page 51487, in the corrections table, in the second entry, in the fourth column, "Ashville" should read "Asheville".

37. On the same page, in the same table, in the 28th entry, in the 2nd column, "Agricultural" was misspelled.

38. On page 51488, in the corrections table, in the ninth entry, in the third column, the facility address should read "438 ABG/CC".

39. On the same page, in the same table, in the 15th entry, in the 3rd column, the facility address should read "438 ABG/CC".

40. On the same page, in the same table, in the 39th entry, in the 3rd column, "Fletcher" should read "Pletcher".

41. On page 51489, in the corrections table, in the 32nd entry, in the 10th column, insert "X".

42. On page 51490, in the corrections table, in the fifth entry, in the third column, the facility address should read "437 ABG/CC".

43. On the same page, in the same table, in the 12th entry, in the 2nd column, "UD" should read "US".

44. On the same page, in the same table, in the 31st entry, in the 4th column, "Ocden" should read "Ogden".

45. On page 51491, in the same table, in the third entry, in the fourth column, remove "UT" and insert "Monticello", and in the fifth column, insert "UT".

46. On the same page, in the same table, in the eighth entry, in the first column, "C-Army" should read "O-Army", and in the sixth column, the zip code should read "22060-5000".

47. On the same page, in the same table, in the 16th and 17th entries, in the 4th column, "Willimsburg" should read "Williamsburg",

48. On page 51492, in the corrections table, in the ninth entry, in the seventh column, remove "X" and in the eighth column, insert "X".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 333

[Docket No. 80N-0476]

RIN 0905-AA06

Topical Antifungal Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 89-28816 beginning on page 51136 in the issue of Tuesday, December 12, 1989, make the following corrections:

1. On page 51136, in the first column, under **DATES:**, in the fifth and in the last lines, "March 12, 1990" should read "April 11, 1990.".

2. On page 51160, in the 2nd column, in the fourth complete paragraph, in the 2nd and 11th lines, "March 12, 1990" should read "April 11, 1990".

BILLING CODE 1505-01-D

federal register

Monday
January 22, 1990

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA16

Safety Standards for Explosives and Blasting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rules to amend the safety standards for explosives and blasting in underground coal mines.

DATES: Written comments must be received on or before March 16, 1990.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances, MSHA, Room 631 Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On December 8, 1989 (54 FR 50714) MSHA published proposed amendments to update and clarify certain provisions in its safety standards for explosives and blasting. The Agency has received several requests from the mining community to extend the comment period on the proposed changes. The comment period was scheduled to close on February 16, 1990 but in response to these requests, the Agency is extending the comment period to March 16, 1990. All interested parties are encouraged to submit comments prior to that date.

Dated: January 17, 1990.

Roy L. Bernard,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-1387 Filed 1-19-90; 8:45 am]

BILLING CODE 4510-43-M

federal register

Monday
January 22, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Sole Radio Navigation System; Minimum Standards for Certification; Advance Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26112; Notice No. 90-2]

RIN 2120-AD26

Sole Radio Navigation System; Minimum Standards for Certification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is developing a regulation that will establish minimum standards under which a radio navigation system may be certified as the sole radio navigation system required in an aircraft conducting instrument Flight Rules (IFR) en route, and terminal area operations, including nonprecision approach, in controlled airspace in the United States. The regulation is being developed in response to the Airport and Airway Safety and Capacity Expansion Act of 1987.

A sole radio navigation system is a radio navigation system that would be used to conduct IFR en route and terminal area operations, including nonprecision approach, in controlled airspace without the need for any other navigation system. Use of such a system, once approved, would be optional. Because of the difficulty or resolving complex technical considerations, the FAA is inviting comments on the appropriate form and content of minimum standards for certifying such a system.

DATE: Comments must be submitted on or before May 22, 1990.

ADDRESS: Comments on this advance notice of proposed rulemaking should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attn.: Rules Docket (AGC-10), Room 915-G, Docket No. 26112, 800 Independence Ave., SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, Room 915-G, weekdays (except Federal holidays) between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, Flight Standards Service (AFS-430), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3722.

SUPPLEMENTARY INFORMATION:

Comments Invited

This advance notice of proposed rulemaking (ANPRM) is being issued in accordance with the FAA's policy of encouraging early public participation in rulemaking proceedings. An ANPRM is issued when there is a need or a requirement to consider rulemaking but reasonable outside inquiry and FAA resources do not provide a sufficient basis upon which to propose a specific course of action. It is helpful, therefore, to invite public participation in identifying and selecting a course of action before a Notice of Proposed Rulemaking (NPRM) is developed and issued.

Interested persons are invited to participate in these preliminary rulemaking procedures by submitting such written data, views, or arguments as they desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

Availability of Document

Any interested person may obtain a copy of this ANPRM by submitting a request to the Federasl Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this ANPRM.

Persons interested in being placed on the mailing list for future proposed rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

This advance notice or proposed rulemaking discusses—

1. The FAA's study efforts since the enactment of Public Law 100-223.
2. The overall objectives of air navigation.
3. Current regulations pertaining to air navigation (both generic and equipment-specific).
4. The FAA's proposed actions regarding—

a. Development of regulations appropriate to all types of navigation systems (ground-based and space-based);

b. Revision and update of current regulations to accommodate all types of navigation systems; and

c. Establishment of the criteria (navigation system characteristics) by which a system could be judged capable of serving as the sole means of navigation within the National Airspace System (NAS).

Introduction

Instrument Flight Rules (IFR) navigation within the National Airspace System (NAS) is currently based on Very High Frequency Omnidirectional Radio (VOR) and VOR/Distance Measuring Equipment (DME). An operator who wishes to navigate from a departure airport to a destination airport under IFR (on a route that is based on VOR) is authorized to do so if the aircraft is equipped with VOR or VOR/DME equipment (depending on the proposed altitude), and that equipment is operable. (If the intended route is based on nondirectional beacon (NDB), then automatic direction finder (ADF) airborne equipment is required also.) VOR and VOR/DME may be used to conduct en route, terminal, and nonprecision approach operations without reference to any other navigation aid. Thus, the VOR and VOR/DME systems currently serve as a sole means of Instrument Flight Rules (IFR) navigation for those phases of flight in the NAS today.

In the near future, other navigation systems may prove capable of providing the same function as VOR/DME. For example, Loran C and Global Positioning System (GPS), or a hybrid of the two systems, may prove to be equivalent to VOR/DME in navigation system capability. It is the FAA's task to develop the criteria by which a navigation system will be judged capable of fulfilling the functions of VOR/DME. When the criteria are developed for a navigation system such as GPS, an aircraft could use that equipment to conduct IFR operations during the en route, terminal, and nonprecision approach phases of flight.

Public Law 100-223 requires that the FAA establish by regulation the criteria by which a navigation system would be judged to be capable of serving the function that VOR/DME fulfills today. This ANPRM seeks public comment to aid the FAA in implementing the provisions of Public Law 100-223.

FAA Efforts Since Enactment of Public Law 100-223

Section 310(c) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223) requires that—

> Not later than September 30, 1989, the Administrator shall establish by regulation minimum standards under which a radio navigation system may be certified as the sole radio navigation system required in an

aircraft for operation in airspace in the United States.

For the past 18 months, the FAA has been studying generic performance criteria (minimum standards) for airworthiness and operational approval of a radio navigation system required in an aircraft for IFR operation in the NAS. The FAA has studied requirements for en route and terminal area operations (including nonprecision approach). This study has required the evaluation of ground and space-based navigational system characteristics (such as signal coverage, reliability, integrity, and accuracy), as well as the evaluation of airborne navigation equipment. The FAA has considered not only single source systems (for example, Loran C) but also hybrid systems (such as a combination of Inertial Navigation System (INS), Loran C, and/or GPS). Also, in order to prepare for the application of GPS, the FAA has expanded its study to include the criteria for en route oceanic operations. The FAA has not included the study of precision approach criteria in its study because it does not foresee navigation systems other than Instrument Landing System (ILS) and Microwave Landing System (MLS) providing precision approach capability any time in the near future.

Because of the complexity of the task assigned to the FAA by Public Law 100-223 and the far-reaching consequences of its resolution, the FAA believes it is in the best interest of the public and the aviation community to seek comments before proceeding further with its efforts.

Objectives of Air Navigation

In aviation, navigation systems must satisfy two safety objectives. The first objective is to enable an aircraft to avoid all obstacles while en route. The second objective is to enable the pilot to align the aircraft with an intended route with enough precision to permit Air Traffic Control (ATC) to separate aircraft and prevent collisions.

In order to satisfy these two objectives, the Federal Aviation Administration and the International Civil Aviation Organization (ICAO) apply the following concepts. These concepts are fundamental to the FAA's Federal Aviation Regulations (FAR) and the ICAO's Standards and Recommended Practices (SARP) that regulate air navigation operations and requirements for air navigation equipment. The purpose of the FAR and the SARP is to establish requirements through which the objectives of navigation are met. The concepts are—

1. ATC clearance—When an air traffic controller issues an IFR clearance, he agrees to reserve a three-dimensional block of airspace along the route defined in the clearance. If the aircraft deviates outside that airspace, the deviation creates a potential hazard.

2. Navigation performance—Navigation performance is measured by the deviation (for any cause) from the exact centerline of the route and altitude specified in the ATC clearance. Such deviation includes errors due to design and maintenance of ground and airborne equipment and errors due to flight crew competency.

3. Degree of navigational accuracy required for control of air traffic—An aircraft is required to remain within a three dimensional block of airspace assigned by ATC. Should the aircraft deviate outside the assigned block of airspace for any reason, then it has not been navigated to the degree of accuracy required for Air Traffic Control.

Advisory Circular 90-45A—Approval of Area Navigation Systems for Use in the U.S. National Airspace System

Prior to discussing regulations pertaining to air navigation, it is important to understand the status of Advisory Circular (AC) 90-45A, Approval of Area Navigation Systems for Use in the U.S. National Airspace System (NAS). Advisory Circular 90-45A establishes a means to obtain airworthiness approval of navigation systems and procedures for Area Navigation System (RNAV) operations. Area Navigation Systems certified in accordance with the criteria listed in AC 90-45A can be used to conduct IFR en route, terminal, and nonprecision approach operations within the NAS. Area Navigation System equipment and operations are approved using AC 90-45A criteria, but current air navigation regulations provide the basis for compliance and enforcement.

Current Air Navigation Regulations

The following discussion of air navigation regulations is not intended to be exhaustive; however, it does cover the more important regulations on equipment requirements. Note: The discussion of sections within part 91 of the FAR apply to the version of Part 91 currently in effect on the date of publication of this advance notice of proposed rulemaking in the **Federal Register**. A revised version of Part 91 was published on August 18, 1989 (54 FR 34284), and will become effective August 18, 1990.

Section 91.33(d)(2) of the FAR requires air navigation equipment to be "appropriate to ground facilities to be used." The current U.S. National Airspace System is based on VOR and VOR/DME ground facilities. Therefore, depending on the ground facilities to be used, VOR or VOR/DME equipment (depending on the proposed altitude), or an area navigation system which meets the criteria of AC 90-45A must be installed in an aircraft and must be operable if used for IFR flight in the NAS. If the route to be flown is based on NDB, then ADF airborne equipment is also required.

Section 91.33(e) of the FAR requires approved DME equipment when operating at or above 24,000 feet mean sea level (MSL) if the route or route segment is based on VOR; however, DME is not required when navigation is based on the use of an RNAV that meets AC 90-45A en route performance and reliability criteria (or the equivalent) without input from DME.

Section 91.123 of the FAR states than unless otherwise authorized by ATC, navigation on a Federal airway or on a direct course between fixes must be conducted on the centerline of the route.

Section 135.165 of the FAR establishes navigation equipment requirements for air taxi and commercial operators (under Part 135) conducting IFR operations in the NAS. This section requires that the aircraft be equipped with two independent receivers for navigation which are appropriate to the facilities to be used. Unless the route is navigated using an area navigation system certified for IFR flight in accordance with AC 90-45A, two independent VOR systems must be installed and operable if the route is based on VOR, and two independent ADF systems must be installed and operable if the route is based on NDB.

Sections 121.103 and 121.121 of the FAR address en route requirements for domestic, flag, and supplemental air carriers and commercial operators of large aircraft under part 121. These sections state that part 121 operators must demonstrate that nonvisual ground aids are available and located so as to allow navigation to the degree of accuracy required for ATC and for the type of operation involved. Nonvisual ground aids are electronic navigational aids (NAVAIDS) that include not only VOR, DME, and NBD but also Omega and Loran C.

Section 121.349 of the FAR requires that Part 121 aircraft be equipped to receive radio navigation signals from all primary en route and approach navigation facilities intended to be used. This regulation requires redundant airway navigation capability (VOR,

VOR/DME, NDB) to ensure the ability to navigate to the degree of accuracy required for air traffic control. Section 121.349 is intended to apply to routes based on VOR, VOR/DME, and NDB. Dual independent RNAV systems that are certified under AC 90-45A also meet the requirements of § 121.349 of the FAR.

Long Range Navigation Requirements

The following are the major regulations that are applicable to long range navigation requirements. The basic requirements for all operations outside the United States are established in part 91, General Operating and Flight Rules. Part 121, Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft, contains additional requirements. Part 135, Air Taxi Operators and Commercial Operators, does not contain additional requirements, however, as these are established in each operator's operations specifications.

Section 91.1 of the FAR states that each person operating a civil aircraft of U.S. registry over the high seas shall comply with "Annex 2—Rules of the Air" to the Convention on International Civil Aviation. Paragraph 5.1.1 of Annex 2 states that for all IFR flights the aircraft shall be equipped with suitable instruments and with navigation equipment appropriate to the route to be flown. Paragraphs 3.6.2.1.1 (a) and (b) restate the § 91.123 requirement that aircraft be operated on the centerline of an airway or on a direct route between fixes.

Section 91.20 of the FAR states that no person may operate an aircraft in North Atlantic Minimum Navigation Performance Specifications (MNPS) airspace unless the aircraft has approved navigation performance capability in accordance with Appendix C of FAR part 91.

Section 135.3 of the FAR states that while operating outside the United States, operators under FAR part 135 must comply with Annex 2 to the Convention on International Civil Aviation.

Sections 121.103 and 121.121 of the FAR, which establish basic requirements for airways navigation, also provide the basis for long range navigation. These sections state that each Part 121 operator must show that nonvisual ground aids are available and located to allow navigation to the degree of accuracy required for ATC and for the type of operation involved. Long range navigation operations using Loran C, Omega, and, by extension, future operations using GPS, are conducted under these regulations. Sections 121.103 and 121.121 also provide for operation on en route segments where nonvisual ground aids are not required. These sections state that on these route segments either celestial or other specialized means of navigation may be used provided it is approved by the FAA.

Section 121.355 of the FAR states that for operations outside the United States, specialized means of navigation, such as INS or a Doppler radar navigation, must have been approved in accordance with Appendix G of part 121.

FAA's Proposed Actions

As stated previously, the FAA believes that it is in the best interest of the public and the aviation community to seek public comment prior to proceeding further with its rulemaking efforts. The FAA plans to undertake the following three actions to establish by regulation the minimum standards under which a radio navigation system may be certified as the sole radio navigation system required in an aircraft for conducting IFR en route and terminal area operations, including nonprecision approach, in controlled airspace in the United States.

1. Adopt revised regulatory standards that would accommodate new navigational systems in the NAS as paragraph (g) under § 91.33 (§ 91.205 as published August 18, 1989; 54 FR 34291) to read as follows:

Section 91.33 (section 91.205) Powered civil aircraft with standard category U.S. airworthiness certificates; instrument and equipment requirements

* * * * *

(g) *Radio navigation system rules (all airspace).* (1) For the purposes of this paragraph, a radio navigation system shall include the navigation facilities and the appropriate airborne instruments and navigation equipment necessary to navigate to the degree of accuracy required for the operation.

(2) No person may operate a civil aircraft of U.S. registry using the radio navigation system required for IFR operations under paragraph (d) of this section unless—

(i) The navigation equipment has been approved by the Administrator for IFR operations, and the operation is in compliance with any operating limitations relating to the use of the equipment;

(ii) The navigation equipment is appropriate to the navigation facilities to be used for navigation along the route to be flown; and

(iii) The navigation facilities have been approved by the Administrator and provide the coverage, integrity, accuracy, and any other characteristics identified by the Administrator as necessary for the operation and as required for Air Traffic Control.

2. Update existing rules to eliminate wording such as "ground" facilities, and eventually eliminate reference to specific systems such as VOR and DME. This would be a long-term measure.

3. Proceed with the development of navigation system criteria to be published as national policy.

The FAA has defined a list of parameters and criteria for evaluation of technical radio navigation system performance criteria (see the Radio Navigation System Parameters Table below). The FAA believes that this table, when complete, should be published as national policy in the form of generic and system-specific advisory circulars. This is in keeping with a precedent for establishing national policy in advisory circulars such as AC 90-45A.

The FAA believes that it can best serve the public and fulfill the requirements of Public Law 100-223 by using its resources to develop these advisory circulars. Draft circulars would be coordinated with the aviation community then published in the **Federal Register** for comment prior to final adoption.

The FAA believes that existing operational rules, revised as proposed, and the updating of national policy will provide an adequate basis for the regulation and certification of navigational systems.

Issue for Public Consideration

Comments are requested on the parameters against which any radio navigation system requirements, including hybrid systems, should be evaluated for each phase of flight. These parameters and some suggested values are shown in the Radio Navigation System Parameters Table below. Comments are also requested on any other parameters which the FAA should consider prior to the development and issuance of a Notice of Proposed Rulemaking. Comments on this Advance Notice of Proposed Rulemaking must be received on or before May 22, 1990.

BILLING CODE 4910-13-M

RADIO NAVIGATION SYSTEM PARAMETERS

PARAMETER	OCEANIC ENROUTE	DOMESTIC ENROUTE	TERMINAL AREA	NON-PRECISION APPROACH	REMOTE AREAS	LOW ALTITUDE HELICOPTER
ACCURACY (2dRMS) 95-98% Probability	Better than 12.6nm	1000m	500m	100m	1000-4000m	500m
RELIABILITY	Near 100%					
INTEGRITY (Time to Alarm)	120s	60s	30s	10s	60s	30s
AVAILABILITY	Near 100%					
COVERAGE Near 100%	Route Being Flown	Controlled Airspace	Controlled Airspace	Defined Procedure Airspace	Route Being Flown	Route Being Flown
FIX RATE (Time)	10S	10s	10s	1s	10s	10s
FIX DIMENSIONS	Two Dimensions					
CAPACITY	Unlimited					
AMBIGUITY	Resolvable by Operator	None				
TIME TO RECOVER NAVIGATION	10s	5s	5s	2s	5s	5s
HUMAN OPERABILITY	Acceptable to the pilot for aircraft guidance and compliance with air traffic control instructions.					

BILLING CODE 4910-13-C

Radio Navigation System Parameters Defined

All of the systems considered are defined in terms of system performance parameters which determine the utilization and limitations of the individual navigation systems.

- Accuracy
- Availability
- Coverage
- Reliability
- Fix Rate
- Fix Dimension
- Capacity
- Ambiguity
- Integrity
- Time To Recover
- Human Operability

These parameters characterize the signal in space and are principally signal power levels, frequencies, signal formats, data rates, and any other data sufficient to completely define the means by which a user derives navigational information.

Accuracy

In navigation, the accuracy of an estimated or measured position of an aircraft at a given time is the degree of conformance of that position with respect to the geographic, or geodetic, coordinates of the earth. Since accuracy is a statistical measure of performance, it includes a statement of the uncertainty in position which applies. Two-dimensional accuracies use the 2 drms (distance root mean square) uncertainty estimate. Two drms is twice the radial error, drms. The radial error is defined as the root-mean-square value of the distances from the true location point of the position fixes in a collection of measurements.

Availability

The availability of a navigation system is the percentage of time that the services of the system are usable by the navigator. Availability is an indication of the ability of the system to provide usable service within the specified coverage area. Signal availability is the percentage of time that navigational signals transmitted from external sources are available for use. It is a function of both the physical characteristics of the environment and the technical capabilities of the transmitter facilities.

Coverage

The coverage provided by a radio navigation system is that surface area or space volume in which the signals are adequate to permit the navigator to determine position to a specified level of accuracy. Coverage is influenced by system geometry, signal power levels, receiver sensitivity, atmospheric noise conditions and other factors which affect signal availability.

Reliability

The reliability of a navigation system is a function of the frequency with which failures occur within the system. It is the probability that a system will perform its function within defined performance limits for a specified period of time under given conditions. Formally, reliability is one minus the probability of system failure.

Fix Rate

The fix rate is defined as the number of independent position fixes or data points available from the system per unit time.

Fix Dimension

This characteristic defines whether the navigation system provides a linear, one-dimensional line-of-position, or a two- or three-dimensional position fix.

System Capacity

System capacity is the number of users that a system can accommodate simultaneously.

Ambiguity

System ambiguity exists when the navigation system identifies two or more possible positions of the vehicle, with the same set of measurements, with no indication of which is the most nearly correct position. The potential for system ambiguities should be identified along with a provision for users to identify and/or resolve them.

Integrity

Integrity is the ability of a system to provide timely warnings to users when the system should not be used for navigation.

Time To Recover Navigation

The time required for restoration of navigation service after signal interruption.

Human Operability

The navigation system is acceptable to the pilot for aircraft guidance and the pilot is able to comply with air traffic control instructions.

Regulatory Evaluation Summary

The FAA has determined that this proposal is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Based on the limited information available at this time, a regulatory evaluation of the economic impacts of this proposal is not currently feasible. A full regulatory evaluation will be prepared with the assistance of comments received as a result of this ANPRM and in conjunction with further rulemaking proceedings on this subject. In order to fully develop a regulatory evaluation, the FAA requests parties to comment on the costs, costs savings, and other benefits that may result from any proposed changes.

Federalism Implications

The regulations discussed herein, if adopted, 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.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 96-449, January 12, 1983).

Issued in Washington, DC, on January 12, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

[FR Doc. 90-1357 Filed 1-19-90; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
January 22, 1990

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 16

Approval Requirements for Electric Detonators; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 16

RIN 1219-AA64

Approval Requirements for Electric Detonators

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's advance notice of proposed rulemaking on the approval requirements for detonators.

DATES: Written comments must be received on or before March 16, 1990.

ADDRESS: Send comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On December 4, 1989 (54 FR 50213) MSHA published an advanced notice of proposed rulemaking seeking comment on the need to develop approval requirements for detonators. The Agency has received several requests from the mining community to extend the period for comment on the advance notice. The comment period was scheduled to close on February 2, 1990 but in response to these requests, the Agency is extending the comment period to March 16, 1990. All interested parties are encouraged to submit comments prior to that date.

Dated: January 17, 1990.

Roy L. Bernard,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-1388 Filed 1-19-90; 8:45 am]

BILLING CODE 4510-43-M

federal register

Monday
January 22, 1990

Part V

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3402
Food and Agricultural Sciences
National Needs Graduate
Fellowships Grants Program;
Administrative Provisions;
Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3402

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: This final rule amends the Cooperative State Research Service (CSRS) regulations relating to the administration of the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program conducted under the authority of section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)). The regulations for this program (published in the **Federal Register** at 52 FR 4712–4716, dated February 13, 1987) established the procedures to be followed annually in the solicitation of grant proposals, the evaluation of such proposals, and the award of grants. This rule amends those regulations to clarify certain aspects of the program, provide additional guidance to applicants so that the material submitted will facilitate the evaluation of proposals, modify the weight factors associated with two of the evaluation criteria, and add newly applicable Federal statutes and regulations.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jane Coulter, Director, Higher Education Programs, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20250–2200. (Telephone: (202) 447–7654.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the collection of information requirements contained in this rule have been approved under OMB Document No. 0524–0024.

Classification

This rule has been reviewed under Executive Order No. 12291 and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individuals industries, Federal, State, or local governmental agencies, or on geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210, Food and Agricultural Sciences National Needs Graduate Fellowships Grants. For the reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, at which time the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 1417(a)(3)(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)), the Secretary of Agriculture is authorized to conduct a competitive graduate fellowships grants program. The administrative regulations governing the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program, published in the **Federal Register** on February 13, 1987 (52 FR 4712–4716), established and codified the procedures to be followed annually in the solicitation of grant proposals, the evaluation of such proposals, and the award of grants. On November 13, 1989, the Department published a Notice in the **Federal Register** (54 FR 47306–47307) proposing the amendment of this rule and inviting comments from interested individuals and organizations. Comments were requested by December 13, 1989. No comments were received.

List of Subjects in 7 CFR Part 3402

Grant programs—agriculture, Agriculture Higher Education Programs (HEP) Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program.

For the reasons set forth in the preamble, title 7, Chapter XXXIV, part 3402 of the Code of Federal Regulations is amended as follows:

PART 3402—[AMENDED]

1. The authority citation for part 3402 continues to read as follows:

Authority: Sec. 1470, National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

2. Section 3402.6 is amended by:

a. Adding a new last sentence in paragraph (a); and

b. Adding a new second sentence in paragraph (b); as follows:

§ 3402.6 Fellowship appointments.

(a) * * * For fellows who complete the program of study early (less than 24 months for master's degree or 36 months for doctoral degree), the institution must refund any unexpended monies to the granting agency.

(b) * * * However, institutions are urged to take maximum advantage of opportunities for awarding fellowships to population groups underrepresented in the food and agricultural sciences, particularly minorities and women. * * *

3. Section 3402.12 is amended by:

a. Revising the introductory text;

b. Revising Section 1;

c. Revising the first sentence of Section 2; and

d. Revising the last sentence of Section 4; as follows:

§ 3402.12 National need narrative.

A narrative for the national need area should be written in four sections. It should be typed, double-spaced, on one side of the page only, and limited to no more than 20 pages. The four sections to be included are as follows:

Sec. 1. This section must clearly establish that the proposed program of study and research will result in the development of outstanding expertise in the national need area for which funding is requested and will do so in a reasonable period of time. Present a detailed description of the proposed graduate program of study and research. If both master's and doctoral fellowships are requested, a separate plan of study should be included for each degree level. This section of the narrative should contain, but need not be limited to, the following components:

(a) The plan should specifically address the coursework which fellows will be required to take rather than the overall spectrum of

departmental offerings. Identify courses, summarize content, and discuss sequencing. Explain how coursework will relate to fellows' research.

(b) Identify and describe areas of research that fellows will be encouraged to engage in via a thesis or dissertation.

(c) Discuss any special features of the graduate program such as the extent to which it will involve a combination-disciplinary approach (inter-disciplinary, multi-disciplinary, or cross-disciplinary) and thus result in development of expertise transcending a single discipline. Also discuss any other special features such as development of an unusual collateral specialization in a related discipline, experiential learning opportunities such as a practicum or internship, a unique mentoring program, seminars, or a multi-university collaborative approach.

(d) Discuss graduate program examination requirements, such as a proficiency or qualifying examination, a comprehensive examination, and an oral examination.

(e) Include a projected timetable for completing the proposed graduate program of study and research.

(f) If admission to the proposed doctoral program does not require a master's degree, discuss how institutional procedures allow for the bypass of a master's degree.

Sec. 2. Justify the institution's position that it presently provides a major, productive, recognized program of graduate study and research at the level(s) of study in the area of national need in which selected fellows would be engaged. * * *

* * * * *

Sec. 4. * * * Examples of approriate data are indices of student quality, enrollments and degrees awarded for recent years, placement of graduates, facilities, faculty research support, and publications of previous doctoral trainess.

4. Section 3402.14. The first sentence is revised as follows:

§ 3402.14 Faculty vitae.

This section should include a Summary Vita, Form CSRS–708, for each faculty member contributing significantly to institutional competence at the level(s) of graduate study in the national need area addressed in the proposal. * * *

5. Section 3402.15 is revised as follows:

§ 3402.15 Appendix.

Any additional supporting information deemed important for clarifying and/or strengthening the proposal should be included in an Appendix and referenced in the national narrative.

6. Section 3402.19 is amended by:

a. Revising the weight factor associated with evaluation criterion a.;

b. Revising evaluation criterion b. and revising the weight factor associated with it; and

c. Revising evaluation criterion e.; as follows:

§ 3402.19 Evaluation criteria.

* * * * *

Evaluation criteria	Weight
a. * * *	30
b. The degree to which the proposed program of study reflects special features such as a combination-disciplinary approach (inter-disciplinary, multi-disciplinary, or cross-disciplinary), an unusual collateral specialization in a related discipline, experiential learning opportunities, a unique mentoring program, seminars, or a multi-university collaborative approach.	10
* * * *	*
e. The degree to which supporting summary data substantiate program quality in the targeted national need area.	* * *
* * * *	*

7. Section 3402.22 is amended by adding newly applicable Federal regulations in numerical order as follows:

§ 3402.22 Other Federal statutes and regulations that apply.

* * * * *

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement); Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order No. 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

* * * * *

8. Section 3402.25 is amended by redesignating the existing text as paragraph (a); and adding a paragraph (b); as follows:

§ 3402.25 Documentation of progress on funded projects.

* * * * *

(b) A *Graduate Fellow Exit Report* form is included in the program brochure. This form should be completed and submitted to CSRS–HEP by the project director for each fellow supported by a grant as soon as a fellow is (1) graduated, or (2) officially terminated from the program. When an exit report for each fellow supported by a grant has been accepted by USDA, the grantee institution will have satisfied the requirement of a final performance report for the grant.

Done at Washington, DC, this 16th day of January 1990.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 90–1383 Filed 1–19–90; 8:45 am]

BILLING CODE 3410-22-M

Reader Aids

Federal Register

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Monday, January 22, 1990

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LIST OF PUBLIC LAWS

Note: For a complete listing of Public Laws enacted during the first session of the 101st Congress, see the Cumulative List of Public Laws published in the **Federal Register**, on January 19, 1990 (55 FR 2042).

The List of Public Laws will resume when bills are enacted into law during the second session of the 101st Congress, which convenes on January 23, 1990.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

S–041999 0002(00)(16–JAN–90–08:34:00)

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