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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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1209

RIN 3124-AA19

Practices and Procedure for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: On July 6, 1989, the U.S. Merit Systems Protection Board (the Board) published, as an interim rule with request for comments, a new part of its regulations to implement the Whistleblower Protection Act of 1989, Public Law 101-12. The interim regulations published under part 1209 on July 6, 1989 are hereby amended as set forth below, and these are now the final regulations of the Board in this part.

EFFECTIVE DATE: July 12, 1990.

FOR FURTHER INFORMATION CONTACT: Mark Kelleher, (202) 653-8892.

SUPPLEMENTARY INFORMATION: On July 6, 1989 (54 FR 28654), the Board published interim regulations in this part to implement the Whistleblower Protection Act of 1989 (Pub. L. 101-12). The public was invited to comment on the interim regulations. The Board has considered the comments received and has adopted many of the suggestions made. The Board has also determined that certain substantive and clarifying changes should be made, based on experience in processing cases under the interim regulations. In addition, changes have been made to simplify and clarify the regulations, to express them in "plain English" to the extent possible, and to conform the regulations in this part to the Board's final regulations in part 1201, published December 29, 1989 (54 FR 53500). The interim rules are hereby modified and are published here as the final rules of the Board in part 1209. The Board is republishing the entire rules in this part for clarity and the convenience of the public, parties, and practitioners.

Two agencies and two individuals submitted comments on the interim rules published July 6, 1989. No organizations responded. The Board adopted suggestions for the following: simplify the rules to the extent possible, using "plain English;" require the appellant to include a description of his or her whistleblowing activity in the appeal; replace the separate time limits for filing a stay request before, simultaneous with, or after filing an appeal with a single time limit; allow flexibility for an agency to designate a representative for service of a stay request; allow filing of stay requests by facsimile; allow stay requests to be signed by either the appellant or the appellant's designated representative; eliminate the provision allowing oral response by an agency to a stay request; and clarify the matters the judge must consider in ruling on a stay request.

The Board did not adopt suggestions for the following: establish a specific time limit for an individual to seek corrective action from the Special Counsel; repeat in this part the 5 CFR part 1201 provisions for filing a petition for review of an initial decision; adopt a construction of the individual right of action provisions of the Whistleblower Protection Act that precludes filing an individual right of action appeal when the Special Counsel and the agency have agreed to corrective action; require service of stay requests by express mail or fascimile; require the Board regional office to serve a stay request on the agency; establish a faster procedure to enforce compliance with stay orders than the 5 CFR part 1201, subpart F procedure; provide that a stay cannot be sought that would order the agency to take an action the employee contends the agency improperly failed to take; eliminate the option to file a stay request before filing an appeal; extend the time limit for an agency to respond to a stay request; provide that any stay granted the Special Counsel that is in effect at the time the Special Counsel terminates its investigation shall continue for no more than 10 calendar days, regardless of the time provided for in the previous order of the Board; and state specifically in the regulations that the appellant bears the burden of showing entitlement to a stay. Suggestions for changes in sections of this part that have been deleted are moot.

The following constitutes a section-by-section analysis and discussion of each substantive change made at this time.

(a) The title to part 1209—is amended by changing it to "Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing."

(b) Authority—is amended by adding 5 U.S.C. 2302(b)(8).

(c) The title to subpart A—is amended by changing it to "Jurisdiction and Definitions."

(d) Section 1209.1—is amended by deleting it in its entirety as redundant.

(e) Section 1209.3—is amended by renumbering it § 1209.1, by revising it for simplicity and clarity, and by substituting the term "appellant's" for "individual's."

(f) Section 1209.2—is amended by renumbering it paragraph (a) of § 1209.2, by revising it for simplicity and clarity, by incorporating as new paragraphs (b)(1) and (b)(2), respectively, the definitions of "individual right of action appeals" and "otherwise appealable action appeals" and the examples from § 1209.5, and by adding new paragraph (b)(3) to state the Board's jurisdiction over "stays." Also, in paragraph (b)(1), a citation to § 1209.4(a) is added to clarify what personnel actions may be the subject of an individual right of action appeal.

(g) Section § 1209.4—is amended by renumbering it § 1209.3 and by revising it for simplicity and clarity.

(h) Section 1209.5—is amended by renumbering it § 1209.4, by revising paragraph (b) for simplicity and clarity, by deleting paragraphs (c) and (d) since they have been incorporated in the revised § 1209.2, and by adding new paragraphs (c) and (d) to provide definitions of "contributing factor" and "clear and convincing evidence."

(i) The title to subpart B—is amended by changing it to "Appeals".

(j) Section 1209.6—is amended by renumbering it § 1209.5 and changing the title, by deleting paragraph (a) in its entirety as redundant, by deleting paragraphs (b) and (d) in their entirety

as unnecessary since the provisions of part 1201 apply, by renumbering paragraph (c)(2) as paragraph (a), by renumbering paragraph (c)(1) as paragraph (b), by renumbering paragraph (c)(3) as paragraph (c), and by revising the renumbered paragraphs (a), (b), and (c) for simplicity and clarity. Also, in paragraph (a), the term "appeal" is substituted for "petition for appeal". Paragraph (a)(1) is amended to clarify that the time for filing an individual right of action appeal, after termination of a Special Counsel investigation, begins to run from the date of issuance of the Special Counsel's written notification to the appellant and to increase the time limit for filing from 60 to 65 days to allow for mailing time. Paragraph (b) is amended to clarify that the time limit for filing an otherwise appealable action appeal is governed by paragraph (a) when the appellant has chosen to seek corrective action from the Special Counsel first and by 5 CFR 1201.22(b) when the appellant appeals directly to the Board. Paragraph (c) is amended by substituting the term "appellant" for "individual," by substituting the term "appeal" for "petition for appeal," and by changing "may" to "will" in the last sentence.

(k) Section 1209.7—is amended by renumbering it § 1209.6, by adding a new paragraph (a)(4) to require an appellant to include in the appeal a description of his or her whistleblowing activity, by renumbering paragraph (a)(4) as paragraph (a)(5), by adding to (i) of new paragraph (a)(5) a requirement that the appellant provide specific indications of his or her apprehensions with respect to threatened actions, by adding "wholly or in part" after "based" in (ii) of new paragraph (a)(5), by adding new paragraph (b) to make it clear that an appellant has a right to a hearing, by renumbering paragraph (b) as paragraph (c) and changing the title and deleting the last sentence, and by revising the entire section for simplicity and clarity. Also, in paragraph (a), the term "Appeals" is substituted for "Petitions" and the citations to §§ 1209.5(a) and 1209.5(b) are corrected to read §§ 1209.4(a) and 1209.4(b), respectively. In paragraph (c), the term "judge" is substituted for "presiding official."

(l) Section 1209.8—is amended by deleting it in its entirety as unnecessary since the provisions of part 1201 apply.

(m) Section 1209.9—is amended by deleting it in its entirety as unnecessary since the provisions of part 1201 apply.

(n) Section 1209.10—is amended by deleting it in its entirety as unnecessary since the provisions of part 1201 apply.

(o) Section 1209.11—is amended by renumbering it § 1209.7, by revising it for simplicity and clarity, and by adding language in the first sentence of paragraph (a) to clarify that the degree of proof required of the appellant is "a preponderance of the evidence."

(p) Section 1209.12—is amended by deleting it in its entirety as unnecessary since the provisions of part 1201 apply.

(q) Section 1209.13—is amended by deleting it in its entirety as unnecessary since the provisions of part 1201 apply.

(r) The title to subpart C—is amended by changing it to "Stay Requests."

(s) Section 1209.14—is amended by renumbering it § 1209.8, by deleting paragraph (a) in its entirety, by renumbering paragraph (c) as paragraph (a), by renumbering paragraph (d) as paragraph (c) and changing the title, by renumbering paragraph (e) as paragraph (d), and by revising the entire section for simplicity and clarity. Also, in new paragraph (a), the separate time limits for filing a stay request before, simultaneous with, or after an appeal are replaced with a single time limit for filing, and language stating when an appellant is eligible to file a stay request is incorporated from the former paragraph (a). Paragraph (b) is amended by substituting the terms "must" and "with" for "shall" and "at," respectively. In renumbered paragraph (c), the requirement for service of a stay request on the agency's General Counsel in deleted and replaced by a requirement that either the local servicing personnel office or the agency's designated representative, if any, be served. Renumbered paragraph (d) is amended to permit filing of stay requests by facsimile, to be consistent with the part 1201 provisions relating to filing appeals and petitions for review.

(t) Section 1209.15—is amended by renumbering it § 1209.9, by substituting the term "appellant" for "individual," by amending paragraph (a)(3) to permit signature of a stay request by either the appellant or the appellant's designated representative—if any—to be consistent with part 1201 signature requirements for appeals and petitions for review, by adding new paragraph (a)(5) to require evidence of timeliness where the appellant first sought corrective action from the Special Counsel, by renumbering paragraphs (a)(5)–(7) as (a)(6)–(8), by deleting former paragraph (a)(8) since the certificate of service requirement is now contained in § 1209.8(c), by renumbering paragraph (b) as paragraph (c), by adding new paragraph (b) to permit an appellant to address the issue of whether a stay would impose extreme hardship on the agency, and by revising the entire section for simplicity and clarity. Also, paragraph (c)(1) is revised to delete the provision permitting an oral response by an agency to a stay request. In paragraph (c)(2), (i) is deleted in its entirety as unnecessary and (ii) is divided and renumbered as (i), (ii), and (iii).

(u) Section 1209.16—is amended by renumbering it § 1209.10, by substituting the term "judge" for "presiding official," by deleting the language regarding oral rulings in paragraph (b)(2) as unnecessary, by numbering the last sentence of paragraph (b)(2) as paragraph (b)(3), and by revising the entire section for simplicity and clarity. Also, the requirement in paragraph (b)(3) that the order inform the agency regarding interim compliance and procedures for appealing the order is deleted as unnecessary.

(v) Section 1209.17—is amended by renumbering it § 1209.11 and changing "stays" to "stay" in the title, by adding "Duration of stay" as the title of paragraph (a), by moving the last sentence of paragraph (a) to become the first sentence of paragraph (b), by adding "Interim compliance" as the title of paragraph (b), and by revising the entire section for simplicity and clarity.

(w) Section 1209.18—is amended by deleting it in its entirety as unnecessary since the interlocutory appeal provisions of part 1201 apply and also to eliminate the requirement that the judge certify to the Board any appeal filed by either party of an order granting or denying a stay.

(x) Section 1209.19—is amended by renumbering it § 1209.12 and revising it for simplicity and clarity.

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Government employees, whistleblowing.

Accordingly, the Merit Systems Protection Board revises 5 CFR part 1209 as follows:

PART 1209—PRACTICES AND PROCEDURES FOR APPEALS AND STAY REQUESTS OF PERSONNEL ACTIONS ALLEGEDLY BASED ON WHISTLEBLOWING

Subpart A—Jurisdiction and Definitions

Sec.
1209.1 Scope.
1209.2 Jurisdiction.
1209.3 Application of 5 CFR part 1201.
1209.4 Definitions.

Subpart B—Appeals

1209.5 Time of filing.
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Subpart C—Stay Requests
1209.8 Filing a request for a stay.
1209.9 Content of stay request and response.
1209.10 Hearing and order ruling on stay request.
1209.11 Duration of stay; interim compliance.
Subpart D—Reports on Applications for Transfers
1209.12 Filing of agency reports.

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.

Subpart A—Jurisdiction and Definitions

§ 1209.1 Scope

This part governs any appeal or stay request filed with the Board by an employee, former employee, or applicant for employment where the appellant alleges that a personnel action defined in 5 U.S.C. 2302(a)(2) was threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities. Included are individual right of action appeals authorized by 5 U.S.C. 1221(a), appeals of otherwise appealable actions allegedly based on the appellant's whistleblowing activities, and requests for stays of personnel actions allegedly based on whistleblowing.

§ 1209.2 Jurisdiction.

(a) Under 5 U.S.C. 1214(a)(3), an employee, former employee, or applicant for employment may appeal to the Board from agency personnel actions alleged to have been threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities.

(b) The Board exercises jurisdiction over:

(1) *Individual right of action appeals.* These are authorized by 5 U.S.C. 1221(a) with respect to personnel actions listed in § 1209.4(a) of this part that are allegedly threatened, proposed, taken, or not taken because of the appellant's whistleblowing activities. If the action is not otherwise directly appealable to the Board, the appellant must seek corrective action from the Special Counsel before appealing to the Board.

Example: Agency A gives Mr. X a performance evaluation under 5 U.S.C. chapter 43 that rates him as "minimally satisfactory." Mr. X believes that the agency has rated him "minimally satisfactory" because of his whistleblowing activities. Because a performance evaluation is not an otherwise appealable action, Mr. X must seek corrective action from the Special Counsel before appealing to the Board or before seeking a stay of the evaluation. If Mr. X appeals the evaluation to the Board after the Special Counsel proceeding is terminated or exhausted, his appeal is an individual right of action appeal.

(2) *Otherwise appealable action appeals.* These are appeals to the Board under laws, rules, or regulations other than 5 U.S.C. 1221(a) that include an allegation that the action was based on the appellant's whistleblowing activities. The appellant may choose either to seek corrective action from the Special Counsel before appealing to the Board or to appeal directly to the Board. (Examples of such otherwise appealable actions are listed in 5 CFR 1201.3 (a)(1) through (a)(19).)

Example: Agency B removes Ms. Y for alleged misconduct under 5 U.S.C. 7513. Ms. Y believes that the agency removed her because of her whistleblowing activities. Because the removal action is appealable to the Board under some law, rule or regulation other than 5 U.S.C. 1221(a), Ms. Y may choose to file an appeal with the Board without first seeking corrective action from the Special Counsel or to seek corrective action from the Special Counsel and then appeal to the Board.

(3) *Stays.* Where the appellant alleges that a personnel action was or will be based on whistleblowing, the Board may, upon the appellant's request, order an agency to suspend that action.

§ 1209.3 Application of 5 CFR part 1201.

Except as expressly provided in this part, the Board will apply subparts A, B, C, E, F, and G of 5 CFR part 1201 to appeals and stay requests governed by this part.

§ 1209.4 Definitions.

(a) *Personnel action* means, as to individuals and agencies covered by 5 U.S.C. 2302:

(1) An appointment;

(2) A promotion;

(3) An adverse action under chapter 75 of title 5, United States Code or other disciplinary or corrective action;

(4) A detail, transfer, or reassignment;

(5) A reinstatement;

(6) A restoration;

(7) A reemployment;

(8) A performance evaluation under chapter 43 of title 5, United States Code;

(9) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action; or

(10) A significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

(b) *Whistleblowing* is the disclosure of information by an employee, former employee, or applicant that the individual reasonably believes evidences a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety. It does not include a disclosure that is specifically prohibited by law or required by Executive order to be kept secret in the interest of national defense or foreign affairs, unless such information is disclosed to the Special Counsel, the Inspector General of an agency, or an employee designated by the head of the agency to receive it.

(c) *Contributing factor* means any disclosure that affects an agency's decision to threaten, propose, take, or not take a personnel action with respect to the individual making the disclosure.

(d) *Clear and convincing evidence* is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established. It is a higher standard than "preponderance of the evidence" as defined in 5 CFR 1201.56(c)(2).

Subpart B—Appeals

§ 1209.5 Time of filing.

(a) *Individual right of action appeals.* The appellant must seek corrective action from the Special Counsel before appealing to the Board. Where the appellant has sought corrective action, the time limit for filing an appeal with the Board is governed by 5 U.S.C. 1214(a)(3). Under that section, an appeal must be filed:

(1) No later than 65 days after the date of issuance of the Office of Special Counsel's written notification to the appellant that it was terminating its investigation of the appellant's allegations; or,

(2) If the Office of Special Counsel has not notified the appellant that it will seek corrective action on the appellant's behalf within 120 days of the date of filing of the request for corrective action, at any time after the expiration of 120 days.

(b) *Otherwise appealable action appeals.* The appellant may choose either to seek corrective action from the Special Counsel before appealing to the Board or to file the appeal directly with the Board. If the appellant seeks corrective action from the Special Counsel, the time limit for appealing is governed by paragraph (a) of this section. If the appellant appeals directly to the Board, the time limit for filing is governed by 5 CFR 1201.22(b).

(c) *Appeals after a stay request.* Where an appellant has filed a request for a stay with the Board without first filing an appeal of the action, the appeal must be filed within 20 days after the

date of the order ruling on the stay request. Failure to timely file the appeal will result in the termination of any stay that has been granted unless a good reason for the delay is shown.

§ 1209.6 Content of appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under 5 CFR 1201.35 may file an appeal. Appeals may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24 (a)(1) through (a)(9);

(2) Where the appellant first sought corrective action from the Special Counsel, evidence that the appeal is timely filed;

(3) The name(s) and position(s) held by the employee(s) who took the action(s), and a chronology of facts concerning the action(s);

(4) A description of the appellant's disclosure evidencing whistleblowing as defined in § 1209.4(b) of this part; and

(5) Evidence or argument that:

(i) The appellant was or will be subject to a personnel action as defined in § 1209.4(a) of this part, or that the agency has threatened to take or not to take such a personnel action, together with specific indications giving rise to the appellant's apprehensions; and

(ii) The personnel action was or will be based wholly or in part on the appellant's whistleblowing, as described in § 1209.4(b) of this part.

(b) *Right to hearing.* An appellant has a right to a hearing.

(c) *Timely request.* The appellant must submit any request for a hearing with the appeal, or within any other time period the judge sets for that purpose. If the appellant does not make a timely request for a hearing, the right to a hearing is waived.

§ 1209.7 Burden and degree of proof.

(a) Subject to the exception stated in paragraph (b) of this section, in any case involving a prohibited personnel practice described in 5 U.S.C. 2302(b)(8), the Board will order appropriate corrective action if the appellant shows by a preponderance of the evidence that a disclosure described under 5 U.S.C. 2302(b)(8) was a contributing factor in the personnel action that was threatened, proposed, taken, or not taken against the appellant.

(b) However, even where the appellant meets the burden stated in paragraph (a) of this section, the Board will not order corrective action if the agency shows by clear and convincing evidence that it would have threatened, proposed, taken, or not taken the same personnel action in the absence of the disclosure.

Subpart C—Stay Requests

§ 1209.8 Filing a request for a stay.

(a) *Time of filing.* An appellant may request a stay of a personnel action allegedly based on whistleblowing at any time after the appellant becomes eligible to file an appeal with the Board under § 1209.5 of this part, but no later than the time limit set for the close of discovery in the appeal. It may be filed prior to, simultaneous with, or after the filing of an appeal.

(b) *Place of filing.* Requests must be filed with the appropriate Board regional office as set forth in 5 CFR 1201.4(d).

(c) *Service of stay request.* A stay request must be simultaneously served upon the Board's regional office and upon the agency's local servicing personnel office or the agency's designated representative, if any. A certificate of service stating how and when service was made must accompany the stay request.

(d) *Method of filing.* A stay request must be filed with the appropriate Board regional office by personal delivery, by facsimile, or by mail.

§ 1209.9 Content of stay request and response.

(a) Only an appellant, his or her designated representative, or a party properly substituted under 5 CFR 1201.35 may file a stay request. The request may be in any format, and must contain the following:

(1) The name, address, and telephone number of the appellant, and the name and address of the acting agency;

(2) The name, address, and telephone number of the appellant's representative, if any;

(3) The signature of the appellant or, if the appellant has a representative, of the representative;

(4) A chronology of facts, including a description of the appellant's disclosure and the action that the agency has taken or intends to take;

(5) Where the appellant first sought corrective action from the Special Counsel, evidence that the stay request is timely filed;

(6) Evidence and/or argument showing that:

(i) The action threatened, proposed, taken, or not taken is a personnel action, as defined in § 1209.4(a) of this part;

(ii) The action complained of was based on whistleblowing, as defined in § 1209.4(b) of this part; and

(iii) There is a substantial likelihood that the appellant will prevail on the merits of the appeal;

(7) Evidence and/or argument addressing how long the stay should remain in effect; and

(8) Any documentary evidence that supports the stay request.

(b) An appellant may provide evidence and/or argument addressing the question of whether a stay would impose extreme hardship on the agency.

(c) *Agency response.* (1) The agency's response to the stay request must be received by the appropriate Board regional office within five days (excluding Saturdays, Sundays, and Federal holidays) of the date of service of the stay request on the agency.

(2) The agency's response must contain the following:

(i) Evidence and/or argument addressing whether there is a substantial likelihood that the appellant will prevail on the merits of the appeal;

(ii) Evidence and/or argument addressing whether the grant of a stay would result in extreme hardship to the agency; and

(iii) Any documentation relevant to the agency's position on these issues.

§ 1209.10 Hearing and order ruling on stay request.

(a) *Hearing.* The judge may hold a hearing on the stay request.

(b) *Order ruling on stay request.* (1) The judge must rule upon the stay request within 10 days (excluding Saturdays, Sundays, and Federal holidays) after the request is received by the appropriate Board regional office.

(2) The judge's ruling on the stay request must set forth the factual and legal bases for the decision. The judge must decide whether there is a substantial likelihood that the appellant will prevail on the merits of the appeal, and whether the stay would result in extreme hardship to the agency.

(3) If the judge grants a stay, the order must specify the effective date and duration of the stay.

§ 1209.11 Duration of stay; interim compliance.

(a) *Duration of stay.* A stay becomes effective on the date specified in the judge's order. The stay will remain in effect for the time period set forth in the order or until the Board issues a final decision on the appeal of the underlying personnel action that was stayed, or until the Board vacates or modifies the stay, whichever occurs first.

(b) *Interim compliance.* An agency must immediately comply with an order granting a stay request. Although the

order granting a stay request is not a final order, petitions for enforcement of such orders are governed by 5 CFR part 1201, subpart F.

Subpart D—Reports on Applications for Transfers

§ 1209.12 Filing of agency reports.

When an employee who has applied for a transfer to another position in an Executive agency under 5 U.S.C. 3352 asks the agency head to review a rejection of his or her application for transfer, the agency head must complete the review and provide a written statement of findings to the employee and the Clerk of the Board within 30 days after receiving the request.

Dated: July 9, 1990.

Matthew D. Shannon,

Acting Clerk of the Board.

[FR Doc. 90-16322 Filed 7-11-90; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-070]

Pink Bollworm; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the pink bollworm regulations by removing Chicot, Drew, Jefferson, Lincoln, Monroe, and Phillips Counties, and a portion of Desha County, Arkansas, from the list of suppressive areas. We have determined that the pink bollworm has been eradicated from these areas. This action removes unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective July 12, 1990. Consideration will be given only to comments received on or before September 10, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-070. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917, and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations contained in 7 CFR 301.52 *et seq.* (referred to below as the pink bollworm regulations) quarantine the States of Arizona, Arkansas, California, Louisiana, Nevada, New Mexico, Oklahoma, and Texas, and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the spread of the pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of the pink bollworm into noninfested areas. However, the eradication of the pink bollworm is undertaken as an objective only in places that are designated as suppressive areas.

Based on trapping surveys conducted by inspectors of Arkansas State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, an agency of the U.S. Department of Agriculture, we have determined that the pink bollworm has been eradicated from Chicot, Drew, Jefferson, Lincoln, Monroe, and Phillips Counties, and a portion of Desha County, Arkansas. No evidence of pink bollworm infestations has been found in these areas since November 1, 1987. We are therefore removing these areas from the list of suppressive areas in § 301.52-2a.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make this rule effective upon publication. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $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 cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation affects the interstate movement of regulated articles from specified areas in Arkansas. There are 21 cotton growers, processors, and seed producers within these areas that will experience a modest economic benefit as a result of this rule, since they will no longer be required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately $100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Arkansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the

Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.).

List of Subjects in 7 CFR Part 301

Agricultural Commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.52–2a, the entry for Arkansas is revised to read as follows:

§ 301.52–2a Regulated area; suppressive and generally infested areas.

* * * * *

Arkansas

(1) *Generally infested area.* None.

(2) *Suppressive area.*

Desha County. That portion of the county lying south-southwest of the Arkansas River.

* * * * *

Done in Washington, DC, this 9th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–16230 Filed 7–11–90; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 90–101]

Imported Fire Ant; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the imported fire ant quarantine and regulations by designating all or portions of the following as generally infested areas: Five counties in Alabama, four counties in Arkansas, four counties in Mississippi, four counties in South Carolina, three counties in Tennessee, and seven counties in Texas. This action expands the regulated areas and imposes certain restrictions on the interstate movement of regulated articles. It is necessary to prevent the artificial spread of the imported fire ant.

DATES: Interim rule effective July 12, 1990. Consideration will be given only to comments received on or before September 10, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–101. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant quarantine and regulations (contained in 7 CFR 301.81 *et seq.*, and referred to below as the regulations) restrict the interstate movement of regulated articles from regulated areas in designated States to prevent the artificial spread of the imported fire ant. The imported fire ant (*Solenopsis* spp.) is an insect that interferes with farming operations, can cause damage to certain crops, and is a pest of livestock, pets, and people in rural and urban areas. The quarantined States include Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee and Texas.

Under the regulations, an area is designated as a regulated area if the imported fire ant has been found there, or if reason exists to believe the imported fire ant is present there.

Regulated areas are designated as either generally infested areas or suppressive areas. Suppressive areas are those areas where eradication of the imported fire ant is being undertaken as an objective. Generally infested areas are all other regulated areas.

Restrictions are imposed on the interstate movement of regulated articles from regulated areas to prevent the artificial movement of the imported fire ant into noninfested areas, and to prevent further infestation of suppressive areas.

We are amending § 301.81–2a by designating all or portions of the following counties as generally infested areas: De Kalb, Jackson, Lauderdale, Limestone, and Madison Counties in Alabama; Desha, Grant, Jefferson, and Lincoln Counties in Arkansas; Bolivar, Leflore, Sunflower, and Tallahatchie Counties in Mississippi; Chester, Greenwood, McCormick, and Newberry Counties in South Carolina; Hardin, Hardeman, and McNairy Counties in Tennessee; and Edwards, Hamilton, Kimble, McMullen, Midland, Real, and Uvalde Counties in Texas.

See the rule portion of this document for specific descriptions of the newly designated infested areas.

This action is necessary because surveys conducted by inspectors of the United States Department of Agriculture and officials of State agencies have established that the imported fire ant has spread to these areas. Eradication of the imported fire ant is not being undertaken as an objective in these areas; and therefore, as an emergency measure, we are adding them to the list of imported fire ant generally infested areas.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. Because the imported fire ant could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making it effective upon publication in the Federal Register. We will consider comments received within 60 days of publication of this rule. After the comment period closes, we will publish another document in the Federal Register, including a discussion of any comments we receive and any amendments we make to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on informaton compiled by the Department, we have determined that this rule will have an

effect on the economy of less than $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 cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in Alabama, Arkansas, Mississippi, South Carolina, Tennessee and Texas. Thousands of small entities move these articles interstate from these States, and many more thousands of small entities move these articles interstate from other States.

However, based on information compiled by the Department, we have determined that approximately 136 small entities within the newly regulated areas move articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $14,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.81–2a is amended by adding, in alphabetical order, the following counties in Arkansas, South Carolina, Tennessee, and Texas under paragraph (1) to read as follows:

§ 301.81-2a Regulated areas; suppressive and generally infested areas.

* * * * *

Arkansas

(1) *Generally infested areas.*

* * * * *

Grant County. That portion of the county south of the south line T. 5 S. and east of State Highway 167.

* * * * *

South Carolina

(1) *Generally infested areas.*

* * * * *

Greenwood County. The entire county.

* * * * *

Tennessee

(1) *Generally infested areas.*

Hardeman County. That portion of the county south and east of a line that follows U.S. Highway 64 from the east side of the county to the city of Bolivar, then follows State Highway 18 from the city of Bolivar to the point that it exits the county near the town of Grand Junction.

* * * * *

Texas

(1) *Generally infested areas.*

* * * * *

Edwards County. The entire county.

* * * * *

Hamilton County. The entire county.

* * * * *

McMullen County. The entire county.

* * * * *

Midland County. That portion of the county bounded by a line beginning at a point where U.S. Highway 80 intersects the Midland-Ector County line; then northerly along this county line to its junction with the Midland-Andrews County line; then easterly along this county line and including the Martin-Midland County line to its junction with U.S. Highway 60-Interstate 20; then southwesterly along U.S. Highway 80 to the point of beginning.

* * * * *

Real County. The entire county.

* * * * *

§ 3301.81-2a [Amended]

3. Section 301.81–2a is amended further by revising the entries for the following counties in Alabama, Arkansas, Mississippi, South Carolina, Tennessee and Texas under paragraph (1) to read as follows:

* * * * *

Alabama

(1) *Generally infested areas.*

* * * * *

De Kalb County. The entire county.

* * * * *

Jackson County. The entire county.

* * * * *

Lauderdale County. The entire county.

* * * * *

Limestone County. The entire county.

* * * * *

Madison County. That portion of the county south of the north line of T. 4 S.

* * * * *

Arkansas

(1) *Generally infested areas.*

* * * * *

Desha County. That portion of the county west of U.S. Highway 65 and south of the south line of T. 10 S., including all of the incorporated city limits of Dumas.

* * * * *

Jefferson County. Secs. 30, 31 and that portion of secs. 29, 32, 33, and 34 south and west of the Arkansas River of T. 5 S., R. 8 W.; secs. 25 and 36 of T. 5 S., R. 9 W. secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36, and that part of secs. 28 and 33 east of State Highway 81 of T. 6 S., R. 8 W.; secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36 of T. 6 S., R. 11 W.; secs. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36 T. 7 S., R. 11 W.

* * * * *

Lincoln County. That portion of the county south of the south line of T. 8 S.

* * * * *

Mississippi

(1) *Generally infested areas.*

* * * * *

Bolivar County. That portion of the county lying south of the north line of T. 22 N.

* * * * *

Leflore County. The entire county.

* * * * *

Sunflower County. That portion of the county lying south of the north line of T. 22 N.

Tallahatchie County. The entire county.

* * * * *

South Carolina

(1) *Generally infested areas.*

* * * * *

Chester County. The entire county.

* * * * *

McCormick County. The entire county.

* * * * *

Newberry County. The entire county.

* * * * *

Tennessee

(1) *Generally infested areas.*

* * * * *

Hardin County. That portion of the county lying south of latitude 35 degrees 20 minutes.

* * * * *

McNairy County. That portion of the county lying south of latitude 35 degrees 15 minutes.

* * * * *

Texas

(1) *Generally infested areas.*

* * * * *

Kimble County. That portion of the county bounded by a line beginning at a point where U.S. Highway 290 intersects the Kimble-Gillespie County line; then southerly along this county line to its junction with the Kimble-Kerr County line; then westerly along this county line to its intersection with U.S. Interstate Highway 10; then northwesterly along this highway to its intersection with U.S. Highway 83 and U.S. Highway 377; then northerly along these highways to the intersection of these highways; then easterly and northeasterly on U.S. Highway 377 to its intersection with the Kimble-Menard County line; then easterly along this county line to its junction with the Kimble-Mason County line; then southerly and easterly along this county line to its junction with the Kimble-Gillespie County line; then southerly along this county line to the point of beginning, excluding the town of London.

* * * * *

Uvalde County. The entire county.

* * * * *

Done at Washington, DC, this 9th day of July, 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-16232 Filed 7-11-90; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 90-074]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by adding the particle concentration fluorescence immunoassay (PCFIA) to the list of official tests for brucellosis in swine. We have determined that this action is warranted in order to allow an alternate method of testing swine that is faster, more sensitive, and more specific than many of the official laboratory tests currently being used.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. W. C. Stewart, Chief Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious disease of animals and man caused by bacteria of the genus *Brucella*. The Secretary of Agriculture is authorized to cooperate with the States in conducting a brucellosis eradication program and in preventing the interstate spread of brucellosis in animals. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used for determining the brucellosis status of cattle, bison, and swine. The regulations stipulate that testing negative to an official brucellosis test is a condition for certain interstate movements of cattle, bison, and swine. Additionally, official tests are used to determine eligibility for indemnity payments for animals destroyed because of brucellosis.

In a document published in the Federal Register on April 6, 1990 (55 FR 12848-12850, Docket Number 89-104), we proposed to amend the brucellosis regulations by adding the particle concentration fluorescence immunoassay (PCFIA) to the list of official tests for brucellosis in swine. Comments on the proposed rule were required to be received on or before May 7, 1990. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $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 cause a significant adverse effect on competition, employment, investment, productivity, innovation, or a on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It does not appear that this action will have a significant economic impact on a substantial number of small entities, including businesses that produce animal health products, swine producers, and laboratories that may perform the PCFIA test.

Approximately 86,000 swine are tested for brucellosis each year as a prerequisite for interstate movement. The PCFIA test will be only one of several tests available for this purpose. Each State's use of the PCFIA test will depend on the prevalence of swine brucellosis in that State, the frequency of tests given, and the availability of the necessary diagnostic equipment to process the test. Because of these factors, we estimate that considerably fewer than 86,000 PCFIA tests will be conducted each year for the purpose of qualifying swine for interstate movement.

The PCFIA test's introduction as an official swine brucellosis test could have a positive but modest economic impact on the small entity that produces the test. It does not appear, however, that the PCFIA will present a competitive threat to other businesses engaged in the production of animal health products. We are aware of no other small entities that are involved in the production of materials used in swine brucellosis tests.

It is not anticipated that swine producers will experience a significant economic impact as a result of this action. The estimated cost of each PCFIA test is $1, including materials, labor, and administrative costs. Assuming exclusive use of the PCFIA, this cost adds up to an expenditure of approximately $86,000 yearly. This sum translates into an average expenditure of approximately $29 annually per swine herd owner, since there are an estimated 3,000 swine herd owners nationwide who regularly ship swine interstate for breeding purposes. We do not believe this figure represents a significant impact upon these entities. Introduction of the PCFIA test as an official test for swine brucellosis should therefore have no effect on the market price of the swine tested.

It is not anticipated that State-Federal-approved laboratories opting to work with the PCFIA test will experience a significant financial impact as a result of this action, since the USDA provides them with funding for processing tests.

Additionally, not all State-Federal-approved laboratories are capable of processing the PCFIA test. Unlike other swine brucellosis tests, the PCFIA test requires the use of a diagnostic machine, which costs approximately $70,000. The Animal and Plant Health Inspection Service is currently leasing machines to State-Federal-approved laboratories in 14 States. The machines are being used to process PCFIA tests for bovine brucellosis. Due to the cost and limited

availability of the machines, only the State-Federal-approved laboratories currently in possession of them may be in a position to use the PCFIA test for swine brucellosis testing.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (see 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authoirty: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definition of "Official test" is amended by adding a new paragraph (b)(3) to read as follows:

§ 78.1 Definitions.

* * * * *

Official test.

(b) * * *

(3) Particle concentration fluoresence immunoassay (PCFIA). An automated serologic test to determine the brucellosis disease status of test-eligible swine when conducted according to instructions approved by the Animal and Plant Health Inspection Service. Swine are classified according to the following ratios between the test sample and a known negative sample (S/N ratio):

S/N Ratio	*Classification*
0.71 or greater	Negative
0.51 to 0.70	Suspect
0.50 or less	Reactor

* * * * *

Done in Washington, DC, this 6th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[Doc. 90–16231 Filed 7–11–90; 8:45 am]

BILING CODE 2410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 077CE, Special Condition No. 23–ACE–48A]

Special Condition; Beech Models B300 and 1900D Series Airplanes, Lightning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition amendment No. 1 to special conditions No. 23–ACE–48.

SUMMARY: This amended special condition is being issued for incorporation of an electronic flight instrument system (EFIS) and autopilot flight director system in the Beech Model B300 and 1900D Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays and autopilot flight director system and the protection of them from indirect effects of lightning for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This amended special condition, concerning the indirect effects of lightning, contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1990, Beech Aircraft Corporation, Wichita, Kansas submitted an application for amended type certificate for the Beech Model B300 airplanes. Beech Aircraft Corporation informed the FAA that they intend to certify the airplanes in the near future to install a Bendix/King KFC–400/EFIS–10 Auto Pilot Flight Director System on the Beech Model B300 that includes an EFIS. This EFIS installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electromechanical displays providing similar information to the flight crew. Beech Aircraft Corporation later requested that this special condition be made applicable to the Model 1900D series airplane.

Special Conditions No. 23–ACE–48 have been issued on December 11, 1989, and contain the airworthiness standards for the installation of the EFIS and the protection of it from high energy radiated electromagnetic fields (HERF) for the B300 and 1900D series airplane. This special condition amends special conditions No. 23–ACE–48 to add the requirements for the protection of critical and essential systems from the indirect effects of lightning.

Type Certification Basis

The type certification basis for the applicable Beech Model B300 and 1900D series airplanes is as follows: Part 23 of the Federal Aviation Regulation (FAR), effective February 1, 1965, including amendments 23–1 through 23–34; Special Federal Aviation Regulations (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1; through 27–6; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through 36–15, Special Conditions No. 23–ACE–48 and special condition adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the EFIS and autopilot flight director system installation in the Beech Model B300 and 1900D series airplanes contains a number of novel and unusual design

features not envisaged by the applicable airworthiness standards. Special conditions are considered necessary because the applicable airworthiness standards do not contain adequate or appropriate safety standards for the novel or unusual design features of the EFIS and autopilot installation in the Beech Model B300 and 1900D series airplanes.

Special conditions resulting from this notice will also be applicable to all Beech Model B300 and 1900D series airplanes for these design features (not limited to the same manufacturer) without further amendment of the special conditions.

Electronic Flight Instrument System (EFIS)

Beech Aircraft Corporation has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature two displays, an EADI and an EHSI on the pilot side of the instrument panels. All other displays, i.e., airspeed, altitude, vertical speed, etc., will be conventional electromechanical instruments. Mechanical and electromechanical flight instruments will be installed on the copilot side.

Protection of EFIS and Autopilot Flight Director System From Indirect Effect of Lightning

Concern for the vulnerability of airplane electronic systems to the effects of lightning has increased substantially over the past few years due to the use of solid-state components and digital electronics in airplane systems that are susceptible to transient effects of induced electrical current and voltage caused by either a direct lightning strike to the airplane or by the electric fields created by a nearby lightning flash. These induced transient currents and voltages can degrade electronic system performance by damaging components or upsetting system functions.

The regulations incorporated by reference include standards for protection from lightning damage to the structure of the airplane (§ 23.867) and from lightning ignition of fuel vapor (§ 23.954). However, these standards do not provide the level of safety for the EFIS that is inherently provided by traditional mechanical or electromechanical displays providing similar information to the flight crew.

The advent of an advanced electronic system in airplane design requires additional consideration be given to protect these systems from the indirect effects of lightning. Increased dependence on electronic equipment for safe operation of an airplane makes adequate protection of that equipment a primary requirement.

Advisory Circular 20-136, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning" dated March 5, 1990, and Radio Technical Commission for Aeronautics (RTCA) RTCA DO-160B, section 22 "Lightning Induced Transient Susceptibility" dated March 8, 1988, provides acceptable methods and procedures for determining compliance with these special conditions. Advisory Circular 20-136 provides guidance to verify the protection of systems installed in an aircraft, while section 22 of RTCA DO-160B, provides methods to qualify equipment prior to installation in an aircraft.

Conclusion

This action affects only certain novel and unusual design features on the Beech Model B300 and 1900D series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (54 FR 43417, October 25, 1989), (54 FR 41955, October 13, 1989), and (53 FR 13113, April 21, 1988). Also, special conditions with similar requirements have been promulgated without public procedures because the FAA has determined that good cause existed for immediate adoption (55 FR 4986, February 13, 1990) and (55 FR 17589, April 26, 1990). For these reasons, and because a delay would significantly affect the applicant's installation of the system and the certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting this amended special condition without further notice. Therefore, this amended special condition is being issued without substantive change for this airplane and made effective 30 days from the date of publication.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the applicable Beech Model B300 and 1900D series airplanes that incorporates the design features discussed.

3. Protection of Electronic Flight Instrument Systems and Autopilot Flight Director System From Indirect Effects of Lightning

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning.

(c) For the purposes of the above, the following definitions apply:

(1) Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) Essential Functions. Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

Issued in Kansas City, Missouri on June 29, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16260 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-194-AD; Amdt. 39-6653]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection of the skin lap joints in the fuselage upper lobe for skin cracks and corrosion, and repair, if necessary. This amendment is prompted by a review of the structural integrity of the Model 747 pressurized fuselage skin lap joints which was conducted by the FAA following an accident involving a Boeing Model 737 airplane in which a cold

bonding manufacturing process used in the construction of the skin lap joints may have contributed to the failure of a large portion of the fuselage. Failure to detect and repair fatigue cracks could lead to rapid decompression of the airplane and the inability to carry fail-safe loads.

EFFECTIVE DATE: August 20, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM-120S; telephone (206) 431-1925. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 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 (AD), applicable to Boeing Model 747 series airplanes which requires inspection of the skin lap joints in the fuselage uppoer lobe for skin cracks and and corrosion, and repair, if necessary, was published in the **Federal Register** on April 6, 1990 (55 FR 12880). That proposal was prompted by a review of the structural integrity of the Model 747 pressurized fuselage skin lap joints which was conducted by the FAA following an accident involving a Boeing Model 737 airplane, in which a cold bonding manufacturing process used in the construction of the skin lap joints may have contributed to the failure of a large portion of the fuselage. Failure to detect and repair fatigue cracks could lead to rapid decompression of the airplane and the inability to carry fail-safe loads.

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

One commenter requested that the 30-month compliance time for modifying lap joints in which corrosion not exceeding 10% of the material thickness is found be extended to 4 years after finding such corrosion, to allow the action to be completed during the aging fleet modification program (reference AD 90-06-06, Amendment 39-6490 (55 FR 8374, March 7, 1990)). The FAA does not concur with this request. The 4-year time proposed by the commenter is unduly long for a lap joint in which corrosion has been found. Further, the FAA does not anticipate any major disruption to an operator's aging fleet modification program because of this AD, since existing information indicates that finding corrosion in an upper lobe lap joint is not very likely, and in the absence of corrosion (or cracks) the modification is not required by this AD. If particular cases arise which are an undue burden to an operator, these could be addressed with appropriate alternate means of compliance, as provided by paragrpah H. of the final rule.

One commenter stated that the existing non-destructive test (NDT) procedures proposed for measuring material lost to corrosion are not accurate enough to measure corrosion damage of less than 10%. This commenter's experience indicated that variations in the lap joint bond thickness, the fuselage skin thickness and the skin surface finish can cause up to a 10% apparent loss of thickness which is not attributable to corrosion. The commenter objected to scheduling the lap joint modification along the complete panel width on the basis of such an inaccurate measurement. The commenter did not suggest an alternative inspection method, however. The FAA does not concur. The proposed method is considered accurate enough, by not only the FAA, but the airplane manufacturer and other Model 747 operators, as well. Further, it is to be noted that the means for detection of corrosion is visual inspection, and that the AD requires modification of all lap joints in which corrosion is detected; the material thickness measurement provides a means of deferring the modification, provided the thickness loss can be shown to be less than 10%. The FAA will consider approving an alternate means of compliance for this method of thickness measurement when submitted as prescribed in paragraph H. of the final rule.

The ATA requested that the 7-day deadline for the submission of a written report to the Seattle Aircraft Certification Office following the detection of cracks or corrosion be lengthened to 14 days because of the difficulty this time constraint places on operators. The FAA concurs that the extension is justified and will not compromise safety. The final rule has been revised accordingly.

One commenter requested that alternate methods of paint removal be allowed by using the terminology "approved procedure" in the AD rather than "approved chemical stripper." The FAA does not concur that this change is necessary, since paragraph H. of the final rule provides for alternate means of compliance when approved by the FAA.

One commenter requested that the inspection interval for the visual inspections required by paragraph A.1. be lengthened to 4,500 flight hours or 1,200 landings so the inspection can be accomplished during a scheduled "C" check. The FAA does not concur with this comment since no data was presented to demonstrate that safety can be maintained using the longer interval. In addition, paragraph A.2. provides an optional longer inspection interval if High Frequency Eddy Current inspections are performed instead of visual.

Paragraph H. of the final rule has been revised to specify the current procedures for submitting requests for approval of an alternate means of compliance.

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

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

There are approximately 195 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $440,000.

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 Administration amends 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:

Boeing: Applies to Model 747 series airplanes, production line numbers 001 through 200, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent depressurization resulting from cracks and/or corrosion in the fuselage skins, accomplish the following:

A. Accomplish either paragraph A.1. or A.2., below:

1. Within 1,000 landings after the effective date of this AD, and thereafter at intervals not to exceed 1,000 landings (2,000 landings from body station (BS) 100 to BS 1480), conduct a detailed external visual inspection of the fuselage skin at the upper lobe skin lap joints for cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished or popped rivet heads, or lose fasteners) in accordance with Boeing Service Bulletin 747-53-2307, dated December 21, 1989. If cracking or corrosion is detected during the visual inspection, prior to further flight, conduct a high frequency eddy current (HFEC) inspection for cracks in the skin at the upper row of fasteners of the affected skin panel lap joint, in accordance with the above mentioned Boeing service bulletin.

2. Within 1,000 landings after the effective date of this AD, and thereafter at the intervals specified below, conduct the following inspections at the upper lobe skin lap joints in accordance with Boeing Service Bulletin 747-53-2307, dated December 21, 1989.

a. Conduct a detailed visual inspection for cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished fasteners, popped rivet heads, or loose fasteners) and repeat at intervals not to exceed 2,000 landings.

b. Conduct a HFEC inspection for cracks, in accordance with the above mentioned Boeing service bulletin, in the skin at the upper row of fasteners of the lap joints forward of BS 1000 and repeat at intervals not to exceed 4,000 landings.

c. Conduct a HFEC inspection for cracks, in accordance with the above mentioned Boeing service bulletin, in the skin at the upper row of fastener holes of the lap joints aft of BS 1480 and repeat at intervals not to exceed 6,000 landings.

B. Any cracks, or corrosion for which material loss exceeds 10% of the material thickness, which are detected during the inspections required by this AD must be repaired, prior to further flight, in accordance with Boeing Service Bulletin 747-53-2307, dated December 21, 1989. Terminating action, as described in the service bulletin, must be accomplished within 15 months after repair for the remainder of any skin panel lap joint in which cracks, or corrosion exceeding 10% of the material thickness, are found. Terminating action, as described in the service bulletin, must be accomplished within 30 months for any skin panel lap joint in which corrosion is found, but the corrosion does not exceed 10% of the material thickness, and no cracking is found; and HFEC inspection of the lap joint for cracks, as described in the service bulletin, must be accomplished at repetitive intervals of 500 landings until the termination action is completed.

C. Within 14 days after the detection of cracks or corrosion when conducting the inspections required by this AD, submit a written report of findings to the Manager, Seattle Aircraft Certification Office, ANM-100S, FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The report must contain the following information:

1. Serial number of the airplane inspected;
2. Total number of landings on the airplane inspected;
3. Number of landings since last inspected;
4. The location and dimensions of cracks and/or corrosion detected.

D. To conduct the inspections required by this AD:

1. Remove the paint, using an approved chemical stripper; or
2. Ensure that each fastener head is clearly visible.

E. For the purposes of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 1.5 PSI.

F. The inspections required by this AD may be terminated for the affected lap joints on which the terminating action has been accomplished in accordance with Boeing Service Bulletin 747-53-2307, dated December 21, 1989.

G. 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.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

This amendment becomes effective August 20, 1990.

Issued in Seattle, Washington, on July 3, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16256 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-24-AD; Amdt. 39-6654]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires inspection and modification of the off-wing evacuation system. This amendment is prompted by numerous reports of failures of the evacuation system due to installation errors and equipment malfunctions. This condition, if not corrected, could result in unusuable escape slides and jeopardize successful emergency evacuation of the airplane.

EFFECTIVE DATE: August 20, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be

examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes, which requires inspection and modification of the emergency escape system, including the escape slides and slide/rafts, was published in the **Federal Register** on March 19, 1990 (55 FR 10074).

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

The first commenter supported the proposed rule.

The second commenter recommended that paragraph C. of the proposed rule, regarding modification of BFGoodrich escape slides, be separated from the other modification requirements into a separate rule because (1) the compliance time is different, (2) it relates to a component while the rest of the rule relates to airplane structure, and (3) it affects all doors while the rest of the rule affects the off-wing evacuation system. The FAA concurs. The FAA has considered these comments and other information related to the BFGoodrich slides and has determined that further rulemaking related specifically to the off-wing evacuation system is warranted; therefore, the final rule has been revised by deleting the BFGoodrich slide modification. The economic impact paragraph, below, has also been revised accordingly.

The third commenter expressed concern about the availability of parts from Boeing to accomplish the modifications within the proposed 20-month compliance time, and requested an additional 4 to 6 months. The FAA does not concur. Boeing advised the FAA that it has improved the availability of the parts required for the modification. Boeing reported that the majority of the parts are available now, and the last group of parts will be ready for shipment before the first of October 1990. Based on this improvement in parts availability, the FAA has determined that adequate parts will be available and the modification can be completed within the 20-month compliance time.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

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

There are approximately 283 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 114 airplanes of U.S. registry will be affected by this AD. The actions required by paragraph A. (compartment door closed proximity sensor installation) will take approximately 6 manhours per airplane to accomplish, and the average labor cost will be $40 per manhour; the estimated cost of required parts is $778 per airplane. Based on these figures, the total cost of the actions required by paragraph A. to U.S. operators is estimated to be $116,052.

The actions required by paragraph B. (escape system actuator replacement) will take approximately 6 manhours per airplane to accomplish, and the average labor cost will be $40 per manhour; the estimated cost of required parts is $1,628 per airplane. Based on these figures, the total cost of the actions required by paragraph A. to U.S. operators is estimated to be $212,952.

Based on the figures discussed above, the total cost of this AD to U.S. operators is estimated to be $329,004.

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 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:

Boeing: Applies to Model 767 series airplanes, identified in paragraphs A. and B., below, certificated in any category. Compliance required within the next 20 months after the effective date of this AD, unless previously accomplished.

To provide satisfactory reliability of the evacuation system, accomplish the following:

A. For airplanes identified in Boeing Service Bulletin 767-25-0120, dated December 14, 1989: Modify the off-wing evacuation system (compartment door closed proximity sensor installation) in accordance with that service bulletin.

B. For airplanes identified in Boeing Alert Service Bulletin 767-25A0131, Revision 1, dated November 9, 1989: Modify the off-wing evacuation system by replacing the escape system actuator in accordance with Boeing Alert Service Bulletin 767-25A0131, Revision 1, dated November 9, 1989, or Boeing Service Bulletin 767-25-0011, Revision 2, dated October 12, 1989 or Revision 3, dated December 14, 1989.

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 (ACO), FAA, Transport Airplanes Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant Principal Inspector (PMI). The PI will then forward comments or concurrence to the Seattle ACO.

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.

The amendment becomes effective August 20, 1990.

Issued in Seattle, Washington, on July 3, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16257 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 90-ASW-8]

Alteration of Restricted Area R-5104A Melrose, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the upper altitude of Restricted Area R-5104A Melrose, NM. The legal descriptions of R-5104A and R-5104B indicate that the altitudes of these two areas overlap at 18,000 feet MSL. In reality, this is not the case; therefore, this action changes the altitude of R-5104A to read "Surface to but not including 18,000 feet MSL." This action reflects the actual altitude of R-5104A and eliminates altitude overlap as previously described.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Rich Uhrich, Military Operations (ATM-400), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-7635.

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the upper altitude of R-5104A from "Surface to 18,000 feet MSL" to "Surface to but not including 18,000 feet MSL." The current legal descriptions of R-5104A and R-5104B indicate that the two areas overlap at 18,000 feeet MSL. This is not the case and this action changes the legal description of R-5104A to accurately reflect the actual upper altitude of the restricted area. Because this action is an administrative correction of the legal description, does not designate any additional restricted airspace, and is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.51 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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, 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 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 7 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.51 [Amended]

2. Section 73.51 is amended as follows:

R-5104A Melrose, NM [Amended]

By removing the present designated altitudes and substituting the following:

Designated altitudes. Surface to but not including 18,000 feet MSL.

Issued in Washington, DC, on June 20, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-16258 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702, 703, 704 and 718, 722, 725, 726, 727

RIN 1215-AA51

Claims; Subchapter A—Longshore and Harbor Workers' Compensation Act and Related Statutes and Subchapter B—Claims for Benefits Under Part C of Title IV of the Federal Coal Mine Health and Safety Act, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of final rule.

SUMMARY: The Department of Labor's Office of Workers' Compensation Programs has changed the title of the district office heads in the Division of Longshore and Harbor Workers' Compensation (DLHWC) and the Division of Coal Mine Workers' Compensation (DCMWC). They were previously known as deputy commissioner and are now called district director. This change will ensure administrative uniformity within the three Employment Standards Administration divisions, including the workers' compensation programs administered by the Office of Workers' Compensation Programs (OWCP). It is effective immediately, since it represents a purely administrative change. It will have no effect on the authority of the office heads; the change is in name only and the district director has the same authority to adjudicate cases and perform all other functions as did the deputy commissoner.

EFFECTIVE DATE: July 12, 1990.

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, room S-3524, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC, 20210; Telephone (202) 523-7503.

SUPPLEMENTARY INFORMATION: The Office of Workers' Compensation Programs (OWCP) administers various workers' compensation programs, including the Federal Employees' Compensation Act (FECA, 5 U.S.C. 8101, *et seq.*) the Longshore and Harbor Workers' Compensation Act (LHWCA, 33 U.S.C. 901, *et seq.*); and Title IV of the Federal Mine Safety and Health Act, as amended (the Black Lung Benefits Act, 30 U.S.C. 901, *et seq.*). The initial adjudication of claims under each program takes place in district offices

which are located throughout the country. The individuals who manage the district offices for the Longshore Division and for the Black Lung Division of OWCP have been titled deputy commissioner (or, as explained below, assistant deputy commissioner) consistent with the language in section 39 and 40 of the Longshore and Harbor Workers' Compensation Act which is applicable in both programs; hence the term deputy commissioner is used in both. OWCP now proposes to change the official title from deputy commissioner to district director.

A review of the history of the programs shows that the title deputy commissioner was used in the legislation which established the OWCP's predecessor agency, the U.S. Employees' Compensation Commission. The adjudicators of the Commission were titled deputy commissioners.

The administering agency later became the Bureau of Employees' Compensation (see Reorganization Plan No. 2 of 1946 (3 CFR 1943–49 Comp., p. 1046; 60 Stat 1095, effective July 16)), and the U.S. Employees' Compensation Commission was abolished. Finally, the Office of Workers' Compensation Programs was formed and absorbed the Bureau of Employees' Compensation. Throughout these administrative changes, however, the title for the head of the adjudication office remained deputy commissioner. This title was also used in the Division of Federal Employees' Compensation (DFEC) until 1987.

In 1988, the Employment Standards Administration changed the title of the office managers in each of its divisions (the Wage and Hour Division, the Office of Federal Contract Compliance Programs and OWCP) to district director in an effort to bring administrative uniformity within the agency. See OMAP notice 89–73. While the change was also made in OWCP's Longshore and Black Lung Divisions, the Change was effective for internal administrative purposes only, since the statutes on which those programs are based contain the title deputy commissioner. In order to assure that there is no confusion as to the authority of the office head to continue to perform the adjudicatory functions delegated to the position under the statutes, routine use of the title district director has awaited this publication.

While the term deputy commissioner may have been appropriate to use when there was a commission, the Director of OWCP recognizes that the title "deputy commissioner" has been an anachronism since the Employees' Compensation Commission was abolished in 1946. The title "district director" more accurately reflects the role now played in the district office by its head, who in addition to adjudicatory functions, is responsible for various management functions. Accordingly, the title was changed for the FEC Division in 1987. There, the change could be made without notice similar to this because it was not used in the enabling legislation.

As noted earlier, the district director title is used not just in OWCP, but throughout the Employment Standards Administration, of which OWCP is a part. The organizational structure for the Department includes ten regional offices. Each of ESA's three major programs is headed in the region by a regional director (RD), while the head of the district offices (of which there may be several within each region) for each of the programs is district director.

Although the DLHWC and DCMWC district office heads are titled district director for internal administrative purposes, the deputy commissioner title is still used by many offices for issuing orders and other official acts authorized by the statutes because the title is used in the legislation. By this publication, the Department extends notice to the relevant communities that the deputy commissioner title will no longer be used for any purpose and that it is replaced by the title district director.

The reader should also note that in some regions, the RD for OWCP has assumed the title of Deputy Commissioner and the individuals who head the Longshore and/or Black Lung Division offices are titled Assistant Deputy Commissioner. In those situations, the changes contemplated in this rule would mean that the Assistant Deputy Commissioner would assume the title District Director, while the RD would forego the use of the title Deputy Commissioner. The lines of authority which now exist would, however, remain unchanged. Thus, if the RD acted as the deputy commissioner and issued orders under that title, the authority to do so would remain, but would be issued under the title regional director. While the means of changing the title are different for the Longshore and Black Lung programs than for the DFEC, the reasons for the change in these two programs remain the same—to provide consistency among the various OWCP offices and to better reflect in the title the functions of the office. The change in title reflects the fact that there has been no commission since 1946, making the term deputy commissioner an anachronism of almost 45 years. It also reflects the shift in emphasis in the position's role since the title was first applied. This final rule substitutes the term district director for deputy commissioner wherever it appears in the regulations. Internally, procedure manuals, bulletins, forms and other public material will be updated to reflect this change. In no event, however, should this change be considered in any way to reflect on the authority of or affect the delegation of authority to the office. The delegation of authority remains unaltered, even in those regional offices where the RD has assumed the deputy commissioner title.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(A), that public comment on this amendment to the regulations is not required because the change is purely an administrative title change, with no effect on the function or substance of the position.

The Department has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. Therefore, this amendment shall be effective immediately. See 5 U.S.C. 553(d)(3). This finding is made because the change represents a purely administrative change and will have no effect on the function of the office or the services provided by OWCP to its public.

Classification—Executive Order 12291

The Department of Labor does not believe that this regulatory proposal constitutes a "major rule" under Executive Order 12291, as it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

None.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(c)). The regulation applies

solely to an administrative title and therefore will have no impact on individuals; no additional burdens are being imposed on small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subjects

20 CFR Part 701

Longshoremen, Workers' compensation.

20 CFR Parts 702 and 704

Administrative practice and procedure, Claims, Insurance, Longshoremen, and Workers' compensation.

20 CFR Part 703

Insurance, Longshoremen, Workers' compensation.

20 CFR Parts 718, 722, 725, 726, and 727

Black lung benefits, Lung disease, Miners, Mines, Workers' compensation, X-rays.

Accordingly, for the reasons set out in the preamble, title 20 CFR parts 701, 702, 703, 704, 718, 722, 725, 726, and 727 are amended as set forth below.

Subchapter A—Longshore and Harbor Workers' Compensation Act and Related Statutes

1. The citation of authorities for parts 701, 702, 703, and 704 are revised to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 83 U.S.C. 939; 36 D.C. Code 501 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C. 1331; 5 U.S.C. 8171, et seq.; Secretary's Order 7–87, 52 FR 48466; Employment Standards Order No. 90–02.

PART 701—GENERAL; ADMINISTERING AGENCY; DEFINITION AND USE OF TERMS

2. Section 701.201 is revised to read as follows:

§ 701.201 Establishment of Office of Workers' Compensation Programs.

The Assistant Secretary of Labor for Employment Standards, by authority vested in him or her by the Secretary of Labor in Secretary's Order No. 7–87 (52 FR 48466), established in the Employment Standards Administration (ESA) an Office of Workers' Compensation Programs (OWCP). The Assistant Secretary further designated as the head thereof a Director, who shall administer the programs assigned to that office by the Assistant Secretary.

3. Section 701.202 is revised to read as follows:

§ 701.202 Transfer of functions.

Pursuant to the authority vested in him or her by the Secretary of Labor, the Assistant Secretary for Employment Standards transferred from the Bureau of Employees' Compensation to the Office of Workers' Compensation Programs all functions of the Department of Labor with respect to the administration of benefits programs under the following statutes:

(a) The Longshore and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 et seq.;

(b) Defense Base Act, 42 U.S.C. 1651 et seq.;

(c) District of Columbia Workmen's Compensation Act, 36 D.C. Code 501 et seq.;

(d) Outer Continental Shelf Lands Act, 43 U.S.C. 1331;

(e) Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171 et seq.;

(f) Title IV of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 901 et seq.

4. Section 701.301 is amended by revising paragraph (a)(7) to read as follows:

§ 701.301 Definitions and use of terms.

(a) * * *

(7) *District Director* means a person appointed as provided in sections 39 and 40 of the LHWCA or his or her designee, authorized by the Director to perform functions with respect to the processing and determination of claims for compensation under such Act and its extensions as provided therein and under this subchapter. These regulations substitute this term for the term "Deputy Commissioner" which is used in the statute. This substitution is for administrative purposes only and in no way affects the power or authority of the position as established in the statute.

* * * * *

PART 702—[AMENDED]

5. Part 702 is amended by adding a new § 702.105 which reads as follows:

§ 702.105 Use of the title District Director in place of Deputy Commissioner.

Wherever the statute refers to Deputy Commissioner, these regulations have substituted the term District Director. The substitution is purely an administrative one, and in no way effects the authority of or the powers granted and responsibilities imposed by the statute on that position.

PART 702—[AMENDED]

6. In part 702 all references to "deputy commissioner" throughout part 702 are revised to read "district director."

PART 702—[AMENDED]

7. In part 702, remove the words "Deputy Under Secretary" and add, in their place, the words "Assistant Secretary for Employment Standards" in the following places:

(a) Section 702.433 (e) and (f); and

(b) Section 702.434 (a), (b) and (c).

PART 703—INSURANCE REGULATIONS

8. In part 703 all references to "deputy commissioner" throughout part 703 are revised to read "district director."

PART 704—SPECIAL PROVISIONS FOR LHWCA EXTENSIONS

9. In part 704 all references to "deputy commissioner" throughout part 704 are revised to read "district director."

Subchapter B—Federal Coal Mine Health and Safety Act of 1969, as Amended

1. The citations of authorities for parts 718, 722, 725, 726, and 727 are revised to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq., Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

PART 718—STANDARDS FOR DETERMINING COAL MINER'S TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

2. In part 718 all references to "deputy commissioner" throughout part 718 are revised to read "district director."

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

3. Section 725.101 is amended by revising paragraph (a)(11) to read as follows:

§ 725.101 Definitions and use of terms.

(a) * * *

(11) "District Director" means a person appointed as provided in sections 39 and 40 of the LHWCA, or his or her designee, who is authorized to develop and adjudicate claims as provided in this subchapter (see § 725.350). These regulations substitute

this term for the term Deputy Commissioner which is used in the statute. This substitution is for administrative purposes only and in no way affects the power or authority of the position as established in the statute.

* * * * *

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

4. In part 726 all references to "deputy commissioner" throughout are revised to read "district director."

PART 727—REVIEW OF PENDING AND DENIED CLAIMS UNDER THE BLACK LUNG BENEFITS REFORM ACT OF 1977

5. In part 727 all references to "deputy commissioner" throughout are revised to read "district director."

Signed at Washington, DC, this 31st day of May, 1990.

Laurence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 90-15508 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-90-1394; FR-2502-F-04]

RIN 2502-AE56

Section 8 Certificate Program—Project-Based Assistance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD regulations that permit a Public Housing Agency (PHA) to attach section 8 Certificate Program assistance to newly constructed or rehabilitated units. The rule clarifies that the PHA's advertisement to announce that it will accept owner applications for assistance must be published once a week for three consecutive weeks. The current rule implied that the advertisement had to be published each day for 30 days. The revision should be less burdensome to PHAs, while still providing public notice of the availability of this assistance.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-0720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-3938. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0388.

Public reporting burden for each collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule reduces the number of times a PHA must publish an advertisement that funds are available to be project-based. This revision, however, does not affect the Department's estimate of the public reporting burden for the PHA's written unit selection policy. Information on the burden hours for these requirements is provided as follows: Number of responses, 200; hours per response, 5; total burden hours 1000.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

On March 12, 1990, the Department published an interim rule revising 24 CFR part 882, subpart G, to permit a Public Housing Agency (PHA) to attach section 8 Certificate Program assistance to newly constructed units. The rule also revised certain provisions of subpart G that also applied to such assistance when it is attached to rehabilitated units. The Department received 18 public comments in response to that interim rule, and is currently developing a final rule which takes into consideration these comments.

One subject of public comment, however, is of immediate concern. Several commenters objected to the provision in § 882.720(b) requiring a PHA to advertise in a newspaper of general circulation that it is accepting applications for project-based assistance. The advertisement must run for a minimum of 30 days. The commenters claimed that the 30-day publication requirement was unnecessarily expensive. The Department agrees, and is revising the § 882.720(b)(1) to require that the advertisement run once a week for three consecutive weeks. The rule also makes clear that the deadline for applications must be at least 30 days after the date the advertisement is last published.

E. Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR, Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with provisions of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule makes less burdensome the requirement that PHAs advertise the availability of project-based assistance, which should be beneficial to all PHAs regardless of size.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule simply alters the advertising requirements that PHAs

must follow when inviting applications for project-based assistance. The rule makes these requirements less burdensome.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because the rule concerns only the advertising requirements that PHAs must follow when inviting applications for project-based assistance. It does not affect the terms and conditions under which a family may qualify for assistance under the Certificate Program. The Certificate Program, itself, is a benefit to families because it assists eligible families to, afford decent, safe, and sanitary housing.

This rule was listed as Sequence Number 1169 in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226, 16246), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (section 8).

List of Subjects in 24 CFR Part 882

Grant programs—Housing and community development; Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR part 882 as follows:

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

1. The authority citation for part 882 is revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 882.720, paragraph (b)(1) is revised to read as follows:

§ 882.720 PHA unit selection policy.

* * * * *

(b) * * *

(1) The PHA's selection policy must provide that the PHA will advertise in a newspaper of general circulation that the PHA will accept applications for assistance under this subpart G for specific projects. The advertisement may not be published until after the later of HUD authorization to implement a project-based program or ACC execution. The advertisement must: be published once a week for three consecutive weeks; specify an application deadline of at least 30 days after the date the advertisement is last published; specify the number of units the PHA estimates it will be able to assist under the funding the PHA is making available for this purpose; and state that only applications submitted in response to the advertisement will be considered.

* * * * *

(Approved by the Office of Management and Budget under control number 2502-0388)

Dated: July 2, 1990.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-16184 Filed 7-11-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8305]

RIN 1545-AO68

Treaty-Based Return Positions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations that amend final regulations previously issued on March 14, 1990, that relate to the requirement that any taxpayer who takes a position that a treaty of the United States overrules, or otherwise modifies, an internal revenue law of the United States shall disclose such position. These final regulations are necessary to provide additional guidance needed to implement section 6114 of the Internal Revenue Code.

DATES: These regulations are effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: David Bergkuist of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R: (INTL-292-90)) (202-566-6442, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545-1126. The estimated annual burden per respondent to comply with § 301.6114-1 varies from ½ hour to 3 hours depending on individual circumstances, with an average estimate of one hour.

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

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 301) under section 6114 of the Internal Revenue Code that were published in the **Federal Register** (55 FR 9438) on March 14, 1990. These amendments respond to comments received after the final regulations under section 6114 were published and provide further guidance with respect to section 6114. These amendments are discussed below.

Explanation of Provisions

Several commentators stated that the language of § 301.6114-1(b)(4)(ii) was unclear. In response to these comments, § 301.6114-1(b)(4)(ii) has been revised to narrow specifically required reporting under section 6114 to certain payments received from related persons. In addition, paragraph (b)(4)(ii)(B)(*4*) includes, as a foreign person who must report under section 6114, a foreign related party as defined in section 6038A(c)(2).

In response to a comment, § 301.6114-1(b)(5) and (c)(1) has been revised to clarity that income derived from certain independent personal services is subject to reporting under section 6114.

In response to comments, § 301.6114-1(c)(7) has been revised to limit to foreign insurers and reinsurers only the class of persons required to report with respect to payments of insurance premiums described in section 4371.

Thus, insureds and insurance brokers are not required to so report. Under the final regulations previously issued, insureds, insurance brokers, and foreign insurers or reinsurers were required to report, unless an exception to reporting applied. Information provided by commentators indicated that this information could be provided most efficiently by foreign insurers or reinsurers. Language has been added to § 301.6114-1(d) to indicate that reporting with respect to payments of premiums must be made for each of three specified categories, as described in section 4371(a), and that aggregation of payments within each category is permitted. Also, for reports first due before May 1, 1991, the report may disclose, for the previous calendar year, for each of the three categories either the total amount of premiums derived in U.S. dollars (even if a portion of the premiums relate to risks that are not U.S. situs) or the total amount of premiums derived with respect to U.S. situs risks. For reports first due after April 30, 1991, the report must disclose, for the previous calendar year, for each of the three categories the total amount of premiums that is derived with respect to U.S. situs risks. In each case, as is the general rule, reasonable estimates of the amounts required to be disclosed will satisfy these reporting requirements. Foreign insurers and reinsurers must report for calendar years 1988 and 1989 no later than August 15, 1990.

Language has been added to § 301.6114-1(c) to provide a rule, applicable only to individuals, that reporting of a treaty-based return position is not required for any payments received by the individual during the course of his taxable year if such payments, in total, do not exceed $10,000.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the previous regulations under section 6114 was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of amendments to the regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—REGULATIONS ON PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 301.6114-1(b)(4)(ii), that portion of paragraph (b)(5) that precedes paragraph (b)(5)(i), and paragraph (c)(1) and (c)(7)(i) and (ii) are revised. In addition, one sentence is added at the beginning of that portion of paragraph (c) that follows paragraph (c)(7)(iii), four sentences are added at the end of that portion of paragraph (d) that follows paragraph (d)(4)(v), and one sentence is added at the end of paragraph (e), all to read as follows:

§ 301.6114-1 Treaty-based return positions.

* * * * *

(b) *Reporting specifically required.*

* * * * *

(4) * * *

(ii) A treaty exempts from tax, or reduces the rate of tax on, fixed or determinable annual or periodical income subject to withholding under sections 1441 or 1442 that a foreign person receives from a U.S. person, but only if—

(A) the payment is not properly reported to the Service on a Form 1042S; and

(B) The foreign person is any of the following:

(1) A controlled foreign corporation (as defined in section 957) in which the U.S. person is a U.S. shareholder within the meaning of section 951(b);

(2) A foreign corporation that is controlled within the meaning of section 6038 by the U.S. person;

(3) A foreign shareholder of the U.S. person that, in the case of tax years beginning on or before July 10, 1989, is controlled within the meaning of section 6038A by the foreign shareholder, or, in the case of tax years beginning after July 10, 1989, is 25-percent owned within the meaning of section 6038A by the foreign shareholder; or

(4) With respect to payments made after October 10, 1990, a foreign related party, as defined in section 6038A (c)(2)(B), the the U.S. person; or

(5) That, notwithstanding paragraph (c)(1) of this section, under a treaty—

* * * * *

(c) *Reporting requirement waived.*

* * * * *

(1) Except as provided in paragraph (b) (4) or (5) of this section, that a treaty has reduced the rate of withholding tax otherwise applicable to a particular type of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442, such as dividends, interest, rents, or royalties;

* * * * *

(7) * * *

(i) The person claiming such treaty-based return position is an insured, as defined in section 4372(d) (without the limitation therein referring to section 4371(1)), or a U.S. or foreign broker of insurance risks,

(ii) Reporting under this section that would otherwise be required to be made by foreign insurers or reinsurers on a Form 720 on a quarterly basis is made on an annual basis on a Form 720 by a date no later than the date on which the return is due for the first quarter after the end of the calendar year, or

* * * * *

Reporting is waived for an individual where payments or income items otherwise reportable under this section received by the individual during the course of the taxable year do not exceed $10,000 in the aggregate. * * *

* * * * *

(d) *Information to be reported.*

* * * * *

(4) * * *

(v) * * *

* * * For purposes of reporting by foreign insurers or reinsurers, as described in paragraph (c)(7)(ii) of this section, such reporting must separately set forth premiums paid with respect to: casualty insurance and indemnity bonds (subject to section 4371(1)); life insurance, sickness and accident policies, and annuity contracts (subject

to section 4371(2)); and reinsurance (subject to section 4371(3)).

All premiums paid with respect to each of these three categories may be treated as a single payment or income item within the category. For reports first due before May 1, 1991, the report may disclose, for each of the three categories, the total amount of premiums derived by the foreign insurer or reinsurer in U.S. dollars (even if a portion of these premiums relate to risks that are not U.S. situs). Reasonable estimates of the amounts required to be disclosed will satisfy these reporting requirements.

(e) *Effective date.*

* * * * *

* * * Foreign insurers and reinsurers subject to reporting described in paragraph (c)(7)(ii) of this section must so report for calendar years 1988 and 1989 no later than August 15, 1990.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: June 14, 1990.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90-16182 Filed 7-11-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Attorney General Order No. 1427-90]

Hate Crime Statistics Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule will codify in the Code of Federal Regulations the formal delegation to the Federal Bureau of Investigation of the authority to enforce the Hate Crime Statistics Act. The FBI has been chosen to perform this function because of its expertise in compiling criminal statistics. The delegation is being codified to ensure public accountability. Codification will provide a permanent guide to the public on where in the Department to report information on hate crimes or seek statistics and guidance.

EFFECTIVE DATE: This rule is effective July 3, 1990.

FOR FURTHER INFORMATION CONTACT: For further information, contact Harper Wilson, FBI (202) 324-2614.

SUPPLEMENTARY INFORMATION: The recently enacted Hate Crime Statistics Act authorizes the Department of Justice to monitor the number of hate crimes that occur in the United States. In order to do so efficiently, the Attorney General has authorized the FBI to act as the central repository of such data and carry out the Department's functions under the Act. This rule will amend the Code of Federal Regulations in order to provide a public record of this delegation.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of EO 12991, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with EO 12612.

List of Subjects in 28 CFR Part 0

Administrative practice and procedure, Authority delegation.

Therefore, by virtue of the authority vested in me, including 28 U.S.C. 509, 510, and the Hate Crime Statistics Act, *to be codified at* 28 U.S.C. 534 *note*, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3521, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 873, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.85 is amended by adding a new paragraph (m) to read as follows:

§ 0.85 General functions.

* * * * *

(m) Carry out the Department's responsibilities under the Hate Crime Statistics Act.

Dated: July 3, 1990.

Dick Thornburgh,
Attorney General.

[FR Doc. 90-16267 Filed 7-11-90; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

California State Plan

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

ACTION: Final rule; level of federal enforcement.

SUMMARY: This notice announces the Occupational Safety and Health Administration's (OSHA) determination that the State occupational safety and health program approved under section 18 of the Occupational Safety and Health Act for the State of California has once again developed sufficiently to justify suspension of most concurrent Federal enforcement activity. On October 5, 1989, OSHA entered into an agreement with California whereby concurrent Federal enforcement authority would not be initiated with regard to most Federal occupational safety and health standards in issues covered by the State's plan. Among other areas as discussed in this notice, the agreement provides that Federal OSHA will continue to be responsible for enforcement in occupational safety and health issues not covered by the State plan and for Federal standards not yet promulgated by the State, and may reassume jurisdiction in other limited circumstances where the State is unable to fulfill its enforcement obligations. OSHA is hereby amending 29 CFR 1952.172 to reflect this level of enforcement authority.

EFFECTIVE DATE: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8184.

SUPPLEMENTARY INFORMATION:

Background

Part 1954 of title 29, Code of Federal Regulations, sets out procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for the evaluation and monitoring of State plans which have been approved under section 18(c) of the Act and 29 CFR part 1902. After initial approval, but prior to final approval, section 18(e) of the Act provides for a period of concurrent jurisdiction. Section 1954.3 of this chapter provides guidelines and procedures for the exercise of discretionary concurrent Federal enforcement authority during the period with regard to Federal standards in issues covered under an approved State plan. In determining the appropriate level of Federal enforcement, OSHA must consider the effectiveness of State enforcement, the coordinated utilization

of Federal and State resources throughout the Nation, and current worker protection needs in the State. If Federal monitoring shows that a State program has developed its program to a degree sufficient to justify suspension of duplicative Federal enforcement activity, U.S. Department of Labor regulations provide that OSHA, through its Regional Administrator, may enter into a procedural agreement with the State, usually referred to as an "operational status agreement," setting forth areas of Federal and State enforcement responsibility (29 CFR 1954.3(f)). Any finding of operational status, and any procedural agreement based upon such a finding must be approved by the Assistant Secretary. A State is determined to be operational under § 1954.3(b) of this chapter when it has enacted enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system of review of contested enforcement actions.

In general, operational status agreements provide that concurrent Federal enforcement authority will not be exercised as to safety and health issues covered by the plan. Federal OSHA retains responsibility for enforcement in occupational safety and health issues not covered by the State plan and for new Federal standards not yet promulgated by the State, and may reassume jurisdiction to assist the State in fulfilling its enforcement obligations under certain limited conditions. These agreements are a procedural allocation of enforcement responsibilities that do not divest OSHA of its Federal concurrent jurisdiction as a matter of statutory law. Statutory authority for concurrent Federal jurisdiction is terminated only after an affirmative determination under section 18(e) of the Act (final approval).

California State Plan

The California State occupational safety and health plan initially was approved by the Occupational Safety and Health Administration (OSHA) under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and 29 CFR part 1902 on April 24, 1973. On May 1, 1973, a notice was published in the **Federal Register** announcing the approval and adding subpart K describing the plan to 29 CFR part 1952. The approved plan provided coverage to all private sector and State and local government employees except some limited maritime employment, domestic household service, and employees of private contractors on Federal installations where the Federal agency claimed exclusive Federal jurisdiction and refused entry to the State.

On January 13, 1976, notice of California's original Operational Status Agreement was published in the **Federal Register** (41 FR 1904). The agreement suspended Federal enforcement authority in specific areas and set forth the scope of the exercise of Federal authority under section 18(e) of the Act in the State of California with respect to occupational safety and health standards promulgated under section 6 of the Act. It specified the conditions the State had met to become eligible for operational status such as providing standards promulgated under State law which are the same as Federal standards or at least as effective as Federal standards, enacting enabling legislation, providing a sufficient number of qualified personnel, and having a review and appeals system in operation in the State. The agreement also delineated continuing Federal responsibilities in the State in such areas as Federal government employment, private contractors on certain Federal installations, response to complaints filed with the Occupational Safety and Health Administration alleging discrimination under section 11(c) of the Act, certain maritime activities, enforcement of Federal permanent and temporary emergency standards until such time as the State shall have adopted equivalent standards, and employers manufacturing explosives under contract to the U.S. Department of Defense. An amendment to the 1976 Agreement was signed on April 30, 1979, which allowed Federal OSHA to further exercise concurrent Federal enforcement authority under specific conditions when necessary to provide worker protection.

On February 6, 1987, Governor George Deukmejian, in a letter to then Secretary of Labor William E. Brock, notified the U.S. Department of Labor of his intention to discontinue State funding for California's occupational safety and health program in the proviate sector and voluntarily withdraw the California State plan pursuant to 29 CFR 1955.3, effective June 30, 1987. (29 CFR 1955.3 provides that a State may at any time withdraw its plan by notifying the Assistant Secretary in writing setting forth the reasons for such withdrawal.) The Governor's letter stated that California would continue to cover public sector employees.

On February 23, 1987, Secretary Brock responded to Governor Deukmejian's letter stating that OSHA would take all the necessary steps possible to ensure worker protection by Federal OSHA in the State of California. Consequently, on June 10, 1987, a notice was published in the **Federal Register** (52 FR 21952) in which OSHA announced that it would resume the exercise of concurrent Federal safety and health authority in California as of July 1. Subsequently, noting the existence of various court challenges to the Governor's February 6 letter of intent as well as the ongoing budgetary process in the State legislature, OSHA took no action to officially terminate the State plan, although Cal/OSHA ceased private sector enforcement operations on July 1, 1987.

The June 10, 1987, notice announced that, under the terms of the April 1979 Operational Status Agreement, Federal OSHA would resume the exercise of its enforcement authority in private sector workplaces in California. On July 1, 1987, Federal OSHA began conducting inspections of private sector workplaces in the State, including inspections in response to employee complaints of hazardous working conditions, and issued citations and proposed penalties for violations of Federal standards and regulations as appropriate. Contests to such citations were heard by the Federal Occupational Safety and Health Review Commission. Federal authority continued to be exercised with regard to complaints alleging discrimination against private sector employees because of the exercise of any right afforded to the employee by the Act. Federal jurisdiction also remained in effect with respect to Federal government employees.

The State continued to regulate safety and health conditions in State and local government employment. The State also provided consultation services to employers, as California had indicated its intention to continue to provide such services to private sector employers under an existing separate agreement with OSHA under section 7(c)(1) of the Act. All complaints from private sector employees of hazardous working conditions or discrimination for exercising rights under the Act and all other inquiries with regard to occupational safety and health enforcement in the private sector after July 1, 1987, were directed by Cal/OSHA to the Federal OSHA Regional Office in San Francisco.

During this time and through October of 1988, a petition drive was underway for an initiative to restore the State's program, to be included on the November 8, 1988 California State ballot. In November 1988, California

voters passed Proposition 97, which added a section to the State Labor Code mandating California's implementation of a full State plan. On November 29, Governor Deukmejian wrote to then U.S. Secretary of Labor Ann McLaughlin indicating the State's intention to reestablish its full State plan. On December 19, Secretary McLaughlin acknowledged the Governor's letter and promised cooperation in the transition back to State enforcement.

To this end, on March 30, 1989, a Memorandum of Understanding (MOU) (subsequently amended on July 12, 1989) was signed by the State of California and Federal OSHA to facilitate the exercise of concurrent enforcement authority during the phased restoration of the State plan, with the goal of the suspension of Federal enforcement activity in the State and California's resumption of enforcement responsibility to be effective by October 1, 1989. Under the terms of the MOU, on May 1 Federal OSHA began to phaseout the exercise of its concurrent jurisdiction and the State began to resume enforcement of job safety and health rules in the private sector (i.e., investigating complaints and accidents, administering various permit, licensing, registration and notification requirements of private sector employers, conducting programmed inspections in specific industries). Federal OSHA continued to be responsible for regularly scheduled inspection activities, targeting specific hazardous industries and operations. In addition, Federal OSHA continued to enforce specific Federal standards which had not yet been adopted by Cal/OSHA or which provided a significantly greater level of worker protection than the corresponding Cal/OSHA standards.

On October 5, 1989, a new Operational Status Agreement was signed between the State of California and Federal OSHA in which the California Division of Occupational Safety and Health (Cal/OSHA) resumed full enforcement of job safety and health rules in both the private and public (State and local) sectors in the State, and Federal OSHA voluntarily suspended most enforcement activity. This agreement replaces that previously entered into between Federal OSHA and the State of California and ends shared enforcement responsibility with Federal OSHA as described in the March 30, 1989, Memorandum of Understanding as revised on July 12, 1989. The new Operational Status Agreement sets forth the scope of the exercise of Federal authority under section 18(e) of the Act in the State of California with respect to occupational safety and health standards promulgated under section 6 of the Act, by specifying areas of State responsibility, and delineating continuing Federal responsibilities in the State.

California was determined to have achieved operational status by:

a. Enactment of State enabling legislation which provides the necessary legal framework to bring State plan into conformity with the Act and 29 CFR part 1902. See sections 6300 through 6708 (Occupational Safety and Health) and 50 through 175 (Department of Industrial Relations) of the California State Labor Code, as amended by the passage of Proposition 97 in November 1989 (Labor Code sections 50.7 and 6303.5).

b. Promulgation of State standards comparable to (but often significantly different from) Federal standards in issues covered by the State plan, with the exception of some such as, Toxic and Hazardous Substances (Air Contaminants, 29 CFR 1910.1000), General Environmental Controls in Agriculture (Field Sanitation, 29 CFR 1928.110), and Hazardous Materials (Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120), which were promulgated by Federal OSHA during and subsequent to the period when Cal/OSHA's private sector activity was suspended.

c. Employment of a sufficient number of qualified personnel necessary for the enforcement of State standards (as of March 1, 1990, California had 119 Safety and 64 Health Compliance Officers conducting inspections).

d. Provision for administrative and/or judicial review of State citations and penalties by the California Occupational Safety and Health Appeals Board which resumed full operation on May 1, 1989.

In addition, the State has provided under its plan for:

a. Notification to employers and employees of their rights and responsibilities under the State plan through the development and required display of a State poster;

b. Occupational accident and illness recordkeeping and reporting by employers covered under the plan;

c. Response to complaints alleging job safety and health violations, and to complaints alleging discrimination under the State Act; and

d. Adequate protection of employer and employee rights.

Accordingly, notice is hereby given that the concurrent Federal enforcement authority will not be exercised with respect to issues covered under the State plan with the exception of: permanent and emergency temporary standards which the State has not adopted or amended in conformance with Federal standards actions and review findings (e.g., Toxic and Hazardous Substances (Air Contaminants, 29 CFR 1910.1000), General Environmental Controls in Agriculture (Field Sanitation, 29 CFR 1928.110), Hazardous Materials (Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120)). In addition, OSHA retains authority for: Federal government employment; all enforcement activity regarding private contractors on Federal installations where the Federal agency has claimed exclusive Federal jurisdiction, challenged State jurisdiction and/or refused entry; response to complaints filed with the Occupational Safety and Health Administration alleging discrimination under section 11(c) of the Act; certain specifically defined private-sector maritime activities as to which OSHA will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current and future, which are applicable to such employment. Federal OSHA also may reassume jurisdiction to assist the State in fulfilling its enforcement obligations under certain limited conditions.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

The purpose of the present rule is to amend subpart K—California, in 29 CFR part 1952, to give notice of the signing of an operational status agreement between Federal OSHA and California limiting the exercise of concurrent Federal enforcement activity. This agreement became effective on October 5, 1989, upon signature by the parties, and further public participation would be unnecessary.

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

In accordance with the terms of the operational status agreement, title 29, part 1952 is hereby amended as set forth below:

1. The authority citation for part 1952 continues to read as follows:

Authority: Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059) or 9-83 (48 FR 35736).

2. Section 1952.172 of part 1952, subpart K—California, is revised to read as follows:

§ 1952.172 Level of federal enforcement.

(a) Pursuant to §§ 1902.20(b)(1)(iii) and 1952.3 of this chapter, under which a revised agreement has been entered into between Frank Strasheim, OSHA Regional Administrator, and Ron Rinaldi, Director, California Department of Industrial Relations, effective October 5, 1989, and based on a determination that California is operational in the issues covered by the California occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR part 1910, 29 CFR part 1926, and 29 CFR part 1928, except as set forth below.

(b) The U.S. Department of Labor will continue to exercise authority, among other things, with regard to:

(1) Specific Federal standards which the State has not yet adopted or with respect to which the State has not amended its existing State standards when the Federal standard provides a significantly greater level of worker protection than the corresponding Cal/OSHA standard, enforcement of new permanent and temporary emergency Federal standards until such time as the State shall have adopted equivalent standards, and enforcement of unique and complex standards as determined by the Assistant Secretary.

(2) The following maritime activities:

(i) Longshore operations on vessels from the shore side of the means of access to said vehicles.

(ii) Marine vessels construction operations (from the means of access of the shore).

(iii) All afloat marine ship building and repair from the foot of the gangway.

(iv) All ship building and repair in graving docks or dry docks.

(v) All ship repairing done in marine railways or similar conveyances used to haul vessels out of the water.

(vi) All floating fuel operations.

(vii) All afloat dredging and pile driving and similar operations.

(viii) All diving from vessels afloat on the navigable waters.

(ix) All off-shore drilling rigs operating outside the 3-mile limit.

(3) Any hazard, industry, geographical area, operation or facility over which the State is unable to exercise jurisdiction fully or effectively.

(4) Private contractors on Federal installations where the Federal agency claims exclusive Federal jurisdiction, challenges State jurisdiction and/or refuses entry to the State; such Federal enforcement will continue at least until the jurisdictional question is resolved at the National level between OSHA and the cognizant Federal agency.

(5) Complaints filed with Federal OSHA alleging discrimination under section 11(c) of the OSH Act.

(6) Completion of Federal enforcement actions initiated prior to the effective date of the agreement.

(7) Situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry.

(8) Enforcement in situations where the State temporarily is unable to exercise its enforcement authority fully or effectively.

(c) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the California State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in California.

Signed at Washington, DC.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 90-16245 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 540

Nicaraguan Trade Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule, amendments.

SUMMARY: This final rule amends the Nicaraguan Trade Control Regulations, 31 CFR part 540 (the "Regulations"), to implement Executive Order 12707 of March 13, 1990 (55 FR 9707), which lifted United States sanctions against Nicaragua. That Executive Order revoked Executive Order 12513 of May 1, 1985, and terminated the national emergency declared therein with respect to Nicaragua. Executive Order 12707 and this rule clarify that sanctions against Nicaragua were lifted as of March 13, 1990, but that the Treasury Department's enforcement authority with respect to acts committed during the period of the emergency rermains in full effect.

EFFECTIVE DATE: 9:10 a.m. Eastern Standard Time, March 13, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 376-0408.

SUPPLEMENTARY INFORMATION: Executive Order 12707 of March 13, 1990, terminated the national emergency declared with respect to Nicaragua, and revoked Executive Order 12513 of May 1, 1985. Executive Order 12513 imposed four measures to deal with the national emergency: a prohibition on imports of Nicaraguan-origin goods and services; a prohibition on exports from the United States of goods to Nicaragua; a ban on Nicaraguan air carriers engaging in air transportation to or from points in the United States; and a ban on vessels of Nicaraguan registry entering into U.S. ports. Implementation of these prohibitions was delegated to the Treasury Department, which promulgated the Regulations to that end.

Consistent with Executive Order 12707, the Office of Foreign Assets Control is amending the Regulations to reflect their inapplicability to transactions occurring after 9:10 a.m. e.s.t., March 13, 1990. This amendment does not affect investigations pending as of the effective date, or rights or duties that matured or penalties that were incurred prior to the effective date.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 540

Administrative practice and procedure, Foreign trade, Nicaragua, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 540 is amended as follows:

Section 540.599 is added to subpart E, as follows:

§ 540.599 Lifting of sanctions.

(a) The prohibitions contained in §§ 540.204 through 540.209 of this part do not apply to any transaction occurring after 9:10 a.m. e.s.t., March 13, 1990.

(b) Nothing in this section affects any action taken or proceeding pending and not finally concluded or determined at, or any action or proceeding based on any act committed prior to, or any rights or duties that matured or penalties that were incurred prior to 9:10 a.m. e.s.t., March 13, 1990.

Dated: June 11, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 22, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-16249 Filed 7-9-90; 12:36 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286h

[DoD Directive 5200.xx]

Release of Acquisition Related Information

AGENCY: Office of the Secretary, DOD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes the policy of the Department of Defense to make the maximum amount of acquisition-related information available to the public and to respond promptly to specific requests from the public.

DATES: Effective July 12, 1990. Written comments on this interim rule must be received by August 13, 1990.

ADDRESSES: Forward comments to the Office of the Deputy Assistant Secretary of Defense for Procurement, Contract Policy and Administration, The Pentagon, room 3C838, Washington, DC 20301-8000.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Slavsky, telephone (202) 697-8335.

SUPPLEMENTARY INFORMATION: Events experienced over the last few years indicate a need for the Department of Defense to issue a uniform policy on the "release of acquisition-related information." This need was also highlighted during a hearing before the Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, on February 24, 1989. In addition section 822 of Public Law 101-189, National Defense Authorization Act, 1990, requires the Department of Defense to prescribe a single uniform regulation for dissemination of, and access to, acquisition information. The final rule will be published in title 32 of the Code of Federal Regulations and incorporated as an appendix to the Defense Federal Acquisition Regulation Supplement.

List of Subjects in 32 CFR Part 286h

Freedom of information, Government procurement.

Accordingly, title 32, subchapter P, is proposed to be amended to add part 286h to read as follows:

PART 286H—RELEASE OF ACQUISITION-RELATED INFORMATION

Sec.
286h.1 Purpose.
286h.2 Applicability and scope.
286h.3 Policy.
286h.4 Responsibilities.

Authority: Public Law 101-189.

§ 286h.1 Purpose.

This part sets forth Department of Defense (DoD) policy for the release of acquisition-related information.

§ 286h.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman, Joint Chiefs of Staff and Joint Staff (CJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) This part is issued pursuant to section 822 of Public Law 101-189, which requires the Department of Defense to prescribe a single uniform regulation for dissemination of, and access to, acquisition information.

§ 286h.3 Policy.

(a) *General.* It is the Department of Defense's policy to make the maximum amount of acquisition-related information available to the public, and to respond promptly to specific requests from the public for such information, except for the information identified in paragraph (b) of this section, for which release is restricted.

(b) *Information for Which Release is Restricted.* The information identified below may be released only as set forth herein.

(1) *Release Subject to Statutory Restrictions.* This information may be released only in accordance with the applicable statutory requirements. Once the statutory requirements have been satisfied, the information may be released unless it falls within one of the categories described in the following paragraphs, in which case the policies governing release of information within those categories shall be followed.

(2) *Classified Information.* (i) Any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or under the control of the United States Government, and which, for national security purposes, must be protected against unauthorized disclosure and is so designated or marked with the appropriate classification.

(ii) Release, access, and dissemination of classified information shall be made through existing security channels in accordance with DoD 5220.22-R;[1] DoD 5220.22-M;[2] and DoD 5200.1-R,[3] which are implementing publications for safeguarding classified information release, access, and dissemination to United States and foreign concerns.

(3) *Contractor Bid or Proposal Information.* (i) This is information prepared by or on behalf of an offeror and submitted to the Government as a part of or in support of the offeror's bid or proposal to enter into a contract with the Government, the disclosure of which would place the offeror at a competitive disadvantage or jeopardize the integrity or the successful completion of the procurement. Contractor bid or proposal information includes cost or pricing data, profit data, overhead and direct labor rates, and manufacturing processes and techniques. Contractor bid or proposal information does not include information that is available to the public.

(ii) (A) *Sealed Bids.* (1) Prior to bid opening, no release or disclosure of contractor bid information shall be made to anyone other than those who are involved in the evaluation of the bids or to other individuals authorized by the Head of the DoD Component, or his or her designee.

(2) After contract award, contractor bid information may be released or disclosed by those authorized by the Head of the DoD Component, or his or her designee, to make such release or disclosure, if the information to be released or disclosed is not subject to a restrictive legend authorized by Federal Acquisition Regulation (FAR) 52.215-12 or release is not otherwise restricted by law.

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[1] Copies may be obtained, at cost, from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies may be obtained, at cost, from the Government Printing Office, ATTN: Superintendent of Documents, Washington, DC 20402.

[3] See footnote 1 to § 286h.3(b)(2)(ii).

(3) *Negotiated Procurements.* Prior to contract award, no release or disclosure of contractor proposal information shall be made to anyone other than those who are involved in the evaluation of the proposals or the source selection or to other individuals authorized by the Head of the DoD Component, or his or her designee. DoD Components shall adopt procedures in accordance with FAR 15.413 to protect against release or disclosure of contractor proposal information. After contract award, contractor proposal information may be released or disclosed by those authorized by the Head of the DoD Component, or his or her designee, to make such release or disclosure, if the information to be released or disclosed is not subject to a restrictive legend authorized by FAR 15.509 or FAR 52.215-12 or release is not otherwise restricted by law.

(4) *Source Selection Information.* (i) This is information prepared or developed for use by the Government in connection with the selection of a bid or proposal for the award of a contract. Only the following information, including copies or extracts thereof, is source selection information:

(A) Bid prices submitted in response to a Government solicitation for sealed bids or lists of such bid prices (applicable prior to bid opening only);

(B) Proposed costs or prices submitted in response to a Government solicitation prior to award of the contract, a list of proposed costs or prices;

(C) Source selection plans;

(D) Technical evaluation plans;

(E) Technical evaluations of competing proposals;

(F) Cost or price evaluations of competing proposals;

(G) Competitive range determinations;

(H) Rankings of competitors;

(I) The reports and evaluations or source selection boards, advisory councils, or the source selection authority (SSA); and

(J) Any other information which:

(1) If disclosed, would give an offeror a competitive advantage or jeopardize the integrity or successful completion of the procurement; and

(2) Is marked with the legend "Source Selection Information."

(ii) *Release of or Access to Source Selection Information (SSI)—(A) Access to SSI.* The SSA (including the contracting officer when the contracting officer is the SSA) shall restrict access to source selection information to only those Government employees directly involved in the source selection process or to those individuals who have been authorized by the Head of the DoD Component, or his or her designee, to have access to such information. If the contracting officer or the SSA have not been appointed, the Head of the DoD Component, or his or her designee, shall assure access to such information is properly restricted. Employees supervising or managing employees directly involved in the source selection process are not themselves by virtue of their positions directly involved in the source selection process.

(B) *Release of SSI.—(1) Prior to Contract Award.* Source selection information shall not be released prior to contract award unless the Head of the DoD Component, or his or her designee, determines that release is in the public interest and would not jeopardize the integrity or successful completion of the procurement. The information to be released shall only be released by the contracting officer. The contracting officer shall make release in a manner that does not provide any potential offeror with a competitive advantage.

(2) *After Contract Award.* The need to protect source selection information generally ends with contract award. The contracting officer may release, or authorize the release of, any source selection information related to that contract award except: Source selection information specifically developed or prepared for use with more than one solicitation when there is a continuing need to protect that information; unless otherwise permitted by law, source selection information containing contractor data or extracts thereof which are protected by law; information which would reveal the relative merits or technical standing of the competitors or the evaluation scoring; and any pre-decisional or other information not subject to release under the Freedom of Information Act. Debriefings to unsuccessful offerors shall be conducted in accordance with FAR 15.1003 and Defense Federal Acquisition Regulation Supplement (DFARS) 215.1003(a).

(5) *Planning, Programming, and Budgetary Information.* (i) Planning, Programming, and Budgeting System (PPBS) documents and supporting data bases are not to be disclosed outside the Department of Defense (DoD) and other governmental agencies directly involved in the defense planning and resource allocation process (e.g., the Office of Management and Budget). PPBS papers and associated data set forth the details of proposed programs and plans. Access to this material by those not directly involved in the PPBS process undermines the confidentiality necessary for the Secretary and Deputy Secretary to obtain candid advice on the content of the defense program. Also, access to PPBS information by private firms seeking contracts with the Department may pose ethical, even criminal, problems for those involved and reduce effective competition in the contract awards process.

(ii)(A) Requests for exceptions to this limitation may be granted on a case-by-case basis to meet compelling needs, after coordination with the Office of General Counsel, by the Head of the OSD office responsible for the PPBS phase to which the document or data base pertains; the Under Secretary of Defense (Policy) for the planning phase; the Assistant Secretary of Defense (Program Analysis and Evaluation) for programming; and the Comptroller, DoD for budgeting. A list of the current major documents and data bases for each PPBS phase is in paragraph (B)(5)(11)(C) of this section; all other PPBS materials are also controlled under this policy.

(B) Disclosure of PPBS information to Congress and the General Accounting Office (GAO) is covered by statute and other procedures.

(C) Major PPBS Documents and Data Bases by Phase.

Planning Phase

(1) Defense Planning Guidance.

Programming Phase

(2) Fiscal Guidance (when separate from Defense Planning Guidance);

(3) Program Objective Memoranda (POM);

(4) POM Defense Program (formerly FYDP) documents (POM Defense Program, Procurement Annex, RDT&E Annex);

(5) Program Review Proposals;

(6) Issue Papers (aka, Major Issue Papers, Tier II Issue Papers, Cover Briefs);

(7) Proposed Military Department Program Reductions (or Program Offsets);

(8) Tentative Issue Decision Memoranda;

(9) Program Decision Memoranda;

Budgeting Phase

(10) Defense Program (formerly FYDP) documents for September and President's Budget Estimate submissions including Defense Program Procurement, RDT&E and Construction Annexes;

(11) Classified P-1, R-1 and C-1;

(12) Program Budget Decisions/ Defense Management Review Decisions;

(13) Reports Generated by the Automated Budget Review System (BRS);

(14) DD Form 1414 Base for Programming;

(15) DD Form 1416 Report of Programs;

(*16*) Contract Award Reports;

(*17*) Congressional Data Sheets.

(ii) Contractor requests for information contained in the National Military Strategy Document (including annexes) and the Chairman's Program Assessment Document (including annexes and comments) shall be forwarded to the CJCS who shall determine on a case-by-case basis what information, if any, is releasable to the contractor.

(6) Documents That Disclose the Government's Negotiating Position. Documents that would disclose the government's negotiating position (such as pre-negotiation business clearances and positions and government cost estimates) or would adversely impact the government negotiating strategy shall not be released.

(7) Drafts and Working Papers. Drafts and working papers that would otherwise be releasable under paragraph 286h.3(a) shall not be released where their release would inhibit the development of agency positions, jeopardize the free exchange of information that is part of the deliberative process, or compromise the decision-making process.

(c) *Freedom of Information Act.* Where a request for information, the release of which is restricted under paragraph 286h.3(b) is made under the Freedom of Information Act, the request shall be forwarded to the appropriate official for disposition in accordance with DoD 5400.7-R.[4] Requests for contractor bid or proposal information pursuant to the Freedom of Information Act shall be subject to subparagraph 5-207 a. of DoD 5400.7-R, which requires notice to a non-United States Government source of a record.

§ 286h.4 Responsibilities.

(a) The Under Secretary of Defense (Acquisition) shall be responsible for establishing uniform policies and procedures for the release of acquisition-related information.

(b) The Under Secretary of Defense (Policy), Assistant Secretary of Defense (Program Analysis and Evaluation) and Comptroller, DoD are responsible for adjudicating requests for access to Planning, Programming and Budgeting information pertaining to their respective phases of the PPB system.

(c) The Head of each DoD Component shall assure that procedures for the release of acquisition-related information are consistent with the policy contained in this Directive and shall not impose any additional restrictions on release of such information. These procedures shall specifically identify the individuals authorized to release and transmit acquisition-related information.

Dated: July 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-16315 Filed 7-11-90; 8:45 am]

BILLING CODE 3810-01-M

[4] See footnote 1 to § 286h.3(b)(2)(ii).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-36]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 25, 1990 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATES: The regulations in 33 CFR 100.502 are effective from 9 a.m. to 5 p.m., August 25, 1990. In case of inclement weather causing the event to be postponed, the regulation will be effective from 9 a.m. to 5 p.m., August 26, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Barnegat Bay Powerboat Racing Association, Toms River, New Jersey, submitted an application on May 15, 1990 to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately 50-60 powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Because this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Waterborne traffic should not be severely disrupted at any given time, because closure of the Intracoastal Waterway is not anticipated. These regulations are implemented by publication of this notice in the **Federal Register** and in the Fifth District Local Notice to Marines.

Dated: July 3, 1990.

P. A. Welling,

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

[FR Doc. 90-16242 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-90-37]

Special Local Regulations for Marine Events; Cambridge Classic Powerboat Regatta; Hambrooks Bay, Choptank River, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Cambridge Classic Powerboat Regatta to be held in Hambrooks Bay, Choptank River, Cambridge, Maryland, July 28 and 29, 1990. These regulations will govern vessel activity during the actual races. The regulations are necessary due to the potential danger to waterway users, the confined nature of the waterway, and expected spectator craft congestion during the event.

EFFECTIVE DATES: The regulations are effective for the following period:

9 a.m. to 6 p.m., July 28, 1990.
9 a.m. to 6 p.m., July 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of **Federal Register** publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event

was not received until June 15, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Cambridge Powerboat Regatta Association Inc. has submitted an application dated May 1, 1990, to hold the Cambridge Classic Powerboat Regatta July 28–29, 1990. The event will consist of approximately 80 powerboats, ranging from 13 to 21 feet in length, racing on a designated course within the regulated area. The races will be conducted in Hambrooks Bay, located on the Choptank River, between Great Marsh Point and Hambrooks Bar. Hambrooks Bay will be closed during the actual races. The Coast Guard Patrol Commander may allow vessel traffic to transit the area between heats. Since Hambrooks Bay is outside the main channel, waterborne traffic should not be severely disrupted.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

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

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35–0537 is added to read as follows:

§ 100.35–0537 Hambrooks Bay, Choptank River, Maryland.

(a) *Definitions*—(1) *Regulated area.* The waters of Hambrooks Bay and Choptank River bounded by the arc of a circle with a radius of 1,200 yards and with its center located at latitutde 38°35'20.0" North, Longitude 76°35'20.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section but may not block a navigable channel.

(c) *Effective periods.* The regulations are effective for the following periods:

9 a.m. to 6 p.m., July 28, 1990.

9 a.m. to 6 p.m., July 29, 1990.

Dated: July 3, 1990.

P. A. Welling,

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

[FR Doc. 90–16240 Filed 7–11–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–90–45]

Special Local Regulations for Marine Events; Hancock Yacht Club/Neuse River Regatta; Neuse River, Cherry Point, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Hancock Yacht Club/Neuse River Regatta to be held July 13–15, 1990. The event consists of approximately 150 sailboats and powerboats racing on courses on the Neuse River at Cherry Point, North Carolina. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective for the following periods:

7 a.m. to 5:30 p.m. July 13, 1990
7 a.m. to 5:30 p.m. July 14, 1990
7 a.m. to 5:30 p.m. July 15, 1990

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until June 19, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Hancock Yacht Club submitted an application dated March 24, 1990 to hold the Hancock Yacht Club/Neuse River Regatta on the Neuse River at Cherry Point, North Carolina. The event consists of approximately 150 sailing vessels and small powerboat log racing boats racing on two courses on the Neuse River in the vicinity of Cherry

Point Marine Corps Air Station. The powerboat predicted log races will be held east of the Minnesott-Cherry Branch Ferry channel and the sailboat races will be held west of the channel. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event. Backed up marine traffic will be allowed to transit the area between race heats. Since the main shipping channel will not be closed for extended periods of time, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 or Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary and the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and determined the final rule does not raise sufficient implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and determined categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in permanent regulations 33 CFR 100.515 rulemaking docket

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35–0545 is added to read as follows:

§ 100.35–0545 Neuse River, Cherry Point, North Carolina.

(a) *Definitions*—(1) *Regulated area.* The waters of the Neuse River from shoreline to shoreline and bounded to the east by a line drawn from latitude 35°02'19.0" North, longitude 76°39'47.0" West, south southeast to latitude 34°59'02.0" North, longitude 76°38'36.0" West, and to the west by a line drawn from latitude 35°00'08.0" North, longitude 76°52'00.0" West, south southwest to latitude 34°57'01.0" North, longitude 76°53'42.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Fort Macon.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section, but may not block a navigable channel.

(c) *Effective Dates:* These regulations are effective for the following periods:

7 a.m. to 5:30 p.m. July 13, 1990
7 a.m. to 5:30 p.m. July 14, 1990
7 a.m. to 5:30 p.m. July 15, 1990

Dated: July 3, 1990.

P. A. Welling,

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

[FR Doc. 90–16241 Filed 7–11–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–90–41]

Special Local Regulations for Marine Events; Solomon's Challenge, Patuxent River, Solomons Island, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Solomon's Challenge Power Boat Race to be held on the Patuxent River at Solomons Island, Maryland on July 21, 1990. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations are effective from 10:30 a.m. to 3:30 p.m., July 21, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 10:30 a.m. to 3:30 p.m., July 22, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of **Federal Register** publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until June 18, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Chesapeake Bay Power Boat Association submitted an application to hold the Solomon's Challenge Power Boat Race on July 21, 1990. The race will consist of approximately 40 offshore powerboats, from 20 to 45 feet in length racing over a course off Solomons Island, Maryland on the Patuxent River between the Thomas Johnson Memorial Bridge and Hog Point. Vessel traffic transiting the regulated area during the event will be directed toward the southern shoreline. Since the main shipping channel will not be closed for an extended period of time, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal

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

Federalism Assessment

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

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

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

PART 100—[AMENDED]

1. The authority citation of part 100 continues to read as follows:

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

2. A temporary § 100.35–0541 is added to read as follows:

§ 100.35–0541 Patuxent River, Solomons Island, Maryland.

(a) *Definitions*—(1) *Regulated area.* The waters of the Patuxent River from shoreline to shoreline bounded to the east by a line drawn from Hog Point at latitude 38°18'32" North, longitude 76°23'55.0" West, thence north to latitude 38°19'07" North, longitude 76°23'56" West, thence northwest to the shoreline at latitude 38°19'32.5" North, longitude 76°25'00" West, and to the west by the Thomas Johnson Memorial Bridge, center point latitude 38°19'32.5" North, longitude 76°28'21" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside the regulated area specified in paragraph (a)(1) of this section, but may not block a navigable channel.

(c) *Effective periods.* The regulations are effective from 10:30 a.m. to 3:30 p.m., July 21, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 10:30 a.m. to 3:30 p.m., July 22, 1990.

Dated: July 3, 1990.

P.A. Welling,

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

[FR Doc. 90–16239 Filed 7–11–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3763/R1086; FRL-3774-3]

Pesticide Tolerance for Nicosulfuron [3-Pyridinecarboxamide, 2-((((4,6-Dimethoxypyrimidin-2-yl)Aminocarbonyl)Aminosulfonyl))-N,N-Dimethyl]

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide nicosulfuron [3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl))-N,N-dimethyl] in or on the raw agricultural commodity (RAC) corn in the form of grain, forage, silage, and fodder at 0.1 part per million (ppm). The tolerance was requested by E. I. du Pont de Nemours and Co., Inc., and establishes the maximum permissible level for residues of the herbicide in or on the RAC.

EFFECTIVE DATE: July 12, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3763/R1086], must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 9, 1990 (55 FR 778), EPA issued a notice which announced that E. I. du Pont de Nemours and Co., Inc., Agricultural Products Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19880-0038, had submitted a pesticide petition (PP 9F3763) to EPA proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide nicosulfuron [3-pyridinecarboxamide, 2-((((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl))-N,N-dimethyl] in or on the RAC corn in the form of grain, forage, silage, and fodder at 0.1 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance.

1. Several acute toxicology studies placing the technical-grade herbicide in Toxicity Category III.

2. A 2-year chronic toxicity/carcinogenicity study with rats fed dosages of 0, 1.9/2.6, 58.1/77.1, 289/382, and 786/1,098 mg/kg/day resulted in a systemic NOEL of greater than or equal to 786 mg/kg/day (males) and 1,098 mg/kg/day (females), the highest dose tested (HDT).

3. An 18-month oncogenicity study with mice fed dosages of 0, 3.3/4.4, 32.7/44.8, 327/438, and 993/1,312 mg/kg/day resulted in a systemic NOEL of 993 mg/kg/day (males) and 1,312 mg/kg/day (female), the HDT.

4. A 1-year feeding study in dogs fed dosages of 0, 6.25, 125, and 500 mg/kg/day resulted in a systemic NOEL of 125 mg/kg/day in males based upon a decrease in body weight gains and a concomitant increase in relative liver and kidney weights in males. The NOEL for females was also 500 mg/kg/day, the HDT.

5. A developmental toxicity study in rats fed dosages of 0, 200, 1,000, 2,500, and 6,000 mg/kg/day had a

developmental and maternal NOEL of greater than or equal to 6,000 mg/kg/day, the HDT.

6. A developmental toxicity study in rabbits fed dosages of 0, 100, 500, 1,000, and 2,000 mg/kg/day had a maternal NOEL of 100 mg/kg/day based upon maternal toxicity occurring at 500 mg/kg/day. Maternal toxicity was demonstrated by an increase in clinical signs, gross pathological observations, abortions, postimplantation loss and a decrease in body weight gain during the dosing period. The developmental NOEL was 500 mg/kg/day based upon developmental toxicity evidenced at 1,000 mg/kg/day in the form of reduced mean fetal body weights and the apparent increase in postimplantation loss at 500 mg/kg/day and above.

7. A multigeneration reproduction study in the rat administered dosages of 0, 12.5, 287, and 1,269 mg/kg/day had a systemic NOEL of 287 mg/kg/day based upon F_1 (first mating) females with a lower body weight gain in females during the final week of gestation and a similar pattern in the F_0 females during the same period of gestation. The reproductive NOEL was 287 mg/kg/day based on a minimal reduction on litter size at birth and in pup weights at postpartum day 14 through 21 in the F_{2a} high-dose group.

8. A mutagenic test with Salmonella typhimurium showed nonmutagenicity in four test strains (TA97A, TA98, TA100, and TA1535) with or without metabolic activation; in vitro chromosomal aberration test in cultured human lymphocytes indicated negative response at the concentrations of 40 to 470 ug/mL; an unscheduled DNA synthesis study in rat hepatocytes did not cause any DNA damage at the concentrations of 0.04 to 470 ug/mL; in vitro gene mutation assay in Chines hamster ovary cells was nonmutagenic at the concentrations of 4 to 465 ug/mL with or without metabolic activation; and a micronucleus assay in mouse bone marrow had negative responses at the dose levels of 500 to 5,000 mg/kg.

The acceptable daily intake (ADI) based on a 1-year dog feeding study (NOEL = 125 mg/kg/body weight/day) and using an uncertainty factor of 100 is calculated to be 1.25 mg/kg/body weight/day. The theoretical maximum residue contribution (TMRC) is 0.000033 mg/kg bwt/day for this action. The current action will utilize 0.0026 percent of the ADI. There are no other published tolerances for this chemical.

No desirable data are lacking. The pesticide is useful for the purposes for which the tolerance is sought. Adequate analytical methodology (liquid chromatography with ultra violet detection) is available for enforcement purposes. The method is not yet published in the Pesticide Analytical Manual (PAM), but can be obtained as follows: By mail: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: Crystal Mall #2, Rm. 242, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Based on the information cited above, the Agency has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the other grounds for the objections. A hearing will be granted if the grounds stated in support of the objections are reasonable.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.454, to read as follows:

§ 180.454 Nicosulfuron, [3-pyridinecarboxamide, 2-{(((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl))-N,N-dimethyl]; tolerances for residues.

Tolerances are established for the residues of the herbicide nicosulfuron [3-pyridinecarboxamide, 2-{(((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl))-N,N-dimethyl] in or on the following raw agricultural commodities:

Commodities	Parts per million
Corn, grain	0.1
Corn, fodder	0.1
Corn, forage	0.1
Corn, silage	0.1

[FR Doc. 90-16327 Filed 7-11-90; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-30303A; FRL-3767-5]

Tolerance Exemptions for GBM-ROPE (Pheromone Dispensers)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the insect pheromone GBM-ROPE (Pheromone Dispensers) containing the active ingredients 9-dodecenyl acetate and 11-tetradecenyl acetate in or on the raw agricultural commodity (RAC) grapes. This regulation eliminates the need to establish a maximum permissible level for residues of this biochemical pesticide. This request for an exemption from the requirement of a tolerance was requested by Mitsubishi International Corporation of Tokyo, Japan (agent: Biocontrol, Ltd., of Australia; U.S. agent: John W. Kennedy Consultants, Inc.)

DATES: This regulation becomes effective July 12, 1990.

ADDRESSES: Written objections and/or requests for a hearing, identified by the document control number, [OPP-30303A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 17, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2690.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of March 14, 1990 (55 FR 9503), which announced that the EPA received an application and petition (File Symbol: 50675-O) from Biocontrol, Ltd., 148 Palmerin St., Warwick, Queensland 4370, Australia (U.S. Agent: John W. Kennedy Consultants, Inc., American Bank Building, Suite 406, Laurel, MD 20707), which is acting on behalf of the Mitsubishi International Corporation of Tokyo, Japan, proposing that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the insect pheromone GBM-ROPE, containing (Z)-9-dodecenyl acetate and (Z)-11-tetradecenyl acetate, in or on the raw agricultural commodity grapes.

There were no comments received in response to the notice of filing.

The pheromone is a synthetic replica of the naturally occurring pheromone. This pheromone product is impregnated in a 6-inch flexible polyethylene tube which has an aluminum wire that runs along the length of the tube to allow the tube to be tied to the lateral branches of the grape vines.

The pheromone permeates the surrounding area giving off an olfactory stimulant which disrupts the mating pattern of the grape berry moth and diminishes its ability to reproduce, reportedly by causing a false trail in the orchard air so as to interrupt the reproductive cycle.

GBM-ROPE is selective for the grape berry moth. It appears to have no influence on other insects, which means that beneficial insects, such as those that prey on mites, are not affected.

The recommended appliction rates are as follows: Four (4) dispensers/tree in standard orchard spacing or 200 to 600 dispensers/acre. Normally, two applications per season will suffice; the first application should be prior to the emergence of the moths (in late February), and the second application should be 90 days later, preferably in late May.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the exemption from the requirements of a tolerance include: an acute oral LD_{50}, rat, with a no-observed effect level (NOEL) = > 5,000 mg/kg; acute dermal LD_{50}, rat, NOEL = > 2,000 mg/kg; primary dermal irritation, rabbit, P.I. score = 0.5, a slightly irritating agent; primary eye irritation, rabbit, no corneal opacity or iritis observed; and acute inhalation LC_{50} NOEL = 5.0 mg/L. The Ames mutagenicity assay submitted was invalid; therefore, the company will repeat it within 12 months. It is a conditional requirement for registration.

The exemption from the requirement for a tolerance on RAC's and registration of GBM-ROPE on a conditional basis are toxicologically supported.

1. It is a synthetic replica of the naturally occurring grape berry moth pheromone which already exists in nature.

2. The polyethylene synthetic tube used in the GBM-ROPE formulation is cleared for use in pesticides.

3. GBM-ROPE will be released at treatment sites at the rate of 48 mg of active ingredient per hour, the specific application rate, through the walls of the polyethylene tubing. Because the pesticide is encapsulated in plastic tubing, it is highly unlikely that humans or animals would be exposed to GBM-ROPE.

A lack of demonstrable toxicity and near nonexistent potential for exposure to GBM-ROPE indicate that its use to aid in grape berry moth control would not result in hazards to public health.

Due to the small quantity of product being used, and its rather rapid dissipation into the environment, the acceptable daily intake and maximum permissible intake considerations are not relevant to this petition.

The data submitted or referenced in this petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirements of a tolerance did not show any deleterious effects that would indicate a cause for concern from the use of this product.

GBM-ROPE is considered useful for the purpose for which the exemption from the requirements of a tolerance is sought. It is concluded that a tolerance for GBM-ROPE is not necessary to

protect the public health. Therefore, 40 CFR Part 180 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As provided for in the Administrative Procedures Act (5 U.S.C. 553(d)(3)), the time for comments is being limited to 15 days in order that the exemption from the requirement of a tolerance can be established in a timely manner.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-54, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1097, to read as follows:

§ 180.1097 GBM-ROPE; exemption from the requirement of a tolerance.

The grape berry moth pheromone (GBM-ROPE) containing the active ingredients (Z)-9-dedecenyl acetate and (Z)-11-tetradecenyl acetate is exempt from the requirement of a tolerance in or on the raw agricultural commodity grapes when used in orchards with encapsulated polyethylene tubing to control grape berry moth.

[FR Doc. 90-16328 Filed 7-11-90; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 52

[FRL-3807-9]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision; Butte County, et. al.

AGENCY: U.S. Enviromental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice takes final action to approve rule revisions proposed for approval action in the Federal Register on May 14, 1987 (52 FR 18240). These rule revisions were submitted by the California Air Resources Board (CARB) as official revisions to the California State Implementation Plan (SIP) on February 10, 1986. This approval action will incorporate these rules into the federally approved state implementation plan. The intended effect of approving these rules is to regulate emissions of nitrogen oxides, sulfur oxides, volatile organic compounds, and particulate matter.

EFFECTIVE DATE: This action is effective August 13, 1990.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 P Street, Sacramento, CA 95814

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

Butte County Air Pollution Control District, 316 Nelson Avenue, Oroville, CA 95965

Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906-3596

Placer County Air Pollution Control District, 11582 B Avenue, Building 117A, Auburn, CA 95603

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 82123-1095

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose (A-2-3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103. Telephone: (415) 556-6205, FTS: 556-5205.

SUPPLEMENTARY INFORMATION:

Background

The following rule revisions were submitted by the CARB for incorporation into the SIP on February 10, 1986. The rules being approved in this notice were proposed for approval in the Federal Register on May 14, 1987 (52 FR 18240). The pollutant that each rule controls is identifed by the following abbreviations after each rule title: Nitrogen Oxides (NO_x), Sulfur Oxides (SO_x), Total Suspended Particulates (TSP), and Volatile Organic Compounds (VOC).

Butte County APCD

Rule 202, Visible Emissions (TSP)
Rule 203, Particulate Matter Concentration (TSP)
Rule 204, Exemptions to Rules 201, 202, and 203 (TSP)
Rule 205, Process Weight Limitation (TSP)
Rule 210, Gasoline Transfer Into Stationary Storage Containers (VOC)
Rule 211, Exemptions to Rule 210 (VOC)
Rule 212, Gasoline Storage (VOC)
Rule 213, Bulk Facilities, Petition for Annual Exemption (VOC)
Rule 214, Vapor Collection and Disposal System at Loading Facilities (VOC)
Rule 215, Storage of Gasoline Products at Bulk Facilities (VOC)
Rule 220, Dry Cleaning (VOC)
Rule 225, Solvent Storage (VOC)
Rule 231, Sulfur Oxides Emission Standard (SO_x)

Monterey Bay Unified APCD

Rule 416, Organic Solvents (VOC)
Rule 418, Transfer of Gasoline Into Stationary Storage Containers (VOC)

Placer County APCD

Rule 213, Gasoline Transfer Into Stationary Storage Containers (VOC)
Rule 307, Agriculturaal Burning Reports (TSP)
Rule 324, Residential Rubbish Burning (TSP)

San Diego County APCD

Rule 66, Organic Solvents (VOC)
Rule 67.8, Dry Cleaning Facilities Using Halogenated Organic Solvents (VOC)

South Coast AQMD

Rule 1159, Nitric Acid Units—Oxides of Nitrogen (NO_x)

Tehama County APCD

Rule 4.3, Particulate Matter (TSP)
Rule 4.8, Dust and Condensed Fumes (TSP)
Rule 4.9, Specific Contaminants (SO_x)
Rule 4.10, Sulfur Content of Fuels (SO_x)
Rule 4.14, Fuel Burning Equipment (NO_x)

EPA Evaluation

Butte County APCD Rule 204 has been revised to exempt smoke from fires set (1) By public officers for emergency purposes, (2) for fire fighting instruction, and (3) for backfires to save life and property. These revisions are approved because they are in the interest of public safety and will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

Butte County APCD Rules 202, 203, 205, 210, 211, 212, 213, 214, 215, 220, and 231 were revised only by being recodified. EPA is approving these rules since they have only been recodified, meaning that the rule numbers were changed. Because these rules were adopted in 1985, they do not contain the most recent requirements for volatile organic compound rules in a rural, nonattainment area. Since they were adopted prior to these new requirements, EPA is approving them under EPA's grandfathering policy and under section 110 of the Clean Air Act (CAA).

Butte County APCD Rule 225 has been recodified and the old effective date of January 1, 1970, has been deleted. This administrative change is approved.

Monterey Bay Rule 416 controls the emissions of organic materials into the atmosphere. The rule has been revised only by being recodified, meaning that the paragraph numbers have been changed from alphabetical to numerical. Monterey Bay Rule 418 has been revised by increasing the percent by weight of the gasoline vapors displaced during the filling of the stationary source containers from 90 percent to 95 percent. This revision strengthens the current SIP; therefore, it is being approved.

Placer County Rule 213 has been revised by: (1) Limiting a previous exemption for gasoline bulk loading facilities; (2) requiring that a facility be operated with a system to prevent release to the atmosphere of gasoline vapors displaced during filling operations; and (3) by defining the term "average monthly throughput." The rule is being approved because it strengthens the SIP.

Placer County Rule 307 allows the APCO to determine reporting requirements during the peak burn season. This revision is being approved since it will not lead to an increase in Total Suspended Particulate (TSP) emissions. Placer County Rule 324 deletes the stacking requirements for residential burns. Placer County's current Rule 308 also applies to residential burns and specifies that the burns must be prepared in order to minimize smoke; this implicity regulates the stacking of materials. Therefore, the revision to Rule 324 will not increase TSP emissions, and is therefore being approved.

San Diego Rule 66 has been revised by narrowing an exemption to the rules for any air-dried coating material with specifications of VOC content and for equipment using aqueous solutions not containing VOC in excess of 10 percent by weight for surface preparations. Since this rule represents a strengthening of the SIP, it is being approved.

San Diego Rule 67.8(d) has been revised by removing the effective date of the regulation and by requiring that waste be transported in sealed containers and disposed of according to California law. This rule is being approved because it is more stringent that the current federally approved rule.

South Coast Rule 1159 controls oxides of nitrogen from nitric acid units. This rule contains three approvable emission limits. One of the emission limits is identical to the New Source Performance Standard (NSPS), subpart G, Nitric Acid Plants, 40 CFR parts 60.70 to 60.74. This rule is being approved since it is equivalent to the NSPS standard and because there is no previously approved rule in federally approved SIP for this source category.

Tehama County Rule 4.3 has been revised by reducing the particulate matter emissions from 0.3 grains per standard cubic foot to 0.15 grains per standard cubic foot. This rule is being approved because it strengthens the particulate matter emission limit.

Tehama County Rule 4.8 has been revised by changing the limits from a table form to an equation. This administrative change is approved since it will not have a negative impact on air quality.

Tehama County Rule 4.9 has been revised by tightening the SO_2 emission limit from 0.2 percent to 250 parts per million. The combustion contaminant limit has also been changed from 0.3 to 0.15 grains per standard cubic foot. Tehama County Rule 4.10 has been revised by eliminating exemptions and making the emission limits more stringent. Since these revisions represent a strengthening of the current SIP, they are being approved.

Tehama County Rule 4.14, has been broadened to apply to all fuel burning equipment units, regardless of their gross heat input. The rule is being approved because it strengthens the SIP.

The rules listed above have been evaluated for consistency with section 110 of the Clean Air Act, 40 CFR part 51, and EPA policy. The rules were found to be consistent with those requirements and were proposed for approval in the **Federal Register**. Copies of the rules and of EPA's evaluation report for each rule were made available at EPA's Regional Office in San Francisco. In addition, the notice of proposed rulemaking provided for a 30-day public comment period. No comments were received on the rules being approved in this notice. Therefore, EPA is finalizing the proposed approval action. The remaining rules from the May 14, 1987, Notice of Proposed Rulemaking will be acted on in a separate **Federal Register** notice at a later date.

All the rules listed above are being approved under section 110 of the Clean Air Act because they satisfy the requirements of the Clean Air Act, 40 CFR part 51, and EPA policy. In the Notice of Proposed Rulemaking, all the VOC rules were proposed for approval both under section 110 and part D of the Clean Air Act.

At this time, it is not appropriate to approve the VOC rules under Part D of the CAA. We are currently working with the State and local Districts as a result of the September 7, 1988, SIP Call to correct part D rule deficiencies. Many of these VOC rule revisions contained only administrative changes, e.g., removal of past dates and renumbering of paragraphs and rule numbers. Approval of these types of changes is appropriate only under section 110. Some of the remaining VOC rules contain deficiencies according to present policy and are not appropriate to approve under part D. However, these same rules represent improvements in the currently approved SIP, and therefore, are approvable under section 110.

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

Regulatory Process

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 2, 1990.

Daniel W. McGovern,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, subpart F is amended to read as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart F—California

2. Part 52.220 is being amended by adding paragraphs (c) (168)(i) (A) (*2*), (c)(168)(i) (C) (*2*), (c)(168)(i) (E) (*2*), (c)(168)(i) (F), (c)(168)(i) (G), and (c)(168)(i) (H) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(168) * * *

(i) * * *

(A) * * *

(*2*) New or amended Rules 202, 203, 204, 205, 210, 211, 212, 213, 214, 215, 220, 225, and 231 adopted August 6, 1985.

(B) * * *

(C) * * *

(*2*) New or amended Rules 213, 307, and 324 adopted May 20, 1985.

(D) * * *

(E) * * *

(*2*) New or amended Rules 4.3, 4.8, 4.9 (a) and (b), 4.10, and 4.14 adopted September 10, 1985.

(F) Monterey Bay Unified APCD.

(*1*) New or amended Rules 416 and 418 adopted September 18, 1985.

(G) San Diego County APCD.

(*1*) New or amended Rules 66 (w) and 67.8 (d) adopted September 17, 1985.

(H) South Coast AQMD.

(*1*) Amended Rule 1159 adopted December 6, 1985.

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[FR Doc. 90–16298 Filed 7–11–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL-3807-8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento County, et al.

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

ACTION: Final rulemaking.

SUMMARY: This notice takes final action to approve rule revisions proposed for approval action in the **Federal Register** on May 15, 1987 (52 FR 18402). These rule revisions were submitted by the California Air Resources Board (CARB) as official revisions to the California State Implementation Plan (SIP) on February 6, 1985 and April 12, 1985. This approval action will incorporate these rules into the federally approved state implementation plan. The intended effect of approving these rules is to regulate emissions of nitrogen oxides, sulfur oxides, and volatile organic compounds.

EFFECTIVE DATE: This action is effective August 13, 1990.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 P Street, Sacramento, CA 95814

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

Sacramento County Air Pollution Control District, 8475 Jackson Road, Suite 215, Sacramento, CA 95826

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

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

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, (A–2–3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103, Telephone: (415) 556–5205, FTS: 556–5205.

SUPPLEMENTARY INFORMATION:

Background

The following rule revisions were submitted by CARB for incorporation into the SIP on February 6, 1985 and April 12, 1985. The rules being approved in this notice were proposed for approval in the **Federal Register** on May 15, 1987 (52 FR 18402). The pollutant that each rule controls is identified by the following abbreviations after each rule title: Nitrogen Oxides (NO_x), Sulfur Oxides (SO_x), and Volatile Organic Compounds (VOC).

February 6, 1985

Sacramento County Air Pollution Control District (APCD)
Rule 447, Organic Liquid Loading (VOC)
South Coast Air Quality Management District (AQMD)
Rule 1105, Fluid Catalytic Cracking Units (SO_x)
Rule 1117, Glass Melting Furnaces (NO_x)
Yolo-Solano APCD
Rule 2.21, Organic Liquid Transfer, Paragraphs (a)(7)(a) and (a)(7) (VOC)

April 12, 1985

San Diego County APCD
Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing (VOC) South Coast AQMD
Rule 1108, Cutback Asphalt (VOC)

EPA Evaluation

Sacramento County Rule 447 has been revised to require that equipment for organic liquid loading be more stringently maintained, thereby reducing emissions. This rule is being approved.

South Coast Rule 1105 permits the extension of compliance dates and an increase in SO_x emissions during a 6-month period. This rule is being approved since the emissions were determined to have no effect on the maintenance of attainment, the compliance date has passed, and there were no measured violations during the 6-month period. The South Coast area is an attainment area for sulfur oxides.

South Coast Rule 1117 established emission limits for glass furnaces. The rule is being approved because it will

control emissions from previously uncontrolled sources.

Yolo-Solano Rule 2.21 has been revised by adding paragraph (a)(7) which adds a requirement that drainage during transfer operations be controlled. Since this rule will now control emissions that were previously uncontrolled, it is being approved.

San Diego Rule 67.10 sets emission standards for a previously uncontrolled source and is, therefore, being approved.

South Coast Rule 1108 has been revised to eliminate the 2,000 foot exemption for the use of medium cure asphalts. Since this rule will result in a decrease in emissions, it is being approved.

The rules listed above have been evaluated for consistency with section 110 of the Clean Air Act, 40 CFR part 51, and EPA policy. The rules were found to be consistent with those requirements and were proposed for approval in the Federal Register. Copies of the rules and of EPA's evaluation report for each rule were made available at EPA's Regional Office in San Francisco. In addition, the Notice of Proposed Rulemaking provided for a 30-day public comment period. No comments were received on any of these rules. EPA is, therefore, finalizing the proposed action. The remaining rules from the May 15, 1989 Notice of Proposed Rulemaking will be acted on in a separate Federal Register notice at a later date.

All the rules listed above are being approved under Section 110 of the Clean Air Act because they satisfy the requirements of the Clean Air Act, 40 CFR part 51, and EPA policy in effect at the time of the proposed rulemaking. Some of the VOC rules contain deficiencies according to present policy and are not appropriate for approval under part D of the Clean Air Act. However, theser rules are being approved under section 110 because they represent improvements of the currently approved SIP.

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

Regulatory Process

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

Under section 307(b)(1) of the Clean Air Act, petitions for judical review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 2, 1990.

Daniel W. McGovern,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, subpart F is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Part 52.220 is being amended by adding paragraphs (c)(159)(iv)(B), (c)(159)(v)(C), (c)(159)(v)(D), (c)(159)(vii), and (c)(160)(i)(D) and (c)(160)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(159) * * *

(iv) * * *

(B) Amended Rule 447 adopted November 20, 1984.

(v) * * *

(C) Amended Rule 1105 adopted September 21, 1984.

(D) New Rule 1117 adopted January 6, 1984.

* * * * *

(vii) Yolo-Solano County APCD.

(A) Amended Rule 2.21.a.7. (a) and (b) adopted November 21, 1984.

(160) * * *

(i) * * *

(D) San Diego County APCD.

(1) New Rule 67.10 adopted January 30, 1985.

(E) South Coast AQMD.

(1) Amended Rule 1108 adopted February 1, 1985.

* * * * *

[FR Doc. 16299 Filed 7-11-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AB54

Individual and Family Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) coordinates the delivery of disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act when the President has declared a major disaster. Under that Act, FEMA provides States 75 percent of the funds for the Individual and Family Grant (IFG) program. The IFG program is administered by the State under FEMA regulations at 44 CFR 206.131 (54 FR 11622; March 21, 1989).

This interim final rule removes paragraph (d)(1)(iii)(E) of the IFG implementing regulation. That provision prohibits IFG awards to individuals or families who "knowingly assumed a risk" by living:

—Within a flowage easement;

—Between a levee and a river (where the family built the home before the levee was built, or was compensated for future flood damage at the time the levee was built); or

—On leased land, where the lease holds the family harmless from the risk of damages.

The amended regulation is less restrictive and enables those individuals and families living in the areas referred to above to receive assistance from the Individual and Family Grant Program.

DATES: April 1, 1990. Comments must be received on or before September 10, 1990.

ADDRESSES: Send comments to Agnes C. Mravcak, Office of Disaster Assistance Programs, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Office of Disaster Assistance Programs, (Federal Emergency Management Agency, Washington, DC 20472, (202-646-3660)).

SUPPLEMENTARY INFORMATION: FEMA is doing away with the existing regulatory restriction for six reasons.

First, to make this aspect to the Individual and Family Grant (IFG) program consistent with the standards of the National Flood Insurance Program so that IFG program applicants who would otherwise be affected by previous regulations will be subject to the same restrictions as other disaster victims. All IFG program applicants whose property is located in a special flood-hazard area are required to purchase and maintain flood insurance available under the National Flood Insurance Act of 1968.

Second, it delays assistance to disaster victims. The IFG program is intended to meet necessary expenses and serious needs. The information base needed to make an eligibility determination is not readily accessible to FEMA or its employees or inspectors, or necessarily to the States. In many cases, the easements are privately granted (from prior owners or from an independent utility, for example) and no local records are available. In some cases the information is available (for example, from the Corps of Engineers in the case of certain Government leases), but experience shows this may not be accurate, up-to-date, or readily accessible. Developing the information from numerous sources delays critically needed disaster aid. Besides title searches (an activity which is expensive and in which FEMA does not have expertise), property surveys are frequently necessary to determine whether the residence itself is located in the easement area. The time and expenses associated with title searches and property surveys is unwarranted in view of the average grant amount: $2,100 nationwide.

The present procedure relating to IFG applications from individuals in Flood Zone A involves remapping the applicant's property to determine its proximity to a lake or river with known easements. If the structure appears to be near an easement, that application is denied with an attachment to inform the applicant that he/she has three options: (1) Show by means of deed, title insurance, or lease that no flowage easement exists on the property; (2) show that the structure in question is located outside the easement or is elevated above mean sea level tied to the easement, which, in some cases, may require the applicant to pay the cost of a survey of his property; or (3) move out of the easement area in order to receive assistance. The impact of this procedure has been to delay assistance to applicants in areas where no easement information is available, or is inadequate; to compound the problems of applicants who live near but not in an easement; and to require many extra hours of staff time.

Third, it is hard to determine whether an individual or family "knowingly assumed a risk" of flooding, i.e., knew of the existence of restrictions in deeds or leases, especially in the case of a renter. The majority of persons faced with denial of disaster assistance bought or rented their properties in good faith, unaware or uninformed of the flood potential and the disastrous impact upon their homes and personal property.

Fourth, in the case of flowage easements or land leased from the Government, it is hard to prove that the flooding damage was caused by Government action rather than natural forces; that being the case, FEMA wishes to give the disaster victim the benefit of the doubt and to provide disaster aid.

Fifth, in establishing the original rule, FEMA applied the restriction in flood-risk areas only. Individuals in other risk situations, such as on earthquake faults, are not subject to the denial of assistance, even if they knowingly live on an earthquake fault or build their homes after the existence of the fault was known. FEMA wishes to eliminate this inconsistency.

Last, unlike flood insurance and floodplain management restrictions, this restriction was not mandated by statute. While it was seen as a way to clear risk areas by not providing rebuilding funds, we find that the wisest way to clear such areas is to use the permitting process in the community which is subject to flood risks. In communities participating in the National Flood Insurance Program, community floodplain management regulations are a more appropriate vehicle than the disaster assistance program to regulate rebuilding. In its implementation of the National Flood Insurance Program, FEMA does not require that coverage or claim payments be suspended in risk areas, except where it can be proven that the Government caused the flooding.

In order to make the benefits of this interim final regulation applicable to current major disaster responses, in Arkansas and Texas which brought the deficiency of the regulation to light, it is necessary to make this change retroactive to the commencement of these disasters. This regulation is therefore effective April 1, 1990.

In view of the promulgation of this interim final rule without opportunity for prior comments, FEMA invites comments now, and will consider these comments before the rule is finalized.

Environmental Considerations

An environmental assessment has been prepared, leading to the determination that this interm final rule will not have a significant impact on the environment and that an Environmental Impact Statement is not required. The assessment is available for review at the Office of the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Regulatory Flexibility

FEMA has determined that this interim final rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analyses have been prepared.

Federalism Assessment

In promulgating this interim final rule, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the Order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this interim final rule implements the requirement that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. These regulations conform FEMA assistance to Executive Order 12612. To describe this, a Federalism assessment has been prepared. It may be obtained or reviewed at the Office of the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Reporting Requirements

There are no information collection requirements under this interim final rule pursuant to the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501, Et. Seq.

List of Subjects in 44 CFR Part 206

Disaster Assistance: general, Declaration process, Emergency assistance, Individual assistance, Public assistance, the Coastal Barrier Resources Act, Community disaster loans, Fire suppression, Hazard mitigation.

Accordingly, 44 CFR part 206 is amended as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: 42 U.S.C. 5121; Reorganization Plan No. 3 of 1978 (3 CFR, 1979, p. 329); Executive Order 12148 (3 CFR, 1980, p. 412); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended by Pub. L. 100-707; Executive Order 12673.

§ 206.131 [Amended]

2. Section 206.131 is amended by removing paragraph (d)(1)(iii)(E).

Dated: July 5, 1990.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 90-16471 Filed 7-10-90; 3:44 pm]

BILLING CODE 6718-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[GEN Docket No. 89-295; FCC 90-236, RM-6620, RM-6649]

Aviation Services; Use of Frequencies in the 136-137 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule permits aircraft to use the frequencies in the 136-137 MHz band. This action was initiated in response to two petitions. One petition (RM-6620) was filed by the Aeronautical Radio, Inc. (ARING) and the other (RM-6649) filed by the American Petroleum Institute (API). The effect of this rule is to permit the aviation community to use additional frequencies in order to alleviate the frequency congestion that currently exists in the aviation services.

EFFECTIVE DATE: August 17, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 89-295, adopted June 14, 1990, and released July 5, 1990. The full text of this Commission decision including the adopted rule changes are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the adopted rule changes may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC. 20037.

Summary of Report and Order

In response to two petitions for rulemaking, one filed by the Aeronautical Radio, Inc. (ARINC), RM-6620, and the other by the American Petroleum Institute (API), RM-6649, on June 28, 1989, the Commission released a *Notice of Proposed Rule Making*, GEN. Docket No. 89-295, FCC 89-207 54 FR 28823, July 10, 1989, which proposed to amend the rules to authorize the aviation services to use the frequencies in the 136-137 MHz band. Authorization to use these frequencies will help to alleviate the frequency congestion currently being experienced in the aviation services. The *Report and Order* discusses the comments filed regarding the proposed rules in the *Notice of Proposed Rule Making* and assigns the 136-137 MHz band to the aviation services.

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

Ordering Clauses

Authority for issuance of this Report and Order is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

It is ordered, that parts 2 and 87 of the Commission's Rules are amended as shown at the end of this document effective as indicated in the "**EFFECTIVE DATE**" paragraph of this document.

It is further ordered, that a copy of this Report and Order will be served on the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered, that this proceeding is terminated.

List of Subjects

47 CFR Part 2

Frequency allocations, Treaties, Radio.

47 CFR Part 87

Aviation services, Aeronautical stations, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Parts 2 and 87 of chapter I title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. In § 2.106, United States footnote US244 is revised to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

United States (US) Footnotes

* * * * *

US244 The band 136.000-137.000 MHz is allocated to the non-Government aeronautical mobile (R) service on a primary basis, and is subject to pertinent international treaties and agreements. The frequencies 136.000 MHz, 136.025 MHz, 136.050 MHz, 136.075 MHz, 136.125 MHz, 136.150 MHz, 136.175 MHz, 136.225 MHz, 136.250 MHz, 136.300 MHz, 136.325 MHz, 136.350 MHz, 136.400 MHz, 136.425 MHz and 136.450 MHz are available on a shared basis to the Federal Aviation Administration for air traffic control purposes, such as automatic weather observation services (AWOS), automatic terminal information services (ATIS) and airport control tower communications. Stations licensed prior to January 2, 1990, using the 136-137 MHz band for space operation (space-to-earth), meteorological-satellite service (space-to-earth) and the space research service (space-to-earth) may continue to use this band on a secondary basis to aeronautical mobile (R) service stations. No new assignments will be made to stations in the above space services.

* * * * *

PART 87—AVIATION SERVICES

1. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. In § 87.137, paragraph (a), Footnote 5 is amended by revising the first sentence to read as follows:

§ 87.137 Types of emission.

(a) * * *

[5] This emission may be authorized for audio frequency shift keying and phase shift keying for digital data links on any frequency listed in § 87.263(a)(1), § 87.263(a)(3) or § 87.263(a)(5). * * *

* * * * *

3. In § 87.173, the frequency table in paragraph (b) is amended by adding the following four columnar entries in frequency numerical order to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) * * *

Frequency or frequency band	Subpart	Class of station	Remarks
*	*	*	*
136.000–136.075 MHz	0, S	MA, FAC, FAW	Air traffic control operations.
136.100 MHz			Reserved for future unicom or AWOS.
136.125–136.175 MHz	0, S	MA, FAC, FAW	Air traffic control operations.
136.200 MHz			Reserved for future unicom or AWOS.
136.225–136.250 MHz	0, S	MA, FAC, FAW	Air traffic control operations.
136.275 MHz			Reserved for future unicom or AWOS.
136.300–136.350 MHz	0, S	MA, FAC, FAW	Air traffic control operations.
136.375 MHz			Reserved for future unicom or AWOS.
136.400–136.450 MHz	0, S	MA, FAC, FAW	Air traffic control operations.
136.475 MHz			Reserved for future unicom or AWOS.
136.500–136.600 MHz	I	MA, FAE	Domestic VHF.
136.625 MHz	I	MA, FAE	Domestic VHF.
136.650 MHz	I	MA, FAE	Domestic VHF.
136.675 MHz	I	MA, FAE	Domestic VHF.
136.700 MHz	I	MA, FAE	Domestic VHF.
136.725 MHz	I	MA, FAE	Domestic VHF.
136.750 MHz	I	MA, FAE	Domestic VHF.
136.775 MHz	I	MA, FAE	Domestic VHF.
136.800 MHz	I	MA, FAE	Domestic VHF.
136.825 MHz	I	MA, FAE	Domestic VHF.
136.850 MHz	I	MA, FAE	Domestic VHF.
136.875 MHz	I	MA, FAE	Domestic VHF.
136.900 MHz	I	MA, FAE	Domestic VHF.
136.925 MHz	I	MA, FAE	Domestic VHF.
136.950 MHz	I	MA, FAE	Domestic VHF.
136.975 MHz	I	MA, FAE	Domestic VHF.
*	*	*	*

4. In § 87.263, paragraph (a)(1) is revised, a new paragraph (a)(5) is added and paragraph (c) is revised to read as follows:

§ 87.263 Frequencies.

(a) *Domestic VHF service.* (1) The frequencies in the 128.825–132.000 MHz band and the frequencies 136.500 MHz, 136.525 MHz, 136.550 MHz, 136.575 MHz, 136.600 MHz, 136.650 MHz, 136.700 MHz, 136.750 MHz, 136.800 MHz, 136.850 MHz, 136.900 MHz and 136.950 MHz are available to serve domestic routes. The frequencies 136.625 MHz, 136.675 MHz, 136.725 MHz 136.775 MHz, 136.825 MHz, 136.875 MHz, 136.925 MHz and 136.975 MHz are also available to enroute stations located at least 288 km (180 miles) from the Gulf of Mexico shoreline (outside the Gulf of Mexico Region). Frequency assignments are based on 25 kHz spacing. Use of these frequencies must be compatible with existing operations and must be in accordance with pertinent international treaties and agreements.

* * * * *

(5) The frequencies 136.625 MHz, 136.675 MHz, 136.725 MHz, 136.775 MHz, 136.825 MHz, 136.875 MHz, 136.925 MHz and 136.975 MHz are available in the Gulf of Mexico Region to serve domestic routes over the Gulf of Mexico and adjacent coastal areas. Assignments of these eight frequencies in the Gulf of Mexico Region are not subject to the conditions contained in section 87.261(c) and paragraph (a)(2) of this section. Frequency assignments are based on 25 kHz spacing. Use of these frequencies must be compatible with existing operations and must be in accordance With pertinent international treaties and agreements. For the purpose of this paragraph, the Gulf of Mexico Region is defined as an area bounded on the east, north and west by a line 288 km (180 miles) inland from the Gulf of Mexico shoreline.

* * * * *

(c) *International VHF service.* Frequencies in the 128.825–132.000 and 136.000–137.000 MHz bands are available to enroute stations serving international flight operations. Frequency assignments are based on 25 kHz channel spacing. Proposed operations must be compatible with existing operations in the band.

* * * * *

5. In § 87.421, the introductory text is revised to read as follows:

§ 87.421 Frequencies.

The Commission will assign VHF frequencies after coordination with the FAA. The following frequencies are available to control towers. Channel spacing is 25 kHz.

118.000–121.400 MHz
121.600–121.925 MHz
123.600–128.800 MHz
132.025–135.975 MHz
136.000–136.075 MHz
136.125–136.175 MHz
136.225–136.250 MHz
136.300–136.350 MHz
136.400–136.450 MHz

* * * * *

[FR Doc. 90-16172 Filed 7-11-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 68

[CC Docket 88-57, RM-5643; FCC 90-220]

Connection of Simple Inside Wiring to Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission's (FCC's) rules setting forth the terms and conditions under which subscribers may install and connect simple inside wiring to the local telephone company network are amended in response to the Notice of Proposed Rulemaking in CC Docket 88-57, RM-5643 (FCC 88-38), adopted January 29, 1988, 53 FR 9952, March 28, 1988. The rule changes will expand consumer options for, and eliminate unnecessary restrictions on, inside

wiring operations; will encourage the development of a competitive, innovative and excellent American communications system; and will provide effective and adaptive regulation for communications, while eliminating regulations which are unnecessary or inimical to the public interest

This item was released as a combined Report and Order (R&O) and Further Notice of Proposed Rulemaking (Further NPRM) in CC Docket 88-57, RM-5643, FCC 90-220, adopted June 8, 1990 and released June 14, 1990. This R&O portion of that action revises the rules. For the document relating to the Further NPRM see the proposed rule published elsewhere in this issue.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Domestic Service Branch, Common Carrier Bureau, (202) 634-1832.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's R&O in CC Docket 88-57, RM-5643, FCC 90-220, adopted June 8, 1990 and released June 14, 1990. The full text of this decision is available for inspection and copying during the weekday hours (excluding Federal holidays) of 9 a.m. to 4:30 p.m. in the FCC's Public Reference Room, room 239, 1919 M Street NW., Washington, DC; or transcripts may be purchased from the FCC's duplicating contractor, International Transcription Services, l2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Part 68 of the FCC's rules, 47 CFR part 68, sets forth the terms and conditions under which subscribers may connect customer premises equipment and wiring to the telephone network. Section 68.213 of the rules, which generally authorizes customers to install at their premises and connect to the telephone network one and two-line telephone wiring (also referred to as "simple inside wiring") was adopted in 1984. Also adopted was a definition of the network interface or demarcation point to serve as the dividing line between carrier and customer wiring; prohibition against customer access to the protector (a device which prevents excessive electrical current from passing from the telephone line into the customer's premises or from the customer's premises into telephone company facilities); and a number of limitations on customer installation rights carriers believed necessary at that time to guard against harm to the telephone network, including the ban against subscribers or their agents severing carrier-installed wiring on the subscriber's premises and installing a jack. See First Report and Order, CC Docket 81-2165, 97 F.C.C.2d 527 (1984), stay denied, Order, FCC 84-546, released Nov. 20, 1984, *recon. granted in part, § 68.213 Reconsideration Order*, 50 FR 29384 (1985).

In its Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network (Notice of Proposed Rulemaking), CC Docket 88-57, 3 FCC Rcd 1120 (1988), the FCC undertook a general review of those rules which set forth the terms and conditions under which customers may install and connect simple inside wiring to the telephone network, and proposed a number of revisions. Particular concern was expressed that the requirement that inside wiring be connected to the network only through a carrier-installed jack might be causing consumers unnecessary costs. Comments on that aspect, as well as others, were solicited. Also offered for comment was (1) a petition for rulemaking filed by the Electronic Industries Association requesting that the FCC rule that all plugs and jacks used in inside wiring, not just the jack at the network interface, are required to conform to the technical specifications of subpart F of the rules, and (2) a request of AT&T that subpart F be modified to eliminate the language that permitted materials equivalent to gold in the jack contact interface. Comments were filed by several carriers and other parties. Based on the record, we are adopting the rules set forth below.

In this R&O, we (1) modify § 68.104 to allow customers to connect simple inside wiring to the telephone network by direct access to carrier-installed wiring at points up to and including the demarcation point, (2) revise lthe definition of the demarcation point in § 68.3 so that in most cases it will be at or near where wiring enters the customer's premises, (3) modify § 68.108 to authorize the carrier to discontinue service when harm occurs originating from customer-installed wiring, or when the carrier reasonably believes such harm is imminent, (4) delete § 68.218 (e), (f) and (g) concerning notification, acceptance testing and extraordinary procedures, (5) determine that jacks and plugs used in inside wiring must conform to subpart F, and (6) state that we expect local exchange carriers to continue to develop and submit to subscribers an informational brochure on the rights of subscribers to perform inside wiring operations.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the amendments of part 68 of the rules, 47 CFR part 68, adopted in this R&O will not have a significant impact on small entities because the amendments will only remove regulatory requirements for inside wiring operations performed by small entities and do not create any additional regulatory requirements for inside wiring operations performed by small entities.

List of Subjects in 47 CFR Part 68

Definitions, Means of connection, Incidence of harm, Installation of unprotected premises wiring, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

PART 68—[AMENDED]

Part 68 of the Commission's Rules and Regulations (chapter I of title 47 of the Code of Federal Regulations, part 68), is amended as follows:

1. The authority citation for part 68 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, unless otherwise noted.

2. Section 68.3 is amended by removing the definition of *Network interface or demarcation point* and adding a new definition in alphabetical order, *Demarcation point* to read as follows:

§ 68.3 Definitions.

* * * * *

Demarcation point: The point of demarcation and/or interconnection between telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. Carrier-installed facilities at, or constituting, the demarcation point shall consist of wire or a jack conforming to subpart F of part 68 of the Commission's rules. "Premises" as used herein generally means a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by the telephone company's reasonable and nondiscriminatory standard operating practices. The "minimum point of entry" as used herein shall be either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The telephone company's reasonable and nondiscriminatory standard operating practices shall determine which shall apply. The telephone company is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which shall apply. Multiunit

premises include, but are not limited to, residential, commercial, shopping center and campus situations.

(a) *Single unit installations.* For single unit installations existing as of August 13, 1990, and installations installed after that date the demarcation point shall be a point within twelve inches of the protector or, where there is no protector, within twelve inches of where the telephone wire enters the customer's premises.

(b) *Multiunit installations.* (1) In multiunit premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local carrier's reasonable and nondiscriminatory standard operating practices. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises.

(2) In multiunit premises in which wiring is installed after August 13, 1990, including additions, modifications and rearrangements of wiring existing prior to that date, the telephone company may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry. If the telephone company does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point location for all customers or separate such locations for each customer. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises.

* * * * *

3. Section 68.104 is amended by revising paragraph (a) to read as follows:

§ 68.104 Means of connection.

(a) *General.* Any jack installed by the telephone company at, or constituting, the demarcation point shall conform to subpart F of this part. Subject to the requirements of § 68.213, connection of wiring and terminal equipment to the telephone network may be made through a jack conforming to subpart F or by direct attachment to carrier-installed wiring including, but not limited to, splicing, bridging, twisting and soldering. Telephone company-provided ringers may be connected to the network in accordance with the carrier's reasonable and nondiscriminatory standard operating practices. Connection to the network of wiring subject to § 68.215 and terminal equipment used therewith shall be through telephone company-provided jacks conforming to subpart F of this part, in such a manner as to allow for easy and immediate disconnection.

* * * * *

4. Section 68.108 is revised to read as follows:

§ 68.108 Incidence of harm.

Should terminal equipment, inside wiring, plugs and jacks, or protective circuitry cause harm to the telphone network, or, should the carrier reasonably determine that such harm is imminent, the telephone company shall, where practicable, notify the customer that temporary discontinuance of service may be required; however, wherever prior notice is not practicable, the telephone company may temporarily discontinue service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance, the telephone company shall:

(a) Promptly notify the customer of such temporary discontinuance;

(b) Afford the customer the opportunity to correct the situation which gave rise to the temporary discontinuance; and

(c) Inform the customer of his right to bring a complaint to the Commission pursuant to the procedures set forth in subpart E of this part.

5. Section 68.213 is amended by revising the heading and paragraph (b) and by removing paragraphs (e), (f) and (g) to read as follows:

§ 68.213 Installation of other than "fully protected" non-system simple customer premises wiring.

* * * * *

(b) *Wiring authorized.* Unprotected premises wiring may be used to connect units of terminal equipment or protective circuitry to one another, and to carrier-installed facilities if installed in accordance with these rules. The telephone company is not responsible, except pursuant to agreement between it and the customer or undertakings by it, otherwise consistent with Commission requirements, for installation and maintenance of wiring on the subscriber's side of the demarcation point, including any wire or jacks that may have been installed by the carrier. The subscriber and/or premises owner may install wiring on the subscriber's side of the demarcation point, and may remove, reconfigure, and rearrange wiring on that side of the demarcation point including wiring that may have been installed by the carrier. The customer or premises owner may not access carrier wiring and facilities on the carrier's side of the demarcation point. Customers may not access the telephone company-installed protector. All plugs and jacks used in connection with inside wiring shall conform to subpart F of the Commission's rules.

* * * * *

[FR Doc. 90-16100 Filed 7-11-90; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 507

[APD 2800.12A, Chge 9]

General Services Administration Acquisition Regulation; Comprehensive Acquisition Plan and Miscellaneous Revisions to GSA Forms

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A), chapter 5, is amended to revise §§ 507.102, 507.104 and 507.105 to update references to the GSA order on Comprehensive Acquisition Planning which has been revised and to revise the GSAR to conform to the requirements of the revised GSA order. Section 553.370-3506 is revised to illustrate the September 1989 edition of GSA From 3506, Construction Contract Clauses and § 553.370-3507 is revised to illustrate the December 1989 edition of GSA Form 3507, Supply Contract Clauses. The intended effect is to provide guidance to GSA contracting personnel.

EFFECTIVE DATE: July 12, 1990.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment prior to issuance because it merely deals with internal operating procedures in GSA.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The rule provides internal operating procedures and guidance to GSA contracting personnel and has no impact on the public. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR 507

Government procurement.

PART 507—ACQUISITION PLANNING

1. The authority citation for 48 CFR part 507 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 507.102 is revised to read as follows:

507.102 Policy.

(a) All acquisitions exceeding the small purchase limitation must have a limited acquisition plan unless a comprehensive acquisition plan is required under GSA Order, Comprehensive Acquisition Planning (APD 2800.13A). Priced options must be included when determining the dollar threshold. An acquisition plan must be prepared before exercise of unpriced and/or unevaluated options exceeding the small purchase limitation.

(b) No solicitation may be issued until either a comprehensive acquisition plan or a limited acquisition plan has been prepared or the requirement waived under GSA Order APD 2800.13A or 507.104(d). A contract may not be entered into without full and open competition on the basis of a lack of acquisition planning or concerns related to the amount of funds available to the acquisition.

3. Section 507.104 is amended by revising paragraphs (a) and (d) to read as follows:

507.104 General procedures.

(a) Policies and procedures for comprehensive acquisition plans are in GSA Order, Comprehensive Acquisition Planning (APD 2800.13A).

* * * * *

(d) The contracting director may waive the requirement for a written limited acquisition plan in cases of unusual or compelling urgency. The individual responsible for preparing the plan will present (as a minimum) an oral plan to at least the next higher level for approval. The file must be documented to show: the nature of the urgency, the content of the oral plan, and the name of the individual that approved it. This document may be prepared after award when preparation before award would unreasonably delay the acquisition. The documentation may be included in the justification required by FAR 6.302-2(c).

4. Section 507.105 is amended by revising paragraph (a)(3) and paragraph (b) to read as follows:

507.105 Contents of written acquisition plans.

* * * * *

(a) * * *

(3) Modification of the suggested information for limited acquisition plans by deleting inapplicable elements or adding new ones as needed.

(b) The outline in FAR 7.105 must be used as the basis for comprehensive acquisition plans required under GSA Order APD 2800.13A. If an element does not apply, it must be so annotated. Elements may be added to the outline as appropriate. It is suggested that a limited acquisition plan include the information cited below:

* * * * *

Note: GSA forms listed in this rule are made a part of the GSAR looseleaf edition. The forms will not appear in this volume of the Federal Register or title 48, chapter 5 of the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th & F Streets, NW., Washington, DC 20405.

Dated: June 19, 1990.

Richard W. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-16109 Filed 7-11-90; 8:45 am]

BILLING CODE 5820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

[Docket No. 70345-0122]

RIN 0648-AC25

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects the effective date for the final rule to implement portions of Amendment 1 to the Fishery Management Plan for Spiny Lobster of the Gulf of Mexico and South Atlantic, published June 28, 1990 (55 FR 26447).

EFFECTIVE DATES: July 28, 1990, except that § 640.4 is effective June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

In FR Doc. 90-15073 beginning on page 26447 in the issue of June 28, 1990, make the following correction:

On page 26447, column one, under the "**EFFECTIVE DATE**" heading, "July 30, 1990" should read "July 28, 1990".

Dated: July 9, 1990.

James E. Douglas,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 90-16281 Filed 7-11-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 134
Thursday, July 12, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317, 359, and 842

Senior Executive Service Recertification

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations on procedures governing the recertification of career appointees in the Senior Executive Service. The regulations are intended to assure consistency and fairness in the recertification process.

DATES: Written comments will be considered if received no later than August 13, 1990.

ADDRESSES: Send or deliver written comments to the Director, Office of Executive Personnel, OEA, room 6R48, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 606-1610.

SUPPLEMENTARY INFORMATION: Under section 506 of the Ethics Reform Act of 1989 (Pub. L. 101-194, November 30, 1989), Senior Executive Service (SES) career appointees are subject to recertification by their agencies every 3rd year, beginning in calendar year 1991. The Act adds a new section 3393a to title 5 of the U.S.C. The section states that recertification is intended "to ensure that the performance of career appointees demonstrates the excellence needed to meet the goals of the Senior Executive Service, as set forth in section 3131 * * * ."

Thus, the Act aims at ensuring that the career members of the SES represent the best that this country has to offer in managing the public's business. It establishes a recertification process that goes beyond the annual performance appraisal, which remains as one of the essential features of the SES, to look at how the executive has performed over a period of several years and whether the executive's overall performance during that period has demonstrated the excellence expected of a senior executive. It is intended to enhance the performance of the SES, to set a standard of excellence for members of the SES, and to assure that executives remain in the SES only when they are performing at the expected level of excellence.

The regulations outline the procedures that agencies will be required to follow in making recertification determinations. The following information clarifies certain of the regulatory provisions:

(1) *Coverage.* Under 5 U.S.C. 3393(a)(2) and proposed 5 CFR 317.504(b)(1), an individual must be a career SES appointee as of the end of the recertification period and must have been continuously employed in the SES for the preceding 156 weeks, except that breaks in SES service totaling 6 months or less are not considered to interrupt the continuous service. The 156 weeks include any service as an SES noncareer or limited appointee. For example, the first 56 weeks could be as an SES limited emergency appointee and the remaining 100 weeks as an SES career appointee. The 156 weeks also include SES service in any agency.

(2) *When recertification takes place.* Under 5 U.S.C. 3393a(a)(2) and proposed 5 CFR 317.054(c), the initial recertification determination is to take place in calendar year 1991 at a time determined by the agency head. That means the entire recertification process, from the initial recommendation of the supervising official to the final determination by the agency head must be made sometime during the calendar year. It is possible, however, that the 156-week recertification period could end before CY 91. For example, an agency head could determine that the period ends on December 31, 1990, with the recertification process being initiated in January 1991.

(3) *Conducting the recertification process.* If an agency is going to consider the 1991 annual performance ratings of executives in making the recertification determination, the agency may wait until the appraisal process is completed (i.e., the appointing authority has given the final summary rating for 1991) before beginning the recertification process, or the agency may conduct the two processes concurrently.

In the latter case, the supervising official could recommend a 1991 annual rating and recommend whether the executive should be recertified at the same time; and the same Performance Review Board could consider both recommendations. The appointing authority would then give the final summary rating for 1991 and recommend to the agency head whether the executive should be recertified.

Concurrent consideration is being permitted because the appraisal period for many agencies will end on September 30, 1991, which will leave only 3 months to complete both the appraisal and recertification processes. Agencies will need to make clear in their procedures, however, that the two processes are separate and that different factors are considered in each of the processes. To help make this clear, recertification recommendations and determinations should be separately documented from the documentation used for the performance appraisals.

Under guidelines issued by OPM, each agency shall provide for a program to train executives who supervise SES career personnel. The purpose of this training would be to make clear the objectives and procedures of the SES recertification process, including the requirement for excellent performance as a prerequisite for continued service in the SES.

(4) *Factors considered.* Under 5 U.S.C. 3393a(b) and proposed 5 CFR 317.504(e)(1), the recommendation of the supervising official shall be based on the following factors.

(a) The appointee's performance ratings in the SES for the 3 preceding years. For example, the agency's annual performance appraisal period ends on September 30, 1991. If the agency's recertification period also ends on September 30, 1991, the agency would consider the ratings given the appointee for performance in the SES between October 1, 1988, and September 30, 1991, even if the performance rating for the last year is not given until November 1991. If the recertification period ends before September 30, 1991, then the agency in this example must consider the ratings for the 3 earlier periods, i.e., October 1, 1987, through September 30, 1990.

(b) Awards and recognition. These may be from the Federal Government (e.g., SES performance awards or Presidential rank awards) or from outside the Government, as long as they are related to performance as a senior executive during the 3 preceding years.

(c) Developmental activities. These may include any professional, educational, or self-development activities related to performance as a senior executive during the 3 preceding years.

(d) Other relevant factors. Among the other relevant factors are whether the executive demonstrated he or she led or actively participated in an effort which:

—Developed and secured approval of a major policy initiative;
—Substantially advanced achievement of a Presidential objective in the President's MBO system or agency objectives;
—Significantly improved the delivery of program services;
—Saved the Government substantial sums of money in the execution of a program for which he or she is responsible;
—Provided for training, activities, or assignments that significantly advanced the development of staff members; and
—Resulted in a successful task force or special project.

Agencies may add other similar factors. The purpose is to provide for recertification only where the executive has demonstrated excellence in achieving the attainable objectives of his or her position. The factors the agency plans to use must be included in the agency's written recertification procedures.

Since the recertification determination is to consider overall performance for the executive for a 3-year period and is to be based on a number of different factors, an agency's procedures may not provide that an executive will be automatically recertified or not recertified based on a single factor. Therefore, for example, the agency's procedures could not provide that an individual will be recertified solely on the basis of having received two above fully successful performance ratings or a rank award during the 3 preceding years. Similarly, the procedures could not provide that an executive will not be recertified solely on the basis of having received a minimally satisfactory performance rating during the 3-year period. The recertification decision should be based on whether the executive has affirmatively demonstrated during the preceding 3 years the excellence expected of a senior executive based on all the factors under consideration.

(5) *Conditional recertification.* Under 5 U.S.C. 3393a(e)(2), the agency head may reduce the pay of an executive who is conditionally recertified to the next lower rate (e.g., from ES–5 to ES–4). If the executive is later recertified, the executive's pay is restored to the former rate on a prospective basis. Under 5 U.S.C. 5383(c), which contains the general rules for setting individual senior executive pay, an executive's pay may be adjusted only once every 12 months. Therefore, proposed 5 CFR 317.504(h)(3) provides that any pay reduction or restoration in the case of conditional recertification may take place only after the executive has been at the current rate of pay for 12 months.

(6) *Relationship to removals based on annual performance ratings.* If an executive's latest SES annual performance rating under 5 U.S.C. 4314 is less than fully successful and requires the individual's removal from the SES because it is the second unsatisfactory rating in less than 5 years, or the second less than fully successful rating in 3 years, then no recertification determination need be made since the individual cannot be retained in the SES; and the removal is effected under 5 U.S.C. 3592(a)(2) governing removal for less than fully successful executive performance.

(7) *Removal for failure to be recertified.* If an executive is removed from the SES for failure to be recertified, then:

(a) Under 5 U.S.C. 3592(a)(3), the individual may appeal the removal to the Merit Systems Protection Board under 5 U.S.C. 7701, which provides a right to a formal hearing. Under 5 U.S.C. 7701(c)(1)(A), the agency action is to be sustained if it is supported by "substantial evidence," which is defined in the Board's regulations at 5 CFR 1201.56(c). The burden is on the agency to show that there is substantial evidence to support its action. Once such substantial evidence is demonstrated, the burden shifts to the appellant to refute the agency's case that there was substantial evidence or to make a demonstration under 5 U.S.C. 7701(c)(2).

(b) Under 5 U.S.C. 3594 (b)(3) and (c) and proposed subpart G of 5 CFR part 359, the individual is guaranteed fallback to no lower than GS–15, or equivalent, with saved pay. As with removal based on less than fully successful performance ratings, the fallback may not cause the separation or reduction in grade of another employee.

(c) Under 5 U.S.C. 8336(h)(1) for CSRS and 5 U.S.C. 8414(a)(1) for FERS, the individual may elect discontinued service retirement in lieu of fallback if otherwise eligible, i.e., is age 50 with 20 years of service or is any age with 25 years of service. If the individual is subject to CSRS, under 5 U.S.C. 8339(h) there is no annuity reduction based on age. If the individual is subject to FERS, under 5 U.S.C. 8421(a)(2) the individual is eligible for an annuity supplement regardless of age (see § 842.503(b)(4) of the proposed regulations).

(d) Under 5 U.S.C. 3593(a)(2) and proposed 5 CFR 317.702(a), the individual does not have SES reinstatement eligibility and thus must compete to obtain another SES career appointment. Further, under proposed 5 CFR 317.502(e), the individual's qualifications must be reapproved by a Qualifications Review Board (QRB) before individual may receive a new SES career appointment. (Note that the proposed regulations provide that any individual who completed an SES probationary period and was removed for a reason that made the individual ineligible for reinstatement to the SES as a career appointee, including removal for performance or under adverse action procedures, must be reapproved by a QRB before receiving a new SES career appointment.)

(8) *Documentation.* Under proposed 5 CFR 317.504(i), a written reason must be provided for any recommendation or decision to conditionally recertify or to not recertify an executive. If such a reason is already in the recertification record (e.g., it was prepared by the supervising official when making his or her recommendation), later reviewers may concur without providing additional written reasons.

In addition to regulations, OPM will also provide guidance for implementation of the recertification process through the Federal Personnel Manual system.

A number of agencies have annual performance appraisal periods that begin July 1, 1990; and most other periods begin October 1. In order to assure that these regulations are issued as early as possible, since the annual performance rating is one of the factors considered in determining whether to recertify an individual, and to assure that agencies have adequate time to develop their own recertification procedures, the Director of OPM finds that good cause exists for shortening the comment period to 30 days.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects

5 CFR Part 317

Government employees.

5 CFR Part 359

Administrative practice and procedure. Government employees.

5 CFR Part 842

Administrative practice and procedure, Government employees, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 317, 5 CFR part 359, and 5 CFR part 842 as follows:

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER, AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority for part 317 is revised to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595.

2. Under subpart E, paragraph (e) is added to § 317.502 and § 317.504 is added to read as follows:

Subpart E—Career Appointments

§ 317.502 Qualifications Review Board certification.

* * * * *

(e) A new QRB certification is required for an individual to be reappointed as an SES career appointee following separation of the individual from an SES career appointment if:

(1) The individual was removed during the SES probationary period for performance or disciplinary reasons; or

(2) The individual completed an SES probationary period, or did not have to serve one, and was removed for a reason that made the individual ineligible for reinstatement to the SES under subpart G of this part.

§ 317.504 Agency recertification.

(a) *General.* (1) Section 3393a of title 5, U.S.C., provides that each career SES appointee shall be subject to recertification by his or her employing agency "to ensure that the performance of career appointees demonstrates the excellence needed to meet the goals of the Senior Executive Service as set forth in section 3131 * * *."

(2) For purposes of this section, "agency" is an executive agency as defined in 5 U.S.C. 105 or a military department as defined in 5 U.S.C. 102.

(b) *Coverage.* (1) This section covers SES career appointees who have been continuously employed in the SES for the 156 weeks preceding the end of the recertification period. One or more breaks in SES service of a total of 6 months or less do not interrupt the 156 weeks of continuous employment.

(2) This section does not apply to SES noncareer, limited emergency, or limited term appointees. It also does not apply to former SES career appointees who took Presidential appointments with Senate confirmation and elected to retain SES benefits under subpart H of this part.

(c) *When recertification takes place.* (1) The initial recertification shall take place in calendar year 1991. Future recertifications shall take place every 3rd calendar year thereafter.

(2) The agency head shall determine when in the calendar year recertification shall take place and shall establish a date for calculating the 156-week employment period. Recertification may take place at different times during the calendar year for different components within the agency.

(3) If an individual is recertified in one agency and then transfers to another agency during the calendar year, the individual is not subject to recertification in the new agency. If an individual transfers to another agency during the calendar year and no recertification decision was made in the old agency, a recertification decision must be made in the new agency.

(d) *Standard for recertification.* (1) To be recertifed, the career appointee must perform at the level of excellence expected of a senior executive. Excellence means that the executive has demonstrated over the evaluation period that he or she has achieved excellence in:

(i) Planning for and attaining goals that required a sustained superior effort;

(ii) Taking specific initiatives that improved delivery of services;

(iii) Taking necessary actions to ensure the achievement of a quality product in a timely manner; and

(iv) Providing leadership, and support, that enhanced the professional development and achievements of subordinate employees.

(2) Agencies may add other activities, as appropriate in their written recertification procedures.

(e) *Recommendation by the supervising official.* (1) The supervising official of the career appointee shall submit to an agency Performance Review Board established under 5 U.S.C. 4314 a recommendation whether the appointee's performance justifies recertification as a senior executive. The recommendation shall be based on the following factors:

(i) The appointee's performance ratings in the SES for the 3 preceding years under 5 U.S.C. 4314;

(ii) Any award or other recognition related to performance as a senior executive received by the appointee during the 3 preceding years;

(iii) Any professional, education, or self-developmental activities of the appointee during the 3 preceding years related to performance as a senior executive; and

(iv) Other relevant factors. Among the other relevant factors are whether the executive demonstrated he or she led or actively participated in an effort which:

(A) Developed and secured approval of a major policy initiative;

(B) Substantially advanced achievement of a Presidential objective in the President's MBO system or agency objectives;

(C) Significantly improved the delivery of program services;

(D) Saved the Government substantial sums of money in the execution of a program for which he or she is responsible;

(E) Provided for training, activities, or assignments that significantly advanced the development of staff members; and

(F) Resulted in a successful task force or special project.

(2) The recommendation shall reflect the official's view whether the appointee's overall performance for the 3 preceding years has demonstrated the excellence expected of a senior executive based on the factors outlined in this section.

(3) The appointee shall be given a copy of the recommendation and advised of the right to submit to the Performance Review Board a statement of accomplishment and other documentation giving evidence of the quality of the appointee's performance during the 3 preceding years.

(f) *Recommendation by the Performance Review Board.* (1) More than one-half of the members of the Board shall consist of SES career appointees, unless OPM determines that there exists an insufficient number of career appointees available to comply with this requirement.

(2) After receiving the recommendation of the supervising official and any information provide by the career appointee under paragraph

(e)(3) of this section, the Board shall submit to the appointing authority a recommendation whether the appointee should be recertified, conditionally recertified, or not recertified, or not recertified for continued employment as a senior executive in the SES.

(3) If the Board proposes to recommend conditional recertification or non-recertification, the appointee shall be notified in writing and shall have the opportunity to appear before the Board prior to the forwarding of the recommendation to the appointing authority.

(4) If the Board recommends recertification, it may also recommend that the appointee's rate of basis pay be increased to a higher rate under 5 U.S.C. 5382. If the Board recommends conditional recertification, it may also recommend that the appointee's rate of basic pay be reduced to the next lower rate under 5 U.S.C. 5382.

(5) In addition to its recommendation, the Board, shall also provide the appointing authority the recommendation from the supervising official and any information received from the appointee under paragraph (e)(3) or paragraph (f)(3) of this section.

(6) If the appointing authority is also the agency head, the recommendation of the Board shall go directly to the individual as the agency head.

(g) *Recommendation by the appointing authority.* (1) If the appointing authority determines that the appointee's performance during the 3 preceding years demonstrates the excellence expected of a senior executive, the appointing authority shall recommend to the agency head that the appointee be recertified as a senior executive.

(2) If the appointing authority determines that the appointee's performance has not demonstrated the excellence expected of a senior executive, the appointing authority shall recommend to the agency head that the appointee be conditionally recertified or not be recertified.

(h) *Determination by the agency head.* (1) The agency head shall determine whether the appointee shall be recertified, conditionally recertified, or not recertified as a senior executive.

(2) If the agency head determines that the appointee's performance warrants recertification, the appointee shall continue in the SES. Further, the appointee, rate of basic pay may not be reduced at the time of recertification.

(3) If the agency head determines that the appointee's performance warrants conditional recertification, the appointee:

(i) Shall remain a career appointee in the SES;

(ii) Shall be subject to continuing close review of the appointee's performance by the supervising official in coordination with an Executive Resources Board established under 5 U.S.C. 3393, in accordance with a performance improvement plan developed by the supervising official and subject to the approval of the Executive Resources Board;

(iii) May, if the agency head so determines, be reduced to the next lower rate of basic pay established under 5 U.S.C. 5382, once 12 months have elapsed since the appointee's last pay adjustmenmt, in accordance with § 534.401(c) of this chapter;

(iv) Shall be removed from the SES if not recertified at the end of the 12-month period following the conditional recertification; and

(v) Shall be retained in the SES if recertified at the end of the 12-month period following the conditional recertification and shall have any reduction in basic pay made under paragraph (h)(3)(iii) of this section restored as of the beginning of the first pay period following recertification when 12 months have elapsed since the pay reduction.

(4) The process for determining whether to recertify at the end of the 12-month period an individual who has been conditionally recertified shall be the same as for the initial recertification decision, including review and recommendation by a Performance Review Board.

(5) If the agency head determines that the appointee's performance does not warrant recertification or conditional recertification, the appointee shall be removed from the SES in accordance with 5 U.S.C. 3592 and part 359, subpart C, of this chapter.

(6) The decision to recertify a senior executive may be delegated by the agency head, but no lower than the appointing authority. The decision to conditionally recertify, or to not recertify, a senior executive must be made by the agency head, the deputy agency head, or the head of a major operating unit within a department. The agency's written recertification procedures must indicate who is to make the decision.

(i) *Procedures.* Written reasons must be provided for any recommendation or decision to conditionally recertify or to not recertify a career appointee.

(j) *Agency responsibilities.* Each agency that has career appointees subject to recertification:

(1) Shall develop and issue regulations before the recertification process is initiated and shall provide its senior executives and OPM a copy of the regulations upon issuance and upon any change;

(2) Shall provide for a program, under guidelines issued by OPM, to train its executives who supervise SES career personnel in the objectives and procedures of the recertification process;

(3) Shall maintain such records as OPM may require;

(4) Shall report to OPM such information as OPM may request relating to recertification actions or the training of SES supervisor; and

(5) Shall take such corrective action as may be directed by OPM if OPM finds that the agency's written procedures, or any actions taken by the agency, are contrary to law or regulation.

3. In § 317.702 of subpart G, paragraph (a) introductory text and paragraph (a)(1) are republished, and the first sentence of paragraph (a)(2) up to the first semi-colon is revised to read as follows:

Subpart G—SES Career Appointment by Reinstatement

§ 317.702 General reinstatement: SES career appointees.

(a) *Eligibility for general reinstatement.* A former SES career appointee who meets the following conditions is eligible for reinstatement under this section:

(1) The individual completed an SES probationary period under a previous SES career appointment or was exempted from that requirement; and

(2) The individual's separation from his or her last SES career appointment was not a removal under subpart C of part 359 of this chapter for failure to be recertified as a senior executive; or a removal under subpart E of part 359 of this chapter for less than fully successful executive performance; * * *

* * * * *

PART 359—REMOVAL FROM THE SENIOR EXECUTIVE SERVICE; GUARANTEED PLACMENT IN OTHER PERSONNEL SYSTEMS

4. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 1302 and 3596, unless otherwise noted.

5. Subpart C, which was formerly reserved, is added to read as follows:

Subpart C—Removal of Career Appointees for Failure To Be Recertified

Sec.
359.301 Coverage.
359.302 Notice requirements.
359.303 Restrictions.
359.304 Appeals.

Subpart C—Removal of Career Appointees for Failure To Be Recertified

§ 359.301 Coverage.

(a) This subpart covers a career appointee who has failed to be recertified under § 317.504 of this chapter.

(b) This subpart does not cover, however, a career appointee who is serving as a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.

§ 359.302 Notice requirements.

(a) The agency shall notify the career appointee in writing before the effective date of the action. If the appointee has completed the SES probationary period, or was not required to serve a probationary period, the notice shall be at least 30 calendar days before the effective date of the removal.

(b) The notice shall advise the appointee of:

(1) The basis for the action;

(2) The appointee's placement rights under subpart G of this part—the position to which the appointee will be assigned shall be identified either in the advance notice or in a supplementary notice issued no later than 10 calendar days before the effective date of the action;

(3) the appointee's right to appeal to the Merit Systems Protection Board, including the time limit for appeal and the office to which an appeal should be sent;

(4) The effective date of the removal; and

(5) When applicable, the appointee's eligibility for immediate retirement under 5 U.S.C. 8336(h) or 8414(a).

§ 359.303 restrictions.

(a) Removal from the SES under this subpart may not be made effective within 120 days after—

(1) The appointment of a new agency head; or

(2) The appointment in the agency of the career appointee's most immediate spervisor who—

(i) Is a noncareer appointee; and

(ii) Has the authority to remove the career appointee.

(b) For purposes of this section, a noncareer appointee includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in Executive Schedule or equivalent position other than a career Executive Schedule or equivalent position.

§ 359.304 Appeals.

Removal under this subpart is appealable to the Merit Systems Protection Board under 5 U.S.C. 7701. Under 5 U.S.C. 7701(c)(1)(A), the decision of the agency shall be sustained if it is supported by substantial evidence, which is defined in the Board's regulations at 5 CFR 1201.56(c). The burden is on the agency to show that there is substantial evidence to support its action. Once such substantial evidence is demonstrated, the burden shifts to the appellant to refute the agency's case that there was substantial evidence or to make a demonstration under 5 U.S.C. 7701(c)(2).

6. In § 359.401 of subpart D, the introductory test is republished, paragraph (a) is revised, paragraph (b) is redesignated as paragraph (c) and is republished, and a new paragraph (b) is added to read as follows:

Subpart D—Removal of Career Appointees During Probation

§ 359.401 General exclusions.

This subpart does not apply to the removal of a career appointee during probation when—

(a) The action is initiated under 5 U.S.C. 1206(g) or 5 U.S.C. 7542;

(b) The removal is effected under subpart C of this part for failure to be recertified; or

(c) The appointee is a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.

7. In § 359.701 of subpart G, the introductory test is republished, paragraph (a) introductory text and paragraph (b) are revised, and paragraph (c) is removed to read as follows:

Subpart G—Guaranteed Placement

§ 359.701 Coverage.

This subpart covers career appointees, other than reemployeed annuitants, who are removed from the SES under any of the following conditions:

(a) Removal during the probationary period under subpart C of this part or under subpart D of this part for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons under §§ 359.403, 359.404, or part 752, subpart F, of this chapter, if at the time of appointment to the SES the individual held a career of career-conditional appointment or an appointment of equivalent tenure, as determined by OPM. An appointment of equivalent tenure is considered to be an appointment in the excepted service other than an appointment—

* * * * *

(b) Removal as the result of

(1) Failure to be recertified under subpart C of this part,

(2) Less than fully successful executive performance under subpart E of this part, or

(3) A reduction in force under subpart F of this part.

The appointee must have completed the required probationary period under the SES or was not required to serve a probationary period.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

8. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461; § 842.105 also issued under 5 U.S.C. 8402(c)(1); § 842.106 also issued under 5 U.S.C. 8402(c)(1).

9. In § 842.211 of subpart B, paragraph (a) is revised paragraph (c) is redesignated as paragraph (d) and is republished, and a new paragraph (c) is added to read as follows:

Subpart B—Eligibility

§ 842.211 Senior Executive Service, Defense Intelligence Senior Executive Service, and Senior Cryptologic Executive Service.

(a) A member of the Senior Executive Service, the Defense Intelligence Senior Executive Service, or the Senior Cryptologic Senior Executive Service who is removed or who resigns after receipt of written notice of proposed removal for less than fully successful executive performance, or for failure to be recertified as a senior executive, is entitled to an annuity—

(1) After completing 25 years of service; or

(2) After becoming age 50 and completing 20 years of service.

* * * * *

(c) "Removed for failure to be recertified as a senior executive" means (1) with respect to a member of the Senior Executive Service, removal in accordance with the procedures in subpart C part 359 of this chapter, and (2) with respect to a member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service, a certification by the head of the Defense Intelligence Agency or National Security Agency (or their designees) that the employee has been

removed for failure to be recertified under 10 U.S.C. 1601(a) or section 12(a)(1) of the National Security Agency Act, respectively.

(d) An annuity payable under paragraph (a) of this section commences on the day after separation from service.

10. In § 842.503 of subpart E, paragraph (b) introductory text and paragraph (b)(4) are revised to read as follows:

Subpart E—Annuity Supplement

§ 842.503 Eligibility for annuity supplement.

* * * * *

(b) An employee or Member who retires under any of the following sections before attaining the minimum retirement age is not entitled to receive an annuity supplement until he or she attains that age:

* * * * *

(4) Section 842.211, except that an individual entitled to an annuity under 5 U.S.C. 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to the minimum retirement age.

* * * * *

[FR Doc. 90-16316 Filed 7-11-90; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. 90-052]

Genetically Engineered Organisms and Products; Exemption for Interstate Movement of the Genetically-Engineered Plant (Arabidopsis thaliana) Under Specified Conditions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations pertaining to the introduction of certain genetically engineered organisms and products by exempting from regulation certain genetically engineered plants that are moved interstate under specified conditions. This proposed amendment would remove unnecessary restrictions on the interstate movement of a genetically engineered plant, *Arabidopsis thaliana*, which does not present a risk of plant pest introduction or dissemination.

DATES: Consideration will be given only to comments received on or before August 13, 1990.

ADDRESSES: Send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90-052. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Cathy Joyce, Biotechnologist, 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) 436-6789.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection (APHIS) published a final rule in the **Federal Register** (52 FR 22892-22915) that established a new part 340 in title 7 of the Code of Federal Regulations (7 CFR part 340), entitled "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" (hereinafter referred to as "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or for which there is reason to believe are plant pests (regulated articles). The rule sets 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. Such permits are required before a regulated article can be introduced in the United States.

It is APHIS' belief that the rule should be flexible and modified when appropriate to remove unnecessary restrictions. APHIS previously demonstrated its commitment to amend its rule by institution of an exemption for certain microorganisms (*E. coli* strain K-12, sterile strains of *Saccharomyces cerevisiae*, or asporogenic strains of *Bacillus subtilis*) that contain plant pest sequences (52 FR 35921-35923). APHIS believes that when it can be shown that the interstate movement between contained facilities of certain organisms does not present a risk of plant pest introduction or dissemination, the regulations should be amended to exclude such movement from the permit requirements.

In this regard, APHIS is proposing to amend § 340.2(b) of the rule by exempting the interstate movement of genetic material from any plant pest that is incorporated in the genome of the plant *Arabidopsis thaliana*. This proposal would not amend the permit requirements concerning release into the environment or importation.

A. thaliana is a small herbaceous plant in the mustard family (Brassicaceae). Several characteristics make *A. thaliana* a desirable model system for classical genetic studies, and *A. thaliana* has been used in this regard for over 40 years. These characteristics include the small size of the plants, short generation times, high seed set, ease of growth, and ease of either self- or cross-fertilization. More recently, *A. thaliana* has begun to be appreciated as a model organism for molecular genetic studies.

Characteristics of this organism which facilitate molecular genetic analysis are the small genome size, the lack of repetitive DNA in the genome, and the ease with which transformation with *Agrobacterium tumefaciens* can be accomplished. *Arabidopsis* has the smallest known genome among higher plants, with a haploid nuclear genome size of approximately 70,000 kilobase pairs (kb). In comparison, two other plants that are frequently used in plant molecular genetic research, cotton and tobacco, have genomes with 780,000 and 1,600,000 kb, respectively. The small genome size and the low content of repetitive DNA in the genome facilitate the application of many techniques in plant molecular biology including screening of genomic libraries, Southern blot analysis, and "chromosome walking." Because of the above mentioned characteristics, *A. thaliana* is now and is likely to continue to be a widely used organism in plant molecular biology research.

Under the proposed exemption, a limited permit for interstate movement would not be required for genetic material from any plant pest contained in the genome of the plant *A. thaliana*, provided all of the following conditions are met:

(1) The plant or materials are shipped in a container that meets the requirements of § 340.6(b) (1), (2) and (3) of this part;

(2) The cloned genetic material is stably integrated into the plant genome; and

(3) The cloned material does not include the complete infectious genome of a known plant pest.

The rationale for imposing conditions in proposed § 340.2(b)(2) (i), (ii) and (iii) is as follows:

(1) Requiring that the plant or material be shipped in a container that meets the requirements of §340.6(b) (1), (2), and (3) of this part ensures that the organisms will receive adequate physical containment during interstate movement. Furthermore, such container requirements are simply sound and prudent measures that should be employed when shipping contained organisms between laboratories.

(2) Requiring that the cloned genetic material be stably integrated into the plant genome ensures that, in the event of an accidental release, the risk of horizontal movement (the transfer of genetic material between organisms) of the genetic material is negligible.

(3) The condition that the cloned material not include the complete infectious genome of a plant pest ensures that such genetic material would not be able to initiate plant disease. In short, APHIS believes that when plant pest genetic material is moved interstate under the conditions set forth above, this would provide adequate safeguards which would prevent the introduction and dissemination of plant pests.

APHIS proposes to amend the rule in § 340.2(b) by adding a new paragraph, (b)(2), to include the proposed exemption.

This document also proposes to add, to the definition section in 7 CFR 340.1, the term "stably integrated".

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of less than a $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effect of this proposed rule would be to exempt a person from having to obtain a limited permit when certain genetic material from a plant pest, contained within the genome of the plant *A. thaliana*, is moved interstate. Currently, such a limited permit requires the submission of data regarding the nature of the organism, how it was produced, and a description of the contained facility at destination. Such data should already be available to the researcher. The proposed exemption would relieve a person from having to submit an application to APHIS for a limited permit, resulting in a savings of time that would ordinarily be associated with preparation of such a permit application. Therefore, the deletion of the requirement to submit the data to obtain a limited permit should not have a significant economic impact on a substantial number of small entities.

The conditions that would have to be complied with under the proposed exemption are those that a researcher would normally employ when using *A. thaliana* as an experimental organism. It is expected that this proposed exemption will affect as least several hundred research scientists, some of whom may be operating small businesses that would be deemed small "entities" under the Regulatory Flexibility Act. The proposed regulation would exempt them from the requirement of having to obtain a limited permit under the circumstances described above. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 340

Agricultural commodities, Biotechnology, Genetic engineering, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we are proposing to amend 7 CFR part 340 as follows:

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

1. The authority citation for 7 CFR part 340 would continue to read as follows:

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 340.1, the following definition would be added in alphabetical order to read as follows:

§ 340.1 Definitions.

* * * * *

Stably integrated. The cloned genetic material is contiguous with elements of the recipient genome and is replicated exclusively by machanisms used by recipient genomic DNA.

* * * * *

3. In § 340.2, a new paragraph (b)(2) would be added to read as follows:

§ 340.2 Groups of organisms which are or contain plant pests and exemptions

* * * * *

(b) * * *

(2) A limited permit for interstate movement would not be required for genetic material from any plant pest contained in the genome of the plant *Arabidopsis thaliana*, provided that all of the following conditions are met:

(i) The plants or plant materials are shipped in a container that meets the requirements of § 340.67(b) (1), (2) and (3) of this part;

(ii) The cloned genetic material is stably integrated into the plant genome;

(iii) The cloned material does not include the complete infectious genome of a known plant pest.

Done in Washington, DC, this 9th day of July 1990

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–16228 Filed 7–11–90; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 3

[Docket No. 90–128]

Animal Welfare—Standards for Horses and Other Farm Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our advance notice of proposed rulemaking regarding establishment of standards designed specifically for the humane care of horses used for biomedical or other nonagricultural research, and for the humane care of other farm animals used for biomedical or other nonagricultural research, or for nonagricultural exhibition. This extension will provide interested persons with additional time to prepare comments regarding such standards.

DATES: Consideration will be given only to written comments on Docket No. 90-006 received on or before September 10, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90-006. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 269, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7833.

SUPPLEMENTARY INFORMATION: On April 5, 1990, we published in the **Federal Register** a final rule (55 FR 12630-12631, Docket No. 89-223) giving notice of our intent to regulate under the Animal Welfare Act horses used for biomedical or other nonagricultural research, and other farm animals used for biomedical or other nonagricultural research, or for nonagricultural exhibition. In the same issue of the **Federal Register**, we published an advance notice (55 FR 12667, Docket No. 90-006) that we are considering proposing standards designed specifically for the humane care of such animals, and we requested comments on appropriate specific standards. We stated in Docket No. 90-006 that until standards designed specifically for the animals in question are added to the regulations, we intend to regulate those animals in accordance with the standards set forth in 9 CFR part 3, subpart F, "Specifications for the Humane Handling, Care, Treatment, and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Marine Mammals."

Comments regarding Docket No. 90-006 were required to be received on or before June 4, 1990. During the comment period, we received requests that we extend the period for accepting comments. In response to these requests, we reopened and extended the comment period until July 12, 1990. (55 FR 23748-23749, Docket No. 90-100). During the extended comment period, we have received a number of requests that we extend the comment period beyond July 12. The requestors—including agricultural associations, research facilities, and members of the general public—stated that additional time is necessary to allow commenters to examine current practices and to formulate constructive comments.

In response to these requests, we are extending the comment period for Docket No. 90-006 through September 10, 1990. This will allow time for the requestors and other interested persons to secure the information they believe is necessary to comment on the advance notice of proposed rulemaking.

Authority: 7 U.S.C. 2131-2157; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 9th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-16229 Filed 7-11-90; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB12

Organization; Reorganization Authorities for System Institutions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Agricultural Credit Act of 1987 (1987 Act), Public Law 100-233, enacted on January 6, 1988 amended provisions of the Farm Credit Act of 1971 (Act) by establishing a procedure under which a Farm Credit institution may terminate its Farm Credit charter by becoming chartered as a financial institution under other Federal or State authority. The Act imposes certain requirements on an institution that wishes to terminate its status as a Farm Credit institution and authorizes the Farm Credit Administration (FCA) to impose by regulation such other conditions as the FCA considers appropriate. On December 18, 1989, the FCA published an Advance Notice of Proposed Rulemaking (ANPRM) (54 FR 51763) requesting comments on the manner and process for implementing the new procedures under the Act. Based on a consideration of all relevant factors, including the comments received in response to the ANPRM, the FCA has determined to promulgate separate sets of regulations for banks and associations. At this time, the FCA publishes proposed regulations on terminations that are applicable to associations. Proposed regulations governing the termination of Farm Credit status by banks will be published in the near future.

DATES: Comments are due August 13, 1990.

ADDRESSES: Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Larry W. Edwards, Director, Special Examination Division, Office of Examination Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4229, TDD (703) 883-4444;

or

Rebecca S. Orlich, Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987; Public Law 100-233, amended the Farm Credit Act of 1971 (Act), 12 U.S.C. 2001 *et seq.*, by adding, among other provisions, a new section 7.10—Termination of System Status. Section 7.10 provides that a Farm Credit institution may terminate its status as a Farm Credit institution if it satisfies the following requirements: (1) 90-day advance notice to the FCA; (2) approval by the FCA Board; (3) approval by a Federal or State authority of a charter for a bank, savings and loan, or other financial institution; (4) the payment by the institution of the amount by which total capital of the institution exceeds 6 percent of its assets, such payments to be made to the Farm Credit Assistance Fund if the termination occurs prior to January 1, 1992, or to the Farm Credit System Insurance Fund if the termination occurs after such date; (5) the payment or adequate provision for the payment of all outstanding debt obligations of the institution; (6) approval of the

termination by a majority of the stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting, held prior to giving notice to the FCA Board; and (7) the fulfillment of such other conditions as the FCA Board, by regulation, considers appropriate.

In addition to the requirement of section 7.10 that a plan of termination be submitted to the FCA Board for approval following an affirmative stockholder vote, section 7.11 of the Act requires that any plan of termination, together with all information that will be distributed to the stockholders, must be submitted to the FCA Board for approval prior to the stockholder vote. The information to be distributed to stockholders must include an enumerated statement of the anticipated benefits and potential disadvantages of such action. The FCA is required to act within 30 days after a plan is filed with the FCA for approval prior to the stockholder vote. If the plan is disapproved by the FCA Board, the notice of disapproval shall specify the reasons for such disapproval.

On December 18, 1989, the FCA published an Advance Notice of Proposed Rulemaking (54 FR 51763) (ANPRM) inviting public comment on issues raised in connection with this new authority as it affects both Farm Credit associations and Farm Credit banks. In response to the notice, comments were received from the Farm Credit Corporation of America on behalf of its member banks and the Farm Credit Credit Banks Funding Corporation. Supplemental comments were received from the Farm Credit Bank of St. Paul, the Farm Credit Bank of Springfield, the Farm Credit Bank of Baltimore, the Farm Credit Bank of Louisville, the Farm Credit Bank of Texas, the Western Farm Credit Bank, and the Federal Intermediate Credit Bank of Jackson. In addition, comments were received from California Livestock Production Credit Association; a law firm representing the Arizona Agricultural Credit Association; a law firm representing the Buckeye Production Credit Association and the Federal Land Bank Association of Fostoria; and the Independent Bankers Association of America.

The FCA has determined that there are factors to be considered when a bank proposes to terminate its Farm Credit status that are substantially different from the factors to be considered when an association proposes to terminate its status, which require the promulgation of separate sets of regulations for banks and associations. The FCA has further determined that different issues arises when the terminating association's capital or assets constitute a significant proportion of the capital or assets of the bank of which it is a member. Accordingly, the FCA has concluded that it would be appropriate to promulgate separate sets of regulations to address these varying concerns. Proposed regulations for banks and for proportionately large associations will be published in the near future. At this time, the FCA is proposing regulations for the termination of associations whose capital or assets constitute less than 25 percent of the capital or assets of the bank from which it is a borrower. All comments received, except those which pertain exclusively to Farm Credit banks, have been considered in drafting these proposed regulations which are published today.

The proposed regulations are explained below by section, including any comments received on the subject matter contained that section.

Part 611—Organization

Subpart P—Termination of Farm Credit Status—Associations

Section 611.1200 General—Applicability

Section 611.1200 provides that these regulations set forth the requirements applicable to the termination of Farm Credit status of an association that seeks a new charter as a national or State bank, savings and loan association, or other type of financial institution. These regulations apply only to those associations whose capital or assets constitute 25 percent or less of the capital or assets of the bank from which it is a borrower. The FCA has determined to promulgate separate sets of regulations for banks, proportionately large associations, and proportionately small associations becuase of the different issues that must be addressed in each of the three situations.

Section 611.1205 Definitions

Section 611.1205 provides definitions applicable to the following terms in this subpart:

"Commencement resolution" refers to the resolution which must be adopted by an association at the outset of the termination process.

"GAAP" refers to generally accepted accounting principles as that term is generally understood. The regulation clarifies that the application of GAAP in particular circumstances will be consistent with interpretations of the FCA.

"QFI" refers to "other financing institution" as that term is defined in the Act and existing regulations.

"Reconsideration vote" refers to a second vote on the transaction which is permitted by statute if 15 percent of voting stockholders petition for such vote within a certain time period after the vote on termination.

"Successor institution" refers to the entity which will succeed to the interests of the association upon termination of the association's Farm Credit status.

"Terminating association" refers to an association which is seeking to terminate its Farm Credit status and to become chartered as a bank, savings and loan association, or other type of financial institution.

"Termination vote" refers to the stockholder vote required to approve the termination of Farm Credit status.

Section 611.1210 Advance Notification

Section 611.1210 provides that an association which intends to seek to terminate its status must, upon commencement of the termination process, notify the FCA and provide appropriate disclosure to prospective borrowers, current equity holders and persons who may purchase or retire association equity. Section 611.1210(b)(2) requires that an explanation, in summary form, of the contemplated transaction be sent to all equity holders. The FCA believes that such notification at the commencement of the termination process is necessary since prospective borrowers may be considering the establishment of a credit relationship that could last up to 40 years. The possibility that the terminating association will terminate its Farm Credit status in the near future and thereby change certain aspects of the loan relationship could influence a prospective borrower's choice of lender.

In addition, in the present circumstances, there is no real market for association stock even though the Act and FCA regulations require that such stock be transferable. Because holders of common stock will be in a position to realize their pro rata interest in the net asset value of the association, the effect of the mere announcement of the intent to terminate could create a market for association stock that did not previously exist. Consequently, a stockholder's decision to request the retirement of common stock or participation certificates or to sell such equities to another party before the termination would deprive the stockholder of the opportunity to share in the net asset value of the association

or the successor institution. Holders of equities other than common stock and participation certificates would lose an opportunity to exchange their equities for stock of the successor institution if they sold or retired their interests prior to the termination date.

The FCA believes that these concerns can be addressed by ensuring that each present or prospective stockholder is given a timely and adequate disclosure of the proposed action and the effect it may have on that person's rights as a stockholder. In addition, the FCA recognizes that, in the absence of a provision for a special class of stock equity interests sold by the terminating association at par or face value during the termination process would have the effect of diluting the interests of existing stockholders in the net worth of the association. The FCA believes that the terminating association should have the option to decide not to extend to purchasers of common stock and participation certificates during the termination process the right to share in the net worth of the association. Accordingly, the regulation permits an association's board to adopt a bylaw providing for special classes of stock and participation certificates which are identical to the equities purchased by borrowers as a condition of obtaining a loan, except that the special classes of equities will not entitle the holder to share in the net asset value of the association upon the termination of Farm Credit status. Such holder shall be limited to receiving either an equity interest in the successor institution equal to the amount of the purchase price of the stock or participation certificate or, in the event that he did not vote in favor of termination at the termination vote, a reimbursement of the purchase price of the stock. The issuance of these special classes of stock and participation certificates will prevent borrowers from seeking loans during the termination process for the purpose of obtaining stock which would have a realizable value in excess of the purchase price. The purchasers of this special class of common stock or participation certificates will otherwise have the same rights as existing holders, including the right to vote if voting stock is purchased on or before the voting record date. Should the proposed termination not occur, these special classes of stock and participation certificates shall automatically convert into the classes of stock and participation certificates which are routinely issued to new borrowers.

To permit the terminating association to issue these special classes of voting stock and participation certificates which will entitle the association to treat the holders differently from other voting stockholders and participation certificate holders, the proposed regulation waives those provisions of § 615.4230(b) which would otherwise require the equitable treatment of all equity holders. All other statutory and regulatory requirements pertaining to stock authorization and issuance by the association must be complied with. The FCA notes in this connection that, in order for the association to be able to begin issuing the special classes of stock and participation certificates immediately after adoption of the commencement resolution, the bylaw authorizing the special stock must already have been adopted by the board and approved by the stockholders prior to the board's adoption of the commencement resolution, in compliance with section 4.3A(c)(2) of the Act which requires stockholder approval before a bylaw can take effect. Approval of the bylaw authorizing the stock could occur at any time prior to adoption of the commencement resolution and would not be considered to be an action commencing the termination process for purposes of § 611.1210(a).

The proposed regulation also provides that a computation of an estimated exit fee be submitted by the terminating association to the FCA within 15 days after the association has submitted the commencement resolution. The purpose of this requirement is to ensure that exit fee discussions between the terminating association and the FCA should be opened at an early stage in the termination process and that any disagreements regarding the computation or amount of the exit fee be resolved before the termination application is accepted by the FCA for filing. Upon receipt of the terminating association's estimated exit fee, the FCA will review the association's computations to determine whether they are in accord with the requirements of § 611.1240. Within 45 days, the FCA will notify the association of its confirmation of the estimated exit fee or will inform the association of any revisions which must be made to the computation. In the event that the terminating association disagrees with the FCA's determination, the association will have the opportunity to request the FCA to reconsider its decision. Such request must be in writing and must explain the specific areas and reasons for disagreement. The FCA will then have 15 days to reconsider its previous determination and to confirm or revise it. As provided in § 611.1212(d), until such time as the FCA and the terminating association agree upon the computation and amount of the estimated exit fee, the termination application shall not be accepted for filing and shall not be given a filing date.

The FCA notes that, at the time the estimated exit fee is submitted for review, the FCA will also review all transactions which have occurred since the adoption of the commencement resolution or which are expected to occur prior to termination to determine whether any such transactions will result in adjustments to the exit fee. Agreement by the terminating association and the FCA on the treatment of these transactions would also be required before the termination application is accepted for filing. In addition, the FCA notes that the estimated exit fee will have to be updated for the information statement to reflect the requirement in §611.1240(c) that the computation date for the actual, as opposed to the estimated, exit fee be the quarter end preceding the filing date.

Section 611.1211—Filing of Termination Application and

Section 611.1212—Filing Date of Termination Application

Sections 611.1211 and 611.1212 set forth the required contents of the termination application and articulate the standard for determining when the application is considered filed.

Upon receipt of the application, the FCA will examine the contents to determine whether any of the required information has been omitted which would prevent the FCA Board from proceeding with a thorough review of the application. If there are significant omissions, the FCA will so inform the terminating association. Section 611.1212 provides that the FCA will notify the applicant within 10 business days of the receipt of an application as to whether the application is substantially complete and therefore accepted for filing. If the application is not accepted for filing at that time, the applicant will be notified of any deficiencies that have been identified. The application will not receive a filing date until all such deficiencies are addressed. The FCA will not commence its review of the application until it is filed, at which time the 30-day review period provided for in section 7.10 and § 611.1215(b) will begin. The FCA believes that 10 business days are sufficient time to allow for docketing of the application, duplication, and distribution to the various divisions that

will be involved in the review, and a brief examination to determine whether any significant required information is missing. Such examination will not be a review of the merits of the application. A determination that the application is substantially complete will not indicate that the FCA will not require further disclosures; it indicates merely that the FCA has enough information to begin a full review of the application.

Section 7.11(a)(2) requires the FCA to either approve or disapprove an application within 30 days after it is filed. The 30-day period will not begin to run until the application is considered substantially complete and thus capable of being reviewed and acted on by the FCA. Consistent with the requirements of the Act, that date will be the filing date of the application.

Paragraph (c) of § 611.1212 ensures that there will be a period of at least 60 days after notification of the intention to commence the termination process, and prior to the filing date, in order to allow the FCA sufficient time to seek another association to provide service to the terminating association's territory. The FCA believes the continuation of Farm Credit service to the territory to be of prime importance in carrying out its statutory mandate to ensure the availability of "an adequate and flexible flow of money into rural areas." Therefore, where the terminating association is the exclusive provider of certain Farm Credit services in part or all of its territory, the FCA needs a 60-day period to determine whether arrangements can be made for a new or existing association to provide service in the territory. However, a failure by the FCA to complete such arrangements would not cause any further delay in the processing and review of the application. The FCA believes that, in nearly all cases, the terminating association will require more than 60 days to prepare the termination and new charter applications, reach an accord with the bank on the repayment of debt and the retirement of equities, and resolve all related matters. It is therefore anticipated that the termination application will rarely be submitted less than 60 days after the first notification to the FCA. Consequently, it is unlikely that this provision will actually extend the length of the termination process.

The FCA notes that, where time periods are set forth in these regulations, days are to be interpreted as calendar days except where specifically denoted as business days.

Section 611.1215—FCA Review and Approval

Section 611.1215 reiterates the statutory time constraints for FCA Board review and enumerates the conditions which must be fulfilled in order to obtain final approval of the termination and revocation of the Farm Credit charter. The six conditions for final approval in paragraph (e) are required to assure the FCA that all appropriate steps for the termination of the association and the formation of the successor institution have been completed. Submission of copies of relevant documents and other information is required to establish that all liabilities of the terminating association are assumed or otherwise disposed of. Evidence of the grant of a new charter may be furnished by a letter from the new chartering authority addressed to the FCA. Alternatively, the association can provide FCA evidence of the preliminary grant of a new charter, with final FCA approval contingent upon the granting of the new charter. If the grant of the new charter is contingent upon other action, such as the grant of deposit insurance, then FCA approval will not be final until such other contingent action occurs. The association's Farm Credit charter will be revoked upon the completion of the last to occur of certain events, including receipt of final payment of the exit fee. Since the aforementioned events involve actions the association must take, the actual date of termination will depend largely upon the time the association requires to complete such actions.

Section 611.1220—Voting Record Date and Stockholder Approval

Proposed § 611.1220 establishes the procedures by which the stockholders of the terminating association shall vote on and approve the proposal to terminate Farm Credit status. The proposed regulation provides that stockholders eligible to vote on the termination must own stock in the terminating association as of a voting record date which shall not be more than 70 days prior to the stockholder vote. The voting record date shall be determined in accordance with the terminating association's bylaws, if such bylaws provide for a voting record date not more than 70 days prior to the stockholder vote; otherwise, the date shall be set by the board of directors.

The timetable in the proposed regulation is consistent, to the extent possible, with the provisions of general corporate law. The Revised Model Business Corporation Act provides in section 7.07 that the record date may not be more than 70 days prior to the stockholder vote or action required. The basis for setting a record date in general corporate law is to establish a fixed point in time at which the identity of the persons entitled to notice of and to vote at a meeting will be determined. The situation for the terminating association is unique in that all equity holders must receive the information statement, rather than only those entitled to vote on the termination. However, the terminating association must have an established point in time at which it can determine which equity holders are entitled to vote on the termination.

The proposed regulation provides that the record date for the termination vote is also the date used to determine which stockholders are eligible to vote in a reconsideration vote. The reconsideration vote is designed for the stockholders to reexamine their vote on the termination and change their vote based on a further review of the information presented to them or based on new information. Thus, it is appropriate for the same stockholders to be eligible to vote in the reconsideration as were eligible to vote on the proposed termination. In addition, this requirement is designed for the convenience of the terminating association by using the same record date for each vote. It is also important that after a favorable termination vote, new stockholders are not sought for the sole purpose of guaranteeing a successful reconsideration vote or to defeat the reconsideration effort. This is an equitable consideration in order to insure the fairness of the reconsideration vote.

The proposed regulation addresses section 4.20 of the Act which prohibits institutions from using signed ballots and requires that institutions adopt procedures safeguarding the stockholders' right to a secret ballot in any election or proceeding subject to a vote of the stockholders. In order to implement this provision, the proposed regulation requires the terminating association to adopt procedures which insure the impartiality, confidentiality and security in the termination vote. While providing for the maintenance of confidentiality, the proposed regulation contains provisions that will enable institutions to identify the stockholders voting against termination for the purpose of determining eligibility for dissenters' rights. These provisions are similar to those found in § 611.330 regarding confidentiality in the election of directors. The proposed regulation requires the terminating association to ensure the confidentiality of the termination vote through the use of an

independent party to establish identity codes, tabulate votes and verify that stockholders who exercise dissenters' rights in accordance with § 611.1260 did not vote in favor of termination. Such independent party shall not be a director, officer, or stockholder of the terminating association or the successor institution. However, the terminating association may use a retained accounting firm, law firm or other similar party to establish identity codes and tabulate the votes in order to maintain impartiality and security in the voting process. This exception to the general confidentiality provisions allows the terminating association to be informed of the vote of a stockholder only if such stockholder exercises the right to dissent from the transaction and retire stock in the terminating association.

The proposed regulation provides in accordance with § 7.10 that the proposal to terminate Farm Credit status must be approved by a majority of the stockholders of the terminating association voting, in person or by proxy, at a duly authorized stockholders' meeting. Further, the terminating association must notify stockholders and other holders of equity interests of the results of the final vote within 30 days and must notify stockholders of their right to file a petition for reconsideration within 35 days of the date the terminating association mails the notice. The 35-day period takes into consideration a 5-day mailing period in addition to the 30-day period required in section 7.9(b)(3) of the Act. The provision for the 5-day period from the date of mailing is similar to the provision in § 611.525 regarding stockholder reconsideration of transfers of authorities and assets.

Section 611.1225—Requirements for Information Statement

The proposed regulations at § 611.1225 specify the types of disclosures that must be provided in an information statement prior to a stockholder vote on the termination.

The disclosure requirements are similar to those for annual reports found in § 620.3 and for association mergers found in § 611.515 and include pro forma financial information on the proposed successor institution. The information statement must also include a discussion of the significant differences between the terminating association and the successor institution, and the consequences of the termination to all holders of equity, in their capacities as both equity holders and borrowers. Because a full discussion of these matters may necessitate a lengthy disclosure, the FCA has decided not to require that a copy of the plan of termination be furnished to equity holders. Instead, the information statement must include a description of the salient points of the plan of termination and must also contain an "Executive Summary" at the beginning of the documents. The purpose of the Executive Summary is to give readers of the document a prominently located, concise explanation of the major points of the termination, with an emphasis upon its overall effect on borrower/equity holders, who make up nearly all of the association's equity holders.

Certain other requirements of the information statement merit comment. The enumeration required in paragraph (d) of potential benefits and disadvantages of the termination is intended to fulfill the statutory requirement in section 7.11(a)(1) of the Act and should be more detailed than the Executive Summary.

Paragraph (g) requires that holders of eligible borrower stock be clearly informed that the special protection of such stock accorded by the Act will terminate when the association terminates its Farm Credit status. If the stock of the successor institution to be received in exchange for eligible borrower stock will be at-risk stock, holders must be so advised.

Paragraph (h) requires the association to disclose how the termination will affect rights borrowers are given under the Act. If the successor institution is an other financing institution (OFI), such rights would be contingent upon, among other things, whether a particular loan was pledged. Alternatively, the successor institution, although not legally obligated to extend borrower rights, may choose to do so in the interest of keeping loans with the institution.

Paragraph (h) also requires that borrowers be informed of the name and address of the Farm Credit institution that will be authorized to serve the territory, if known, and an explanation of how to transfer a loan to such association. The FCA believes that borrowers should have the opportunity to keep their loans with a Farm Credit association, subject to the new association's acceptance of the loan, and that the transfer should be accomplished with a minimal amount of time and effort expended by the borrower.

Paragraph (m) requires additional disclosures regarding the treatment of borrowers by the successor institution; such information will further aid borrowers in determining whether to transfer their loans to another association.

Section 611.1230—Plan of Termination

The plan of termination requires information supplemental to the information statement which is necessary to provide a complete picture of the proposed termination. Documents to be submitted include, but are not limited to, any purchase and assumption or merger agreements, stock subscription agreements, employment agreements, and agreements between the terminating association and the Farm Credit Bank; a description of how the successor institution will succeed to the interests of the terminating association; a copy of the charter application submitted to the new Federal or State chartering authority; and a statement setting forth the parameters of any continuing credit relationship the successor institution will have with the Farm Credit Bank.

Section 611.1235—Stockholder Reconsideration

The proposed regulation at § 611.1235 provides stockholders with the right to reconsider the approval of termination in accordance with section 7.9 of the Act. In order to seek a reconsideration vote, 15 percent of the stockholders of the terminating association must sign a petition for reconsideration and file a copy of the petition with the FCA within 35 days after the date of mailing of the notification to the stockholders of the final results of the termination vote required under § 611.1215. The petition shall be filed with the terminating association which will within 5 days certify that the signatures on the petition are the signatures of stockholders of the association eligible to vote on the voting record date established pursuant to § 611.1220. The proposed regulation requires that the petition include the name of a person designated as the petitioners' representative who shall represent the interests of the petitioners in the reconsideration process. The petitioners' through the petitioners' representative and the terminating association shall have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be mailed to the stockholders and other equity holders along with the notice of the stockholders meeting for the reconsideration vote. The designation of a petitioners' representative is proposed in order to keep the statements supporting the petition to a reasonable length and to

serve as a contact person for the stockholders and the association to coordinate the preparation and submission of the supporting statement and other matters.

If the terminating association certifies that at least 15 percent of the eligible voting stockholders have signed the petition for reconsideration, the proposed regulation requires a special stockholders meeting to be called within 60 days of the date the stockholders were notified of the final result of the termination vote. The proposed regulation further provides that if the majority of the stockholders voting in person or by proxy at the duly authorized stockholders meeting vote against the termination, the termination is not approved. However, if a majority of the stockholders do not vote against the termination, the proposed regulation provides that the termination shall be effective in accordance with the provisions of § 611.1215(f), but not less than 15 days after the reconsideration vote. The 15 days are necessary to ensure that the FCA has an opportunity to review the documents and grant final approval.

The proposed regulation requires the apportioning of the expenses for the reconsideration process between the terminating association and stockholders in order to insure that the rights and interests of both parties are treated as fairly and equitably as possible, while permitting stockholders their right to reconsider the termination vote. The proposed regulation requires that the terminating association shall furnish, at its expense, a list of the names and addresses of stockholders eligible to vote to any voting stockholder requesting such list during the petition period. It further requires that any other expenses for the petition, such as those incurred in circulating and securing 15 percent of the stockholders' signatures on the petition, shall be borne by the petitioners. This requirement is proposed in order to minimize the disruptive effect and the cost to the association of petition efforts that do not earn the requisite signatures of 15 percent of the eligible voting stockholders of the association.

The proposed regulation further requires that if the petitioners secure the signatures of 15 percent of the stockholders, the reasonable expenses of the reconsideration vote required by section 7.9 of the Act shall be paid by the terminating association. Reasonable expenses include but are not limited to the duplicating costs for the statements regarding the reason for the reconsideration, the mailing costs for notice to the stockholders, and the expenses necessary to hold a stockholders' meeting. Reasonable expenses would not include extraordinary fees of counsel or accountants retained to assist the stockholders in preparing the statement to the submitted with the notice of the meeting.

The requirement for the terminating association to pay certain of the costs of the reconsideration vote takes into consideration that the enactment of section 7.9 was motivated in part by a concern that stockholders of the association may have been unduly influenced to approve the termination proposal and that those stockholders should be given an opportunity to fully reconsider their earlier votes. The proposed regulation is designed to give full effect to this right by allowing the stockholders to be able to initiate a petitioning action without having to bear the expenses of the vote. The terminating association should view the expenses of the vote as a cost of doing business or becoming another type of institution.

Section 611.1240—Exit Fee

Section 611.1240—sets forth the procedures for calculating the exit fee required by section 7.10 of the Act. The Act requires that terminating Farm Credit institutions pay an exit fee equal to the amount by which the institution's total capital exceeds 6 percent of the institution's assets. As pointed out in the ANPRM, the Act does not define "total capital" or "assets" for purposes of computing the exit fee. Respondents to the ANPRM were sharply divided regarding the definition of "total capital." One respondent expressed the view that Congress mistakenly used the term "total capital" and that it actually intended to include only unallocated surplus in calculating the exit fee. This argument is based on the fact that an earlier version of the bill required an exit fee based on unallocated surplus. The FCA disagrees with this contention and can find no basis for concluding that Congress erred in substituting the term "total capital" for "unallocated surplus." Respondents were also divided over whether protected stock should be included in total capital for purposes of calculating the exit fee. The definition proposed in these regulations includes protected stock as part of capital. Many associations have already retired protected stock by converting it to at-risk stock or through straight retirement and reduction of capital. Any protected stock remaining upon termination would lose its protected status in the successor institution and would thus become capital in the fullest sense of that term. Therefore, the Board saw no basis for excluding it from the calculation.

Most respondents to the ANPRM expressed the view that financial statements prepared on the basis of generally accepted accounting principles (GAAP) should be the basis for calculating the exit fee. The FCA believes that while GAAP-based financial statements provide for a good starting point for the exist fee calculation, strict application of GAAP may not result in the fairest treatment of certain types of transactions.

GAAP is promulgated to assure that certain transactions are accounted for in a uniform manner so that the reader of financial statements can be reasonably assured that financial information is presented in a uniform and consistent manner from period to period and from one institution to another. Such accounting treatment may or may not repesent the "value" of the institutions, nor does it account for fluctuations in the level of assets or capital from one period to another. Accordingly, as recommended by some of the respondents to the ANPRM, the proposed regulation provides that the exit fee shall be calculated based on the average daily balance of assets and total capital for the 12 months preceding the computation date and that certain adjustments may be made to the account balances. In some associations, asset balances fluctuate widely depending on the type of agriculture financed by the association. In these cases, if the exist fee is calculated as of a specific point in time, the timing of the exit fee computation date could have a significant impact on the amount of the fee. Using average daily balances rather than balances as of a specific date mitigates this problem.

Some individual transactions can increase or decrease the exit fee to such a degree that average balances are not sufficient to offset their impact. The regulation proposes that these transactions will be individually evaluated and adjustments made in the account balances based on the circumstances in each case. It should be noted that the required adjustments will be solely for the purpose of calculating the exit fee and, as discussed below, determining the rights of dissenting stockholders. The association will not be required to restate its financial statements to reflect these adjustments.

One respondent to the ANPRM stated that it was appropriate for the FCA to implement measures to prevent circumvention of the exit fee. Another respondent stated that FCA should

retain discretion to review any extraodinary transactions and eliminate their impact on the exit fee if circumstances warrant. However, one respondent stated that an association that increased assets would be required to retain sufficient capital to meet the capital requirements of the successor institution, thus suggesting that adjustments would not be necessary.

The adjustments contemplated generally fall into one of three categories. In the first category are transactions that good business judgment indicates are necessary but the prospective impact on the exit fee causes the association to delay taking actions. For example, an association with a weak capital position might improve its financial strength by increasing capital or selling assets. Either action might increase the amount of the exit fee. In these circumstances, the association should not be penalized for entering into transactions that are clearly in the best interest of the association. The second category of adjustments would be transactions where the conservative nature of certain aspects of GAAP does not result in a fair reflection of the value of the institution. This may include adjustments to the value of certain assets or quantification of certain contingent liabilities. The final category of adjustments would be discretionary acts by an association that are outside the ordinary course of business that have the effect of reducing the exit fee. This would include such transactions as extraordinary dividends, cash patronage refunds, or changes in capital programs.

In determining whether the computation date balances will be adjusted, the FCA will examine the transactions of the association for the 3 years preceding the date of the adoption of the commencement resolution. The three-year "look back" is consistent with the buiness and capital planning requirements of §§ 615.5200(b) and 618.8440 of these regulations. The Board considered, but did not adopt, a two-year "look back" period. The Board specifically invites comments regarding the appropriate time frame.

Whether or not adjustments to the balances will be made will depend on the circumstances presented by each individual case. To guide institutions in considering terminating, the FCA Board provides the following illustrative explanations of the application of the types of adjustments cited in the body of the regulation. The FCA Board does not, however, intend to limit the possible types of adjustments to those listed below.

(1) The allowance for loan losses may be adjusted if the amount reflected in the account is not, in FCA's judgment, based on GAAP. This is consistent with the treatments afforded the allowance for loan losses in calculating the permanent capital ratio where excess allowances are included as part of capital. This treatment is also consistent with a majority of the comments received in response to the ANPRM;

(2) Extraordinary purchases and sales of assets may affect the amount of the exit fee. One method by which an association can reduce the exit fee would be to inflate the balance sheet by purchasing assets. Conversely, good business judgment may suggest that an association should sell assets to accomplish essential business purposes. Association boards of directors contemplating termination may be reluctant to enter into such transactions because of the impact on the exit fee. This could eliminate exit fee considerations from decisions to buy or sell assets;

(3) Institutions that pay extraordinary dividends or patronage refunds may, for purposes of calculation of the exit fee, be required to add the amount of extraordinary payments back to the capital accounts prior to calculating the exit fee. This provision does not preclude an association's payment of dividends or cash patronage refunds if such actions are consistent with the association's operating history;

(4) The 1987 Act required all associations to adopt a new capital plan and authorized a significant reduction in the required level of borrower investment. Most associations adopted such plans in 1988. As contemplated by the Act, most such plans resulted in a reduction in borrower investment and consequently in total capital. The FCA does not believe that the regulations should attempt to recapture retirements of capital as a result of these initial capital plans that were authorized by Congress unless other evidence suggests such plans were influenced by the association's desire to terminate its status or the initial plan resulted in unsafe capital levels. Therefore, absent such evidence, the FCA would not require any adjustments resulting from the association board's initial capital plan, unless the FCA examinations conducted since the capital plan was adopted have concluded that the association's capital levels were inadequate. However, subsequent plans that reduce capital levels within the 3-year review period may be considered actions in contemplation of termination, and adjustments may be required. Associations that need to increase capital subsequent to the initial plan may be reluctant to do so if they contemplate termination. These regulations are not intended to interfere with the exercise of good business judgment. Therefore, associations may have the negative impact of such decisions on the exit fee adjusted if the events creating the need for additional capital were not caused by an unsafe initial capital plan;

(5) Occasionally, contingent liabilities may be quantifiable but uncertainties regarding timing may not require that they be recorded as liabilities on the books of the association under GAAP. For example, loss-sharing plans typically require the calculation and recognition of an obligation as of a date certain. Prior to such date certain—*i.e.*, prior to the actual recognition of the loss—it is often possible to make a reasonably accurate calculation of what such obligation will be. In such cases, for purposes of calculating the exit fee, associations may be permitted to consider the effect of such liabilities when the amount can be reasonably determined and the eventual recordation under GAAP is assured;

(6) Certain assets which under GAAP may not be reflected on the balance sheet or may be reflected at less than market value must be appraised and the appraised value used for computing the fee. The assets requiring adjustments are generally those that the association is holding for eventual sale or revenue production such as acquired property or mineral rights. The value of assets intended for use in an ongoing business such as office buildings do not require adjustment;

(7) Assets may be reduced by the amount of any loan participation purchases from other Farm Credit institutions. This adjustment is made because many associations require institutions from which loans are purchased to acquire stock to support such purchases. This stock owned by other Farm Credit institutions is not eligible for conversion to stock in the successor institution. Therefore, the stock is deleted from capital and the loan participation purchases are deleted from assets in computing the exit fee. Additionally, since extraordinary purchases of loans to increase assets are one method by which associations can artificially reduce the impact of the exit fee, reducing the assets by the loan participation purchases will prevent such effect;

(8) Under GAAP, an association may have recorded an income tax liability for the current period and have an

unrecorded tax loss carry forward that would offset the liability. In calculating the exit fee, the transaction recording the tax liability would be reversed to more appropriately reflect the amount of taxes that will ultimately be due;

(9) Section 611.1240 also requires the reversal of transactions recording expenses associated with the termination effort. Such expenses as accounting and legal fees, printing, mailing, and tax impacts may not be charged to capital in computing the exit fee. Such adjustments will not include expenses for association staff time, supplies, and other such miscellaneous expenses.

If the FCA requires an adjustment to the association's records for purposes of computing the exit fee, the full effect of the adjustment will be reflected on the association's accounts. To assure that all relevant facts surrounding an adjustment are considered, the regulations provide an opportunity for the association to review all such adjustments and request reconsideration by FCA.

The FCA Board recognizes the extreme importance of the method for calculating the exit fee and especially invites comments on this section of the regulation.

Section 611.1250—Repayment of Debts and

Section 611.1255—Retirement of Equities Owned

Section 611.1250 sets forth the requirements for terminating associations' repayment of debts. Most respondents to the ANPRM expressed the view that this area should be left to be negotiated between the parties. With some minimal limitations, the FCA Board concurs. As the regulation recognizes, some successor institutions may be eligible and desire to establish an OFI relationship with the Farm Credit Bank under the terms of part 614, subpart P, of these regulations. Under these circumstances, the terms and conditions are subject to negotiation between the parties. Those successor institutions that do not establish such a relationship may negotiate a phased repayment provided the debt is repaid in full within 3 years. For these latter institutions, the Farm Credit Bank may not continue the make additional loans to the successor institution except as may be necessary to protect the bank. Whether or not the Farm Credit Bank permits phased repayment rather than repayment upon termination is within the bank's discretion.

Those associations which have explored termination and several of the respondents to the ANPRM recognized that retirement of equities the association owns in the bank may be essential to the future viability of the successor institution. The FCA Board concurs that this issue is important and that refusal of a bank to retire such equities under reasonable terms amounts to bank authority to veto an association's right to terminate. Therefore, the proposed regulations at § 611.1255 requires the bank to retire equities if it can do so and still meet the minimum capital standards pursuant to section 4.3 of the Act. If retiring such equities will cause the bank to fail to meet the minimum capital standards, the bank must negotiate retirement of equities within a reasonable time period. If the parties are unable to reach agreement, the FCA may require the retirement of equities. However, if the retirement of equities would threaten the viability of the bank, such retirement shall not be required as part of the termination without the FCA's consent. In adopting these requirements, the FCA Board does not intend to permit banks to use the refusal to retire equities as a way to frustrate an association's desire to terminate its status as a Farm Credit institution. However, the FCA believes that the provision for termination of Farm Credit status in section 7.10 of the Act does not permit an override of the minimum capital adequacy requirements of section 4.3 of the Act. In addition, the FCA believes that it must take into consideration the effect of the termination on the viability of other Farm Credit insitutions. The provision for negotiation of an arrangement other than retirement prior to termination was allowed to accommodate the matching of equity retirement with repayment of indebtedness or other circumstances that might not be detrimental to the terminating association. However, the terminating association may not continue to own voting stock in the bank after its Farm Credit status has been terminated.

The proposed regulations would not prohibit banks from retiring association-owned equities when the bank has issued an continues to have issued and outstanding preferred stock to the Financial Assistance Corporation (FAC). On this point the respondent Farm Credit Banks were sharply divided, with three Banks recommending that a bank be prohibited from retiring association-owned equities under such circumstances and three Banks recommending that the matter be left to the discretion of the bank. The FCA concurs with the observation of responding associations that the retirement by the bank of association-owned equities may be essential to the future viability of the successor institution. A blanket prohibition on the retirement of equities even where such retirement does not raise capital adequacy or other viability concerns would amount to bank authority to veto an association's right to terminate. The FCA does not believe such a blanket prohibition is necessary, especially in view of other safeguards provided by the regulations pertaining to viability and maintenance of minimum capital standards. Therefore, retirement of stock in such circumstances would be a matter to be negotiated by the bank and the terminating association. However, in cases where the association has issued stock to the FAC or where the bank has issued stock to FAC (which stock remains outstanding) and used the proceeds to invest in stock of the terminating association, the terminating association would be required to retire all its FAC assistance-related stock prior to termination. The FAC considered the issue of the interest cost associated with the FAC obligations but did not include a provision for payment of the interest in the proposed regulations. One alternative considered would require the terminating association to be responsible for the cost of any interest on FAC obligations used to assist the association above the current cost of 1-year bonds until the maturity date of the FAC obligations. The FAC requests comments on this issue.

Section 611.1260—Dissenters' Rights

A new § 611.1260 is proposed to address the rights of stockholders who dissent to the termination. As in general corporate law, stockholders who object to extraordinary corporate transactions must be given dissenters' rights so that they are not bound by those transactions which would result in their ownership interest in the corporation being substantially changed or affected by the action. Historically, a dissenting stockholder's right to receive payment for his shares was based on the theory that the extraordinary transactions amounted to a conversion of the stockholder's interest in the corporation. As a result of a majority vote in favor of termination, a stockholder's equity interest in the terminating association is being completely changed depending upon the type of institution the terminating association becomes. Consistent with these general principles, the FCA believes that a decision by an association to terminate its Farm Credit status will result in such a fundamental change in the nature of the institution

and the stockholders' investments in the institution that dissenting stockholders should not be required to convert their equities into investment in the institute in the successor institution.

The FCA notes that a termination of status is fundamentally different from the types of reorganization activities, such as mergers, territory transfers, and special reconsiderations, in which no dissenter's rights are provided. For instance, while a merger of an association with another association may result in a change in the size, loan volume, or earnings prospects of the association in which shares are owned, the essential business prospects, organizational structure and statutory provisions governing the institution are unchanged. The stockholder will continue to own stock in a cooperatively structured, borrower-owned and controlled association which is governed by the same organic act. In contrast, when an association terminates its status, the resulting entity will no longer be part of the Farm Credit System and will be organized, owned and controlled under a completely different statutory framework. Moreover, the resulting entity may not be borrower-owned and may actually be restricted in the types and amounts of loans it could make to its stockholders. For example, national banks and savings and loan associations are prohibited from making certain loans to holders of significant amounts of stock.

FCA considered several options for determining the value that stockholders dissenting from the termination would be entitled to receive. A majority of the commenters suggested that the rights of dissenting stockholders to share in the equity interest of the terminating association should be governed by the bylaws of the terminating association in the event of a liquidation of the institution. Association bylaws are required to provide that the value distributed to stockholders in a liquidation is typically determined after the payment of all claims and expenses, the retirement of stock at par, the retirement of allocated equities. The remaining capital is paid to the holders of voting stock and paticipation certificates on a pro rata basis. In most cases, holders of equity interests other than voting or common stockholders and participation certificate holders receive face or par value per share plus any accumulated dividends in the event of liquidation of the association. Common stockholders and participation certificate holders generally receive par value for their share plus a pro rata interest in any remaining assets of the association.

The proposed regulation provides that dissenting stockholders shall be paid in accordance with the priorities in liquidation set forth in the bylaws of the terminating association. Because there will not be an actual liquidation and distribution to the stockholders, the price paid to dissenting common stockholders and holders of participation certificates shall be the book value at the termination date adjusted to reflect any increase or decrease in asset value resulting from the appraisals required to determine the exit fee in § 611.1240. The appraisals of asset value conducted to determine the amount of the exit fee will yield a value as close as possible to the true value of the assets. The value arrived at through this computation most nearly reflects the value that stockholders would receive based on a right of appraisal and distribution if the institution were liquidated as provided for in the receivership regulation at § 611.1167. If the terminating association's bylaws do not provide for a distribution upon liquidation, the distribution should be based on the requirements of the capitalization bylaws of the association, with the exception that dissenting common stockholders and participation certificate holders shall still receive book value per share adjusted to reflect the valuation of assets in § 611.1240. The proposed regulation also requies that holders of eligible borrower stock receive at least par value for their shares in accordance with section 4.9A of the Act.

The FCA believes that dissenting stockholders should be paid in accordance with the terminating associations' bylaws so that the price paid will essentially be the value the stockholders would receive upon liquidation. This determination follows the holding in *Amarillo Production Credit Association* v. *Farm Credit Administration*, 887 F.2d 507 (5th Cir. 1989). The Court of Appeals determined in *Amarillo* that a plan to transfer assets and liabilities to a new State-chartered association, distribute new institution stock in exchange for the association stock, and request cancellation of the Farm Credit charter approximated a voluntary liquidation rather than a corporate reorganization. Although the Amarillo PCA's plan to charter a new State institution and discontinue existence as a Farm Credit institution was developed before section 7.10 was enacted, the FCA believes that termination of Farm Credit status should be considered an effective liquidation entitling dissenting stockholders to a share in the value of the assets of the association.

One of the respondents suggested that dissenters' rights should be determined in accordance with chapter 13 of the Revised Model Business Corporation Act. Chapter 13 provides that dissenting stockholders are entitled to the fair value of their shares immediately before the effectuation of the corporate action, excluding any appreciation or depreciation in anticipation of the action, unless such exclusion would be inequitable. The fair value of shares can be determined in a number of ways to reflect the price a willing buyer would pay for the shares and the price a willing seller would accept. One prevalent method uses a weighted average of elements of value, including market price, asset valuation, and earnings. In the case of a Farm Credit institution, the institution is not primarily motivated to maximize profit as is a general corporation. Thus, earnings value would not be appropriate in this instance. A consideration of market price is also not relevant because there is generally no determinable market price for Farm Credit institution stock. The net asset value is essentially the share the stock represents in the value of the net assets of the corporation and is based on the hypothetical dissolution and distribution of the corporation's assets. *Fletcher Cyc. Corp.*, Vol. 12B § 5906.12. In addition, it has been held that the value may be based primarily on book value when the corporation has no real earnings or value based on earnings. *Meadows* v. *Bicrodyne Corp.*, 785 F.2d 670 (9th Cir. 1986). In this instance, book value of the assets is not the sole determination; rather, net asset value should be determined by an appraisal to reflect the fair value of the corporation's assets. This net asset value determination is essentially the value that is derived using the calculation method in the proposed regulation.

Another respondent suggested that the value of the dissenters' shares should be determined in accordance with the National Bank Act. That Act provides that an appraisal committee of three persons is chosen by the bank and the dissenting stockholder. The appraisal committee determines a fair cash value or market value by considering the market price of the stock, the established investment value, or the adjusted book value. In response to this comment, the FCA Board believes, as discussed above, that the market price would not serve as a reliable indicator of value for stock of

an association because it generally has no determinable market price and is in most cases issued in connection with a loan rather than transferred. The Board notes that investment value is commonly calculated by determining the value of a share in the future earnings of the consolidated bank. This method would be difficult to calculate in that each terminating association may elect to become a different type of financing institution. Also, it would be difficult to calculate an earnings stream for a newly formed commercial bank or other institution. Finally, adjusted book value, as it is defined by the Office of Comptroller of the Currency (OCC), would also not be a reliable indicator because it is determined by multiplying the book value of assets per share by the average market price to book value ratio of comparable banking organizations.

The proposed regulation provides that the price paid to dissenting stockholders is to be determined net of the exit fee calculated in § 611.1240. Deducting the amount of the exit fee prior to calculating the per share value of the dissenters' stock does not entirely follow general corporate law which provides that the value of dissenters' stock should be determined without any appreciation or depreciation as a result of the transaction at issue. However, the Model Business Corporation Act also provides that an adjustment in value based on the transaction may be considered if not doing so would be inequitable. The FCA considered alternatives regarding the impact of the exit fee on the value of dissenters' shares. If the stockholders were entitled to dissent from the termination and receive a value for their shares that was calculated before the exit fee was subtracted there would be an incentive for some stockholders to dissent from the transaction and reinvest all or part of the distribution in the successor institution, thus creating a windfall. The FCA believes that valuing dissenters' shares net of the exit fee is the method least likely to encourage dissent for the purpose of gaining a windfall on the retirement of equities. Also, valuing dissenters' shares net of the exit fee treats dissenting stockholders and stockholders who receive an equity interest in the successor institution equally. The stockholders who do not dissent receive an equity interest in the successor institution that is net of the exit fee paid upon termination. Thus, both parties receive value for their equity interests in the terminating association that is determined by subtracting the exit fee. The FCA believes that this methodology is consistent with one of the primary goals of providing dissenters' rights, which is to ensure that stockholders who dissent from the transaction are treated equitably with those who vote in favor of termination and receive equity interests in the successor institution.

The proposed regulations also specify that, prior to termination, dissenting stockholders shall be paid in cash the lesser of the book value or par value for the stockholder's interest in the association. Any equity interest in excess of the par value of stock would, at the dissenting shareholder's option, be paid in subordinated debt of the successor institution. That subordinated debt could have a maturity sufficiently long to qualify it as capital under some financial regulators' guidelines. The Board felt that this method of payment would permit the dissenting stockholders to be treated fairly, provide assurance that dissenting shareholders would not be forced to own equity in the terminating association, and at the same time reduce the potentially adverse impact on the terminating association. The Board also considered requiring the terminating association make all payments to dissenting stockholders in cash prior to termination. The Board decided not to adopt this approach in the proposed regulations but specifically invites comments on the issue.

The proposed regulation requires that the terminating association include within the notice specified in § 611.1220(e) an explanation of the rights of dissenting stockholders, a statement of the current book and par value per share plus the expected book and market value of the stockholders' pro rata interest in the successor institution, and an explanation of the procedure required to exercise dissenters' rights. The proposed regulation further requires that the terminating association adopt a convenient and easily understandable procedure by which stockholders and holders of participation certificates may exercise dissenters' rights and retire their equity interests. Such procedure should consist of a notification form such as a postcard or pre-printed return form and envelope which shall specify the date the form must be returned to the association and include a place for stockholders to indicate that they intend to exercise dissenters' rights. In accordance with general corporate law, the proposed regulation provides that in order to be eligible to exercise dissenters' rights, a stockholder must not vote in favor of the termination, but rather must vote against or abstain from voting on the termination. *Model Business Corporation Act*, 3d Ed., vol. 3 § 13.21 (1984); *Fletcher Cyc. Corp.*, vol. 12B § 5906.7. The proposed regulation requires that dissenting stockholders notify the terminating association within 30 days of the date the notification of dissenters' rights is mailed that they intend to retire their stock or participation certificates. In the event a petition for reconsideration is successful, the stockholders' election to retire stock shall automatically be rescinded.

Section 611.1266—Loan Refinancing by Borrowers

A majority of the commenters expressed the belief that borrowers of the terminating association must be given the opportunity to continue as borrowers of a Farm Credit institution. However, the commenters asserted that no institution should be required to make a loan to borrowers of the terminating association. The proposed regulation at § 611.1266 assures the borrowers' ability to seek financing for their loans from another Farm Credit institution. The FCA is in agreement with the respondents that no institution should be required to extend credit to any borrower, and the proposed regulation is in accord with this view. The institution chartered to serve the territory of the terminating association, whether on an interim or permanent basis, will use its own credit standards to determine if the borrowers are creditworthy. The proposed regulation requires the institution chartered to serve the territory to provide information to assist borrowers in applying for financing. In addition, it is important that the terminating association facilitate the borrowers' attempts to finance loans with another Farm Credit institution through such means as promptly providing all necessary information to the borrowers and the other institution. The proposed regulation also takes into consideration the nature of the obligation with the Farm Credit Bank and the ease of transferring the obligation from the terminating association to the institution designated to serve the territory, if the institution is willing to acquire the loan.

Section 611.1270—Continuation of Borrower Rights

The impact of the termination on borrower rights can be determined only on a case-by-case basis. As one commenter noted, some institutions may have incorporated various borrower rights provisions in loan documents in such a way that they have become contractual rights between the parties.

In such cases, the proposed regulation at § 611.1270 prohibits the terminating association from requiring that these contractual rights be waived as a condition of continued financing through the successor institution. In other cases, successor institutions may become OFIs and may thus be required to continue borrower rights as directed by the Act. As noted above, § 611.1225 of the proposed regulations requires the terminating association to disclose the impact of termination on borrower rights as part of the information statement provided to all equity holders.

Lists of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as set forth below and all other authority citations throughout part 611 are removed.

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e); 12 U.S.C. 2011, 2021, 2071, 2096, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233.

2. Part 611 is amended by adding a new subpart P to read as follows:

Subpart P—Termination of Farm Credit Status—Associations

Sec.
611.1200 General—Applicability.
611.1205 Definitions.
611.1210 Advance notification.
611.1211 Filing of termination application.
611.1212 Filing date of termination application.
611.1215 Farm Credit Administration review and approval.
611.1220 Voting record date and stockholder approval.
611.1225 Requirements for information statement.
611.1226 Prohibited acts.
611.1230 Plan of termination.
611.1235 Stockholder reconsideration.
611.1240 Exit fee.
611.1250 Repayment of debts.
611.1255 Retirement of equities owned.
611.1260 Dissenters' rights.
611.1266 Loan refinancing by borrowers.
611.1270 Continuation of borrower rights.

Subpart P—Termination of Farm Credit Status—Associations

§ 611.1200 General—Applicability

(a) Each association is authorized, in accordance with sections 7.10 and 7.11 of the Act, to terminate the status of the association as a Farm Credit institution. The regulations in this subpart set forth the procedural, disclosure, voting and approval requirements applicable to such termination.

(b) Except as provided in paragraph (c) of this section, these regulations are applicable to an association that seeks to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan associaton, or other type of financial institution. In the event that a receiver or conservator is appointed by the Farm Credit Administration in the case of a voluntary or involuntary liquidation of the association the provisions of subpart L of this part apply, and the provisions of this subpart shall not apply.

(c) These regulations are not applicable to the termination of an association whose capital is in excess of 25 percent of the capital, or whose assets are in excess of 25 percent of the assets, of the bank of which it is a member.

§ 611.1205 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Commencement resolution* means the resolution adopted pursuant to § 611.1210(a) to indicate the commencement of the termination process.

(b) *GAAP* means generally accepted accounting principles, which is that body of conventions, rules and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. GAAP shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated. The application of GAAP in particualr circumstances shall be consistent with interpretations of the Farm Credit Administration.

(c) *OFI* means other financing institutions, as that term is defined in § 614.4540(e).

(d) *Reconsideration vote* means the vote at which the voting stockholders reconsider whether to terminate the terminating association's Farm Credit status.

(e) *Successor institution* means the institution to which the terminating association will convert when its Farm Credit charter is revoked.

(f) *Terminating association* means an association seeking to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution.

(g) *Termination resolution* means the resolution adopted pursuant to § 611.1211(a) approving the applications for termination and a new charter and providing for submission of the termination proposal to a stockholder vote.

(h) *Termination vote* means the stockholder vote at which the termination proposal is first submitted to the voting stockholders for their approval or disapproval.

§ 611.1210 Advance notification.

(a) An association's board of directors shall commence the process of termination by adopting a commencement resolution indicating the association's intention to terminate its Farm Credit status.

(b) Within 5 days of the adoption of the commencement resolution by the board of directors, the terminating association shall:

(1) Submit a certified copy of the commencement resolution to the Farm Credit Administration; and.

(2) Mail a brief announcement to all holders of equity in the association which states that the board is taking steps to terminate its Farm Credit status and which describes the process of termination, the anticipated effect of termination on current holders of equity, and the type of institution the successor institution will be. If bylaws are adopted in accordance with paragraph (e) of this section, the announcement shall also state that, during the time period up until the termination, new common stock and participation certificates either purchased from the association in connection with a loan or sold to the association prior to the termination will not entitle the holder to receive a share in the net asset value of the association.

(c)(1) Within 15 days after submission of the commencement resolution pursuant to paragraph (b)(1) of this section, the terminating association shall submit to the Farm Credit Administration a statement of its estimation of the exit fee together with an explanation of the computation of the exit fee pursuant to the requirements of § 611.1240. For purposes of this estimate of the exit fee, the computation date set forth in § 611.1240(c) shall be the quarter and preceding the date of the commencement resolution.

(2) Within 45 days of its receipt of the terminating association's estimated exit fee, the Farm Credit Administration shall either confirm the association's

estimation of the exit fee or notify the association of any required revisions to the computation.

(3) In the event that the Farm Credit Administration requires adjustments to the estimated exit fee pursuant to paragraph (c)(2) of this section, the terminating association may request reconsideration of any revisions. Such request shall be in writing and shall set forth specific reasons why the revisions should not be made. The Farm Credit Administration shall reconsider the revisions and shall inform the terminating association of its determination within 15 days of the receipt of the reconsideration request.

(d) During the time period after the board of directors' adoption of the commencement resolution pursuant to paragraph (a) of this section and prior to the date of termination, the following conditions shall apply to the terminating association's conduct of business:

(1) Each prospective new borrower shall be informed of the effect of the proposed termination upon the borrower's loan and shall be specifically informed whether the borrower will continue to have any of the borrower rights provided under the Act and regulations promulgated thereunder;

(2) Any common stockholders or participation certificate holders who seek to have such equity interest retired before termination shall be informed that the retirement would extinguish the holder's right to stock in the successor institution if the termination is completed or to dissent from the termination and receive a share of the net assets of the association.

(e) Notwithstanding any provisions of § 615.5230(b) to the contrary, an association may adopt bylaws which provide for the issuance of a special class of voting stock and participation certificates in connection with loans granted during the time period subsequent to the adoption of the commencement resolution and prior to the termination. Such voting stock or participation certificates, which shall be issued in accordance with section 4.3A of the Act, shall have characteristics identical to shares of the existing classes of voting stock or participation certificates issued as a condition of the extension of a loan, except for the following:

(1) In the event of termination, the holder shall be entitled to receive either an equity interest in the successor institution equal to the amount of the purchase price of the stock or participation certificate or, provided that such holder did not vote in favor of termination at the termination vote, a return of the purchase price of the stock;

(2) In the event that the termination does not occur, this special class of stock or participation certificates shall automatically convert into shares of the classes of voting stock or participation certificates issue prior to the adoption of the commencement resolution.

§ 611.1211 Filing of termination application.

(a) The board of directors of an association which seeks to terminate its status shall adopt an appropriate termination resolution approving an application for such termination, approving an application for a new charter for the successor institution, and providing for the submission of such termination proposal to its stockholders for a vote.

(b) An original and three copies of a termination application consisting of the following materials shall be submitted by the terminating association to the Farm Credit Administration for review and preliminary approval:

(1) A certified copy of the termination resolution adopted pursuant to paragraph (a) of this section;

(2) A copy of the plan of termination as required under § 611.1230;

(3) An information statement that complies with the requirements of § 611.1225;

(4) All other information that is to be submitted to the stockholders and other equity holders in connection with the contemplated action; and

(5) Any additional information the board of directors wishes to submit to the Farm Credit Administration in support of the request or that the Farm Credit Administration requests.

§ 611.1212 Filing date of termination application.

(a) Each application shall be reviewed by the Farm Credit Administration and shall be given a filing date. Except as provided in paragraphs (c) and (d) of this section, the date upon which the Farm Credit Administration determines that the termination application is substantially complete shall be the filing date of the application. The filing date shall be a date that is not more than 10 business days after receipt of the application unless the Farm Credit Administration determines within such 10-day period that the application is not substantially complete. If the Farm Credit Administration determines that the application is not substantially complete, the Farm Credit Administration shall notify the terminating association within such 10-day period of any deficiencies identified to that date. While the association is responding to the deficiencies, the Farm Credit Administration shall continue to review the application to determine whether there are any other deficiencies that need to be corrected to make the application substantially complete. Upon correction of all identified deficiencies, the Farm Credit Administration shall give the application a filing date.

(b) A substantially complete termination application consists of the information required to be submitted to the Farm Credit Administration under § 611.1211.

(c) In the event the advance notification required in § 611.1210 is not received by the Farm Credit Administration at least 60 days prior to the filing date of the termination application, the filing date shall be the date that is 60 days following the date on which the terminating association first informs the Farm Credit Administration of the association's intention to terminate its Farm Credit status. During this 60-day period, the Farm Credit Administration shall contact other associations to determine their willingness to provide service to the territory of the terminating association or to determine if there are persons who wish to charter a new association to serve the territory. An inability of the Farm Credit Administration to arrange for a new service provider for the territory shall not be grounds for an extension of the 60-day period. This paragraph shall not apply if the entire chartered territory of the terminating association is already included in the charter of one or more associations that are chartered to offer credit services of the same type as the terminating association.

(d) If the Farm Credit Administration has required any revisions to the terminating association's computation of the estimated exit fee pursuant to § 611.1210(c), the termination application shall not be accepted for filing until the terminating association and the Farm Credit Administration have resolved the differences.

§ 611.1215 Farm Credit Administration review and approval.

(a) Upon receipt of a substantially complete termination application, the Farm Credit Administration shall review the application and either disapprove or give its preliminary approval.

(b) The Farm Credit Administration Board shall have 30 days from the filing date, as defined in § 611.1212, to approve or disapprove the termination application. If the Farm Credit Administration Board does not act within such 30-day period, the

application is deemed to have preliminary approval.

(c) If the application is denied, written notice specifying the reasons for denial shall be transmitted to the chief executive officer of the association, who shall promptly notify the association's board of directors. If the application is disapproved, it shall not be submitted to the stockholders for a vote.

(d) Upon stockholder approval of the proposed termination as provided in § 611.1220, the secretary of the terminating association shall forward to the Farm Credit Administration a certified record of the results of the stockholder vote and shall notify its stockholders and other equity holders of the results of the vote as provided in § 611.1220(e)

(e) Final approval by the Farm Credit Administration Board shall be conditioned upon the following:

(1) A termination vote in favor of termination and, if a reconsideration vote is held, a reconsideration vote in favor of termination;

(2) Receipt by the Farm Credit Administration of conformed executed copies of all contracts and agreements submitted pursuant to § 611.1230;

(3) Satisfactory evidence of the terminating association's adequate provision for payment of debts and retirement of equities;

(4) Evidence of the grant of a new charter for the successor institution by the appropriate Federal or State chartering authority;

(5) Payment of the exit fee by certified check or other means agreed upon by the Farm Credit Administration and the terminating association; and

(6) The fulfillment of any other condition of termination imposed by the Farm Credit Administration Board.

(f) If no petition for reconsideration is filed with the Farm Credit Administration in accordance with § 611.1235, the Farm Credit Administration shall grant final approval, the terminating association's charter shall be revoked, and the termination shall be effective on the last to occur of—

(1) The proposed termination date of the terminating association;

(2) Ninety (90) days after receipt by the Farm Credit Administration of the notice required to be submitted pursuant to paragraph (d) of this section; and

(3) Receipt of final payment of the exit fee.

§ 611.1220 Voting record date and stockholder approval.

(a) Upon receipt of preliminary approval of the termination application by the Farm Credit Administration Board, the association shall call a meeting of its voting stockholders. The stockholders meeting shall be held within 60 days of receipt of preliminary approval from the Farm Credit Administration Board. All holders of equity in the terminating association shall be permitted to attend the meeting. The stockholders eligible to vote shall be the stockholders who are eligible to vote on the voting record date as determined by the association's bylaws if such date is not more than 70 days prior to the stockholder vote, or on a date fixed by the board of directors which shall be not more than 70 days prior to the date of the stockholder vote. The association shall notify each stockholder that the resolution has been filed and that a meeting will be held in accordance with the association's bylaws.

(b) The notice of meeting to consider and act upon the board of directors' resolutions shall be accompanied by an information statement that complies with the requirements of § 611.1225.

(c) (1) The terminating association shall establish voting security procedures which comply with the procedures for the election of directors in § 611.330, as applicable. Specifically, the terminating association shall insure that all information regarding how or whether individual stockholders have voted and all materials such as ballots, proxy ballots, election records, and other relevant documentation related to the votes of stockholders shall be held in strict confidence.

(2) The terminating association may adopt procedures which require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. The terminating association may also use signed proxies or eligibility certificates which will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope.

(3) The terminating association shall use a form of identity code on the ballot enabling it to determine which stockholders are eligible to exercise dissenters' rights and shall require that the votes be tabulated by an independent party who is not a stockholder, director, or officer of the terminating association or the successor institution. When the terminating association receives notification pursuant to § 611.1260 that a stockholder intends to exercise dissenters' rights, the association will verify with the independent party that the stockholder either abstained from voting or voted against the termination. The terminating association shall be informed of the vote a stockholder only in the event that stockholder exercises the right to retire stock in the association in accordance with § 611.1260.

(d) The proposal shall be approved by the stockholders if agreed to by a majority of the eligible voting stockholders of the association voting in person or by proxy at the stockholders' meeting.

(e) Upon approval of a proposed termination by the stockholders of the terminating association, a certified statement showing the results of the stockholder vote shall be forwarded to the Farm Credit Administration within 10 days following the stockholders' meeting. The terminating association shall notify its stockholders and other holders of equity interests of the results of the vote not later than 30 days after the final vote. The terminating association shall further notify stockholders of their right to file a petition for reconsideration in accordance with § 611.1235 and that any petition for reconsideration must be filed on or before a date certain, which shall be 35 days after the date the terminating association mails notice to the stockholders of the results of the stockholder vote.

§ 611.1255 Requirements for information statement.

Notice of the meeting to consider and act upon a proposed termination shall be sent to all stockholders and other holders of equity interests and shall be accompanied by an information statement that contains the following information and materials:

(a) A statement on either the first page of the material or the notice of the stockholders' meeting, in capital letters and bold face that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(b) A statement on the first page of the material entitled "Executive Summary" and consisting of a concise description of the material changes in rights of the borrowers, stockholders, and holders of other equity interests to occur as a result of the termination, the effect of such changes, and the potential benefits and disadvantages to them of the termination.

(c) A description of the plan of termination as required in § 611.1230.

(d) A statement by the board of directors of the terminating association

enumerating the potential benefits and disadvantages of the termination together with the basis for the board's recommendation for termination.

(e) A list of the initial board of directors and senior officers of the successor institution, together with a brief description of the business experience of each such person, including principal occupation and employment, during the past 5 years.

(f) A summary of the provisions of the organizational documents of the successor institution, including the articles of incorporation and bylaws, that differ materially from the charter and bylaws of the terminating association. The summary shall indicate whether the maintenance of a borrowing relationship with the successor institution shall be required as a condition for maintaining a stockholder's interest.

(g) An explanation of any changes in the nature of the stockholders' and other equity holders' investment in the association, including but not limited to any changes in dividends, patronage refunds, voting rights, preferences, retirement of equities, and priority upon liquidation. If any eligible borrower stock is outstanding, such explanation shall include a statement that the guaranty afforded to eligible borrower stock by § 4.9A of the Act shall be extinguished at termination and that stock of the successor institution received in exchange for eligible borrower stock shall not be protected under § 4.9A of the Act.

(h) An explanation of the effect of termination on the rights that borrowers are afforded under the Act; the expiration date of those rights, if applicable, under the provisions of the plan of termination; a statement that borrowers may seek to have their loans transferred to the association(s) that will be chartered to serve the terminating association's territory, or from any other associations that already serve the territory; and an explanation of the procedure for a borrower to apply for a transfer of his loan to the association(s) that will be chartered to service the terminating association's territory, if such designations have been made. The disclosure shall include the name and address of such association(s).

(i) An explanation of the formula and process by which stock of the terminating association will be exchanged for stock of the successor institution.

(j) A description of any agreement or arrangement with any person, including any officers or directors of the terminating association, relating to employment or termination of employment with the terminating association or employment with the successor institution.

(k) An explanation of the computation of the exit fee and the estimated amount of the exit fee.

(l) A statement detailing the nature and type of financial institution that the successor institution will become after termination and the conditions of approval, if any, placed on the successor institution by the State or Federal financial regulatory who will charter the successor institution.

(m) A summary of the differences, if any, between the terminating association and the successor institution with respect to interest rates, interest rate policies, collection policies, services provided, service fees, and any other item of interest that would affect a borrower's lending relationship with the successor institution including whether stockholders will be restricted in any way in their ability to borrow from the successor institution.

(n) A discussion of the expected capital requirements of the successor institution, and the amount and method of capitalization for the successor institution.

(o) An explanation of the sources and manner of funding the operations of the successor institution.

(p) An explanation of the existence of any continuing contingent liability that will not be paid immediately upon termination and the manner in which this liability will be addressed by the successor institution.

(q) A summary of the differences in tax status of the terminating association and the successor institution, and an explanation of the effect of such changes on both the successor institution and the stockholders.

(r) A brief description of the regulatory environment for the successor institution and a summary of the differences from the current regulatory environment that affect the cost of doing business or the value of equity and that are not addressed elsewhere in the information statement.

(s) A statement identifying those stockholders and other holders of equity that are entitled to dissenters' rights and an explanation of those rights as set forth in § 611.1260, including the estimated value of the stock upon distribution, procedures for the exercise of dissenters' rights, and the time period during which such rights may be exercised, and a statement that stockholders who vote in favor of the termination will not receive dissenters' rights.

(t)(1) A presentation of the following financial data:

(i) A balance sheet and income statement for the terminating institution for each of the 2 preceding fiscal years;

(ii) A balance sheet for the terminating institution as of a date within 90 days of the date the termination application is forwarded to the Farm Credit Administration presented on a comparative basis with the corresponding period of the prior fiscal year;

(iii) An income statement for the interim period between the end of the last fiscal year and the date of the required balance sheet presented on a comparative basis with the corresponding period of the prior fiscal year;

(iv) A pro forma balance sheet of the successor institution presented as if termination had occurred as of the date of the most current balance sheet presented in the statement; and

(v) A pro forma summary of earnings for the successor institution presented as if the termination had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheet presented pursuant to paragraph (t)(1)(iv) of this section.

(2) The format for the balance sheet and income statement shall be the same as is contained in the institution's annual report to stockholders and shall contain appropriate footnote disclosures, including data relating to nonperforming loans and related assets and allowance for losses.

(3) The financial statements shall include either of the following:

(i) A statement signed by the chief executive officer and each member of the board of directors of the terminating association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with GAAP (except as otherwise disclosed therein) and are, to the best of the knowledge of the board, a fair and accurate presentation of the financial condition of the association; or

(ii) A signed opinion by an independent certified public accountant that the various financial statements have been examined in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and other such auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the terminating association in accordance with GAAP applied on a consistent

basis, except as otherwise disclosed therein.

(u) A description of any event subsequent to the date of the financial statements, but prior to the date upon which the termination application is submitted to the Farm Credit Administration, that would have a material impact on the financial condition of the terminating association or the successor institution.

(v) A description of any event subsequent to the submission of the termination application to the Farm Credit Administration that would have a material impact on any information in the termination application.

(w) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed decision on the proposed plan of termination, or that is necessary to make the required disclosures not misleading.

(x) A proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(y) A certification signed by the entire board of directors of the terminating association as to the truth, accuracy, and completeness of the information contained in the information statement. If any director refuses to sign the certification, the director shall inform the Farm Credit Administration of the reasons for such refusal.

§ 611.1226 Prohibited acts.

(a) No terminating association or director, officer, employee or agent thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact concerning the proposed plan of termination to a stockholder of the association in order to influence the outcome of the vote on the proposed termination.

(b) No director, officer, employee, or agent of a terminating association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association's plan of termination constitutes, directly or indirectly, either a recommendation on the merits of the proposal or an assurance concerning the adequacy or accuracy of any information provided to the association's stockholders and other equity holders in connection therewith.

§ 611.1230 Plan of termination.

The plan of termination shall include the following information:

(a) Copies of all contracts, agreements and other documents pertaining to the proposed termination and organization of the successor institution.

(b) A statement of the means by which the assets of the terminating association will be transferred to, and its liabilities assumed by, the successor institution.

(c) The terminating association's plan to retire, and the successor institution's plan to issue, equities held by holders of stock, participation certificates, and allocated equities, if any.

(d) A copy of the charter application filed with the appropriate Federal or State chartering authority, together with any exhibits or other supporting information that is submitted to such authority.

(e) A statement whether the successor institution will have a credit relationship with the Farm Credit bank and the effect such status will have on the provision for payment of the terminating association's debts. The plan of termination shall include evidence of the agreement and plan for satisfaction of outstanding debts, whether contained in a general financing agreement or otherwise.

(f) The proposed effective date of the termination.

§ 611.1235 Stockholder reconsideration

(a) Eligible voting stockholders have the right to reconsider the approval of the termination provided that—

(1) A petition signed by 15 percent of the eligible voting stockholders of the association is filed with the association, and a copy of such petition is filed with the Farm Credit Administration, within 325 days after the date of mailing of the notification of the final results of the stockholder vote required under § 611.1215; and

(2) Such petition is certified by the terminating association as provided in paragraph (b) of this section.

(b) Each petition shall include the signature, printed name and full address of each voting stockholder signing the petition. Within 5 days of its receipt of a timely filed stockholder petition, the association shall certify whether the signatures on the petition are the signatures of persons who were eligible voting stockholders of the terminating association on the voting record date, and the association shall notify the Farm Credit Administration of such certification.

(c) The petition shall include the name and address of a person who shall serve as petitioners' representative and who shall represent the interests of the petitions in the reconsideration vote process.

(d) If the terminating association certifies that a least 15 percent of eligible voting stockholders have signed the petition, a special stockholders' meeting shall be called by the association to vote on the reconsideration. Such meeting shall be held within 60 days after the date on which the stockholders were notified of the final result of the termination vote. If a majority of stockholders of the association voting in person or by written proxy vote against the termination, the termination is not approved. If a majority of stodkholders of the association voting in person or by writtern proxy do not vote against the termination, the termination shall be effective pursuant to the provisions of § 611.1215(f), but not less than 15 days after the reconsideration vote.

(e) The petitions, through the petitioners' representative, and board of directors of the terminating association shall each have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be reasonable in length and shall be mailed to stockholders and other equity holders along with the notice of stockholders' meeting for the reconsideration vote.

(f) The terminating association shall, at its expense, provide the stockholders initiating the petition with a list of the names and addresses of all of the eligible voting stockholders of the association. All other expenses for the petition shall be borne by the petitioners. Reasonable expenses for the reconsideration vote shall be borne by the terminating association.

§ 611.1240 Exit fee.

(a) Definitions. (1) *Assets* means all assets less appropriate valuation reserves as determined in accordance with GAAP except where otherwise noted.

(2) *Contingent liabilities* means those liabilities that, in accordance with GAAP, will materialize if certain events occur.

(3) *Total capital* means all capital stock, surplus and undivided profits accounts as determined in accordance with GAAP, except where otherwise noted, and as adjusted pursuant to the requirements of § 611.1240.

(b) A terminating association shall pay an exit fee equal to the amount by which the total capital of the association exceeds 6 percent of its assets. The exit fee shall be paid to the Farm Credit Assistance Fund if the effective date of termination is prior to January 1, 1992 or to the Farm Credit Insurance Fund if the effective date is after that date.

(c) The computation date for the exist fee shall be the quarter end preceding the filing date. A certified audit of the terminating association shall be performed by a certified public accounting firm as of the computation date. The Farm Credit Administration may, in its complete discretion, waive this requirement if such an audit was performed as of a date within the 6 months preceding the computation date.

(d) The method of computation shall be as follows:

(1) The average daily balance of assets and total capital for the past 12 months preceding the computation date will be computed as a basis for determining the exit fee; and

(2) Account balances shall be computed in accordance with GAAP and adjusted in accordance with paragraph (e) of this section.

(e) For purposes of determining the amount of the exit fee, the Farm Credit Administration will review the terminating association's transactions over a 3-year period prior to the date of the adoption of the termination resolution. If this review determines that the terminating association has an increase in assets unrelated to the association's core business or has retired capital outside the ordinary course of business, the Farm Credit Administration may make adjustments to the association's assets, liabilities, or capital and recompute the exist fee based on these adjustments. The review by the Farm Credit Administration shall include, but not be limited to:

(1) Additions or subtractions to the allowance for loan losses;

(2) Additions to assets outside the terminating association's ordinary course of business;

(3) Dividends or patronage refunds exceeding the terminating association's usual practices;

(4) Changes in the terminating association's capitalization plan or implementation of that plan that increased or decreased the level of borrower investment;

(5) Contingent liabilities, such as loss-sharing obligations, that can be reasonably quantified; and

(6) Assets that may be undervalued or not recorded on the books of the association.

(f) Capital of the terminating association owned by another Farm Credit institution is not eligible for conversion to stock in the successor institution. Such stock shall be retired or converted to a liability. Stock issued in connection with assistance from the Financial Assistance Corporation shall not be included in capital for the purpose of determining the exit fee.

(g) In the event that GAAP requires that a liability be recorded on the balance sheet that will be offset by an unrecorded asset, the transaction recording the liability shall be reversed.

(h) In the event the terminating association has recorded expenses associated with the termination, such transaction shall be reversed.

(i) The exit fee shall be paid by certified check, or other means agreed upon by the Farm Credit Administration and the terminating association, not later than 5 business days prior to the effective date of the termination.

§ 611.1250 Repayment of debts.

(a) The terminating association shall provide for the payment or assumption by the successor institution of all outstanding debt obligations, other than obligations to other Farm Credit institutions.

(b) The terminating association may establish and maintain an OFI relationship with the Farm Credit Bank, subject to part 614, subpart P, of these regulations. The general financing agreement establishing the OFI relationship shall provide for the assumption by the successor institution of any direct loan or other obligation that a production credit association is authorized to incur and that is not repaid at the time of termination. Any part of the direct loan or other obligation that is not linked to a loan covered by the general financing agreement shall be repaid as provided in paragraph (c) of this section.

(c) A terminating association that will not become an OFI shall either repay its direct loan and any other obligations with the Farm Credit Bank upon termination or shall arrange with the Farm Credit Bank to repay the loan over a period which shall not exceed 3 years following termination.

(d) The terminating association shall pay or make provision of payment of obligations to any other Farm Credit institutions under any loss-sharing agreement or other agreement.

§ 611.1255 Retirement of equities owned.

(a) The Farm Credit Bank may retire all equities of the Farm Credit Bank that are owned by the terminating association on the termination date or may enter into an agreement with the terminating association which would provide for a phased retirement of the equities. Any such plan for phased retirement shall provide for such retirement to be completed by the earlier to occur of 3 years from the termination date or the date on which the terminating association repays all indebtedness to the bank, provided that no retirement shall occur during that period if any such retirement would result in the Farm Credit Bank's failure to meet minimum capital requirements.

(b) If the Farm Credit Bank and the terminating association are unable to reach agreement regarding the retirement of Farm Credit Bank equities, either institution may send the most recent proposals to the Farm Credit Administration along with an explanation of the points of disagreement. The Farm Credit Administration may require the bank to retire terminating association equities under such conditions as the Farm Credit Administration may require.

(c) No retirement shall occur if the Farm Credit Administration determines that the retirement of equities of the Farm Credit Bank would threaten the viability of the Farm Credit Bank.

(d) The amount to be paid to a terminating association in the retirement of equities owned in the Farm Credit Bank shall be equal to the amount of the allocated equities owned by the terminating association in the Farm Credit Bank, less any impairment, at the date the request for retirement is made by the terminating association. If the Financial Assistance Corporation owns any preferred stock in the Farm Credit Bank, any impairment of bank capital shall be applied first against the value of association owned equities for determining the value of stock to be retired.

(e) If the terminating association has outstanding preferred stock issued to the Financial Assistance Corporation or has received the proceeds of such stock from a Farm Credit Bank, the association shall retire all such investment prior to termination.

§ 611.1260 Dissenters' rights.

(a) Dissenting stockholders, at their discretion may, but are not required to, have their stock or participation certificates in the terminating association retired as provided in paragraph (b) of this section. To be eligible to be a dissenting stockholder a person must be the owner, other than a Farm Credit institution, of voting or non-voting stock or other equities of the terminating association who was either—

(1) Not eligible to vote on the termination resolution; or

(2) Eligible to vote on the termination resolution and did not vote, in person or by proxy, in favor of such resolution.

(b) The terminating association shall pay dissenting stockholders in accordance with the priorities in liquidation set forth in the bylaws of the

terminating association. If there is no bylaws provision governing liquidation, such distribution shall be based on the requirements in the capitalization bylaws of the terminating association. Holders of eligible borrower stock shall receive not less than par value for their stock.

(c)(1) Execpt as provided in paragraph (d) of this section, the price paid to dissenting common stockholders and participation certificate holders shall be the book value at the termination date adjusted to reflect any increase or decrease in asset value resulting from the appraisals required in § 611.1240.

(2) Payments made to dissenting common stockholders referred to in paragraph (c)(1) of this section shall be made on the following basis. If the book value of the common stock is less than or equal to the par or stated value of the stock, the full amount of the payment shall be in cash. If the book value of the common stock is greater than its par or stated value, the association:

(i) Shall pay in cash an amount equal to the par or stated value of the stock; and

(ii) Shall cause or otherwise provide for the successor institution to issue on the date of termination subordinated debt to the stockholders in an amount equal to the amount by which the book value exceeds the par or stated value of the stock. Such subordinated notes shall have a maturity date not in excess of seven years after the date of issuance, shall have a priority on liquidation ahead of all equity shares, and shall carry a rate of interest that shall be not less than the rate for comparable debt issued by the Treasury of the United States plus one percent.

(d) If the association has adopted bylaws in accordance with § 611.1210(e), dissenting stockholders who own common stock or participation certificates issued in accordance with such bylaws shall be paid in cash an amount equal to the lesser of the par or book value of such stock or certificates.

(e) For the purposes of this section, common stock consists of voting stock, non-voting stock which was formerly voting stock, and stock which has no priority of payment over any other class upon liquidation.

(f) The notice to stockholders and other holders of equity interests required in § 611.1220(e) shall include the following information:

(1) A statement of the rights of dissenting stockholders as specified in paragraph (a) of this section;

(2) The current book and par value per share, and the expected book and market value of the stockholder's pro rata interest in the successor institution; and

(3) An explanation of the procedure by which stockholders may exercise dissenters' rights and the form they shall return to the terminating association informing it of their intent to exercise such rights. The notification form by which stockholders may exercise dissenters' rights shall include the date by which the form must be returned to the terminating association, as specified in paragraph (b) of this section, and a place for stockholders to mark or indicate that they intend to exercise dissenters' rights. The notification form shall be a convenient method for the stockholders to notify the association and may consist of, but is not limited to, a postcard or pre-printed return envelope.

(g) Dissenting stockholders shall have until 30 days following notification of their dissenters' rights to request retirement of their stock or participation certificates. The stockholders' election to retire stock will be rescinded if a petition for reconsideration is successful.

(h) Maintenance of a borrowing relationship with the successor institution shall not be required as a condition for owning stock in the successor institution, unless otherwise directed by the bylaws of the successor institution.

§ 611.1266 Loan refinancing by borrowers.

(a) Borrowers of the terminating association who do not wish to have their loans transferred to the successor institution may seek to have their loans financed by or through another association chartered to serve the territory of the terminating association.

(b) If an association has been designated to serve the territory of the terminating association prior to the mailing of the information statement, or if an association that offers credit services of the same type as the terminating association is already chartered to serve the territory, such association shall be identified in the information statement. In addition, such association shall provide the terminating association with the following information:

(1) The name and address of the association office that the borrower should contact;

(2) An explanation of the procedures to apply for financing with the association and the procedures by which the loan may be transferred to the association;

(3) An explanation of the stock purchase requirements of the new association; and

(4) Any other information the association wishes to include or routinely provides to new borrowers.

(c) If the terminating association receives the information required in paragraph (b) of this section prior to the mailing of the information statement to borrowers, the terminating association shall either include such information in the information statement or shall provide a list of the names and addresses of its borrowers to the list of the names and addresses of its borrowers to the designated association. If an association has not been designated to serve the territory or if the terminating association does not receive the information required in paragraph (b) of this section prior to the mailing of the information statement, the terminating association shall provide a list of the names and addresses of its borrowers to such association promptly after the Farm Credit Administration notifies it of such designation.

(d) The terminating association shall provide credit and loan information to the association designated to serve the territory upon the borrower's or association's request, in accordance with §§ 618.8300 through 618.8325, and take such other steps as are necessary to facilitate the transfer of the loan to the association.

§ 611.1270 Continuation of borrower rights.

Terminating associations which maintain an OFI relationship with the Farm Credit bank shall comply with borrower rights provisions contained in part 614, subparts K, L, M and N of these regulations. The terminating association may not require a waiver of applicable borrower rights provisions as a condition of ownership interest in and continued financing by the successor institution.

Dated: July 9, 1990.

Curtis M. Anderson,

Secretary.

[FR Doc. 90-16321 Filed 7-11-90; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-90-16]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. 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.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 10, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 26229, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: 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 (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 5, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26229.

Petitioner: David M. Hornbaker.

Regulations Affected: 14 CFR 61.55.

Description of Petition: The petitioner proposes to permit USAF weapon system officers (WSO) and their functional equivalents, who earned a commercial pilot license with appropriate instrument ratings, be able to log WSO flight time as second-in-command time for credit toward an airline transport pilot rating and total flying time.

Petitioner's Reason for the Petition: The petitioner believes this amendment is necessary to provide an FAA approved vehicle for the recognition of the invaluable flight experience of these airmen.

[FR Doc. 90-16255 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-123-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With BFGoodrich Escape Slides and Slide/Rafts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require inspection and modification of certain escape slides and slide/rafts. This proposal is prompted by reports of failures of the escape slides and slide/rafts due to equipment malfunctions. This condition, if not corrected, could result in unusable escape slides and slide/rafts, and jeopardize successful emergency evacuation of the airplane.

DATES: Comments must be received no later than August 8, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Adminstration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-123-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 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 90-NM-123-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Recent reports of malfunctions of Boeing Model 767 series airplanes' emergency escape systems has resulted in a review of the inflation system on all escape slides. Based on this review, the FAA has determined that modifications are necessary to achieve satisfactory reliability of the system and to decrease the likelihood of malfunctions which could jeopardize successful evacuation of the airplane.

The FAA has reviewed and approved BFGoodrich Service Bulletin 25-212, dated October 27, 1989, which describes procedures for modifying the inflation system of the escape slide and slide/rafts. These modifications improve the reliability of automatic inflation, aspirator closing, and "Y" fitting strength, thus improving the overall reliability of the inflation system of the escape slides and slide/rafts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modifications of the BFGoodrich escape slides and slide/rafts in accordance with the service bulletin previously described.

The proposed modifications were originally published as part of Notice of Proposed Rulemaking, Docket 90-NM-24-AD (55 FR 10074, March 19, 1990), with a proposed compliance time of 40 months. The FAA has determined that it is necessary to remove this modification requirement from that rulemaking action and make it a separate action in order to prevent confusion among affected operators and to revise the compliance time. The proposed compliance time of 20 months has been selected so that the modification can be accomplished at the same time as other inspections and overhaul of the escape slides and slide/rafts are performed, as required by AD 86-06-06, Amendment 39-5261 (51 FR 10537, March 27, 1986), for the majority of affected airplanes.

There are approximately 275 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry would be affected by this AD, that it would take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. It is estimated that the required parts would cost $2,125 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $564,450.

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 30.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, equipped with BFGoodrich escape slides or slide/rafts identified in BFGoodrich Service Bulletin 25-212, dated October 27, 1989, certificated in any category. Compliance required within the next 20 months after the effective date of this AD, unless previously accomplished.

To provide satisfactory reliability of the evacuation system, accomplish the following:

A. Modify the escape slides and slide/rafts in accordance with BFGoodrich Service Bulletin 25-212, dated October 27, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle Aircraft Certification Office, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 3, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-16259 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3337/P515; FLR-3769-7]

Pesticide Tolerance for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for residues of fungicide metalaxyl and its metabolites in or on strawberries at 10.0 parts per million (ppm). This regulation to establish the maximum permissible level for residues of metalaxyl in or on the commodity was requested in a petition submitted by the Ciba Geigy Corp.

DATES: Comments, identified by the document control number [PP 6F3337/P515], must be received on or before August 13, 1990.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in room 246 at the address given above, from 8 a.m. to 4 p.m., Monday and Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of March 5, 1986 (51 FR 7628), which announced that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a tolerance petition (PP) 6F3337 to EPA requesting

that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the fungicide metalaxyl [N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxy-acetyl) alanine methyl ester in or on strawberries at 5.0 ppm, resulting from application of the pesticide to the growing crop. Since that time, Ciba-Geigy Corp. has petitioned the Agency to increase the tolerance to 10.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in support of the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include the following:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 mg/kg body weight/day (250 ppm).

2. A developmental toxicity study in rats with a NOEL of 400 mg/kg body weight (highest dose tested). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg body weight (highest dose tested). Metalaxyl had no developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl did not induce gene mutations in bacteria, yeast, and mouse lymphoma cells in vitro with or without metabolic activation. The fungicide also caused no structural or numerical chromosomal aberrations in yeast, hamsters (in vivo nucleus anomaly assay), or mice (a dominant lethal assay). No DNA damage was observed in bacteria, and no unscheduled DNA synthesis was noted in rat primary hepatocytes or human fibroblasts in vitro as the result of exposure to metalaxyl. These results suggest that metalaxyl is not genotoxic.

5. A mouse dominant-lethal study that was negative for mutagenicity.

6. A three-generation rat reproduction study with a NOEL of 62.5 mg/kg body weight/day (1,250 ppm).

7. A 6-month dog feeding study with a NOEL of 6.3 mg/kg body weight/day (250 ppm).

8. A 2-year rat chronic toxicity/oncogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 12.5 mg/kg body weight/day (250 ppm) based upon slight increases in liver weight to body weight ratios at 1,250 ppm.

9. A 2-year mouse oncogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver, the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the oncogenicity studies and related material was performed by the peer review committee of the Toxicology Branch of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Parafollicular cell adenomas in the thyroid of female rats, (2) adrenal medullary tumors (pheochromocytomas) in male rats, (3) liver tumors in male mice, and (4) whether the highest dose tested (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no dose-response relationship; and (3) the two reevaluations of the microscopic slides by the pathologists at EPL and Toxicology Branch in OPP further mitigated any apparent effect observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely pheochromocytomas, in the male rat was also reassessed by both CAG and the peer review committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidences of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissues slides reported an elevated incidence of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at the EPL and by the reading of a CAG pathologist. The peer review committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The issue of whether a maximum tolerated dose (MTD) of metalaxyl was used in the rat and mouse 2-year feeding studies was considered by CAG and the OPP peer review committee. Although increased liver weights and vacuolation of hepatocytes in the rat study and fatty infiltration of the liver in the mouse study indicated treatment-related effects, these weight and histologic changes in the liver suggest that a pharmacologic rather than a toxic response was observed at the highest dose test (1,250 ppm). The pharmacologic response most often associated with these types of histologic and weight changes in the liver is the induction of the microsomal drug-metabolizing enzymes of the liver. A compound's self induction of these hepatic enzymes, which in turn leads to an acceleration of its own rate of metabolism, is the body's compensatory mechanism for handling excess exposure to a foreign chemical and may not in itself represent a minimal toxic effect.

Nevertheless, the Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals even though the MTD may not have been tested and that further testing is not warranted. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies were high enough to produce compound-related changes in liver weight and/or histology, probably representing a pharmacologic response; (2) metalaxyl is not structurally related to known carcinogens; (3) available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (4) under the conditions of the rat and mouse tests, no indication of compound-induced carcinogenic effects were noted at any of the treatment doses, sexes, or species.

The acceptable daily intake (ADI) based on the 6-month dog feeding study (NOEL of 6.3 mg/kg bwt/day), and using a hundredfold safety factor, is calculated to be 0.063 mg/kg bwt/day. The theoretical maximum residue contribution from previously established tolerances and the tolerances established here is 0.01106 mg/kg bwt/day and utilizes 18.50 percent of the ADI.

The nature of the residue is adequately understood, and adequate analytical methods (capillary N/P GLC) are available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from:

Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-4432.

The pesticide is considered useful for the purpose for which the tolerance is sought. Since strawberries are not an animal feed item, no secondary residues in meat, milk, poultry, or eggs from the use of metalaxyl in conjunction with the proposed tolerance is expected. Based on the information and data considered, the Agency concludes that the establishment of the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6F3337/P515]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administration has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: June 27, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.408(a) is amended in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Strawberries	10.0
* * * * *	

* * * * *

[FR Doc. 90-16329 Filed 7-11-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA 6975]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; deletion.

SUMMARY: This document deletes a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 54 FR 53332 on December 28, 1989. This notice serves to delete the representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Twentynine palms, San Bernardino County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice to delete the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Twentynine Palms, San Bernardino County, California, previously published at 54 FR 53332 on December 28, 1989, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Twentynine Palms Channel.	Approximately 100 feet upstream of Bullion/Mountain Road.	*1,727

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
	Approximately 100 feet downstream of Amboy Road.	*1,805
	Approximately 80 feet upstream of Joe Davis Drive.	*1,878
	Approximately 70 feet upstream of Adobe Road.	*1,983
	Approximately 70 feet upstream of Twentynine Palms Highway.	*2,121
Pinto Cove Creek.	Approximately 1,000 feet downstream of Joe Davis Road.	*1,890
	Approximately 80 feet upstream of Joe Davis Road.	*1,900
	Approximately 840 feet downstream of Twentynine Palms Highway.	*1,930
	Approximately 125 feet upstream of Twentynine Palms Highway.	*1,946
	Approximately 1,140 feet upstream of Twentynine Palms Highway.	*1,961
Pine Springs Wash.	At confluence with Twentynine Palms Channel.	*1,899
	Approximately 100 feet downstream of Twentynine Palms Highway.	*1,926
	Approximately 110 feet upstream of Pinon Drive.	*1,937
	Approximately 500 feet downstream of Palm Vista Drive.	*1,951
	Approximately 280 feet upstream of Palm Vista Drive.	*1,960
Joshua Mountain Wash.	Approximately 160 feet upstream of Palm Vista Drive.	*1,965
	Approximately 1,300 feet upstream of Palm Vista Drive.	*1,990
	Approximately 340 feet downstream of Foothill Road.	*2,020
	Approximately 25 feet downstream of Base Line Road.	*2,050
	Approximately 930 feet upstream of Base Line Road.	*2,072
Smoketree Wash.	Approximately 135 feet downstream of Twentynine Palms Highway.	*2,055
	Approximately 1,010 feet upstream of Twentynine Palms Highway.	*2,072
	Approximately 660 feet downstream of National Old Trails Highway.	*2,096

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
	Approximately 2,690 feet upstream of National Old Trails Highway.	*2,155
	Approximately 25 feet downstream of the corporate limits.	*2,202

Issued: July 5, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-16291 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6978]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 55 FR 1219 on January 12, 1990. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Village of Walton, Delaware County, New York.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Village of Walton, previously published at 55 FR 1219 on January 12, 1990, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The entries under Walton (Village), Delaware County for Third Brook are correctly revised to read as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Third Brook:	
At confluence with West Brook	*1,207
Approximately 1,250 feet upstream of Ogden Street Bridge	*1,273

Issued: July 5, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-16292 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket 88-57, RM-5643; FCC 90-220]

Connection of Simple Inside Wiring to Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In 1984, the Federal Communications Commission (FCC) adopted § 68.213 of its rules which generally authorized telephone subscribers to install at their premises and connect to the telephone network one and two-line telephone wiring ("simple inside wiring"). Those rules were consistent with the FCC's evolutionary approach of expanding the control of telephone customers over their own telecommunications facilities, subject to limitations on customer installation rights believed by the carriers to be necessary at the time to guard against harm to the telephone network. In subsequent years, the rules were amended consistent with the FCC's consideration of what regulatory treatment of inside wiring provided by carriers would best serve the public interest.

By this action, the FCC has proposed to expand the scope of inside wiring subject to § 68.213 from the present two lines up to four lines. The FCC believes that the rule amendment it proposes will eliminate unnecessary burdens on telephone subscribers.

This item was issued as a combined Report and Order (R&O) and Further Notice of Proposed Rulemaking (Further

NPRM) in CC Docket 88-57, RM-5643, FCC 90-220, adopted June 8, 1990 and released June 14, 1990. The companion R&O is published elsewhere in this issue.

DATES: Written comments must be received on or before August 13, 1990, and reply comments on or before September 10, 1990.

ADDRESSES: Comments should be filed with the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Domestic Services Branch, Common Carrier Bureau, (202) 634-1832.

SUPPLEMENTARY INFORMATION: This is a summary of the Further NPRM in CC Docket 88-57, RM-5643, FCC 90-220, adopted June 8, 1990 and released June 14, 1990. The complete document, as well as comments and reply comments, may be inspected and copied during the weekday hours (excluding federal holidays) of 9 a.m. to 4:30 p.m. in the FCC's Public Reference Room, room 239, 1919 M Street NW., Washington, DC; or transcripts may be purchased from the duplicating contractor, International Transcription Services, 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800.

Part 68 of the rules, 47 CFR part 68, provides for uniform standards for the protection of the telephone network from harm caused by the connection of terminal equipment and associated wiring. Section 68.104 of part 68, 47 CFR 68.104, provides that all connections to the network be made through the standard plugs and standard telephone company-provided jacks described in subpart F of part 68. Rule 68.213, 47 CFR 68.213, permits the use of "unprotected" premises wiring to connect units of terminal equipment or protective circuitry to one another, and to the network interface (or demarcation point), when such installations are limited to simple installations of wiring for one and two-line business and residential telephone service.

In its Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, CC Docket 88-57, 3 FCC Rcd 1120 (1988), the FCC undertook a review of its rules setting forth the terms and conditions under which customers may install and connect simple inside wiring to the telephone network. Comments were filed by several carriers and other parties. This Further NPRM is issued based on our examination of the record.

The FCC has defined inside wiring as the customer premises portion of telephone plant which connects station components to each other and to the telephone network. See Inside Wiring Reconsideration Order, 1 FCC Rcd 1190, 1197, n. 1, further recon. 3 FCC Rcd 1719 (1988). Simple inside wiring is the simple installations of wiring for one and two-line residential and business telephone service. 47 CFR 68.213. In this Further NPRM, we propose to expand the scope of § 68.213 to encompass wiring installations of up to four business or residential telephone lines, instead of the current maximum of two. Additionally, comments are solicited on the request of AT&T that § 68.213 include any wiring not located electrically behind protective equipment.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the amendment of part 68 proposed in this Further NPRM will not have a significant impact on small entities because the amendment will only remove regulatory requirements for inside wiring operations performed by small entities and does not create any additional regulatory requirements for inside wiring operations performed by small entities.

For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. Requirements governing *ex parte* presentations may be found in paragraph 80 of the complete Further NPRM and in §§ 1.1200—1.1206 of the rules, 47 CFR 1.1200—1.1206.

List of Subjects in 47 CFR Part 68

Conditions on use of terminal equipment, Registration procedures, Connectors, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

PART 68—[AMENDED]

Part 68 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 68 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, unless otherwise noted.

2. Section 68.213 is amended by revising the heading and paragraph (a) to read as follows:

§ 68.213 Installation of other than "fully protected" non-system simple customer premises wiring.

(a) *Scope.* Provisions of this rule are limited to "unprotected" premises wiring used with simple installations of wiring for one to four line residential and business telephone service. Unprotected premises wiring is wiring which is not located electrically behind apparatus which protects against hazardous voltages and imbalance. More complex installations of wiring for multiple line services, for use with systems such as PBX and key telephone systems, are controlled by § 68.215 of these rules.

* * * * *

[FR Doc. 90-16101 Filed 7-11-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 900777-0177]

RIN 0648-AC00

High Seas Salmon Fishery off Alaska

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

ACTION: Proposed Rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 3 to the Fishery Management Plan for the High Seas Salmon Fisheries off the Coast of Alaska East of 175 Degrees East Longitude (FMP). Amendment 3 was prepared by the North Pacific Fishery Management Council (Council) and submitted for Secretarial review, approval, and implementation under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The amendment completely revises the existing FMP (i.e., renames, reorganizes, and shortens it as well as changing the regulatory procedures for managing the fishery). Amendment 3 revises the FMP to (1) incorporate recent scientific data on the salmon stocks and information on the salmon harvests by the troll fishery, (2) correct existing errors, (3) provide for the annual harvest levels (optimum yields (OYs)) to be established by the Pacific Salmon Commission under provisions of the Pacific Salmon Treaty, (4) defer regulation of the salmon fisheries in the Exclusive Economic Zone (EEZ) to the State of Alaska to be regulated consistent with the FMP and applicable Federal law, (5) make the FMP consistent with recent provisions

of the Magnuson Act requiring consideration of vessel safety issues and fish habitat, and (6) provide for extending the jurisdiction of the FMP over the EEZ west of 175 degrees east longitude should the International Convention for the High Seas Fisheries of the North Pacific Ocean (International Convention) be terminated and not be replaced by an equivalent international agreement to which the United States is a party. Amendment 3 is intended to improve regulation of the salmon fisheries in Alaska's waters and in the EEZ off the coast of Alaska. It should reduce duplicative State and Federal fishery management efforts, maintain Council oversight of the fishery in the EEZ while eliminating Federal involvement in routine fishery management actions, and streamline season and inseason regulatory procedures.

DATES: Public comments are invited until August 20, 1990. Comments on the Environmental Assessment are particularly requested.

ADDRESSES: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. Individual copies of Amendment 3 and the Environmental Assessment (EA) and Regulatory Impact Review (RIR) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone: 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS, Alaska Region, Juneau, Alaska (telephone: 907-586-7228).

SUPPLEMENTARY INFORMATION:

Background

Salmon fishing in the EEZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP). The FMP was developed by the Council and approved and implemented by the Secretary of Commerce in 1979. Implementing regulations appear at 50 CFR Part 674.

The original FMP established the Council's authority over the salmon fisheries in the EEZ. The Council excluded the EEZ waters west of 175 degrees east longitude (near Attu Island) from the FMP management measures because the salmon fisheries in that area were under the jurisdiction of the International North Pacific Fisheries Commission (INPFC). The Council exercised its authority to manage the salmon fisheries in the portion of the EEZ east of 175 degrees east longitude by dividing that whole area into a "West Area" and an "East Area" with the boundary between the two areas being a line running due south from Cape Suckling (143°53'6" west longitude). The Council allowed recreational salmon fishing in both areas, prohibited commercial salmon fishing (with three minor exceptions for net fisheries regulated by Alaska under the North Pacific Fisheries Act of 1954) in the West Area, and allowed commercial troll fishing in the East Area. Management measures for the salmon fisheries in the EEZ were to be consistent, on an annual basis, with Alaska's regulations for the salmon fisheries in its State waters.

The FMP has been amended twice (once in 1980 (45 FR 59172) and again in 1981 (46 FR 57302)). Since 1981, the FMP has become outdated because the scientific data in the FMP are no longer current and do not represent the best available information, the Pacific Salmon Treaty between the United States and Canada came into being in 1985 and altered the process for managing the Alaska salmon fisheries, and finally, recent Magnuson Act amendments require that fishery management plan amendments submitted for Secretarial review after January 1, 1987, include considerations for temporary adjustments regarding fishery access for vessels prevented from harvesting because of weather or other ocean conditions affecting vessel safety, and information on the significance of habitat to the fishery and assess the probable effects that habitat changes may have on the fishery.

Although the Council had considered revising the FMP for several years, it delayed doing so until it knew what the provisions of the Pacific Salmon Treaty (then under negotiation) would be. In 1986, the Council decided to update and correct the FMP and make it consistent with the Pacific Salmon Treaty and the recent Magnuson Act amendments. More recently, the Council decided to consider extending the FMP's jurisdiction over the EEZ off Alaska west of 175 degrees east longitude in case the International Convention was dissolved.

Management Options Considered By the Council for Amendment 3

The Council considered, at its June 1986 meeting, five general options for revising the FMP: (1) Withdraw the FMP (and Council management of the EEZ salmon fisheries); (2) make minor FMP revisions by correcting textual errors and incorporating the best available scientific data; (3) revise the FMP significantly by deferring management authority to the State of Alaska; (4) change the FMP to provide more management flexibility as well as correcting errors and incorporating the best available scientific information; and (5) change the FMP to close the EEZ to all commercial salmon fishing.

The Council decided in 1986 to revise the FMP to (1) allow for annual catch levels under the FMP to be set in accordance with the Pacific Salmon Commission's management decisions (i.e., adopting the Commission's annual harvest limits), (2) update all of the biological material and catch statistics in the FMP, (3) allow Federal season and inseason management measures to be consistent with and implemented simultaneously with those set by the State, (4) fulfill new requirements of the Magnuson Act for consideration of habitat and vessel safety issues, and (5) correct existing errors.

After the Council's 1986 decisions regarding the contents of Amendment 3, the Council's Salmon Plan Team (SPT) prepared an initial draft Amendment 3. In June 1988, the Council reviewed the initial draft Amendment 3 and directed the SPT to revise it by (1) adding a measure which extended jurisdiction of the FMP over waters west of 175 degrees east longitude, (2) changing the definitions of maximum sustainable yield (MSY) and optimum yield, and (3) deferring regulation of the salmon fisheries to the State of Alaska.

The Council believed that its approach to revising the FMP would reduce duplicative Federal and State management actions and paperwork, eliminate the uncertainty and confusion among the fishermen over similar but not always identical Federal and State regulations, allow the salmon fisheries to continue operating as they have, and maintain minimal, although necessary, Council and Federal oversight of and participation in the management of the salmon fishery in the EEZ.

In April 1989, the Council released the revised draft Amendment 3 for public review and comment until September 1, 1989. At its September 1989 meeting, the Council reviewed all public comments received and adopted a final Amendment 3 for submission to the Secretary of Commerce for review and approval.

Summary of Management Measures

Amendment 3 renames the FMP as the "Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska." It reorganizes and shortens the FMP, incorporates recent scientific data on the salmon stocks and

statistics on the salmon harvests by the troll fishery in recent years, and corrects existing FMP errors. Amendment 3 provides for the OYs to be set by the Pacific Salmon Commission under procedures established by the Pacific Salmon Treaty. Further, it defers regulation of the salmon fisheries in the EEZ to the State of Alaska to be regulated consistent with the FMP and applicable Federal law, including Federal law implementing applicable treaties. Alaska's regulations will then apply to all fishing vessels registered under the laws of the State whether they are fishing in State waters or in the EEZ. Amendment 3 discusses fish habitat issues and vessel safety concerns and identifies ongoing and future Council actions to address these matters; it does not contain specific management measures implemented by regulations regarding these concerns. Finally, Amendment 3 provides for extending the jurisdiction of the FMP over salmon in the EEZ west of 175 degrees east longitude should the International Convention be terminated and not be replaced by an equivalent international organization to which the United States is a party.

Amendment 3 retains the previous ban on salmon fishing with nets in both East and West areas, retains the ban on commercial salmon fishing in the West Area, allows commercial hand-troll and power-troll salmon fishing in the East Area, and allows sport fishing in both Areas.

Finally, Amendment 3 provides that the Secretary of Commerce may review the applicability of a State statute or regulation to the EEZ. Any member of the public may obtain that review by properly appealing any State statute or any regulation (i.e., any perennial, annual, or inseason regulation) issued by the State for the salmon fisheries in the EEZ off the Coast of Alaska. Such public appeals of State statutes and perennial or annual regulations would be directed first to the State and, if unsuccessful, then to the Secretary. Public appeal to the State is not required in advance of an appeal to the Secretary for an inseason rule, but simultaneous pursuit of State and Secretarial review is expressly endorsed by Amendment 3. Secretarial review of all public appeals is limited by Amendment 3 to the issue of whether the challenged State statute or regulation is consistent with the FMP, the Magnuson Act, and other applicable Federal law, including Federal law implementing applicable treaties (the applicable criteria). The Secretary is constrained from responding to public comments which merely object to a State statute or regulations or simply indicate that an alternative State statute or regulation would provide for better management of the salmon fishery. The appellant must tie the objection to the applicable criteria for Secretarial review. This limitation on Secretarial review of State regulations will allow the Secretary to disregard frivolous comments and should encourage persons with serious concerns to participate fully in the State regulatory procedures before seeking Secretarial intervention.

Initial public appeals to the State follow procedures of the Alaska Administrative Procedure Act which are outlined in Amendment 3. These State procedures provide for the Council, National Marine Fisheries Service, and NOAA's Office of General Counsel to submit comments to the State concerning the extent to which the appealed State regulation falls within the scope of the FMP, the Magnuson Act, and other applicable Federal law.

If, in response to a public appeal or as a result of NMFS's routine review of the State's salmon regulations and statutes, the Secretary makes a preliminary determination that a State statute or perennial or annual regulation is inconsistent with the applicable criteria, the Secretary will (1) publish a proposed rule for salmon fisheries in the EEZ in the **Federal Register** that is consistent with the applicable criteria, and request comments for 30 days, (2) provide notice of the rule to the Council and the Commissioner of the Alaska Department of Fish and Game, and (3) hold an informal public hearing if requested by the State. After reviewing all public and State comments, the Secretary will decide whether or not the State regulation or statute appealed or found questionable is consistent with the applicable criteria. Depending upon his decision, the Secretary will either publish a notice withdrawing his proposed Federal rule or promulgate a final Federal rule for salmon fisheries in the EEZ superseding the inconsistent State regulation or statute.

If the Secretary receives a public appeal of a State inseason regulation which is alleged to be inconsistent with the applicable criteria, he will (1) immediately provide a copy of the appeal to the Council and the Alaska Department of Fish and Game Commissioner, (2) consider any comments from the Council and Commissioner, and (3) either (A) notify the appellant that he has found the State's inseason regulation consistent with the applicable criteria or (B) if the State regulation is found inconsistent with the applicable criteria, immediately issue Federal regulations for salmon fisheries in the EEZ superseding the State regulation unless there is sufficient time to follow the procedure for an annual or perennial regulation that has been determined preliminarily to be inconsistent with the applicable criteria.

Proposed Changes to the Regulations Implementing the FMP

Because Amendment 3 defers regulation of the sport and commercial salmon fisheries in the EEZ off the coast of Alaska to the State of Alaska, the proposed regulations implementing Amendment 3 remove all the specific management measures presently contained in 50 CFR part 674, subpart B (Management Measures—fishing times and areas, harvest limits, gear restrictions, and inseason adjustment procedures). Subpart B of 50 CFR part 674 will now simply refer to relevant State of Alaska salmon fishing regulations.

Subpart A of 50 CFR part 674 is amended to eliminate references to specific management measures no longer contained in subpart B.

Public Comments

Comments are invited in writing on (1) Amendment 3 and the associated EA and RIR and (2) the proposed rule. Copies of Amendment 3 and the other documents may be obtained by writing to the address stated above. Comments are also to be directed to that address. At this time, no additional public hearings on Amendment 3 are planned.

Classification

This proposed rule is published under section 304(a)(1)(C) of the Magnuson Act as amended by Public Law 99-659, which requires the Secretary to publish regulations proposed by the Council within 15 days of receipt of the fishery management plan amendment and regulations. At this time, the Secretary has not determined whether Amendment 3, which these regulations would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making these determinations, will take into account the data and comments received during the public comment period.

The Council prepared an EA for Amendment 3 and concluded that there will be no significant impacts on the human environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above and comments on it are requested.

The Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary), has preliminarily determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR prepared by the Council which concluded that Amendment 3 does not change the FMP in a manner affecting the actual functioning of the fishery. No effects of extending the FMP's jurisdiction over salmon fisheries in the EEZ west of 175 degree east longitude are expected as long as the International Convention remains in effect. In the event that the International Convention were to be terminated, Amendment 3 would provide Federal management authority over the EEZ west of 175 degrees east longitude. In the small likelihood that a domestic fishery develops in this area, specific management measures will have to be established by the State and their impacts assessed at that time. Deferring salmon regulatory authority to the State will not change the fishermen's operations or alter annual catch quotas or user allocations as compared to the status quo. Deferring to the State regulatory process should also result in quicker notice to fishermen of annual and inseason regulatory actions, reduce duplicative Federal and State efforts, and minimize confusion among fishermen and Federal and State enforcement personnel as to when specific areas are open or closed to trolling. Approximately $100,000 in annual administrative costs savings are expected.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act (section 304(a)(1)(D)(ii)), as amended, require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of the order.

The Council's RIR concluded that this proposed rule, if adopted, would not have significant economic effects on small business entities as specified under the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared. The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on small entities for the following reasons. The economic impacts from deferring to State management of salmon and from streamlining the regulatory process should include slightly lower Federal management costs and slightly increased benefits to the fishermen in the form of more timely notices of management changes and less confusion about the regulatory actions. The impacts, if any, from extending the FMP's jurisdiction over the EEZ west of 175 degrees east longitude will depend upon whether the International Convention continues to exist and how the Japanese conduct their high-seas salmon gillnet fisheries in the event the International Convention is dissolved. Whether the International Convention is dissolved, and the subsequent actions of the United States and Japan if it is, are independent of this rule.

The Under Secretary determined that this proposed rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Deputy Assistant Secretary of Commerce for Intergovernmental Affairs has determined that Amendment 3 and this proposed rule have sufficient federalism implications to warrant preparation of a federalism assessment (FA) under E.O. 12612. Because section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt, there is insufficient time to prepare an FA prior to publication. However, an FA is being prepared and will be available, upon request, at the above address. Based on a preliminary analysis, there are no provisions or elements of Amendment 3 or this proposed rule that are inconsistent with the principles, criteria, and requirements set forth in sections 2 through 5 of E.O. 12612. Further, Amendment 3 and the proposed rule would not appear to affect Alaska's ability to discharge traditional state governmental functions, or other aspects of State sovereignty. The FA will address these preliminary determinations as well as the extent to which Amendment 3 and this proposed rule will impose costs or burdens on Alaska and Alaska's ability to carry out its responsibilities under Amendment 3 and this proposed rule.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and Recordkeeping requirements.

Dated: July 6, 1990

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 674 is proposed to be amended as follows:

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

The authority citation for part 674 continues to read as follows:

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. Section 674.2 is amended by adding the definition of *West Area* to read as follows:

§ 674.2 Definitions.

* * * * *

(a) *West Area* means the waters of the EEZ seaward of Alaska which are west of 143°53'36" W. longitude (Cape Suckling).

* * * * *

3. Section 674.7 is revised to read as follows:

§ 674.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for, take, or retain any salmon in violation of the Act or this part.

(b) Engage in fishing for salmon in the management area except to the extent authorized by § 674.4(a) of this part.

4. Subpart B is revised to read as follows:

Subpart B—Management Measures

Sec.
674.20 General.
674.21 Commercial fishing.
674.22 Personal use fishing.

Subpart B—Management Measures

§ 674.20 General.

The management measures specified in this subpart shall apply to all fishing for salmon in the management area by vessels registered under laws of the State of Alaska.

§ 674.21 Commercial fishing.

(a) For State of Alaska statutes and regulations governing commercial fishing, see Alaska Statutes, Title 16—Fish and Game; title 5 of the Alaska Administrative Code, chapters 1–39.

(b) For State of Alaska Regulations specifically governing the salmon troll fishery, see 5 Alaska Administrative Code 30 (Yakutat Area), and 5 Alaska Administrative Code 33 (Southeastern Alaska Area).

§ 674.22 Personal use fishing.

(a) For State of Alaska statutes and regulations governing sport and personal use salmon fishing other than subsistence fishing, see Alaska Statutes, Title 16—Fish and Game; 5 Alaska Administrative Code 42.010 through 75.995.

(b) For State of Alaska statutes and regulations governing subsistence fishing, see Alaska Statutes, Title 16—Fish and Game; 5 Alaska Administrative Code 01, 02, 39, and 99.010.

[FR Doc. 90-16198 Filed 7-6-90; 4:57 pm]
BILLING CODE 3510-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing on Proposed Endangered Status for Blennosperma bakeri (Baker's stickyseed), Lasthenia burkei (Burke's goldfields), and Limnanthes vinculans (Sebastopol meadowfoam)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act (Act), gives notice that a public hearing will be held on the proposed endangered status for three plants from northern California; *Blennosperma bakeri, Lasthenia burkei,* and *Limnanthes vinculans.* The hearing will allow all interested parties to submit oral or written comments on the proposal.

DATES: The public hearing will be held from 6 p.m. to 9 p.m. on Wednesday, July 25, 1990, in Santa Rosa, California. Comments from all interested parties must be received by August 6, 1990.

ADDRESSES: The public hearing will be held in the City of Santa Rosa Council Chambers, 100 Santa Rosa Avenue, Santa Rosa, California. Written comments and materials may be submitted at the hearing or may be sent directly to Mr. Wayne S. White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E-1803, Sacramento, California 95825. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jim A. Bartel, Sacramento Field Office, at the above address (telephone (916) 978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Blennosperma bakeri, Lasthenia burkei, and *Limnanthes vinculans* are annual plants that occur in vernal pools, and shallow swales in the Cotati Valley of Sonoma County, California. *Lasthenia burkei* is also known from Manning Flat in Lake County and historically from Ukiah in Mendocino County. These species are threatened with extinction principally as a result of urban development, conversion of native habitats to agriculture, wastewater discharge, and livestock grazing. A proposed rule that would designate *Blennosperma bakeri, Lasthenia burkei,* and *Limnanthes vinculans* as endangered species was published in the **Federal Register** (55 FR 23109) on June 6, 1990.

Subsection 4(b)(5)(E) of the Act, as amended (16 U.S.C. *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule.

In anticipation of the hearing requests on this proposal, the Service has scheduled a public hearing for July 25, 1990, from 6 p.m. to 9 p.m. in City of Santa Rosa Council Chambers, 100 Santa Rosa Avenue, Santa Rosa, California. Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the **ADDRESSES** section of this notice. The comments period closes on August 6, 1990.

Author

The primary author of this notice is Mr. Jim A. Bartel, Sacramento Field Office, at the above address.

Authority

The authority for this action is 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: June 22, 1990.

Marvin L. Plenart,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 90-16279 Filed 7-11-90; 8:45 am]
BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 134
Thursday, July 12, 1990

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 6, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W. Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

• Foreign Agricultural Service
7 CFR part 1493-Regulations Covering CCC's Export Credit Guarantee Program (GSM-102) and CCC's Intermediate Export Credit Guarantee Program (GSM-103)
Recordkeeping; On occasion
Businesses or other for-profit; 21,589 responses; 3,822 hours; not applicable under 3504(h)
L.T. McElvain (202) 447-6225

New Collection

• Food and Nutrition Service
Study of Paperwork Reduction Pilot Project of the National School Lunch Program
Recordkeeping; Annually
Individuals or households; State or local governments; 504 responses; 396 hours; not applicable under 3504(h)
Lisa Greenwood, (703) 756-3133

• Food and Nutrition Service
Child Nutrition Meal Cost Methodology Study
One-time data collection
State or local governments; 2,960 responses; 538 hours; not appliable under 3504(h)
Susan Battan, (703) 756-3115

Reinstatement

• Office of Operations
Solicitation/Award/Administration of Contracts for Procuring Goods and Services
On occasion
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 7,788 responses; 38,940 hours; not applicable under 3504(h)
Larry Schreier, (202) 447-8924

• Office of Operations
Procurement: Key Personnel Clause
On occasion
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 400 responses; 400 hours; not applicable under 3504(h)
Larry Schreier, (202) 447-8924

Existing

• Office of Operations
Procurement: Instruction for the Preparation of Technical and Business Proposals
On occasion
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 2,310 responses; 92,400 hours; not applicable under 3504(h)
Larry Schreier, (202) 447-8924

• Office of Operations
Procurement: Brand Name or Equal Clause
On occasion
Businesses or other for-profit; Small businesses or organizations; 295,480 responses; 29,548 hours; not applicable under 3504(h)
Larry Schreier, (202) 447-8924

• Office of Operations
Procurement: Progress Reporting Clause
Monthly; Quarterly
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 2,400 responses; 3,600 hours; not applicable under 3504(h)
Larry Schreier (202) 447-8924

• Office of Operations
Procurement: Maximum Workweek—Construction Schedule
On occasion
Businesses or other for-profit; Small businesses or organizations; 600 responses; 150 hours; not applicable under 3504(h)
Larry Schreier, (202) 447-8924

• Office of Operations
Procurement: General Financial and Organizational Information
On occasion
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 2,310 responses; 2,310 hours; not applicable under 3504(h)
Larry Schreier, (202) 447-8924

Donald E. Hulcher,
Acting Departmental Clearance Officer

[FR Doc. 90-16215 Filed 7-11-90; 8:45 am]
BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 90-119

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit To Field Test Genetically Engineered Cucumber 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 the New York State Agricultural Experiment Station, to allow the field testing in Ontario County, New York, of cucumber plants genetically engineered to express a gene encoding the coat protein of cucumber mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered

cucumber plants will not present a risk of the introduction or dissemination of a plant pest and will not have a 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: Dr. James White, Biotechnologist, Biotechnology Permits, 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 Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-059-01.

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).

The New York State Agricultural Experiment Station, Cornell University, Geneva, New York, has submitted an application for a permit for release into the environment, to field test cucumber plants genetically enginerred to express a gene encoding the coat protein of cucumber mosaic virus. The field trial will take place in Ontario County, New York.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cucumber plants under the conditions described in the New York State Agricultural Experiment Station application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a 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 the New York State Agricultural Experiment Station, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts assoicated 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 the coat protein of cucumber mosaic virus has been inserted into the cucumber chromosome. In nature, chromosomal genetic material 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 no sexually compatible plants are within at least one mile of the field.

2. Neither the gene encoding the coat protein nor the coat protein confers on cucumber any plant pest characteristics.

3. The expression of the viral coat protein gene does not provide the transformed cucumber plants with any apparent selective advantage over nontransformed cucumber in their ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been inserted into the cucumber chromosome. These sequences do not confer on cucumber any plant pest characteristics.

5. The vector used to transfer the plant viral genes to the cucumber plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to any susceptible plant.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the plant viral coat protein gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed cucumber plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

8. The field test site is small (less than 0.3 acre) and is completely surrounded by forest and fruit crops with no cultivated cucurbits within a mile of the test site.

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 9th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service

[FR Doc. 90-16227 Filed 7-11-90; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Amendment to the Land and Resource Management Plan, Bighorn National Forest, Sheridan, Johnson, Bighorn, and Washaki Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to re-analyze timber resource land suitability, allowable sale quantity, and ability to re-stock lands following timber harvest.

SUMMARY: The U.S. Department of Agriculture, Forest Service, will re-evaluate lands on the Bighorn National Forest for their suitability for timber production following the procedure outlined in 36 CFR 219.14. Concurrently, the Forest will re-evaluate the maximum amount of timber which can be sold over the next 10 years from lands designated as suited for timber production in the Forest Plan. The analysis will result in an amendment to the Land and Resource Management Plan for the Bighorn National Forest.

DATES: Comments concerning the scope of the analysis should be received in writing by August 31, 1990.

ADDRESSES: Send written comments and suggestions to Lloyd D. Todd, Forest Supervisor, Bighorn National Forest, 1969 South Sheridan Avenue, Sheridan, Wyoming 82801.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Larry J. Thoney, Land Management Planning Staff Officer, Bighorn National Forest, phone 307-672-0751.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement was completed and the Record of Decision approving the Land and Resource Management Plan for the Bighorn National Forest was signed in October 1985. In July 1989, a lawsuit was filed in the United States District Court for the District of Colorado by the Sierra Club. As a result of that lawsuit the Court issued a judgment and order on February 13, 1990, declaring the regeneration standards in the Forest Plan to be illegal and ordered that the plan be amended and revised by replacing the seven-year regeneration standard with a five-year standard and that the three-step suitability analysis process outlined in 36 CFR 219.14 be redone based on a five-year regeneration standard.

The re-analysis will determine the significance of the Forest Plan amendment. If the amendment is deemed significant, the Forest will issue a Notice of Intent to prepare a supplement to the Final Environmental Impact Statement for the Forest Plan. At that time, the public will be formally asked to comment.

Dated: July 3, 1990.

Lloyd D. Todd,

Forest Supervisor,

[FR Doc. 90-16326 Filed 7-11-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Upper South Fork—Sabine River Watershed, TX

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper South Fork—Sabine River Watershed, Collin, Hunt, and Rockwall Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501, telephone (817) 774-1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to improve water quality, reduce sediment damage, and assure the capability to sustain long-term agricultural productive capacity. The plan consists of an accelerated land treatment program that provides financial and technical assistance to apply conservation practices on cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: June 29, 1990.

Harry W. Oneth,

State Conservationist.

[FR Doc. 90-16324 Filed 7-11-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 9106-01, 9106-02]

Action Affecting Export Privileges; James E. Albert

In the Matter of: James E. Albert, President, Quaestus International, Inc. 601 Van Ness Avenue, Suite 441, San Francisco, CA 94102, Respondent

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against James E. Albert (Albert) pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1989)) (the Act), and part 788 of the Export Administration Regulations (15 CFR parts 768-799 (1989)) (the Regulations), alleging that Albert violated §§ 787.3, 787.4(a), 787.5, and 787.6 of the Regulations in that: (1) From on or about January 22, 1985 to on or about January 15, 1987, Albert exported, or attempted to export, computer-related equipment to Austria, without the individual validated licenses he knew or had reason to know were required, and (2) Albert made, either directly or indirectly, false statements of material fact to a United States agency in connection with the export of computer-related equipment from the United States; and

The Department and Albert having entered into a Consent Agreement whereby the parties have agreed to settle this matter by Albert's being denied all United States export privileges for a period ending 10 years from the date of this Order, and having further agreed that, beginning two years from the date of entry of this Order, the balance of the denial period will be suspended for eight years, and waived thereafter, provided that Albert has committed no violation of the Act or any regulation, order or license issued under the Act; and

The terms of the Consent Agreement having been approved by me:

It is therefore Ordered,

First, that James E. Albert, 601 Van Ness Avenue, Suite 441, San Francisco, California 94102, for a period ending 10 years from the date of this Order, is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data, subject to the Act and the Regulations, from the United States or abroad.

A. All outstanding individual validated export licenses in which Albert appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Albert's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the

United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submited therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data that are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Albert is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services (hereinafter "related person").

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Albert or any related person, or whereby Albert or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Albert or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

E. As authorized by § 788.17(b) of the Regulations, beginning two years from the date of entry of this Order, the balance of the denial period will be suspended for eight years. The eight-year suspended portion of the denial period will thereafter be waived, provided that, during the period of suspension, Albert has committed no violation of the Act or any regulation, order or license issued under the Act.

Second, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served upon Albert and published in the **Federal Register**.

This constitutes the final agency action in this matter.

Entered this 29th day of June, 1990.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 90-16187 Filed 7-11-90; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 9106-01, 9106-02]

Action Affecting Export Privileges; Quaestus International, Inc.

In the Matter of: Quaestus International, Inc. 601 Van Ness Avenue, Suite 441, San Francisco, CA 94102, Respondent

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Quaestus International, Inc. (Quaestus), pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1989)) (the Act), and part 788 of the Export Administration Regulations (15 CFR parts 768-799 (1989)) (the Regulations), alleging that Quaestus violated §§ 787.3, 787.4(a), 787.5, and 787.6 of the Regulations in that: (1) From on or about January 22, 1985 to on or about January 15, 1987, Quaestus exported, or attempted to export, computer-related equipment to Austria, without the individual validated licenses it knew or had reason to know were required, and (2) Quaestus made, either directly or indirectly, false statements of material fact to a United States agency in connection with the export of computer-related equipment from the United States; and

The Department and Quaestus having entered into a Consent Agreement whereby the parties have agreed to settle this matter by Quaestus's being denied all United States export privileges for a period ending 10 years from the date of this Order, and having further agreed that, beginning two years from the date of entry of this Order, the balance of the denial period will be suspended for eight years, and waived thereafter, provided that Quaestus has committed no violation of the Act or any regulation, order or license issued under the Act; and

The terms of the Consent Agreement having been approved by me:

It is therefore Ordered,

First, that Quaestus International, Inc., 601 Van Ness Avenue, Suite 441, San Francisco, California 94102, for a period ending 10 years from the date of this Order, is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data, subject to the Act and the Regulations, from the United States or abroad.

A. All outstanding individual validated export licenses in which Quaestus appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Quaestus's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data that are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicabale to any person, firm, corporation, or business organization with which Quaestus is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services (hereinafter "related person").

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Quaestus or any related person, or whereby Quaestus or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Quaestus or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

E. As authorized by § 788.17(b) of the Regulations, beginning two years from the date of entry of this Order, the balance of the denial period will be suspended for eight years. The eight-year suspended portion of the denial period will thereafter be waived, provided that, during the period of suspension, Quaestus has commited no violation of the Act or any regulation, order or license issued under the Act.

Second, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served upon Quaestus and published in the Federal Register.

This constitutes the final agency action in this matter.

Entered this 29th day of June, 1990.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 90-1618 Filed 7-11-90; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Species and Designation of Critical Habitat: Petition To Designate Critical Habitat for the Northern Right Whale

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

ACTION: Notice of receipt of a petition presenting substantial information and request for additional information.

DATES: Comments and information must be received by September 10, 1990.

ADDRESSES: Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, F/PR2, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, NMFS, 301-423-2323.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act (ESA) and 50 CFR part 424 contain provisions allowing interested parties to petition for the designation of critical habitat. Within 90 days after receiving a petition a determination must be made concerning whether the petition presents substantial information indicating that the petitioned action may be warranted. If a petition presents substantial information, a review is conducted to determine if critical habitat should be designated. Determinations concerning critical habitat are made on the best available scientific and commercial data and the economic impacts of such designation.

Petition Received

On May 18, 1990, Mr. Hans Neuhauser, on behalf of the Right Whale Recovery Team, petitioned NMFS to designate critical habitat for the northern right whale in the following three areas off the Eastern Seaboard:

Cape Cod Bay: The area bounded by the following coordinates: 42°04.8'N, 70°10'W; 42°12'N, 70°15'W; 42°12'N, 70°30'W; 41°46.8'N, 70°30'W; and on the south and east by the interior coastline of Cape Cod.

Great South Channel: The area bounded by the following coordinates: 41°40'N, 69°45'W; 41°00'N, 69°05'W; 41°38'N, 69°13'W; 42°10'N, 68°31'W.

Southeastern U.S. Coast Calving Ground—Georgia/Florida: The coastal waters between 31°15'N (approximately the mouth of the Altamaha River, Georgia) and 30°15'N (approximately Jacksonville, Florida) from the coast out to 15 nautical miles offshore; and the coastal waters between 30°15' and 28°00'N (approximately Sebastian Inlet, Florida) from the coast out to 5 nautical miles.

Presentation of Substantial Information

NMFS has determined that the petition presents substantial information. A copy of the information submitted with the petition is available upon request from the above ADDRESSES.

Review

NMFS will conduct a review to determine if the petitioned action to designate critical habitat is warranted. Section 4 of the ESA requires that within 12 months of receipt of a substantial petition, the Secretary of Commerce make one of the following findings: (1) The petitioned action is not warranted; (2) the petitioned action is warranted; or (3) the petitioned action is warranted, but pending listing proposals preclude immediate proposal of a regulation to implement the action. A notice of finding must be published in the Federal Register and, in the case of (2) above, a proposed regulation to implement the action must be included.

Unlike designating a species as endangered or threatened, economic impacts must be considered when designating critical habitat. An area may be excluded from the designation if it is determined that the benefits of an exclusion outweigh the benefits of including the area as critical habitat, and the exclusion will not result in the extinction of the species.

Information Solicited

NMFS is soliciting information and comments concerning the petition to ensure that the review is complete and is based on the best available information including information concerning economic impacts. We request that the information comments be accompanied by (1) supporting documentation such as maps, biological references or reprints of pertinent publications and (2) the person's name, address and association, institution, or business that the person represents.

Dated: July 5, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 90-16226 Filed 7-11-90; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2), notice was given on 5 June 1990 (55 FR 22944) that a special committee of the Board of Visitors to the United States Naval Academy will meet between 29 May and 15 July 1990, at the U.S. Naval Academy, Annapolis, Maryland. Notice is hereby given that the meetings of the committee will continue until 31 August 1990. The sessions will be closed to the public.

The purpose of the meeting is to make inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, and academic method of the Naval Academy.

For further information concerning this meeting contact:

Captain John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402-5017.

Dated: June 27, 1990.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 90-16189 Filed 7-11-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.003V]

Bilingual Education: Short-Term Training Program; Invitation To Apply for New Awards for Fiscal Year (FY) 1991

Purpose of Program: Provides grants to improve the skills of educational personnel and parents participating in programs for limited English proficient students.

Deadline for Transmittal of Applications: October 12, 1990.

Deadline for Intergovernmental Review: December 11, 1990.

Applications Available: July 16, 1990.

Available Funds: $1,300,000.

Estimated Range of Awards: $35,000-$140,000.

Estimated Average Size of Awards: $76,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12, 24, or 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 500 and 574.

Priorities

Competitive Priority: The program regulations in 34 CFR 574.30 provide that the Secretary may annually establish, as a priority, one or more of the activities listed in 34 CFR 574.10. For this competition the Secretary gives preference to applications that meet the following competitive priority:

Training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient (LEP) persons (34 CFR 574.10(a)).

Under 34 CFR 75.105(c)(2)(ii) an application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority.

Invitational Priorities: In addition, the Secretary is particularly interested in applications that must meet one or more of the following invitational priorities:

(1) Training designed to improve the competence of teachers in regular classrooms in providing instructional services to LEP children.

(2) Training designed to improve the competence of teachers in providing instruction in mathematics and science to LEP children at secondary grade levels.

(3) Training proposed by local educational agencies (LEAs) to improve the instructional competence of teachers of LEP children and designed to be incorporated into existing LEA staff development programs.

However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 574.32.

In addition to the maximum of 100 points awarded under 34 CFR 574.32, the program regulations in 34 CFR 574.33(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 574.33(a). For this competition the Secretary distributes the 10 additional points as follows:

(1) Evidence of prior participants' success in serving LEP children in accordance with needs identified in the prior project (1 point).

(2) Evidence of demonstrated capacity and cost effectiveness as provided in 34 CFR 574.32 (d) and (f) (9 points).

For Applications or Information Contact: Ms. Petraine Johnson, U.S. Department of Education, 400 Maryland Avenue SW., Room 5627, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 732-5722.

Authority: 20 U.S.C. 3321(a)(4)-(5).

Dated: June 26, 1990.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 90-16222 Filed 7-11-90; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003L]

Bilgual Education: Special Populations Program; Invitation To Apply for New Awards for Fiscal Year (FY) 1991

Purpose of Program: Provides grants to establish, operate, or improve preschool, special education, and gifted and talented programs for limited English proficient (LEP) children which are preparatory or supplementary to programs, such as those assisted under title VII of the Elementary and Secondary Education Act as amended, and designed to assist LEP children in achieving full competency in English.

Deadline for Transmittal of Applications: October 12, 1990.

Deadline for Intergovernmental Review: December 11, 1990.

Applications Available: July 16, 1990.

Available Funds: $1,700,000.

Estimated Range of Awards: $70,000-$180,000.

Estimated Average Size of Awards: $155,000.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) The Regulations for this program in 34 CFR parts 500 and 526.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority: preparatory or supplementary preschool programs for LEP children who have not reached elementary school age.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or

absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 526.32.

In addition to the maximum of 100 points awarded under 34 CFR 526.32, the program regulations in 34 CFR 526.31(b) and 34 CFR 525.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 525.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (5 points).

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (6 points).

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons (1 point).

(4) The relative numbers of children from low-income families sought to be benefited by the program (3 points).

FOR APPLICATIONS OR INFORMATION CONTACT: Ms. Barbara J. Wells, U.S. Department of Education, 400 Maryland Avenue SW., Room 5627, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 732-1840.

Authority: 20 U.S.C. 3291(a)(6).

Dated: June 26, 1990.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 90-16223 Filed 7-11-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Environmental Restoration and Waste Management Site Specific Plans

AGENCY: Chicago Operations Office, DOE.

ACTION: Extension of period of solicitation of comments from the general public on environmental restoration and waste management site specific plans for laboratories and facilities under the Chicago Operations Office.

SUMMARY: The Department of Energy Chicago Operations Office has extended the comment period for the Environmental Restoration and Waste Management Site Specific Plans for the facilities under its management (55 FR 3636). These facilities include Ames Laboratory, Iowa; Argonne National Laboratory—East, Illinois; Argonne National Laboratory—West, Idaho; Battelle Columbus Laboratories, Ohio; Brookhaven National Laboratory, New York; Fermi National Accelerator Laboratory, Illinois; Princeton Plasma Physics Laboratory, New Jersey; Hallam Nuclear Power Facility, Nebraska; and Piqua Nuclear Power Facility, Ohio.

DATES: Comments will be accepted through September 10, 1990.

ADDRESSES: Persons requiring copies of these Site Specific Plans should submit their requests to Mr. Joel Haugen, Environmental Restoration and Waste Management Division, U.S. Department of Energy, Chicago Operations Office, Attn: Site Specific Plans, 9800 South Cass Avenue, Argonne, IL 60439 or call (708) 972-2093. Written comments should be addressed to Mr. Haugen at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Haugen on (708) 972-2093.

Hilary J. Rauch,

Manager, Chicago Operations Office.

[FR Doc. 90-16317 Filed 7-11-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2622-002]

International Paper Co.; Availability of Environmental Assessment

June 29, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the Turners Falls Project, on the Turners Falls canal, in the Village of Turners Falls, City of Montague, Franklin County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-16199 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3862-001 Illinois]

City of LeClaire; Availability of Environmental Assessment

June 29, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed LeClaire Project, located on the Upper Mississippi River, near the town of Hampton, Rock Island County, Illinois, and has prepared a draft Environmental Assessment (EA) for the proposed project.

Copies of the EA are available for review in the Public Reference Branch, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 3862 to all comments. For further information please contact Ann Miles, Environmental Assessment Coordinator, at (202) 357-0769.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-16200 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1613-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

July 3, 1990.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corp.

[Docket No. CP90-1613-000]

Take notice that on June 25, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84108 filed in Docket No. CP90-1613-000 a request pursuant to § 157.205 of Commission's Regulations for authorization to add a new delivery point, for sales service to Washington Natural Gas Company (Washington

Natural) pursuant to a Service Agreement dated April 5, 1989 under Northwest's Rate Schedule ODL-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it is currently authorized by order issued March 14, 1990 in Docket No. CP89-1740 to provide 21,000 dt of firm sales service for Washington Natural at Northwest's South Tacoma Sales Lateral, in Pierce County, Washington.

Northwest further states that by letter agreement dated May 25, 1990, Washington Natural requested Northwest to establish a delivery point at the South Tacoma Meter Station for up to 2,700 dt per day of natural gas under Northwest's Rate Schedule ODL-1. Northwest understands that Washington Natural intends to use the newly requested volumes to service a new residential development in the area near the South Tacoma Station.

The volume proposed herein is within existing entitlements. Existing facilities will be used for the execution of the service proposed herein.

Comment date: August 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CP90-1643-000]

Take notice that on June 28, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-1643-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to acquire and operate metering facilities located in Morehouse Parish, Louisiana, under United's blanket certificate issued in Docket No CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the metering facilities, located in Section 24, Township 21 North, Range 5 East in Morehouse Parish, Louisiana, were installed by Gulf South Pipeline Company (Gulf South), an intrastate pipeline, for resale to International Paper Company (International Paper), on August 5, 1985, under section 311 of the Natural Gas Policy Act of 1978. United further states that it intends to acquire the facilities from Gulf South at a cost of $123,555, and wishes to convert the facilities to be used under § 157.211(a)(2) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.211(a)(2)) for open access transportation to International Paper.

United indicates that it has received authorization from the Louisiana Historical Commission and the U.S. Fish and Wildlife Commission to operate the proposed facilities under its blanket certificate authority. United further indicates that it would operate the proposed facilities in compliance with part 157, subpart F of the Commission's Regulations; that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers: And that its tariff does not prohibit the addition of new delivery points.

Comment date: August 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Co.

[Docket Nos. CP90-1641-000 CP90-1642-000] [1]

Take notice that on June 28, 1990, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: August 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

Appendix

[Docket No. CP90-1641-000, *et al.*]

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day avg. annual [1]	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90-1641-000 (6-28-90)	United Gas Pipe Line Company P.O. Box 1478 Houston, TX. 77251.	Centran Corp.	20,077 20,077 7,328,105	Off. LA	Off. LA	5-17-90 ITS	CP88-6-000 ST90-3389-000
CP90-1642-000 (6-28-90)	United Gas Pipe Line Company P.O. Box 1478 Houston, TX. 77251.	Entrade Corp.	103,000 103,000 37,595,000	Off. LA, LA, TX, AL, MS.	LA, MS, AL, FL	4-5-90, ITS	CP88-6-000 ST90-3391-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. It an ST docket is shown, 120-day transportation service was reported in it.

4. Texas Gas Transmission Corp.

[Docket No. CP90-1640-000]

Take notice that on June 28, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-1640-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Louisiana Gas Marketing Company (Louisiana Gas), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 50,000 MMBtu per day for Louisiana Gas. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 10,000 MMBtu and 2,000,000 MMBtu respectively.

Texas Gas advises that service under Section 284.223(a) commenced June 9, 1990, as reported in Docket No. ST90-3524.

Comment date: August 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corp.

[Docket No. CP90-1626-000]

Take notice that on June 25, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP90-1626-000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for permission and approval to abandon and construct various facilities used to provide natural gas service to Exxon Corporation (Exxon) in Sublette County, Wyoming, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northwest proposes to abandon its Black Canyon sales lateral by assignment to Exxon; abandon its Black Canyon sales meter station partly by assignment and partly by removal from the downstream end of the Black Canyon sales lateral; construct and operate a new Black Canyon meter station at the upstream end of the Black Canyon sales lateral; and change the delivery point for its non-jurisdictional direct sale of natural gas to Exxon from the old Black Canyon sales meter station to the proposed Black Canyon meter station.

Comment date: August 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corp. and Columbia Gas Transmission Corp.

[Docket Nos. CP90-1627-000; CP90-1628-000; CP90-1629-000; CP90-1630-000]

Take notice that on June 26, 1990, Texas Gas Transmission Corporation (TGT), 3800 Frederica Street, Owensboro, Kentucky 42301, and Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE, Charleston, West Virginia 25314, filed requests with the Commission in the above referenced dockets, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas on behalf of various shippers, under their blanket certificates issued in Docket No. CP88-686-000 and Docket No. CP86-240-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[2]

TGT and Columbia propose interruptible natural gas transportation services for each of the shippers under their FERC Rate Schedule IT and ITS, respectively. TGT and Columbia have also provided other information applicable to each transaction, including the shipper's identity; the peak day, average day, and annual volumes; service initiation dates; and the related docket numbers of the 120-day transactions under § 284.223(a) of the Regulations, as summarized in the attached appendix.

Comment date: August 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

Appendix

[Docket Nos. CP90-1627-000, *et al.*]

[2] These prior notice requests are not consolidated.

Docket No.	Shipper	Volumes-MMBtu (peak, average annual)	ST docket start up, date	Receipt points (state)	Delivery points (state)
CP90-1627-000	Ladd Gas Marketing, Inc	50,000 10,000 3,650,000	ST90-3216, 5-19-90	Various	Various
CP90-1628-000	Industrial Energy Services Company	30,000 15,000 5,475,000	ST90-3294, 5-24-90	Various	Various
CP90-1629-000	Midcon Marketing Corp	200,000 75,000 27,375,000	ST90-3177, 5-18-90	Various	Various
CP90-1630-000	CNG Trading Company Co	700 560 255,500	ST90-3127, 5-10-90	Various	Various

Standard Paragraph:

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas ACt (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-16201 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

Establishment of Performance Review Board: Names of Board Members

Section 4314(c) of title 5, United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Federal Energy Regulatory Commission establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards to review, evaluate, and make final recommendations on performance

appraisals assigned to members of the Senior Executive Service in the Commission. The Performance Review Board also makes written recommendations to the Chairman, Federal Energy Regulatory Commission, regarding Senior Executive Service performance bonuses, awards and performance-related actions.

Section 4314(c) of title 5, United States Code requires that notices of appointment of Performance Review Board members be published in the **Federal Register**. The following persons have been appointed to serve on the Performance Review Board standing register for the Federal Energy Regulatory Commission:

Herod, J. Steven
Madden, Kevin P.
O'Neill, Richard P.
Pratt, George L.B.
Scherman, William S.
Shafferman, Howard H.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-16202 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TF90-3-48-000]

ANR Pipeline Co. Proposed Changes in FERC Gas Tariff

July 3, 1990.

Take notice that ANR Pipeline Company ("ANR"), on June 29, 1990, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective August 1, 1990.

Twenty-Ninth Revised Sheet No. 18.

ANR states that the purpose of the instant filling is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

Twenty-Ninth Revised Sheet No. 18 reflects a $0.2084 per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, from rates effective May 1, 1990. There is no change in the monthly D-1 demand rate from rates effective May 1, 1990. The D-2 demand rate reflects a $0.0019 decrease from rates in effect May 1, 1990.

The filing further reflects a decrease in ANR's one-part rate applicable to Rate Schedule SGS-1 of $0.2142 per dth from rates in effect May 1, 1990.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 11, 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. 90-16203 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 3, 1990.

Take notice that on June 29, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Ninth Revised Sheet No. 8.
Ninth Revised Sheet No. 9.

Carnegie states that pursuant to the Purchased Gas Adjustment in Article 23 of its FERC Gas Tariff, it proposes to adjust its rates effective September 1, 1990, to reflect: A $.1206 per Dth increase in the commodity components of its LVWS and CDS Rate Schedules; a $.1235 per Dth increase in the commodity component of its LVIS Rate Schedule; and a $.0038 per Dth decrease in the D-1 components and a $.0006 per Dth increase in the D-2 components of its LVWS and CDS Rate Schedules. Carnegie also proposes to decrease its DCA charge by $.0001 per Dth and to assess a negative $.0208 surcharge to the commodity components of its sales rates in order to clear the net overrecovered $389,698 balance accrued (as of April 30, 1990) in its current deferred subaccount. Carnegie's Standby Adjustment stated in this filing is $.0549 per Dth.

Carnegie's filing indicates that its actual costs of purchased gas did not exceed the projected costs by more than three percent during any of the four applicable test intervals established at 18 CFR 154.306. Carnegie therefore states that specific Commission authority for surcharge recovery is not necessary.

Carnegie requests waiver of the Commission's policy requiring separately stated D-1 and D-2 surcharge adjustments. Carnegie states that it overcollected its demand charges by only $633.00 during the preceding annual PGA period. Carnegie states that this $633 overcollection is included in the commodity surcharge. Carnegie bases its request for waiver on the de minimis effect of these overcollections, and its statement that use of a single surcharge adjustment is in accordance with its tariff.

Carnegie states that copies of its filing were served on all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 24, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16204 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-12-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

July 3, 1990.

Take notice that on June 29, 1990, Granite State Gas Transmission, Inc. (Granite State) 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Substitute Thirty-Sixth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1 for effectiveness on July 1, 1990.

According to Granite State, it submitted its regular quarterly purchased gas cost adjustment on June 4, 1990 based on projected gas costs and sales for the third quarter on 1990. Granite State further states that the instant filing revises its forecast of purchase costs and sales for the third quarter, resulting in additional reductions in rates for jurisdictional wholesale sales.

It is stated that the proposed rate changes are applicable to Granite State's wholesale sales to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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., in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 11, 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. 90-16205 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-12-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

July 3, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on June 29, 1990 tendered for filing Twenty-Ninth Revised Sheet Nos. 57(i) and 57(ii) and Fifteenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected PGA rates for the months of August, September and October, 1990 pursuant to the Quarterly PGA filing requirements of § 154.304(a)(2) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before July 11, 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. Copies of this filing are on file with the Commission and are available for public inspection in the Pubic Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16206 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-651-001]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

July 3, 1990.

Take notice that on June 25, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets, to be a part of its FERC Gas Tariff.

First Revised Volume No. 1

Substitute Original Sheet No. 10.2
Substitute Seventh Revised Sheet No. 14
Substitute Original Sheet No. 89
Substitute Original Sheet No. 90
Substitute Original Sheet No. 91
Substitute Original Sheet No. 92
Substitute Original Sheet No. 93
Substitute Original Sheet No. 94
Substitute Original Sheet No. 95
Substitute Original Sheet No. 96
Substitute Original Sheet No. 97
Substitute Original Sheet No. 98
Substitute Original Sheet No. 99
Substitute Second Revised Sheet No. 114
Substitute Original Sheet No. 231
Substitute Original Sheet No. 232
Substitute Original Sheet No. 233
Substitute Original Sheet No. 234
Substitute Original Sheet No. 235
Substitute Original Sheet No. 236
Substitute Original Sheet No. 237

Original Volume No. 1-A

Original Sheet No. 314-A

The above tariff sheets were filed to reflect the terms and conditions applicable to Northwest's new Rate Schedule SGS-2F and SGS-2I services which were authorized by the Commission in an Order Granting Certificate issued by the Commission on March 14, 1990, and amplified in the Commission Order Rejecting Compliance Filing dated June 8, 1990.

Northwest states that a copy of this filing is being served on all parties of record in the above referenced docket and on affected state regulatory commissions.

Any person desiring to protect 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 July 11, 1990. Protests with 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. 90-16207 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-578-029 and CP89-1740-003]

Northwest Pipeline Corp.; Acceptance of Certificates of Public Convenience and Necessity and Compliance Filing

July 3, 1990

Take notice that Northwest Pipeline Corporation (Northwest) on June 18, 1990, submitted for filing its acceptance of certificates of public convenience and necessity and compliance filing authorized by the Commission in Opinion Nos. 344 and 344-A issued March 13, 1990 and May 17, 1990.

Opinion Nos. 344 and 344-A relate to (1) the approval of new sales for resale service agreements for Northwest's ODL-1 and DS-1 sales customers, (2) the establishment of a transportation service within contract demand (a form of standby sales service for sales customers) and, (3) the institution of a permanent gas inventory charge (GIC). Northwest provides this notice to the Comission of its final acceptance of the service agreement certificates and the authorization for new standby service as described in Opinion No. 344. Northwest also notifies the Commission of its acceptance of the certificate of public convenience and necessity as authorized by the Commission in Opinion No. 344-A relating to the institution of provisions necessary to implement a GIC on a permanent basis. Northwest submits the following original and revised tariff sheets to implement the newly authorized services:

First Revised Volume No. 1

Sixty-Eighth Revised Sheet No. 10
Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 16
First Revised Sheet No. 20
Fourth Revised Sheet No. 21
Second Revised Sheet No. 21-A
Fourth Revised Sheet No. 100
Second Revised Sheet No. 133-A
Original Sheet No. 133-I
Original Sheet No. 133-J
Original Sheet No. 133-K
Original Sheet No. 133-L
Original Sheet No. 133-M

Original Sheet No. 133-N
Original Sheet No. 205-B
Fifth Revised Sheet No. 300
Seventh Revised Sheet No. 301
Sixth Revised Sheet No. 302

Original Volume No. 1-A

Third Revised Sheet No. 429
Second Revised Sheet No. 429-A
Original Sheet No. 429-A.1

Northwest believes this filing to be in compliance with the Commission's directives as set forth in its Opinions Nos. 344 and 344-A and the regulations of the Commission.

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 a 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 July 11, 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 fo public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16212 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-11-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 3, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 29, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on appendix A of the filing.

Texas Eastern states that the purpose of this filing is to (1) track modifications to take-or-pay charges billed to Texas Eastern by United Gas Pipe Line Company (United) as proposed by United in a filing made on May 18, 1990 in Docket No. RP90-91, (2) track modifications to take-or-pay charges billed to Texas Eastern by Southern Natural Gas Company (Southern) that are attributable to United's Docket Nos. RP88-27, RP88-264, and RP89-138 and Sea Robin Pipeline Company's (Sea Robin) Docket No. RP89-141 as proposed by Southern in a filing made March 30, 1990 in Docket No. TM90-4-7, and (3) establish the procedures pursuant to which Texas Eastern will recover take-or-pay charges billed to Texas Eastern by United attributable to Sea Robin's Docket No. RP90-129 as proposed by United in a filing made on June 15, 1990 in Docket No. RP90-132.

The proposed effective date of the tariff sheets listed on appendix A of the filing is July 1, 1990.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 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. 90-16208 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-17-000 and TM90-10-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 3, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 29, 1990 tendered for filing as part of its FERC Gas Tariff, six copies each of the tariff sheets:

Fifth Revised Volume No. 1

Substitute Twenty-Third Revised Sheet Nos. 50.1 and 50.2
Substitute Twenty-Third Revised Sheet Nos. 50.3 and 50.4
Substitute Sixteenth Revised Sheet Nos. 50A.1, 50B.1, 50C.1 and 50D.1
Substitute Fifteenth Revised Sheet Nos. 50A.2, 50B.2, 50C.2 and 50D.2
Substitute Fifteenth Revised Sheet No. 51
Substitute Original Sheet Nos. 51.1 and 51.2
Substitute Ninth Revised Sheet Nos. 51A, 51B, 51C and 51D
Substitute Original Sheet Nos. 51A.1, 51B.2, 51C.1 and 51D.2

Original Volume No. 2

First Revised Thirty-Sixth Revised Sheet No. 235
First Revised Twenty-Eighth Revised Sheet No. 241
First Revised Thirty-Sixth Revised Sheet No. 322

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, section 26, Electric Power Cost (EPC) Adjustment and section 12.5, Demand Charge Adjustment Commodity Surcharge, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's Regular Quarterly PGA filing to be effective August 1, 1990 pursuant to 18 CFR 154.308.

Texas Eastern states that these revised tariff sheets filed herewith reflect a Demand-1 decrease of $0.73/dth with no change in Demand-2, and a commodity decrease of $.2333 per Dt, representing the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's last scheduled PGA filing effective May 1, 1990 in Docket No. TQ90-2-17.

Texas Eastern states that this filing also constitutes Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to section 26. These changes in rates for Sales and Transportation services are based upon the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning August 1, 1990 and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of April 30, 1990.

Texas Eastern states that in accordance with section 12.5 of the General Terms and Conditions of its FERC Gas Tariff Texas Eastern is also filing, herein, Demand Charge Adjustment Commodity Surcharge Rates. This is due to the Demand Charge Adjustment (DCA) credits given to those affected customers as a result of adjustments to gas supply deliveries that occurred on Texas Eastern's system in December, 1989. The Demand Charge Adjustment Commodity Surcharge provision allows Texas Eastern to adjust its sales rates under Rate Schedules DCQ, CD-1 and CD-2 by means of commodity surcharges designed to recoup the amounts of DCA credits given to customers as a result of the adjustments to gas supply deliveries.

The proposed effective date of the above tariff sheets is August 1, 1990.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 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 shold be filed on or before July 11, 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. 90-16209 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1639-000]

Texas Gas Transmission Corp., Request Under Blanket Authorization

July 3, 1990.

Take notice that on June 28, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-1639-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phibro Distributors Corporation (Phibro), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 25,000 MMBtu per day for Phibro. Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 25,000 MMBtu, 10,000 MMBtu and 9,125,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced June 8, 1990, as reported in Docket No. ST90-3525.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If a protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16210 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-4-43-000 and TM90-8-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 3, 1990.

Take notice that Williams Natural Gas Company (WNG) on June 29, 1990 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twentieth Revised Sheet No. 6
Sixth Revised Sheet No. 6A
Nineteenth Revised Sheet No. 7

WNG states that pursuant to the Purchased Gas Adjustment in article 21 of its FERC Gas Tariff, it proposes no change in the Cumulative Adjustment and increases in transportation fuel rates and in gathering fuel rates to be effective August 1, 1990.

WNG states that pursuant to Article 29 of its FERC Gas Tariff, the above referenced tariff sheets reflect a revised TOP Volumetric Surcharge for the period August 1, 1990 through October 31, 1990 of $.0291 per Dth.

WNG states that copies of its filing were served on all juridictional customers and interest 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 §§ 385.211 and 385.214 of the Commission's Rules of the Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 11, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16211 Filed 7-11-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-28-NG]

Great Lakes Gas Transmission Limited Partnership and Great Lakes Gas Transmission Co.; Application

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to allow Great Lakes Gas Transmission Limited Partnership to succeed to existing authorizations to import and export natural gas of Great Lakes Gas Transmission Company.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 6, 1990, of an application filed by Great Lakes Gas Transmission Limited Partnership (Great Lakes LP) and Great Lakes Gas Transmission Company (Great Lakes) for authorization permitting Great Lakes LP to succeed to all of Great Lakes' existing authorizations to import and export natural gas effective on April 6, 1990, the first full day of operation after the date of formation of Great Lakes LP. Great Lakes also seeks authority to be substituted as applicant or petitioner in all of Great Lakes' pending requests for import and export authority or amendments thereto. Great Lakes LP and Great Lakes are concurrently filing a related application with the Federal Energy Regulatory Commission (FERC) for authorization to allow Great Lakes LP to acquire and operate the facilities and to perform the natural gas transportation and sales services of Great Lakes, effective April 6, 1990.

Since authorization sought by this application does not seek a change in the terms and conditions of any of Great Lakes' existing import and export authorizations apart from the succession of Great Lakes LP as the holder of such authority, the DOE believes that the sole relevant issue in this case is the impact of the transfer on Great Lakes' customers. Accordingly, we are establishing a shortened comment period of 15 days.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motion to intervene, notices of intervention, requests for

additional procedures and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed belwo no later than 4:30 p.m., e.d.t., July 27, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION:

Frank Duchaine, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 290585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Great Lakes is a natural gas transmission company engaged in the business of importing and exporting natural gas to and from Canada subject to the jurisdiction of DOE, and of purchasing, transporting and selling for resale, natural gas in interstate commerce subject to the jurisdiction of the FERC. Great Lakes is jointly owned in equal shares by TransCanada PipeLines USA, Ltd., a subsidiary of TransCanada PipeLines Ltd. (TransCanada), and Coastal Natural Gas Company, a subsidiary of the Coastal Corporation.

Great Lakes LP is a partnership comprised of two general partners, TransCanada GL, Inc., a subsidiary of TransCanada PipeLines USA Ltd., and Coastal Great Lakes, Inc., a subsidiary of American Natural Resources Company, a subsidiary of Coastal Natural Gas Company, and one limited partner, Great Lakes.

Great Lakes LP is being concurrently formed for the purposes of: (1) Acquiring the facilities and operations of Great Lakes; (2) acquiring the import and export authorizations that are currently held by Great Lakes; (3) continuing the presently authorized services of transporting and selling for resale natural gas in interstate commerce; and (4) expanding the Great Lakes pipeline system so that it can better serve the public interest.

Great Lakes was originally authorized to import and export natural gas from and to Canada in proceedings before the Federal Power Commission (FPC). The volumes have subsequently been amended by the FERC, Economic Regulatory Administration (ERA), and FE, exercising functions formerly vested in the FPC. The most recent amendments under which Great Lakes is currently authorized to import and export gas are summarized below:

(1) DOE/ERA Opinion and Order No. 157, issued February 27, 1987, ERA Docket No. 86-50-NG, authorizes a maximum of 16,651,000 Mcf of gas annually to be imported from TransCanada for resale, compressor fuel, and other company uses through October 31, 1991.

(2) DOE/ERA Opinion and Order No. 236, issued April 14, 1988, ERA Docket No. 87-61-NG, authorizes a maximum of 186,748 Mcf of gas per day to be imported from TransCanada for resale through October 31, 1990.

(3) DOE/ERA Opinion and Order No. 239, issued April 28, 1988, ERA Docket No. 87-58-NG, authorizes a maximum of 28,079 Mcf of gas per day to be imported from TransCanada for resale through October 31, 1991.

(4) DOE/ERA Opinion and Order No. 276-A, issued April 25, 1990, ERA Docket No. 88-56-NG, authorizes a maximum of 987,500 Mcf of gas per day to be imported from an exported to TransCanada under a transportation arrangement through October 31, 2005.

In addition, DOE/FE Opinion and Order No. 343, issued October 25, 1989, FE Docket No. 89-15-NG, conditionally authorized Great Lakes to increase the volumes imported and exported under the transportation arrangement with TransCanada up to a maximum of 1,405,000 Mcf per day. The authorization was conditioned upon completion of environmental review of expanded pipeline facilities proposed by Great Lakes to transport the gas.

Furthermore, Great Lakes has an application pending in FE Docket No. 90-03-NG (55 FR 6820, February 27, 1990) to reassign to ANR Pipleline Company its authority to import a total of up to 19,064 Mcf per day under Order Nos. 157, 236, and 239.

This joint application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. Based on the application, the only change represented by this joint petition is the proposed transfer of the import and export authority from Great Lakes to Great Lakes LP. TransCanada would remain the supplier of the gas and the contractual terms and volumes imported and exported would remain the same. Accordingly, the competitiveness of the import arrangements, need for the imports and exports, and security of the gas supply are not expected to be issues in this proceeding. The DOE believes that the sole relevant issue in this case is the impact of the transfer of the import and export authority on Great Lakes' customers. Parties, especially those that may oppose this joint application, should address that issue in their comments.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above. They must be filed no later than 4:30 p.m., e.d.t., July 27, 1990.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedure will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should

identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If any additional procedures are scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of the application filed by Great Lakes LP and Great Lakes is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC July 5, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-16318 Filed 7-11-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-33-NG]

Power City Partners, L.P.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 27, 1990, of an application filed by Power City Partners, L.P. (Power City), to import Canadian natural gas. Power City requested authorization to import up to 21,000 Mcf per day and up to a total of 111.3 Bcf over a maximum term of 16 years and three months, commencing approximately on August 1, 1992, and ending no later than October 31, 2008. The natural gas would be imported at the interconnection between Niagara Gas Transmission Limited (NGTL) and St. Lawrence Gas Company (St. Lawrence) near Cornwall, Ontario, and transported in the United States by St. Lawrence. The proposed imported gas would be consumed in a cogeneration facility to be constructed by Power City in the town of Massena, New York.

In addition, Power City requested a two-year blanket authorization to enable it to market to other purchasers in the United States any natural gas which, from time to time, the cogeneration facility is unable to use.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable; requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., August 13, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8116

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 3E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Power City is a limited partnership under the laws of the State of Delaware. Power City Generating, Inc., a New York corporation, is the general partner. Sundance Energy, Ltd., a New York corporation, and Energy Factors, Inc., a Delaware corporation, are the limited partners.

Power City intends to construct, own and operate a 79 megawatt natural gas fired cogeneration facility at the Aluminum Company of America (Alcoa) plant in Massena, New York, an area served with natural gas by St. Lawrence. Electricity generated by the cogeneration facility will be sold to Niagara Mohawk Power Corporation (Niagara Mohawk) and Alcoa will purchase the steam generated by the facility. Commercial operation of the cogeneration facility is expected to begin approximately August 1, 1992. It will be operated as a "qualifying facility" as defined in the Public Utility Regulatory Policies Act of 1978. In addition, Power City has filed a Certification of Compliance (54 FR 23258, May 31, 1989) with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended.

To obtain fuel for the cogeneration facility, Power City has entered into a natural gas purchase agreement dated February 15, 1990 (purchase agreement), to purchase Canadian natural gas from Husky Oil Operations Ltd. and Canterra Energy Ltd., jointly and severally the seller under the purchase agreement. Both of these companies are wholly owned subsidiaries of Husky Oil Ltd.

The purchase agreement provides for the delivery and sale of a maximum daily quantity (MDQ) of 20,000 Mcf. (The daily import authorization request of 21,000 Mcf allows some tolerance to account for such items as transportation imbalances.) Firm deliveries of the proposed imported gas would commence somewhere between August 1, 1992, and November 1, 1992. The term of the purchase agreement would run for 15 years if deliveries commenced on November 1st, or for 15 years plus the time from the commencement date to the next November 1st, if deliveries commenced on some date other than November 1st.

The purchase agreement would terminate if deliveries of natural gas have not begun by November 1, 1992, but Power City could, at its option, extend the initial firm delivery date until November 1, 1993. However, if Power City elected to exercise its extension period option, it would be obligated to take or nevertheless pay for 80 percent of the MDQ over the course of the extension period. Power City would be excused from this take-or-pay obligation if it gave the seller timely notice that firm deliveries would commence on or before November 1, 1993. Power City stated that it is because of the possibility it may elect to obligate itself to taking gas prior to the completion of the cogeneration facility, as well as to mitigate demand and reservation charges, that it is requesting blanket authority to sell the proposed imports to other U.S. consumers.

The price for the natural gas would be divided into a transportation charge and a commodity charge. The transportation charge would consist of the transportation costs in Canada from the seller's production areas to the interconnect point near Cornwell, Ontario.

The base commodity price during 1991 is set by the purchase agreement at U.S. $1.65 per MMBtu. For each year thereafter the commodity price would be determined on the basis of an index tied to changes in both a Canadian wellhead

price of natural gas (70 percent), and a U.S. domestic wellhead price of natural gas (30 percent). Under the purchase agreement, the Canadian and U.S. wellhead prices are calculated figures based on natural gas sales rates contained in the published tariffs of the Consumers' Gas Company Ltd., an Ontario natural gas distribution company, and Niagara Mohawk, respectively, in both cases netted back to the wellhead using published transportation tariffs and fuel costs of relevant pipeline companies. Power City stated that the border price at 100 percent load factor as of January 1, 1991, would be U.S. $2.705.

In addition, the purchase agreement contains a floor price, a first ceiling price and a second ceiling price for each calendar year during its term. If the adjusted commodity price falls below the floor price for any year, the seller would receive the floor price and an interest-bearing floor tracking account would be used to record the difference in the commodity price and the floor price. If the adjusted commodity price rises above the second ceiling price for any year, the seller, except as noted below, would receive the second ceiling price and an interest-bearing ceiling tracking account would be used to record the difference between the commodity price and the second ceiling price.

The first ceiling price would set the sellers' priority to payment out of the cogeneration facility's monthly revenue. Any portion of the commodity price up to and including the first ceiling price would be paid out of the cogeneration facility's revenue after payment of operating expenses, but prior to debt service. Any portion of the commodity price which exceeds the first ceiling price up to and including the second ceiling price would be paid after service of debt. In the event the monthly revenue of the cogeneration facility is insufficient to pay all or part of the portion of the commodity price above the first ceiling price the unpaid amount would be placed in the ceiling tracking account.

The floor tracking account could be used only as an offset to amounts that would otherwise be added to the ceiling tracking account. Power City would be obligated to pay seller the amounts contained in the ceiling tracking account. The purchase agreement provides for Power City to pay the balance in the ceiling tracking amount at the end of the term of the purchase agreement or, depending upon the circumstances, to pay down any such balance from time to time during the term of the purchase agreement.

The 1992 floor price is set by appendix A of the purchase agreement at $1.60 and rises to $4.19 in 2008. The first ceiling price starts at $1.91 in 1992 and rises to $7.25 by 2008, and the second ceiling price starts at $1.91 and rises to $7.59.

The purchase agreement also provides that if Power City's takes of natural gas fall below 80 percent of the MDQ over a two-year period, or over the last year of the term, it would be obligated to pay a reservation charge to the seller. That reservation charge would be equal to 20 percent of the applicable floor price multiplied by the amount which Power City's takes are below 80 pecent of the MDQ. Total reservation charges would be limited to $500,000 over any two-year period and $250,000 over the last contract year.

The purchase agreement contains warranty provisions which seek to ensure the continued firm flow of Power City's gas requirements and requires the seller to compensate Power City for additional costs incurred if it became necessary to obtain alternative supplies.

Power City states in its application that it has been informed by St. Lawrence, the U.S. transporter, that a certain amount of pipeline "enhancement" will be required. The nature and extent of this work has not yet been finalized, but when the scope of the work has been determined, Power City will inform DOE so that it can complete its environmental responsibilities.

In support of its application, Power City states that it has freely negotiated the purchase agreement with its Canadian suppliers and that the proposed imports would provide a supply of natural gas designed to meet the needs of the cogeneration facility under terms and conditions necessary to ensure the successful agreement. Power City states further that no domestic gas supplies are delivered into the area where the cogeneration facility is to be located. Finally, Power City asserts that Canada has been a historically reliable source of natural gas and that the Canadian suppliers are substantial gas producers with combined proven and probable natural gas reserves of 1.9 Tcf.

The decision on Power City's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for natural gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facility. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the natural gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is needed, competitive and its natural gas sources will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

Power City has requested a two-year blanket authorization in order to market natural gas not used in the cogeneration facility to other purchasers in the United States. DOE's blanket authorization program provides an authorization holder with approval, within prescribed limits, to negotiate and transact individual, spot and short-term import arrangements without further regulatory action. In this case, Power City has a long-term contract with a Canadian seller for specific volumes of firm gas supplies using an indexed pricing formula. Power City contemplates using the natural gas in the cogenerational facility but may resell the gas to other domestic customers in order to reduce its liability. Power City's request is fundamentally different from a blanket authorization request: The importer is known, the exporter is known, the import point is known, the volumes are known, the pricing provisions are known. Therefore, all parties should be aware that the DOE intends to process Power City's application as a single request to import natural gas pursuant to the purchase agreement regardless if the gas would be used in the cogeneration facility or resold to other domestic purchasers.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Power City's application is available for inspection and copying in the Office of Fuels Programs Docket, room 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 6, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-16319 Filed 7-11-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3809-1]

Science Advisory Board, Radiation Advisory Committee, Radionuclides in Drinking Water Subcommittee

Series of Conference Call Meetings, July and August 1990

Under Public Law 92-463, notice is hereby given that the Radionuclides in Drinking Water Subcommittee of the Science Advisory Board's Radiation Advisory Committee will hold additional conference calls in July and August 1990 to complete the review of four criteria documents on radionuclides in drinking water. The additional calls are scheduled for Mondays at 12 to 2 p.m. EDT on July 16 and August 6.

The Subcommittee required additional time to review criteria Documents on radionuclides in drinking water. The Subcommittee plan to discuss the gross beta criteria document on July 16, the radium document July 23 (announced in a previous **Federal Register** notice) and edit and approve its draft reports August 6.

Members of the public may participate by providing oral or written comment or by listening to the calls. However, the availability to participate is limited by the nature of the conference call equipment. Opportunities for oral comment will be limited to a total of 15 minutes per day. Written comment should be submitted (six copies) in advance. Members of the public wishing further information should call either Mrs. Dorothy Clark or Mrs. Kathleen Conway at 202/382-2552. Those wishing to participate in the any conference calls should call by noon on the Friday before the scheduled call.

Dated: July 2, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90-16201 Filed 7-11-90; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1818]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 26, 1990.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed July 30, 1990. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of parts 1, 21, 22, 74, and 94 of the Commission's Rules to Establish Service and Technical Rules for Government and non-Government Fixed Service Usage for the Frequency Bands 932-935 MHz and 941-944 MHz. (GEN Docket No. 82-243) Number of Petitions filed 1.

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Philpot, Kentucky) (MM Docket No. 88-126, RM-6142) Number of Petitions filed 1.

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Bolingbroke, Unadilla and Warner Robins, Georgia) (MM Docket No. 89-55, RMs-6539, 6715 & 6760) Number of Petitions filed 1.

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Bayou Vista, Louisiana) (MM Docket No. 89-178) Number of Petitions filed 1.

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Dushore, Pennsylvania) (MM Docket No. 89-299, RM-6961) Number of Petitions filed 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-16233 Filed 7-11-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Advisory Committee of the National Earthquake Hazards Reduction Program (NEHRP); Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), and the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*, and after consultation with the General Services Administration, the Director of the Federal Emergency Management Agency (FEMA) has determined that the establishment of the National Earthquake Hazards Reduction Program (NEHRP) Advisory Committee is in the public interest in connection with the performance of duties imposed on the agency by law.

The (NEHRP) is a multidisciplinary program made up of four Federal agencies: FEMA, the U.S. Geological Survey (USGS), the National Institute of Standards and Technology (NIST), and the National Science Foundation (NSF). The ultimate goal of the NEHRP is to reduce loss of life, injury and property from earthquakes. To facilitate an effective Federal program, the Earthquake Hazards Reduction Act of 1977 calls for input and review by persons outside the Federal Government expert in the sciences of earthquake hazards reduction and in the practical application of earthquake hazards reduction measures.

The objective of the NEHRP Advisory Committee is to provide advice, recommendations, and counsel on all major policies and activities of the NEHRP to the Director of FEMA. Principal functions of the NEHRP Advisory Committee include consideration of and recommendation on:

- Roles and responsibilities of each department or agency participating in the NEHRP;
- Goals, priorities, and milestones of such elements required to achieve the objectives of the Program as established by law;
- The roles of States and local units of government, private organizations, and individuals; and
- Specific earthquake-related topics identified by the Director of FEMA or the heads of the USGS, NSF, and NIST.

The NEHRP Advisory Committee shall consist of up to 15 members, including a Chairperson, appointed by the Director of FEMA, in consultation with the heads of USGS, NSF, and NIST. Members are appointed for a 1 year term, subject to renewal, and will serve at the pleasure of the Director.

Committee members shall be composed of non-Federal employees selected on the basis of their professional experience in fields such as engineering, earth sciences, public administration, and emergency management.

Members of the Committee will be selected from the various disciplines to attain an equitable representation.

The NEHRP Advisory Committee will function solely as an advisory body, and will comply fully with the provisions of the Federal Advisory Committee Act.

Interested persons are invited to submit comments regarding the establishment of the NEHRP Advisory Committee. Such comments, as well as any inquiries, may be addressed to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

Dated: July 6, 1990.

Jerry D. Jennings,

Acting Director.

[FR Doc. 90-16296 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-872-DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-872-DR), dated June 30, 1990, and related determinations.

DATED: July 3, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of California, dated June 30, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 1990:

The counties of San Bernardino and Riverside for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert G. Chappell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-16288 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-872-DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA-872-DR), dated June 30, 1990, and related determinations.

DATED: June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated June 30, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of California, resulting from wildland fires beginning on June 26, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint William M. Medigovich of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have

been affected adversely by this declared major disaster:

The counties of Los Angeles and Santa Barbara for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90-16289 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-872-DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-872-DR), dated June 30, 1990, and related determinations.

DATED: July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective July 3, 1990.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 90-16293 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-871-DR]

Amendment to Notice of a Major Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-871-DR), dated June 22, 1990, and related determinations.

DATED: July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective July 3, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-16285 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-868-DR), dated May 26, 1990, and related determinations.

DATED: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective July 6, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-16286 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-868-DR), dated May 26, 1990, and related determinations.

DATED: July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice of a major disaster for the State of Iowa, dated May 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 26, 1990:

The counties of Calhoun, Cedar, Clarke, Dallas, Jones, Louisa, Madison, Muscatine, Polk, Scott, Warren, and Washington for Public Assistance; and Monona County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-16294 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-873-DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA-873-DR), dated July 4, 1990, and related determinations.

DATES: July 4, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated July 4, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms, tornadoes, and flooding beginning on June 10, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 310(a), Priority to Certain Applications for Public Facility and Public Housing

Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

The counties of Colfax, Dodge, Gage, Hitchcock, Madison, Platte, Red Willow, Stanton, Thurston, and Washington for Individual Assistance and Public Assistance; and

The counties of Buffalo, Douglas, Sarpy, and Sherman for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Jerry D. Jennings,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90-16295 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATES: July 3, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

Richland County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert G. Chappell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-16287 Filed 7-11-90; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0227]

Drug Export; Pharmacia Combi HIV-1/HBsAg System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pharmacia Diagnostics, Inc. has filed an application requesting approval for the export of the biological product Pharmacia Combi HIV-1/HBsAg System to Australia, France, The Netherlands, Spain, and Sweden.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Pharmacia Diagnostics, Inc., 8310 Guilford Rd., Columbia, MD 21046-1297 has filed an application requesting approval for the export of the biological product Pharmacia Combi HIV-1/HBsAg System to Australia, France, The Netherlands, Spain, and Sweden. The product consists of Pharmacia Combi HIV-1/HBsAg ELISA, Pharmacia Combi HIV-1/HBsAg Identity Kit, and the Pharmacia Combi-ID HBsAg Confirmatory Test. The Pharmacia Combi HIV-1/HBsAg System is indicated for use in the simultaneous detection of Human Immunodeficiency Virus, Type 1 antibody (HIV-1 ab) and Hepatitis B Surface Antigen (HBsAg) in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on June 15, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 23, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: June 20, 1990.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 90-16251 Filed 7-11-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0228]

Drug Export; Recombinant Methionyl Human Granulocyte Colony Stimulating Factor

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Amgen, Inc. has filed an application requesting approval for the export of biological product Recombinant Methionyl Human Granulocyte Colony Stimulating Factor (r-metHuG-CSF), to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands,

New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Amgen, Inc., 1840 Dehavilland Dr., Thousand Oaks, CA 91320 has filed an application requesting approval for the export of the biological product Recombinant Methionyl Human Granulocyte Colony Stimulating Factor (r-metHuG-CSF) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Recombinant Methionyl Human Granulocyte Colony Stimulating Factor is for the prevention of infection (as evidenced by febrile neutropenia) in patients receiving cytotoxic chemotherapy. The application was received and filed in the Center for Biologics Evaluation and Research on June 5, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 23, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: June 19, 1990.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research

[FR Doc. 90-16252 Filed 7-11-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS

ACTION: Notice

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees

MEETING: The following advisory committee meeting is announced:

Biological Response Modifiers Advisory Committee

Date, time, and place. July 30 and 31, 1990, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Orientation, July 30, 1990, 8:30 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 11:30 a.m.; open committee discussion, 11:30 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 5:30 p.m.; open committee discussion, July 31, 1990, 8:30 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m. The Advisors and Consultants Staff, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695, will provide a meeting agenda and list of committee members upon request. Gretchen Hascall of that office is the Executive Secretary of the Committee.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issue pending before the committee. Those desiring to make formal presentations should notify the contact person before July 23, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 30, 1990, the committee will have a brief orientation to FDA procedures and regulations. The committee will discuss interferon gamma (Genetech, Inc.) for the treatment of chronic granulomatous disease; and interleukin-2 (Cetus Corp.) for the treatment of metastatic renal cell carcinoma. On July 31, 1990, the committee will discuss interferon alpha-2b (Schering Corp.) for the treatment of chronic non-A non-B hepatitis; and granulocyte marcophage colony stimulating factor (Immunex Corp.) for the treatment of graft failure/loss in bone marrow transplantation.

Closed committee deliberations. On July 30 and 31, 1990, the committee will, if necessary, review trade secret or confidential commercial information relevant to pending product license applications in the Center for Biologics Evaluation and Research. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved

for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guidline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wished to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 5, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-16253 Filed 7-11-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of North Carolina Medicaid State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 23, 1990 in Atlanta, Georgia to reconsider our decision to disapprove North Carolina State Plan Amendment 89-14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before July 27, 1990.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone: (301) 966-4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove North Carolina State Plan Amendment (SPA) number 89-14.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice,

in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

North Carolina submitted SPA 89-14 proposing to make the annual adjustment in the poverty level effective July 1 of each year for purposes of determining eligibility for Qualified Medicare Beneficiaries (QMBs) and pregnant women, infants, and children.

The issue in this matter is whether the proposed July 1 effective date violates requirements of section 1902(a)(4) of the Act, which requires States to implement methods of administration which are found by the Secretary to be necessary for the proper and efficient operation of the program. In addition, section 1902(a)(8), 1902(a)(10)(A)(ii) (IX), 1902(a)(10)(E), and 1902(a)(19) of the Act require that medical assistance be furnished with reasonable promptness and that such assistance be in the best interests of recipients, establish the optional poverty-related categorically needy group of pregnant women, infants, and children and mandate that Medicare cost sharing be furnished to QMBs. Moreover, with respect to QMBs, section 301(h) of Public Law No. 100-360 makes the coverage of QMBs mandatory and does not authorize a delay based upon the need for State appropriation statutes.

HCFA disapproved the amendment because it believed the use of the proposed July 1 effective date violates the above cited statutes. HCFA believed these statutes mandate the earliest possible implementation of the poverty level increase. Furthermore, HCFA took notice that when QMBs became mandatory, Congress did not permit a delayed implementation based upon the need for appropriation statutes.

The annual increase in the poverty level is published in the **Federal Register** each year about mid-February. Implementation of this increased poverty level as soon as possible after its publication is important for QMBs because there is no retroactivity of eligibility for this group. For pregnant women, infants, and children, retroactive eligibility cannot be any earlier than 3 months prior to the filing of an application for medical assistance. Thus, until a State makes the increased poverty level effective, it must use the previous year's poverty level in determining and redetermining eligibility. Consequently, persons who would otherwise be eligible under the higher, new amounts are denied eligibility under the previous year's poverty level.

Title XIX provides no mechanism for correcting or alleviating this problem. HCFA believed that under current law the only solution is for States to make the poverty level increase effective as soon as possible.

The notice to North Carolina announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Ms. Barbara D. Matula, Director, Division of Medical Assistance, North Carolina Department of Human Resources, 1985 Umstead Drive, Raleigh, North Carolina 27603.

Dear Ms. Matula: I am responding to your request for reconsideration of the decision to disapprove North Carolina State Plan Amendment (SPA) 89-14.

There are two issues in the matter. The first issue is whether the proposed July 1 effective date violates section 1902(a)(4) of the Social Security Act (the Act), which requires States to implement methods of administration which are found by the Secretary to be necessary for the proper and efficient operation of the program. The second issue is whether the proposed July 1 effective date violates sections 1902(a)(8), 1902(a)(10)(A)(ii)(IX), 1902(a)(10)(E), and 1902(a)(19) of the Act, which require that medical assistance be furnished with reasonable promptness and that such assistance be in the best interests of recipients, establish the optional poverty-related categorically needy group of pregnant women, infants, and children and require that Medicare cost sharing be furnished to Qualified Medicare Beneficiaries (QMBs).

I am scheduling a hearing on your request to be held on August 23, 1990, at 10:00 a.m. in Suite 723, 101 Marietta Tower, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Gail R. Wilensky, *Administrator.*

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 6, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-16266 Filed 7-11-90; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Advisory Committee on the Food and Drug Administration

ACTION: Correction notice.

CONTACT: ADDRESSES: All responses should be mailed to Eric M. Katz, Executive Director, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, Room 740-G Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Sheryl Rosenthal, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, Room 740-G Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Telephone number (202) 245-7305.

SUMMARY: The notice offering an opportunity for public comment on the mission, responsibilities, and structure of FDA, printed in the July 3rd **Federal Register** on page 27507, incorrectly identified the location to which responses should be mailed as room 750-G Humphrey Building. All comments should be addressed to Room 740-G Humphrey Building.

Dated: July 6, 1990.

Eric M. Katz,

Executive Director, Advisory Committee on the Food and Drug Administration.

[FR Doc. 90-16265 Filed 7-11-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-030-00-4410-02]

Dickinson District Advisory Council Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: The District Advisory Council for the Bureau of Land Management's Dickinson District will meet August 1, 1990, in Dickinson, North Dakota.

The District Advisory Council will take a field tour of the Lost Bridge area in Dunn County. Major topics to be

discussed will include: (1) A proposal by the North Dakota Game and Fish Department to reintroduce bighorn sheep on BLM-administered land, (2) the Carus Cooperative Allotment Management Plan, (3) the Little Missouri Horse Trail, and (4) recent oil and gas activities in the district.

The Council is chartered by the Secretary of Interior to give advice to the Dickinson District Manager regarding planning and management of public lands and resources.

The meeting is open to the public, and members of the public will be given the opportunity to make statements before the Council. Persons wishing to submit a written statement to the Council should send it to the Dickinson District Manager.

LOCATION, DATE, AND TIME: August 1, 1990, from 8 a.m. to approximately 5 p.m. Mountain Daylight Time, Conference Room, Bureau of Land Management, 2933 3rd Avenue West, Dickinson, North Dakota.

FOR FURTHER INFORMATION CONTACT: William F. Krech, District Manager, 2933 3rd Avenue West, Dickinson, North Dakota 58601, Telephone 701-225-9148.

Dated: July 6, 1990.

William F. Krech,

District Manager.

[FR Doc. 90-16325 Filed 7-11-90; 8:45 am]

BILLING CODE 4310-DN-M

[WY-060-4212-13; WYW106566]

Realty Action; Exchange; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public lands in Sheridan County for private lands in Sheridan County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian

T. 57 N., R. 77 W.,
Sec. 32, Lot 6

The above land aggregates 44.02 acreas.

In exchange, the United States proposes to acquire the following private surface estate from First Interstate Bank of Sheridan, Wyoming, Trustee of the Woods Sheridan Trust.

Sixth Principal Meridian

T. 57 N., R. 77 W.,
Sec. 32, Tract 51

The above land aggregatges 40.00 acres.

FOR FURTHER INFORMATION CONTACT: Glenn Bessinger, Area Manager, Buffalo Resource Area, BLM, 189 Cedar, Buffalo, Wyoming 82834, (307) 684-5586.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to settle an occupancy trespass on Federal land and will also aid in acquiring a private inholding within a large block of public lands. The First Interstate Bank of Sheridan, Trustee for the Woods Sheridan Trust is acting as the proponent in this exchange. The exchange will be for an equal value amount of Federal surface. If the exchange should include a money payment for equalization of value, it shall not exceed 25 percent of the value of the public lands and interest being conveyed, but the amount of the money payment shall be reduced to as small an amount as possible. The publication of this Notice segregates the public land described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

Any Patent issued will be subject to all valid existing rights to include oil and gas lease WYW111108. Specific Patent reservations include:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 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 minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the Bureau of Land Management, Buffalo Resource Area Office.

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

For a period of forty-five (45) days from the date of issuance of this Notice in the **Federal Register** interested parties may submit comments to the Bureau of Land Management, District Manager, Casper, 1701 East E. Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: July 2, 1990.

James W. Monroe,

Casper District Manager.

[FR Doc. 90-16269 Filed 7-11-90; 8:45 am]

BILLING CODE 4310-22-M

[CO-942-90-4730-12]

Filing of Plats of Survey; Colorado

July 3, 1990.

The plats of survey of the following described land will be officially filed in the Colarado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., July 3, 1990.

The plat representing the corrective dependent resurvey of a portion of the subdivision lines, T. 6 N., R. 70 W., Sixth Principal; Meridian, Colorado, Group No. 919, was accepted June 26, 1990.

This survey was executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the west and north boundaries, subdivision lines, Tract No. 69, and portions of M.S. No.11213, Columbine placer and M.S. No. 11214, Columbine placer No. 2, and the subdivision of sections 6 and 7, T. 10 N., R. 85 W., Sixth Principal Meridian, Colorado, Group No. 852, was accepted June 20, 1990.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Gary L. Gibson,

Acting Chief, Cadastral Surveyor for Colordao.

[FR Doc. 90-16271 Filed 7-11-90; 8:45 am]

BILLING CODE 4310-JB-M

[WY-940-00-4730-12]

Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plat of survey.

SUMMARY: The plat of survey of the following described lands was officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., July 5, 1990.

Sixth Principal Meridan

T. 55 N., R. 77W.

The plat, representing the dependent resurvey of a portion of Amended Tract

No. 66, portions of the south boundary and subdivisional lines, and the subdivision of section 34, and the metes and bounds survey of Lot 17, section 34, T. 55 N., R. 77 W., Sixth Principal Meridan, Wyoming, Group No. 521, was accepted July 2, 1990.

This survey was executed to meet certain administrative needs of this Bureau.

ADDRESSES: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: July 5, 1990.

Dennis D. Bland,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 90-16264 Filed 7-11-90; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 697819

Applicant: U.S. Fish and Wildlife Service, Regional Director—Region 4, Atlanta, GA

The applicant requests an amendment to their current permit to allow take of additional species for the purposes of scientific research and enhancement of propagation or survival of the species in accordance with Recovery plans, listing or other Service work.

PRT 749839

Applicant: San Diego Zoo, San Diego, CA

The applicant requests a permit to import two capitve born male Fiji banded iguana's (*Brachylophus fasciatus*) from the Taronga Zoo, Sydney, Australia, for the purpose of enhancement of propagation and survival of the species.

PRT 730619

Applicant: International Animal Exchange, Inc., Ferndale, MI

The applicant requests a permit to export and sell in foreign commerce one male and two femal mandrills (*Papio sphinx*), born at the Bronx Zoo, Bronx, New York, to Monkey Center Co., Ltd., Taipei, Taiwan, for display purposes.

PRT 748818

Applicant: Jack McCrary, Houston, TX

The applicant requests a permit to import one sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by M.J. D'Alton, Bredasdorp, Cape Province, Republic of South Africa for enhancement of propagation and survival of the herd. This amends a May 15 notice for a permit to import a sport-hunted trophy from V.L. Pringle.

PRT 748817

Applicant: Suzanne McCrary, Houston, TX

The applicant requests a permit to import one sport-hunted trophy of a male bontebook (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by MM. D'Alton, Bredasdorp, Cape Province, Republic of South Africa for enhancement of propagation and survival of the herd. This amends a May 15 Notice for a permit to import a sport-hunted trophy from V.L. Pringle.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 430, Arlinton, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: July 5, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-16197 Filed 7-11-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Golden Gate National Recreation Area And Point Reyes National Seashore Advisory Commission

Notice is hereby given in accordance with the Federal Advisory Committee Act that two public meetings of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 7:30 p.m. at Tamalpais High School Student Center in Mill Valley on Tuesday, July 31, 1990 and at 7:30 p.m. at the Tamalpais High School Student Center in Mill Valley on Thursday, September 13, 1990.

The Advisory Commission was established by Public Law 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are are follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda item at these public meetings will be a presentation and public comment of a draft Environmental Assessment on the California Marine Mammal Center Five-Year Master Plan 1990-1995, which includes a proposal for the construction of an education center.

The education center expansion was first presented to the public at a Golden Gate National Recreation Area Advisory Commission meeting on June 5, 1987 at Point Reyes Station, California.

Since then, the project has been modified to include a one-story building of 4200 square feet at the California Marine Mammal Center facility at Fort Cronkhite in the Marin Headlands. The addition of the education facility will require the removal of three container structures (880 total square feet) presently located at the western end of the tarmac. These containers presently house a gift shop, storage, museum, and curator's office, which are to be moved to the new education facility. Construction of the addition is expected to take six months.

The nonprofit California Marine Mammal Center (CMMC) was established in 1975 to undertake the rescue, rehabilitation and release of distressed, ill or injured marine mammals. CMMC also does scientific studies relative to marine mammals and their environment, and manages public education programs directed toward the development of an awareness and

concern for marine mammals and their environment.

A second agenda item will be a presentation by the Headlands Center for the Arts (HCA) on modest proposals for building re-use and site work currently not identified as part of the General Management Plan for the Marin Headlands in the Golden Gate National Recreation Area. The proposals involve a shift in locations of activities rather than an expansion of programs. The plan calls for the permanent use of the Three Sisters buildings (Buildings 960, 961, and 962); the demolition of the old military theatre (Building 951) at the site and restoration of the meadow on the site; and joint use of the old military gymnasium (Building 952) with the National Park Service, the Headlands Institute and the U.S. Army.

The Headlands Center for the Arts is one of the several nonprofit organizations operating in the Marin Headlands under a cooperative agreement with the National Park Service (NPS). The agreement stipulates that the NPS grants these "Park Partners" exclusive use of the buildings in exchange for their renovation and development of programs for the public.

Also included at these meetings will be a Superintendent's Report.

Changes in the main agenda item at these meetings will be noticed in the **Federal Register.** These meetings are open to the public. Persons wishing to receive copies of the Draft Environmental Assessment of the California Marine Mammal Center Five Year Master Plan 1990–1995 or of the Draft Environmental Assessment of the Proposed Site Plan and Facilities Improvement Program for the Headlands Center for the Arts should contact the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or telephone (415) 556–4484.

These meetings will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript for the July 31, 1990 meeting is available after July 20, 1990 and for the September 13, 1990 meeting after October 4, 1990. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: June 22, 1990.

Lewis Albert,

Deputy Regional Director, Western Region.

[FR Doc. 90–16216 Field 7–11–90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31693]

Decision; Gulf and Ohio Railways, Inc.—Purchase and Lease; CSX Transportation, Inc. Line Between Thomasville and Sylvester, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application filed on June 14, 1990, by Gulf & Ohio Railways, Inc. (G&O) and CSX Transportation, Inc. (CSXT) (collectively applicants). G&O seeks to acquire, by purchase and lease, three contiguous segments of CSXT railroad, totalling 77.4 miles, between Thomasville and Sylvester, GA. Pursuant to 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 13, 1990, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by August 27, 1990. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list in this proceeding have been properly served copies of these comments. Applicants' reply is due by September 17, 1990.

ADDRESSES: Send original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31693, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh Street SW., Washington, DC 20590

Attorney General of the United States, United States Department of Justice, 10th & Constitution Ave., Washington, DC 20530

Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201

Kevin M. Sheys, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., 1350 New York Avenue NW—Suite 800, Washington, DC 20005–4797

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTARY INFORMATION: By application filed June 14, 1990, Gulf & Ohio Railways, Inc. (G&O) and CSX Transportation, Inc. (CSXT), collectively referred to as applicants, seek approval under 49 U.S.C. 11343, *et seq.*, for G&O to: (1) Purchase a 35.92-mile segment from Thomasville (milepost ANC–692.08) to Camilla (milepost ANC–728.00), in Thomas and Mitchell Counties, GA; (2) lease a 20.03-mile segment from the end of the purchase segment at Camilla (milepost ANC–728.00) to Albany (milepost ANC–748.03) in Mitchell and Dougherty Counties, GA; and (3) lease a 21.45-mile segment from Albany (milepost AP–699.12) to Sylvester (milepost AP–677.67) in Dougherty and Worth Counties, GA. These three segments (referred to as the Line) are contiguous and total 77.4 miles. Applicants intend to consummate the transaction as soon as possible after Commission approval and issuance of a final decision. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they have submitted an application in accordance with the railroad consolidation procedures at 49 CFR part 1180 for minor transactions.

G&O, a Tennessee corporation, is a Class III common carrier operating a 50-mile railroad system between Swan Lake an Lula, MS. It is controlled by Pete and Linda Claussen, who control two other Class III carriers—Alabama & Florida Railroad Company, Inc. and Wiregrass Central Railroad Company, Inc. Applicants state that the transaction will not affect these railroads, which operate in Alabama, nor will it expand or affect the Claussens' control authority.[1]

[1] The Claussens' control of G&O raises the question of whether they are required to participate as "applicants" in this proceeding. *See* 49 CFR 1180.26. We find they are not. The Claussens do not need, as a technical matter, to be formally styled as applicants because we can obtain sufficient information from the above-named applicants. *See* Finance Docket No. 32000, *Rio Grande Industries, Inc., SPTC Holding Inc., and the Denver and Rio Grande Western Railroad Company—Control—Southern Pacific Transportation Company*, Decision No. 3 (not printed), served January 22, 1988, in which under similar circumstances, the Anschutz Corporation was not required to be a co-applicant. *See also* Finance Docket No. 31530, *Wilmington*

Continued

CSXT, a subsidiary of CSX Corporation, is a Class I common carrier conducting operations in 19 States, the District of Columbia, and the Province of Ontario, Canada. It transported 12,167 originating and terminating carloads on the Line in 1988 and 11,030 carloads in 1989. The line carries overhead traffic from and to a rail line running between Albany and Dawson, GA.

Applicants state that the proposed transaction will permit G&O to expand into new markets and secure a larger traffic and revenue base. CSXT will be relieved of the inefficiencies inherent in operating what is for it a marginal line. Both carriers will accordingly realize operating efficiencies.

Because G&O's existing line will not connect with the three segments involved in this application, applicants argue that G&O's new operation will have to depend on traffic generated by the Line to be acquired. Thus, G&O will have a strong incentive to provide service closely tailored to the needs of the Line's patrons. They expect that G&O's provision of good, locally tailored service will enhance its financial viability by increasing its revenue base. G&O anticipates effecting economies by sharing administrative costs with the new Line. It also anticipates that its provision of effective competition and efficient service will enable it to divert traffic on the Line from truck to rail. Although G&O will incur debt service obligations from this transaction, it anticipates that the revenue generated by originating and terminating traffic on the line will cover these charges. No new securities will be issued.

Applicants do not expect that the proposed transaction will in any way lessen intermodal or intramodal competition, or create a monopoly or restrain trade in freight surface transportation in any region in the United States. As applicants do not compete for originating and terminating freight traffic on the Line, the transaction will merely substitute one rail carrier for another on an existing line. The Line is parallel to either U.S. Highway 19 or 82 for its entire length, and the area is served by motor carriers. Applicants believe that the transaction will enhance intermodal competition by allowing the rail mode to compete more effectively with other modes of surface transportation.

The Line to be acquired connects with CSXT at Thomasville and Albany. At Albany, G&O will be able to interchange traffic to and from Dawson, GA, with either CSXT or South Carolina Central Railroad Company, Inc. (SCCR).[2] The Line also connects with the Southern Railway Company (SRC) at Albany and at Camilla. Although interchange with SRC is possible at Camilla or Albany, interchange will probably be effected at Chapco (near Albany) where it will also be effected with CSXT trains operating under trackage rights on SCR's line between Oglethorpe, GA, and Albany. Applicants state that the proposed transaction should not have any significant effect upon any other rail common carrier in the Line's immediate area since the opportunities for interchanging traffic with SRC and SCCR will not be reduced.

G&O currently operates three locomotives and employs six people. After the transaction is completed, it will operate nine locomotives and employ approximately 20 people. G&O plans to operate the Line exclusively with its own employees under its own rates of pay, rules, and working conditions, and will not assume CSXT's collective bargaining agreements. The proposed transaction will have no effect on G&O's existing employees.

The transaction will result in the abolition of 16 CSXT positions.[3] Applicants state that implementing agreements have not yet been entered into under the conditions of *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) (*New York Dock*) and *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980). Applicants acknowledge that implementing agreements required by *New York Dock* will have to be entered into with adversely affected employees prior to consummating the transaction.

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal here involves a Class I and a Class III rail carrier. It has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal is a minor transaction as defined in 49 CFR 1180.2(c). Since the application complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petiton for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limts for processing a minor transaction are set forth in 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on July 11, 1990.

Decided: July 6, 1990.

Terminal Railroad, Inc.—Purchase and Lease—CSX Transportation, Inc. Lines Between Savannah and Rhine, and Vidalia and Macon, GA (not printed), served October 5, 1989.

[2] In Finance Docket No. 31481, served November 1, 1989, the Commission approved the sale of CSXT's line between Dawson and Albany to SCCR. G&O intends to interchange with whichever railroad occupies the line when the instant transaction is consummated.

[3] Applicants anticipate abolition of the following CSXT positions—three engineers, nine trainmen, three clerks, and one carman.

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

Noreta R. McGee,

Secretary.

[FR Doc. 90-16284 Filed 7-11-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-335 (Sub-No. 1X)]

KCT Railway Corporation—Abandonment Exemption—In Wharton and Fort Bend Counties, TX

Applicant has filed a notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon its 22-mile line of railroad between a point near New Gulf (near former Atchison, Topeka and Santa Fe Railway Company [Santa Fe] milepost 7+4942) and a point near Smither's Lake (near former Santa Fe milespost 30+327.5), in Whaton and Fort Bend Counties, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within a 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 August 11, 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 July 23, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 1, 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: Stephen W. McVearry, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005.

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 July 17, 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 Kasier, 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: July 3, 1990.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-16282 Filed 7-11-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-335X]

KCT Railway Corporation—Abandonment Exemption—In Colorado and Matagorda Counties, TX

Applicant has filed a notice of exemption under 49 CFR part 1152, Subpart F—*Exempt Abandonments* to abandon its 17-mile line of railroad: (1) Between a point near Rayner Junction (near former Atchison, Topeka and Santa Fe Railway Company [Santa Fe] milepost 0+319.4) and a point near Garwood (near former Santa Fe milepost 9+2904); and (2) between a point near Wadsworth (near former Santa Fe milepost 82+2632) and a point near Matagorda (near former Santa Fe milepost 90+3760), in Colorado and Matagorda Counties, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 11, 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 July 23, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 1, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

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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—Office 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.

[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.

A copy of any petition filed with the Commission should be sent to applicant's representative: Stephen W. McVearry, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., Suite 800, 1350 New York Avenue NW., Washington, DC 20005-4797.

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 July 17, 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: July 3, 1990.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-16283 Filed 7-11-90; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a one-day meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules, which will be a planning meeting. The majority of the meeting will be dedicated to planning for the future, however, the Committee will also address such topics as the Local Rules Project and a number of aspects of the practice of cases under chapter 13.

DATE: August 22, 1990.

ADDRESS: Gus J. Solomon United States Courthouse, 620 SW Main Street, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 633-6021.

Dated: July 6, 1990

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 90-16234 Filed 7-11-90; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

[Atty. Gen. Order No. 1428-90]

Anti-bribery Provisions

AGENCY: United States Department of Justice.

ACTION: Notice.

SUMMARY: Notice is given that the Attorney General has determined that no guidelines are necessary under sections 5003(a) and 5003(c) of the Foreign Corrupt Practices Act Amendments of 1988 (Pub. L. 100-418).

SUPPLEMENTARY INFORMATION: Section 30A(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1(d)) and section 104(e) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2(e)), as amended respectively by sections 5003(a) and 5003(c) of the Foreign Corrupt Practices Act Amendments of 1988 (Pub. L. 100-418), require the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, to determine to what extent compliance with 15 U.S.C. 78dd-1 and 78dd-2 would be enhanced and the business community would be assisted by further clarification of these provisions through the issuance of guidelines. The Department solicited comments in a public notice published in the **Federal Register** on October 4, 1989 (54 FR 40918). After consideration of the comments received, and after consultation with the appropriate agencies, the Attorney General has determined that no guidelines are necessary. NOTICE: Notice is hereby given that, pursuant to section 30A(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1(d)) and section 104(e) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2(e)), as amended respectively by sections 5003(a) and 5003(c) of the Foreign Corrupt Practices Act Amendments of 1988 (Pub. L. 100-418), I have determined that compliance with the provisions of section 30A of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78dd-1), and section 104 of the Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78dd-2), would not be enhanced nor would the business community be assisted by further clarification of these provisions through the issuance of guidelines.

Dated: July 5, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90-16268 Filed 7-11-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 22, 1990, a proposed consent decree in *United States* v. *Eagle-Picher Industries, Inc.* Civil Action No. 87-5100-CV-SW-8 was lodged with the United States District Court for the Western District of Missouri. The proposed consent decree concerns a complaint filed by the United States that alleged violations of the Federal Water Pollution Control Act and its implementing regulations at certain Eagle-Picher facilities in Joplin, Missouri. The complaint alleged that defendant Eagle-Picher had discharged water without the authority of a valid NPDES permit. The complaint sought injunctive relief to require compliance with applicable discharge standards and civil penalties for past violations. The decree requires the defendant to pay $1.5 million in settlement of the United States' claims for civil penalties, and contains a schedule to bring Eagle-Picher into compliance with applicable standards by December 1990.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Eagle-Picher Industries, Inc.* D.J. Ref. 90-5-1-1-2927.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Missouri, 549 United States Courthouse, 811 Grand Avenue, Kansas City, Missouri 64106, and at the Region VII Office of the United States Environmental Protection Agency, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the consent decree may

also be examined at the Enironmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-16190 Filed 7-11-90; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action Enjoin Violation of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Fehr Brothers, Incorporated* (S.D.N.Y.), Civil Action No. 90-CIV-4341-JFK, was lodged with the United States District Court for the Southern District of New York on June 29, 1990. The Consent Decree provides for penalties for importation of CFC-113 into the United States without the requisite consumption allowances and enjoins Fehr Brothers, Incorporated from further violations of the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and 40 CFR part 82.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be address to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Fehr Brothers, Incorporated,* D.O.J. Ref. No. 90-5-2-1-1473.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of New York, 1 Saint Andrews Plaza, New York, New York 10007; at the Region II office of the Environmental Protection Agency, Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-16191 Filed 7-11-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-24,201]

Alcatel Network Systems, Portsmouth, RI

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 29, 1990 applicable to all workers in the Test and Assembly Departments of Alcatel Network Systems, Portsmouth, Rhode Island. The notice was published in the **Federal Register** on June 13, 1990 (55 FR 23991).

At the request of the Regional Office the Department reviewed its certification. As a result of the review, the Department is expanding the scope of coverage to all workers of Alcatel Network Systems, Portsmouth, Rhode Island.

The intent of the certification is to cover all workers of Alcatel Network Systems, Portsmouth, Rhode Island who were adversely affected by increased imports of articles like or directly competitive with magnetics and printed circuit boards. The amended notice applicable to TA-W-24,201 is hereby issued as follows:

All workers and former workers of Alcatel Network Systems, Portsmouth, Rhode Island who became totally or partially separated from employment on or after March 20, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 2d day of July 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-16305 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Ben-Mont Corp., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 23, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 23, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 2nd day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Ben-Mont Corp., (Workers)	Bennington, VT	7/02/90	6/20/90	24,565	Wrapping Paper.
Boart Hardmentals, Inc., (Workers)	Cleona, PA	7/02/90	6/08/90	24,566	Drill Bits.
Breed Automotive Mfg., Inc	Boonton TWP, NJ	7/02/90	6/12/90	24,567	Safety Bags.
Bundy Tubing, (UAW)	Winchester, KY	7/02/90	5/18/90	24,568	Auto Tubing.
Carol Cables Co., Inc., (Workers)	New Bedford, MA	7/02/90	5/30/90	24,569	Electronic Wire & Cords.
Egyptian Drilling, Inc., (Workers)	Fairfield, IL	7/02/90	6/22/90	24,570	Oil & Gas.
(The) Eureka Co., (IAMAW)	Bloomington, IL	7/02/90	6/18/90	24,571	Vacuum Cleaners.
Fawn Industries, Inc., (Workers)	Rocky Mount, NC	7/02/90	4/17/90	24,572	Plastic Moldings.
General Tire & Rubber Co., (URW)	Mayfield, KY	7/02/90	6/20/90	24,573	Auto & Truck Tires.
GID Energy, Inc., (Workers)	Houston, TX	7/02/90	6/14/90	24,574	Oil & Gas.
G.T.I. of Ohio, (Workers)	Englewood, CA	7/02/90	6/14/90	24,575	Digital Maps.
Lafarge Cement Corp., (Boilermaker)	Reston, VA	7/02/90	6/05/90	24,576	Cement.
Lafayette Mfg., Co., (Workers)	Mableton, GA	7/02/90	6/03/90	24,577	Ladies Apparel.
Lawn-Boy, Inc., (UAW)	Plymouth, WI	7/02/90	6/19/90	24,578	Tractors & Blowers.
Lomax Exploration, (Workers)	Roosevelt, UT	7/02/90	6/21/90	24,579	Oil & Gas.
Lomax Exploration, (Workers)	Salt Lake City, UT	7/02/90	6/21/90	24,580	Oil & Gas.
Lorilee Sports, (Workers)	El Paso, TX	7/02/90	6/15/90	24,581	Mens' & Womens' Coats.
Lynell Inc. (Company)	Zanesville, OH	7/02/90	6/20/90	24,582	Oil & Gas.
My Lady Sportswear, (ILGWU)	Newark, NJ	7/02/90	6/21/90	24,583	Womens' Raincoats.
Panhandle Royalty Co., (Workers)	Oklahoma City, OK	7/02/90	6/14/90	24,584	Oil & Gas.
Pollington Machine Tool, (Company)	Marion, MI	7/02/90	6/20/90	24,585	Machines.
Sunstrand Advanced Technology Group, (Workers).	Denver, CO	7/02/90	6/20/90	24,586	Aircraft Parts.
Thomson Co., (Workers)	Thomson, GA	7/02/90	6/21/90	24,587	Men's Slacks.

[TA-W-23, 929]

Chrysler Corp. St. Louis #1 Assembly Plant, Fenton, MI; Negative Determination on Reconsideration

On May 29, 1990 the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at St. Louis #1 assembly plant of Chrysler Corporation, Fenton, Missouri. This notice was published in the **Federal Register** on June 7, 1990 (55 FR 23311).

The union claims that the Dodge Daytona and Chrysler LeBarons should be classified in separate segments as Wards does. The Department classified the subject models in its mid-priced sports coupes and convertibles segments.

The Department's denial was based on the fact that, in the market for mid-priced sports coupes and convertibles, the import segment lost market share from 1988 to 1989 while the segment consisting of all domestic sports coupes and convertibles other than the subject vehicles gained market share over the same period.

The Department's classification system of determining like or directly competitive vehicles is on a case-by-case basis and tailored to the vehicles manufactured at the subject facility. Criteria included in the Department's system are: (1) Base price (2) fully-equipped price, (3) body style, (4) curb weight, (5) wheel base, and (6) sporting characteristics.

Wards Communications classifies by (1) Size, (2) price and (3) marketing intent and apparently does not account for significant changes once a model is assigned to a particular segment. Also Ward's apparent price standards are overly broad to be useful in determining competitive classifications. The EPA classification system is based solely on measurements of interior volume and cargo space and has no relevance at all for the kind of market analysis necessary to decide a trade adjustment case.

Findings on reconsideration show that the Chevrolet Luminas, included by Wards in the same category as the Chrysler LeBarons, are not like or directly competitive with the Chrysler LeBarons. The Luminas, a W-body vehicle, are classified by the Department as standard intermediate automobiles and replaced the older intermediate A-body line of General Motors. The Luminas do not meet criteria 3, 4, 5 and 6 of the Department's system.

Of paramount competitive significance in the sport coupe segment from 1988–1989 was the introduction of the Plymouth Laser, Eagle Talon, and Mitsubishi Eclipse manufactured at Normal, Illinois and the increased sales of the Ford Probe and Mazda MX-6 manufactured at Flat Rock, Michigan. These car lines are direclty competitive with the autos produced at the Fenton, Missouri plant and experienced a more than doubling of sales and market share from 1988 to 1989.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers of the St. Louis #1 assembly plant of Chrysler Corporation located in Fenton, Missouri.

Signed at Washington, DC, this 5th day of July 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-16309 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,643]

Flushing Shirt Co., Frostburg, MD; Negative Determination Regarding Application for Reconsideration

By an application dated February 22, 1990, the Amalgamated Clothing and Textile Workers of America (ACTWA) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 18, 1990 and published in the **Federal Register** on January 31, 1990 (55 FR 3286).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that increased imports of uniform shirts led to worker separations.

Investigation findings show that the Frostburg plant did stitching on uniform shirts for an affiliate plant located in nearby Grantsville. The Frostburg plant ceased operations in November 1989. Frostburg's production was transferred either to Grantsville or to other corporate domestic facilities. Neither the Flushing Shirt Company nor its parent company B. Lipman imports uniform shirts. Other findings show that B. Lipman had increased sales of uniform shirts in 1989 compared to 1988.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. The closing of the Frostburg plant was the result of a corporate decision to consolidate its production with its other domestic facilities.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-16310 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 206]

Honeywell, Inc., Fort Washington, PA; Negative Determination Regarding Application for Reconsideration

By an application dated June 14, 1990, Local #116 of the United Electrical Workers (IUE) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 18, 1990 and published in the **Federal Register** on May 30, 1990 (55 FR 21955).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that worker separations occurred because of the reorganization and consolidation of three divisions (Process Management Systems, Process Control and the International Service Business Segments) into the Industrial Automation Control Division (IACD) with headquarters in Phoenix, Arizona. Also, the union claims that the company's sales and production data includes locations other than Fort Washington.

Investigation findings show that the production and sales data collected in this investigation is for Fort Washington. The findings show that the Phoenix and York plants produce altogether different products which do not overlap with those of Fort Washington. Other findings show that the consolidation of the above three divisions into the IACD in November 1989 affected only salaried workers.

The Department's denial was based on the fact that production and sales of control instruments increased in 1989 compared to 1988 and in the first quarter of 1990 compared to the same period in 1989. Workers at Fort Washington were recently denied eligibility to apply for adjustment assistance in November 1989 (TA-W-23, 370).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of June 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-16311 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,124]

Nortex International, Philadelphia, PA.; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Nortex International, Philadelphia, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,124; Nortex International, Philadelphia, Pennsylvania (July 3, 1990)

Signed at Washington, DC, this 3rd day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-16306 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,106]

Rockwell International New Castle, PA; Negative Determination Regarding Application for Reconsideration

By an application dated May 29, 1990 Local 4194 of the United Steelworkers of America (USW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 27, 1990 and published in the **Federal Register** on May 16, 1990 (55 FR 20330).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that worker separations at New Castle were the result of production declines of the F-450 axle assemblies whose production was exported to Canada and the M-450 axle beams which were imported from Europe.

The findings show that the F-450 axle assemblies were exported to Canada for incorporation into truck chassis which

were later imported. The F-450 axle assemblies did not account for a substantial portion of New Castle's production or sales in 1989. The workers were not separately identifiable by product. Further, the loss of sales and production to the export market would not provide a basis for a worker group certification.

Also, in discussing the term "like or directly competitive" as used in the Trade Act of 1974, the courts concluded that imported finished articles are not like or directly competitive with their domestic component parts, *United Shoe Workers of America* v. *Bedell, et. al.*, 506 F 2d. 174 (1974). In that case, the court held that imported finished women's shoes were not like or directly competitive with shoe counters. Similarly, chassis incorporating the axle assemblies are not like or directly competitive with axle assemblies.

Other findings show that company imports of the M-450 axle beams imported from Europe, repackaged in New Castle and exported to Mexico for incorporation into recreational and commercial chassis did not account for a substantial portion of New Castle's production. Further, company imports of all front end parts as a percent of production declined in 1989 and in the first two months of 1990. The workers are not separately identifiable by component.

Lastly, other components scheduled for future overseas production would not form a basis, in itself, for certifying workers under the current petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of June 1990.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 90-16312 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance, Tedmar, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply to adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,356; Tedmar, Inc., Newark, NJ

TA-W-24,326; A.O. Smith Electrical Motor Div., Mt. Sterling, KY

TA-W-24,361; ASC (American Shizuki Corp), Ogallala, NE

TA-W-24,190; Simpson Industries, Litchfield, MI

TA-W-24,399; RCR Sportswear Co., Passaic, NJ

TA-W-24,345; Hill Top Knitting Maspeth Queens, NY

TA-W-24,344; H. Korenstein, Newark, NJ

TA-W-24,393; N & S Fashions, Paterson, NJ

TA-W-24,422; Memorex Telex Corp., Inc., Tulsa, OK

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24,343; Friskies Pet Care, Hillsboro, OR

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,480; National Pattern, Inc., Saginaw, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,346; Lamp Specialties, Irvington, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24,208; J.W. Electronics, Tumwater, WA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24,359; Vulcan Electric, Kezar Falls, ME

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,371; E.I. DuPont Co., Moberly, MO

U.S. imports of paints and coatings are negligible.

TA-W-24,352; Sharlyn Fashions, Inc., East Newark, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,357; United Technologies Automotive, Union City, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,444; Kasco Corp., Sussex, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,333; CMI International, Southfield, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,256; Jendall Fashions, Inc., South Orange, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,389; Mario Papa & Sons, Gloversville, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,435; Cardinal Drilling Co., Billings, MT

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,416; F. Schumacher & Co., Adams, MA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-24,377; Fiorentina Fashions, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,380; General Motors Corp., CPC Doraville, Atlanta, GA

A certification was issued covering all workers separated on or after April 26, 1989.

TA-W-24,350; Rhone-Poulenc, Portland, OR

A certification was issued covering all workers separated on or after April 16, 1989.

TA-W-24,437; Fall River Co., Inc., Fall River, MA

A certification was issued covering all workers separated on or after April 17, 1989.

TA-W-24,368; D & H Enterprises, Forks, WA

A certification was issued covering all workers separated on or after April 16, 1989.

TA-W-24,384; Greensleeves, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,363; Alvin Coat, Paterson, NC

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,387; Lido Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,391; N.L Fashion, Paterson, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,355; Superior Production Logging, Inc., Snyder, TX

A certification was issued covering all workers separated on or after April 13, 1989.

TA-W-24,355A; Superior Production Logging, Inc., & All Other Locations in the State of Texas

A certification was issued covering all workers separated on or after April 13, 1989.

TA-W-24,342; The French Oil Mill Machinery Co., Inc., Piqua, OH

A certification was issued covering all workers separated on or after May 1, 1989.

TA-W-24,383; Gerr'a, Inc., Montclair, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,244; Curly Candy Fashions, Inc., Newark, NJ

A certification was issued covering all workers separated on or after March 28, 1989.

TA-W-24,404; Subsurface, Inc., Denver, CO

A certification was issued covering all workers separated on or after April 20, 1989.

TA-W-24,378; GEO, Inc., Denver, CO

A certification was issued covering all workers separated on or after April 20, 1989.

TA-W-24,381; General Motors Corp., CPC Fairfax, Kansas City, KS

A certification was issued covering all workers separated on or after April 26, 1989.

TA-W-24,487; Top Stitches Sport, Inc., San Fernando, CA

A certification was issued covering all workers separated on or after May 15, 1989.

TA-W-24,376; ERA Coats, Paterson NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,421; Massena Aluminum Recovery Co., Inc., Massena, NY

A certification was issued covering all workers separated on or after April 24, 1989.

TA-W-24,388; Malcolm Clothing Corp., Passaic, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,464; Wood Texture, Inc. Edison, NJ

A certification was issued covering all workers separated on or after May 9, 1989.

TA-W-24,245; Dudley Sports Co., Vadalia, GA

A certification was issued covering all workers separated on or after March 14, 1989.

TA-W-24,420; Maine Woods, Livermore Falls Div., Livermore Falls, ME

A certification was issued covering all workers separated on or after April 27, 1989.

TA-W-24,425; Petrodata Systems, Inc., Edmond, OK

A certification was issued covering all workers separated on or after April 27, 1989.

TA-W-24,292; Henderson Camp Products, Inc., Vancouver, WA

A certification was issued covering all workers separated on or after April 13, 1989.

TA-W-24,297; Lebo Peerless Corp., Bloomfield, NJ

A certification was issued covering all workers separated on or after April 2, 1989.

TA-W-24,423; NEC (New Energy Corp), Cushing, OK

A certification was issued covering all workers separated on or after April 24, 1989.

I hereby certify that the aforementioned determinations were issued during the month of June 1990. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 5, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-16314 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,921]

Workwear Corp., Joplin, MO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Workwear Corporation, Joplin, Missouri. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-23,921; Workwear Corporation, Joplin, Missouri (July 3, 1990)

Signed at Washington, DC this 3rd day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-16307 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,274]

UNGERMANN-BASS, Inc., RONKONKOMA, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 9, 1990 in response to a worker petition which was filed on

behalf of workers at the Ronkonkoma, New York facility of Ungermann-Bass, Incorporated.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 28th day of June 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-16308 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits, Ending of Extended Benefit Period in the State of Alaska

This notice announces the ending of the Extended Benefit Period in the State of Alaska, effective on June 30, 1990.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During and Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alaska on February 18, 1990, and has now triggered off.

Determination of an "Off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on June 9, 1990, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending June 30, 1990.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on July 5, 1990.

Roberts T. Jones,

Assistance Secretary of Labor.

[FR Doc. 90-16303 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Rhode Island

This notice announces the ending of the Extended Benefit Period in the State of Rhode Island, effective on June 30, 1990.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Rhode Island on April 1, 1990, and has now triggered off.

Determination of an "Off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on June 9, 1990, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending June 30, 1990.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extend Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on July 5, 1990.

Robert T. Jones,

Assistant Secretary of Labor.

[FR Doc. 90-16304 Filed 7-11-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-49)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 55FR24672, Notice Number 90-42, June 18, 1990.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING: July 17, 1990, 8:30 a.m. to 4 p.m. Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Ms. Catherine Smith, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2367).

Dated: July 9, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-16248 Filed 7-11-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting; Working Group on Social/Human Issues

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Working Group on Social/Human Issues.

DATE AND TIME: July 30, 1990—9 a.m.-6 p.m.; July 31, 1990—9 a.m.-5:30 p.m.

PLACE: New Federal Building, 915 Second Avenue, Seattle, Washington 98104

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., Suite 815, Washington, DC 20006, (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: On July 30 and 31, 1990 the Working Group on Social/Human Issues of the Commission will hold a hearing to examine the range of human and social services needed by people affected by the HIV/AIDS epidemic, and the partnerships needed to provide these services.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-16220 Filed 7-11-90; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL CRITICAL MATERIALS COUNCIL

National Commission on Superconductivity (NCOS); Meeting

The purpose of the National Commission on Superconductivity is to review all major policy issues regarding United States applications of recent research in advanced superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies. The Commission will meet on July 30 and 31, 1990 in room 105 (Columbia Suite) of the River Inn Hotel, 924 25th Street NW., Washington, DC, from 8:30 a.m. until 5 p.m.

The proposed agenda is the following:

July 30—Review the draft report by chapters and discuss recommendations
- Morning—Chapters 1 and 2
- Afternoon—Chapters 3 and 4.

July 31—Present final recommendations for submission to the President and Congress
- Morning—Executive summary and recommendations
- Afternoon—Public comments, final comments and recommendations.

Perry M. Lindstrom,

Technical Director.

[FR Doc. 90-16221 Filed 7-11-90; 8:45 am]

BILLING CODE 3130-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

July 3, 1990.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on August 9-10, 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 carrying out 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 August 9-10, 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 commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the session on August 9, 1990, will be as follows:

Committee Meetings

8:30-9 a.m.—Coffee for Council Members—Room 526 (Open to the Public)

9-10 a.m.—Committee Meetings—Policy Discussion
- Education Programs—Room M-14
- Fellowship Programs—Room 316-2
- General Programs—Room 415
- Research Programs/Preservation Grants—Room 315
- State programs/Challenge Grants—Room M-07

10 a.m. until Adjourned—(Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on August 10, 1990, will convene at 9 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows: (Coffee for Staff and Council members attending the meeting will be served from 8:30-9 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter

D. Application Report, Matching Report and Status of Fiscal Year 1990 Funds
E. Status of Fiscal Year 1991 Appropriation Request
F. Legislation
G. Committee Reports on Policy and General Matters
1. Education Programs
2. Fellowship Programs
3. General Programs
4. Research Programs
5. Preservation Grants
6. State Programs
7. Challenge Grants
8. Jefferson Lecture

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 Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 90-16192 Filed 7-11-90; 8:45 am]

BILLING CODE 7536-01-M

National Endowment for the Arts

Meeting; Opera—Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on July 26, 1990, from 9 a.m.- 5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 2, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-16270 Filed 7-11-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type submission, new, revision, or extension: New.
2. The title of the information collection: Proposed Rule on Nuclear Power Plant License Renewal, 10 CFR part 54.
3. The form number if applicable: Not applicable.
4. How often the collection is required: One-time submission with application for renewal of an operating license for a nuclar power plant and occasional collections for holders of renewed licenses.
5. Who will be required or asked to report: Nuclear power plant licensees who wish to renew their operating licenses.
6. An estimate of the number of responses: It is estimated that as many as 100 licensees may take advantage of this provision over the next forty years. It is anticipated that 2 responses will be received during the requested three year clearance period.
7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 30,000 hours per licensee (60,000 hours annual total).
8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.
9. Abstract: The Atomic Energy Act, which permits renewal of licenses, and the license renewal rule already in effect (10 CFR 50.51) do not contain specific procedures, criteria, and standards that must be satisfied in order to renew a license. The proposed rule (10 CFR part 54) would establish the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20037.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this day of July 3, 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 90-16280 Filed 7-11-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-454, STN 50-455, STN 50-456, and STN 50-457]

Commonwealth Edison Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has approved the withdrawal of an amendment application dated March 2, 1988, filed by Commonwealth Edison Company (CECo), the licensee. The application requested amendments to Facility Operating License Nos. NPF-37 and NPF-66, issued to the licensee for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois, and Facility Operating License Nos. NPF-72 and NPF-77, issued to the licensee for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would have reduced the containment tendon design stresses to incorporate additional design margin not reflected in the values currently included in the Byron and Braidwood Technical Specifications. The Commission issued a "Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing" on March 25, 1988 (53 FR 9830).

By letter dated May 31, 1990, the licensee withdrew the application for

the proposed amendments after the NRC staff evaluated the initial submittal and determined that a significant number of tendon stress surveillances would be needed over a number of years in order to assess the actual rate of relaxation of tendon strength and determine that the tendon forces will not decrease below their design forces during plant life. The Commission has considered the licensee's request and has determined that permission to withdraw the March 2, 1988 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendments dated March 2, 1988, and (2) the staff's letter dated June 27, 1990.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010, and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481, for Byron and Braidwood, respectively.

Dated at Rockville, Maryland, this 27th day of June, 1990.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-16276 Filed 7-11-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

Entergy Operations, Inc. et al., Grand Gulf Nuclear Station, Unit 1; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw the May 4, 1990, application for proposed amendment to Facility Operating License No. NPF-29 for the Grand Gulf Nuclear Station, Unit No. 1, located in Clairborne County, Mississippi.

The proposed amendment would have revised the license to extend the implementation date of Amendment No. 65 concerning the transfer of operating responsibilities from Systems Energy Resources, Inc. to Entergy Operations, Inc.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 10, 1990 (55 FR 19687). By letter dated June 6, 1990, the licensee withdrew the proposed change because the licensee was able to implement all conditions in Amendment No. 65 within the required time limit. The official transfer date is June 6, 1990.

For further details with respect to this action, see the application for amendment dated May 4, 1990, and the licensee's letter dated June 6, 1990, which withdrew the application for license amendment.

The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 2nd day of July 1990.

For the Nuclear Regulatory Commission:

Lester L. Kintner,

Senior Project Manager, Project Directorate IV-1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-16277 Filed 7-11-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-417]

Grand Gulf Nuclear Station, Unit 2, et al.; Completion of Transfer of Authority To Construct

In the matter of Grand Gulf Nuclear Station, Unit 2, Entergy Operations, Inc., Mississippi Power & Light Co., System Energy Resources, Inc., South Mississippi Electric Power Association

The U.S. Nuclear Regulatory Commission (the Commission) issued Amendment No. 9 to Construction Permit No. CPPR-119 for the Grand Gulf Nuclear Station, Unit 2 (GGNS-2) to reflect a transfer of authority to construct GGNS-2 from System Energy Resources, Inc. (SERI) to Entergy Operations, Inc. Notice of Issuance of the amendment was published in the **Federal Register** on January 5, 1990 (55 FR 535).

Amendment No. 9 was made effective as of its date of issuance. The changed construction permit conditions were required to be implemented within 180 days of the date of issuance and upon the official transfer of responsibilities from System Energy Resources, Inc. to Entergy Operations, Inc.

By letter dated June 6, 1990, Entergy Operations, Inc. advised that SERI had received all necessary regulatory approvals to transfer performance of activities for GGNS-2 to Entergy Operations, Inc. and that all conditions in Amendment No. 9 to the Construction Permit have been implemented effective June 6, 1990. Accordingly, the official transfer date is June 6, 1990.

For further details with respect to this action see (1) the applications for amendment dated August 21, September 27 and November 21, 1989, (2) Amendment No. 9 to Construction Permit No. CPPR-119, (3) the Commission's related Safety Evaluation, and (4) Entergy Operations, Inc. letter dated June 6, 1990. All of these items are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room at Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

In addition, 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, Project Directorate IV-1, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 2nd day of July 1990.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

Senior Project Manager, Project Directorate IV-1 Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-16278 Filed 7-11-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28186; File No. SR-NASD-89-5]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Prompt Receipt and Delivery of Securities

The National Association of Securities Dealers, Inc. ("NASD") submitted on January 26, 1989,[1] a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 [3] thereunder to add Section 2(b) to the Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities following Article III, Section 1 of the

[1] Amendment No. 1 to the proposed rule change was filed on March 29, 1989, Amendment No. 2 on August 21, 1989, and Amendment No. 3 on October 3, 1989.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1989).

NASD Rules of Fair Practice. The proposal provides that no NASD member shall effect a short sale for its own account in any security unless the member makes an affirmative determination that it can borrow the securities or otherwise provide for their delivery by settlement date. The rule includes exemptions for transactions: (1) In corporate debt securities, (2) for bona fide market transactions by a member (A) in NASDAQ securities for which it is registered as a NASDAQ market maker, and (B) in non-NASDAQ securities for which it publishes a two-sided quotation to an independent quotation medium, and (3) for transactions that result in fully hedged or arbitraged positions.

Notice of the filing and the terms of substance of the proposed rule change and Amendment No. 1 thereto, was given by the issuance of a Commission release (Securities Exchange Act Release No. 26746, April 20, 1989) and by publication in the **Federal Register** (54 FR 18185, April 27, 1989). Notice of the filing of Amendment No. 3 to the proposed rule change also was given by the issuance of a Commission release (Securities Exchange Act Release No. 27409, October 31, 1989) and by publication in the **Federal Register** (54 FR 46665, November 6, 1989).

The Commission received nine negative comment letters on the proposed rule change as first published by the Commission.[4] In essence, all the commentators objected to the failure of the NASD to include within the proposed rule an exemption for non-NASDAQ market making transactions.

In response to the comment letters, the NASD filed Amendment No. 3,[5] which added an exemption from the borrowing requirement for market maker transactions in non-NASDAQ securities in which the market maker publishes a two-sided quotation to an independent quotation medium. No comments were received with respect to the publication of Amendment No. 3 to the proposed rule change.

The Commission believes that the NASD has responded adequately to the negative comment letters; no comments were received after publication of the amended version of the proposed rule. The rule, as amended, requires a member effecting a short sale for its own account to make an affirmative determination that it can borrow the security or otherwise provide for delivery of the security by settlement date, with the exemptions noted above. A similar requirement was imposed with respect to customer short sale orders in 1986.[6] The Commission believes that extension of the borrowing requirement to members effecting short sales for their own accounts will impose additional discipline on short selling and will thereby increase the ability to maintain a fair and orderly market.

Through its own enforcement and regulation programs, the Commission carefully and continually has monitored short sale trading practices. Where problems have been identified, the Commission has taken action and has approved NASD rulemaking initiatives designed to eliminate abusive practices. The Commission expects the NASD to develop an enforcement plan and to monitor complaints with the rule by member firms. In particular, the Commission expects the NASD to monitor closely the use of the exemption for bona fide market making transactions as it applies to both NASDAQ and non-NASDAQ securities. In this connection, the NASD has represented that it routinely will surveil for compliance with the market maker exemptions in the proposed rule change when conducting an examination of a market maker.[7] The Commission expects the NASD to report to the Commission within one year on the effectiveness of the new requirement.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16213 Filed 7-11-90; 8:45 am]

BILLING CODE 8010-01-M

[4] See letter to Kathryn Natale, Assistant Director, Division of Market Regulation, SEC, from Theodore London, Senior Vice President, Reich & Co., Inc., dated May 25, 1989; and letters to Jonathan G. Katz, Secretary, SEC, from J. Donadio, William V. Frankel & Co. (undated); Claire B. Verchot, Vice President and Director of Equity Trading, J. F. Lowe & Company, Inc., dated May 26, 1989, John L. Watson, III, President, Security Traders Association, dated May 25, 1989; Kenneth W. Perlman, General Counsel, Mayer & Schweitzer, Inc., dated May 25, and May 31, 1989; Glenn F. Woo, Troster Singer, dated May 26, 1989; Anthony Dudzinski, M. H. Myerson & Co. (undated), and Michael Silvestri, President, Anthony Dudzinski, Vice President OTC Trading, M. H. Meyerson & Co., Inc., dated May 31, 1989.

[5] Amendment No. 3 superseded Amendment No. 2.

[6] See Securities Exchange Act Release No. 23572, August 28, 1986; 51 FR 31865, September 5, 1986. It also should be noted that the present proposed rule change was one of those recommended by the NASD-commissioned report, Short-Sale Regulation of NASDAQ Securities, produced by former Commissioner Irving M. Pollack in July, 1986.

[7] See letters from T. Grant Callery, Vice President and Deputy General Counsel, NASD, to Katherine England, Branch Chief, SEC, dated March 20, 1990 and March 30, 1990.

[Release No. 34-28185; File No. SR-PSE-88-19]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Arbitration Process and the Use of Predispute Arbitration Clauses

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 8, 1988, the Pacific Stock Exchange, Inc. ("Exchange") or "PSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization ("SRO"). Amendments No. 1, 2, 3, 4 and 5, submitted on November 28, 1988, February 2, 1989, May 2, 1989, May 31, 1990, and July 3, 1990, respectively, make additional changes to the Exchange's rules under the proposed rule change and the statements of purpose concerning the proposed rule change. The PSE has requested accelerated approval of this proposal because the filing is substantially identical to rule filings of the New York Stock Exchange ("NYSE"), National Association of Securities Dealers ("NASD"), and American Stock Exchange ("Amex") that were approved by the Commission on May 10, 1989.[3] similar rule filings submitted by the Chicago Board Options Exchange ("CBOE") and Midwest Stock Exchange ("MSE") were subsequently approved by the Commission on August 2, 1989 and August 25, 1989, respectively.[4] The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

[3] Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989) (approving Files No. SR-NYSE-88-08, SR-NYSE-88-29, SR-NASD-88-29, SR-NASD-88-51, SR-NASD-89-19, and SR-AMEX-88-29) ("May 10, 1989 Order").

[4] Securities Exchange Act Release No. 27093 (August 2, 1989), 54 FR 32731 (August 9, 1989)

Continued

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend the Exchange's rules for administering arbitration proceedings contained in PSE Rule XII and address many issues regarding the fairness and efficiency of the arbitration process administered by the Exchange, as well as institute new requirements applicable to the use by Exchange members of predispute arbitration clauses in agreements with customers.

The PSE developed these changes to its arbitration rules through the auspices of the Securities Industry Conference on Arbitration ("SICA"). The SROs have worked together over the past twelve years to develop uniform arbitration rules through SICA, which is comprised of a representative from each SRO that administers an arbitration program,[5] a representative of the securities industry, and four representatives of the public.

On September 10, 1987, after a review of securities industry-sponsored arbitration, the Commission sent to SICA a letter that set out its views regarding the need for changes to the Uniform Code of Arbitration ("Uniform Code").[6] The Commission also sent letters to the SROs on July 8, 1988 requesting that the SROs review the issues raised by the current use of mandatory predispute arbitration agreements by their member firms.[7] Since September 1987, SICA and its subcommittees have met regularly to develop proposals in response to the Commission's letters.

The majority of the proposals to amend the PSE's rules were based on changes in the Uniform Code made by SICA largely in response to the September 1987 and July 1988 Commission letters.[8] The other proposals included in this order were developed to meet concerns that have arisen through the administration of the arbitration programs.

Substantially similar rule filings submitted by the NYSE, Amex and NASD were approved by the Commission on May 10, 1989. Comparable rule filings of the CBOE and MSE were approved on August 2, 1989 and August 25, 1989, respectively. In its May 10, 1989 Order, the Commission addressed fully the significant public dialogue and comment that preceded its action. This notice and order granting accelerated approval of the proposed rule change is consistent with the substance of the May 10, 1989 Order, and the discussion set out in that order is fully applicable to the PSE rules approved herein.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission's Public Reference Section.

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

(1) *Purpose*—(a) *Service of Pleadings.* The PSE proposes to modify the guidelines for service of pleadings in PSE Rule XII, sections 2 and 13, to provide that parties will be required to provide the Director of Arbitration with sufficient additional copies of pleadings for each of the parties and arbitrators. The PSE, unlike some of the other SROs that administer arbitration programs, will continue to act as an intermediary in pleadings administration. In this regard, the PSE maintains a master file on each arbitration case, which the Exchange believes precludes administrative problems that may occur if the parties (including unrepresented public customers) were required to serve pleadings directly upon one another. Additionally, the proposal specifies that service by first-class postage prepaid or by overnight mail service is considered to be made on the date of mailing and service by other means is considered to be made on the date of delivery.

This proposed rule change would apply both to arbitration proceedings conducted pursuant to the simplified procedures for small claims under PSE Rule XII, section 2 and regular cases initiated pursuant to PSE Rule XII, section 13.

Additionally, amended PSE Rule XII, section 13 provides that where both a PSE member firm and a person associated with the member firm are named parties to an arbitration proceeding, service on the associated person may be made either on the associated person, or on the member firm, which would then have the obligation to perfect service on the associated person. Proposed section 13 of Rule XII also provides that if the firm does not undertake to represent the associated person, the member firm must serve the associated person, advise all parties and the Director of Arbitration that the firm is not representing the associated person, and must provide the associated person's current address.

(b) *Classification of Arbitrators.* The arbitration panels at the SROs for cases involving public customers have historically been composed of a majority of "public arbitrators" and a minority of "industry arbitrators." However, there have not been clear requirements or specifications for who may serve as a public arbitrator. Under the Exchange's proposal, amended section 8 of PSE Rule XII would specify who may not serve as a public arbitrator and who may serve as an industry arbitrator.

The PSE's proposal addresses the potential for real or apparent bias on the part of public arbitrators who may have some professional or personal association with the securities industry. PSE Rule XII, section 8 defines as an industry arbitrator one who is associated with a member of an SRO, broker, dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser. PSE Rule XII, section 8 also deals with the appropriate role in the arbitration system of professionals such as attorneys or accountants who provide services to securities industry clients. The rule would classify as industry arbitrators, rather than public arbitrators, attorneys, accountants and other professionals

(accelerated approval of File No. SR-CBOE-89-06), and Securities Exchange Act Release No. 27187 (August 25, 1989), 54 FR 36926 (September 5, 1989) (accelerate approved of File No. SR-MSE-88-11).

[5] The SROs that administer an arbitration program are the PSE, NYSE, NASD, Amex, CBOE, MSE, Municipal Securities Rulemaking Board, Boston Stock Exchange, Cincinnati Stock Exchange and Philadelphia Stock Exchange.

[6] See letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President, NYSE, dated September 10, 1987. This letter was also addressed separately to each of the other members of SICA.

[7] See letter from David S. Ruder, former Chairman, SEC, to John J. Phelan, Jr., Chairman, NYSE, dated July 8, 1988. This letter was also addressed to the senior executive officers of all other SROs that administer arbitration facilities.

[8] The Exchange's rules developed in response to the Commission's letters are sections 8, 9, 11, 14, 20, 21, 25, 29, 31(b) and 34 of PSE Rule XII.

who devoted twenty percent or more of their professional work effort to securities industry clients within the last two years. In addition, the rule excludes from service as a public arbitrator persons who are spouses or other members of the household of a person associated with a registered broker-dealer, municipal securities dealer, government securities dealer or investment adviser.

PSE Rule XII, section 8 permits an individual who had been associated with the securities industry to become a public arbitrator after three years, if the individual has gone on to other work and is now retired from the securities industry. Also, under the rule, industry retirees will no longer be permitted to serve as public arbitrators, although they may continue to serve as industry arbitrators.

The PSE is also proposing disclosure provisions designed to assist parties in assuring that the panel assigned to each case is appropriately balanced. Under proposed section 9 of PSE Rule XII, the employment histories of the arbitrators for the past ten years, as well as the information provided by arbitrators pursuant to separate disclosure obligations contained in proposed section 11 of PSE Rule XII will be disclosed.[9]

The amendments regarding the classification of arbitrators are designed to promote impartial and knowledgeable decisions in the arbitration of disputes between investors and broker-dealers. The reclassification of securities industry retirees to the industry arbitrator pool and the establishment of a three year period before a former securities industry employee may serve as a public arbitrator should relieve any doubts that investors may have had regarding the impartiality of the public arbitrator pool. Similarly, the judgment to exclude from the public arbitrator pool lawyers, accountants and other professionals who regularly service the securities industry makes clearer the distinctions between the two arbitrator pools.

(c) *Arbitrator Disclosure and Background Information to be Supplied to the Parties.* The PSE also is proposing changes to its rules with regard to what disclosures arbitrators must make and how that disclosure is supplied to the parties. Under the current rules, parties have been provided only with the names and current business affiliations of the arbitrators proposed for their cases. Moreover, parties have had to request specifically any other information from the arbitration department within very short time frames. The Exchange's proposed rule change would provide to the parties all of the information disclosed by arbitrators pursuant to the amended disclosure rules at the time when the parties are first given the arbitrators' names. This change would provide full disclosure of arbitrators' backgrounds to parties at the earliest possible stage in the process, and should therefore avoid unnecessary postponements of hearings and promote knowledgeable use of challenges. Additionally, the Exchange's proposed rule change also would provide necessary guidance to arbitrators about the types of relationships that may create conflicts of interest.

Accordingly, proposed section 11(a) of PSE Rule XII establishes specific disclosure obligations of arbitrators. The rule requires that arbitrators disclose any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. These disclosures extend to any relationships the arbitrators may have with any party, or its counsel, or with any individual whom they have been advised will be a witness. The rule also requires arbitrators to disclose any such relationship involving members of their families or their current employers, partners or business associates.

Section 11(b) of PSE Rule XII admonishes prospective arbitrators to make a reasonable effort to inform themselves of any interests or relationships described in section 11(a). PSE section 11(c) specifically advises arbitrators that the duty to disclose under section 11(a) is an ongoing duty, and that any person who serves as an arbitrator must disclose at any stage of the arbitratation proceeding any such interests, relationships, or circumstances that arise, or that are recalled or discovered. Also, under PSE section 11(d), the Exchange has clarified that prior to the first session, the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to the rule. Parties are to be informed of any information disclosed pursuant to the rule, if the arbitrator has not been removed.[10]

As discussed above, PSE Rule XII section 9 provides that parties will be informed of the names and business affiliations of the arbitrators for the past ten years, as well as any information disclosed pursuant to section 11 of PSE Rule XII at least eight days prior to the date fixed for the initial hearing session. Under PSE section 9, parties may also make further inquiry through the department of arbitration concerning the arbitrators' background.

(d) *Appointment of Replacement Arbitrators on a Panel.* The PSE is also proposing two changes with respect to its ability to appoint a replacement arbitrator on a panel when a vacancy occurs. The first of these changes concerns the ability of the Director of Arbitration to replace an arbitrator who becomes unavailable to serve less than eight days prior to the first hearing session. Under the proposed amendment, if after appointment and prior to the first hearing session an arbitrator resigns, dies, withdraws, is disqualified or otherwise is unable to perform as an arbitrator, section 9 of PSE Rule XII authorizes the Director of Arbitration to appoint a replacement arbitrator. The rule permits the appointment of replacement arbitrators closer than eight days to the hearing. The rule also explicitly provides that parties are entitled to receive the same disclosure regarding the background of the replacement arbitrator as they received for the initial arbitrator(s), and have the same right to request more information, and to challenge the arbitrator as provided in the rules, although within a shorter time frame.

The second change concerning the ability to appoint replacement arbitrators addresses situations where an arbitrator resigns, dies, withdraws, is disqualified or otherwise is unable to perform as an arbitrator after the commencement of the first hearing session. Under the PSE's existing rules, if a vacancy occurs after the hearings have begun, both parties must consent either to the appointment of a replacement arbitrator to hear the rest of the case, or to continuing with the remaining arbitrator(s). Otherwise, if that consent cannot be obtained, the case must be reheard from the beginning with a full panel.

The proposed amendment to section 12 of the PSE Rule XII permits the remaining arbitrators to continue with

[9] The disclosure rules are proposed rule changes discussed in subsection (c) of this notice. The rules would require arbitrators to make extensive disclosures to the parties.

[10] Once the arbitation panel is sworn, it controls all of the procedural aspects of the hearing. Accordingly, under the Uniform Code and the PSE's Rule XII, the Director of Arbitration may not remove an arbitrator after the hearings have begun. An arbitrator should be alert to the guidelines set out in the American Bar Association/American Arbitration Code of Ethics for Arbitrators in Commercial Disputes ("ABA/AAA Code") and the applicable law with respect to arbitrator bias, and remove himself from the panel when conflicts arise after hearings have begun. See Canon II, E. (2) of the ABA/AAA Code

the hearing and determination of the controversy. However, under the proposal, if a party objects, a replacement arbitrator would be appointed by the Director of Arbitration under the same procedures as for the replacement of an arbitrator prior to the first hearing. The rule is designed to permit parties in particular cases to make the decision that makes the most sense for their case. For example, in cases where only peripheral issues have been dealt with and relatively little progress has been made, it may make sense for parties to request a replacement arbitrator. Conversely, where the hearings have progressed significantly, or are in fact substantially completed, it would make less sense for parties to request a replacement arbitrator, who then would have to learn all that had occurred in his absence.

In the event that parties do request a replacement arbitrator, it is clear that the arbitrators have the authority to require the rehearing of part or all of the case, or to withdraw from the case, effectively requiring the appointment of another panel, as is appropriate in their judgment. With this rule change, however, a party may no longer delay the resolution of the dispute by insisting on a rehearing whenever an arbitrator unexpectedly is unable to continue in his hearing of a case.

(e) *Discovery.* The PSE is proposing significant changes to its arbitration discovery rules, which should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits. Under current Exchange rules, parties have been expected to exchange documents pursuant to subpoena under the existing rules, but these do not have to be produced until the day of the hearing.

The PSE's proposed discovery rule expands party access to prehearing discovery and provides specific time frames for parties to request information from parties and for responding to such an information request. The rule also establishes a mechanism for prehearing conferences and for arbitrator involvement in prehearing matters where needed. Under the PSE's proposed rule change, arbitrators may also order depositions when appropriate.

Proposed section 14(a) of PSE Rule XII continues the policy established under existing rules for parties to cooperate to the fullest extent possible in the voluntary exchange of documents and information. In the event that voluntary exchanges are not sufficient, however, the rule establishes a clear framework for document production and information requests.

Proposed section 14(b) of PSE Rule XII provides that a party may serve a written request for information or documents 20 days after service of the claim or upon the filing of the answer, whichever is earlier. All parties are to receive copies of the request, and parties are required to endeavor to work out disputes regarding the request between themselves before an objection to the request is filed. Unless the requesting party allows more time, information requests must either be satisfied or objected to within 30 calendar days from the date of service. The party who made an information request has 10 days from receipt of the objection to respond to the objection.

Under the proposal, a party whose information request has not been satisfied may request in writing that the Director of Arbitration refer the matter to a prehearing conference. Parties may also find that there are other matters in addition to unresolved information requests that require the assistance of a prehearing conference. Section 14(d) of PSE Rule XII provides that the Director of Arbitration may appoint someone to preside over the prehearing conference. The prehearing conferences could be held either in person or by telephone conference call, and are designed to help the parties to reach agreement on such matters as the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of fact, identification and briefing of contested issues, and any other matter which will expedite the arbitration proceedings.

When a prehearing conference is unable to resolve any of these issues, section 14(e) of Rule XII provides for the Director of Arbitration to appoint a single arbitrator to issue subpoenas, direct appearances of witnesses, direct the production of documents and depositions, and set deadlines and issue any other ruling which will expedite the hearing and permit any party to develop fully its case. Section 14(e) of Rule XII provides that the single arbitrator appointed to decide prehearing matters would be a public arbitrator in those cases where public customers have requested a majority of public arbitrators for their panel.

Other amendments to the prehearing provisions require parties to serve on one another at least 10 days prior to the first hearing copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing and identify witnesses they intend to present at the hearing. Under proposed PSE section 14(c) of Rule XII, arbitrators may exclude from the arbitration documents not exchanged or witnesses not identified at that time. The provision does not extend to documents or witnesses that parties may use for cross-examination or rebuttal. In addition, the PSE is proposing to amend its rules regarding subpoenas. In PSE Rule XII, section 20, the Exchange proposes to require parties to serve copies of all subpoenas on all parties in addition to complying with applicable local, State or Federal laws governing subpoenas.

(f) *Preservation of a Record.* The PSE is amending its arbitration rules to assure that adequate records of arbitration proceedings are made and preserved. These records are necessary for court use in conjunction with any judicial review of arbitration proceedings. In this regard, section 25 of PSE Rule XII would codify a requirement that a verbatim record by stenographic reporter or tape recording be maintained. The rule further provides that, if a party to a proceeding elects to have the record transcribed, the cost of such transcription shall be borne by that party, unless the arbitrator(s) direct otherwise. If a record is transcribed at the request of a party, the rule requires that a copy shall be provided to the arbitrators.

(g) *Content and Public Availability of Arbitration Awards.* The PSE's proposed rule for arbitration awards expands both the content and public availability of arbitration awards. Prior to the Commission's May 10, 1989 approval of the amended arbitration rules of the Amex, NASD, and NYSE, the only information generally available to the public regarding SRO arbitration cases was the percentage of investors that received some portion of the amount they claimed against their broker-dealer. No data has been previously available with respect to particular arbitrators' awards. The PSE's proposal affords substantially more public access to the results of this process of dispute resolution.

Proposed section 29(e) of PSE Rule XII provides that awards shall contain the names of the parties, a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing(s), the names of the arbitrators and the signatures of the arbitrators

concurring in the award. The awards, including any written opinion voluntarily prepared by the arbitrators, are to be made public, except that the names of customer parties to the arbitration will be excluded pursuant to proposed section 29(f) of PSE Rule XII, if the customer parties request in writing that their names not be included in the public version of the award.

(h) *Arbitration Fees.* Under proposed section 31 of PSE Rule XII, the fees that may be assessed by the arbitrators for particular cases have been increased in order to defray the PSE's costs of administering its arbitration program. Proposed PSE section 31(d) would raise to $200 from $100 the minimum deposit for cases where no money damages are claimed. Proposed PSE section 31(h) sets a fee for prehearing sessions with an arbitrator of 75% of hearing session fees.

Proposed section 31(c) of PSE Rule XII also clarifies that arbitrators may assess the costs of conducting a hearing against the parties as they deem appropriate. These costs include not only the fees for each session, but all other costs of conducting the hearing contemplated under the rules, such as the costs of transcribing a record, or producing witnesses or documents, and any other costs contemplated by the agreement between the parties or permitted by applicable law. Further, proposed section 31(c) provides that, for each hearing session, arbitrators may assess fees equal to the largest hearing fees deposited by a party.

The PSE does not currently maintain a separate fee schedule pertaining to industry and clearing controversies. Like the proposed separate schedule of fees for industry controversies established under NYSE Rule 632, proposed section 32 of PSE Rule XII establishes a separate schedule setting forth the amounts which must be deposited with the Director of Arbitration in industry or clearing controversies which are required to be submitted to arbitration before the PSE as set forth in section 1 of PSE Rule XII. Moreover, PSE Rule XII currently does not give the Exchange the authority to assess fees in connection with pre-hearing activities, which are often costly and time consuming, and yet are necessary to expedite a hearing. Proposed section 32(h) establishes a non-refundable surcharge of $2,500 payable in industry or clearing controversies requiring expedited hearings. The PSE has incurred certain additional administrative costs associated with industry proceedings which, pursuant to court order or otherwise, have required expedited processing on the part of arbitration staff and arbitrators.

Sections 31(e) and 32(e) of the PSE Rule XII give the Exchange the authority not to refund filing fees where a case is settled or withdrawn five business days after the party receives notifications that the hearing date has been set. This change is based on the increased expenses associated with arbitration empanelment and hearing arrangements. The refund requirement does not apply to cases heard under the Exchange's expedited arbitration procedures for small claims.

Finally, the PSE is proposing to codify its definition of a "hearing session." Under section 31(b) of PSE Rule XII, a "hearing session" would be a meeting between the parties and arbitrators that lasts less than four hours.

(i) *Predispute Arbitration Clauses.* The PSE also proposes two rule changes designed through the auspices of SICA to improve disclosure to customers in account opening agreements and to restrict the content of the arbitration clauses. Under the proposed rule change, Section 34 of PSE Rule XII would require broker-dealers that employ predispute arbitration clauses to place immediately before the clause introductory language that would inform customers that they are waiving their right to seek remedies in court, that arbitration is final, that discovery is generally more limited than in court proceedings, that the award is not required to contain factual findings and legal reasoning, and that the arbitration panel typically will include a minority of arbitrators associated with the securities industry.

Proposed PSE section 34 of PSE Rule XII would require that the disclosure language be highlighted four ways. First, large or otherwise distinguishable type must be used. Second, the disclosure language must be set out in outline form so as to be noticeable to readers. Third, a statement, also highlighted, that provides that the agreement contains a predispute arbitration clause, and indicates where that clause is located in the contract, must be inserted into the agreement immediately preceding the signature line. Fourth, a copy of the agreement containing a predispute arbitration clause must be given to the customer, who is to acknowledge receipt of the agreement, either in the agreement itself or in a separate document.

Additionally, section 34 of PSE Rule XII prohibits SRO members from having agreements with customers that limit or contradict the rules of any SRO, or limit the ability of a party to file any claim in arbitration or limit the ability of the arbitrators to make any award.

(2) *Statutory Basis.* The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[11] which requires that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that there is good cause to approve the PSE's proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register.**[12] The proposal is substantially identical to the NYSE, NASD and Amex rule filings that were the subject of the Commission's May 10, 1989 approval order.[13] The NYSE's, NASD's and AMEX's versions of the same rules were published for public comment in the **Federal Register,** providing both the public and broker-dealer community with ample opportunity to comment on the proposed rule change that is the subject of this release. All public comments directed at the other SROs' arbitration filings were considered in the context of the review undertaken for the Commission's May 10, 1989 approval order.[14] In light of the

[11] 15 U.S.C. 78f(b) (1988).

[12] The proposed amendments to sections 8, 9, 11, 12, 14, 20, 21, 25 and 29 of PSE Rule XII are effective upon approval. The proposed amendments to sections 2, 13, 31 and 32 of PSE Rule XII are effective only for cases filed with the PSE after the date of this approval order. The proposed amendment to Section 34 of PSE Rule XII will become effective September 5, 1990. See letter from Rosemary A. McGuiness, Senior Counsel, PSE, to George Scargle, Staff Attorney, SEC, Division of Market Regulation, dated June 15, 1990.

[13] See note 3, *supra.*

[14] In addition, the PSE proposal is substantially identical to the CBOE and MSE rule filings that were approved by the Commission in August, 1989. See note 4, *supra.*

Commission's thorough consideration of all comments directed at the SRO arbitration filings that were the subject of the Commission's May 10, 1989 approval order, the substantially identical nature of the PSE's arbitration proposal, and the benefits that will accrue to investors from the availability of these improved arbitration procedures, the Commission believes that a good cause finding is justified.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b) (4) and (5) of the Act,[15] which require that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest.

The Commission believes that the proposed rules appropriately balance the need to strengthen investor confidence in the arbitration systems at the SROs, both by improving the procedures for administering the arbitrations and by creating clear obligations regarding the use by SRO members of predispute arbitration clauses, with the need to maintain arbitration as a form of dispute resolution that provides for equitable and efficient administration of justice. In particular, the Commission finds that the rule changes affecting the classification of arbitrators, arbitrator disclosure, discovery, the preservation of a record, the form and public availability of awards, and guidelines for the use of predispute arbitration clauses significantly advance the public interest in SRO arbitration.[16] Likewise, the Commission believes that the PSE's initiatives with respect to the handling of pleadings, appointment of replacement arbitrators, the use of small claims procedures, and the number of arbitrators should improve the efficiency and speed of arbitration, maintaining those bargained for qualities of traditional arbitration. Because these rules will aid in the just resolution of disputes between investors and broker-dealers, the Commission concludes that these rules are designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[17] The fee increases represented by these changes appear to be reasonable and provide for an equitable allocation of fees among SRO members and investors using the arbitration facilities consistent with section 6(b)(4) of the Act.[18]

IV. Solicitation of Comments and Conclusion

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 addressing 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 witheld 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 the filing and comment letters will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should prefer to the file number in the caption above and should be submitted by August 2, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the above-mentioned proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Dated: July 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16183 Filed 7-11-90; 8:45 am]

BILLING CODE 8010-01-M

[15] 15 U.S.C. 78f(b) (4) and (5) (1988).

[16] The Commission's approval of section 34 of PSE Rule XII, and the comparable rules of the NYSE, NASD, AMEX, CBOE, MSE and MSRB, is consistent with the conclusion of the Court of Appeals for the Sixth Circuit in *Roney* v. *Coren*, 875 F.2d 1218 (6th Cir. 1989) that the Commission has the authority to assure customer choice among SRO arbitration forums.

[17] 15 U.S.C. 78f(b)(5) (1988).

[18] 15 U.S.C. 78f(b)(4) (1988).

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 C.F.R. 200.30-3(a)(12) (1989).

SELECTIVE SERVICE SYSTEM

Senior Executive Service Performance Review Board; Appointments of Members

Announcement is made of the appointment of the following persons as members of the SES Performance Review Board for the Selective Service System: Gary Edles, General Counsel, Administrative Conference of the United States; William Olmstead, Executive Director, Administrative Conference of the United States; and Beverly Milkman, Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped.

The announcement of September 19, 1989, 54 FR 38581 is cancelled.

Dated: July 2, 1990.

Samuel K. Lessey Jr.,

Director.

[FR Doc. 90-16193 Filed 7-11-90; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF STATE

[Public Notice 1224]

Interim Working Party 11/9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Interim Working Party (IWP) 11/9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on July 30, 1990 at the National Association of Broadcasters, 1771 N Street N.W., Washington, DC in the McCollough Room commencing at 1 p.m.

IWP 11/9 deals with matters relating to the harmonization of HDTV standards between broadcast and non-broadcast applications.

The purpose of the meeting is to begin U.S. preparations for participation in the first meeting of IWP 11/9 to be held in Tokyo, October 3-9, 1990.

The CCIR has been primarily concerned with HDTV studio production standards but has also worked on standards for other parts of the "broadcast chain" from production through to reception. On emission topics, study effort has been directed at satellite broadcasting, data broadcasting, terrestrial broadcasting and baseband formats, as well as relationships with enhanced television. On program exchange topics, work has been done on standards for baseband formats, video disk, video tape, film and telecine.

The CCIR has recognized the need to coordinate its activities with non-broadcasting HDTV communities represented by industrial, scientific, medical, computer displays, telecommunications and printing/publication interests. This coordination is intended to provide a means for the various requirements of the non-broadcast applications to be conveyed to the CCIR.

To achieve this coordination CCIR Study Group 11 (Television) established Interim Working Part 11/9 in October 1989, to harmonize HDTV standards.

IWP 11/9 will pursue the following work program:

(a) Consider the general problems associated with the harmonization of broadcasting and non-broadcasting applications and develop basic guidelines for joint activities with the ISO, IEC and the CCITT;

(b) Take into account the views of the ISO, IEC and the CCITT, to provide information to Study Group 11 concerning:

—Harmonization of HDTV Recommendations,

—Those parameters of the HDTV studio production still under study;

(c) Consider the implications of harmonization of HDTV standards on Recommendations being formulated by IWP 11/7, the CMTT, the CCITT, etc., for the transmission of TV program signals, videoconferencing, etc.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to the U.S. Representative to IWP 11/9, Mr. Alex D. Felker, Wiley, Rein, & Fielding, 1776 K Street NW., 8th Floor, Washington, DC 20006, phone (202) 828-3102.

Dated: June 22, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90-16272 Filed 7-11-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1227]

Overseas Security Advisory Council; Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, July 25, 1990 at 8:30 a.m. at the Westin Hotel, Cincinnati, Ohio. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522-1003, phone: 202/663-0002.

Dated: June 25, 1990.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 90-16194 Filed 7-11-90; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 1228]

Shipping Coordinating Committee; National Committee for the Prevention of Marine Pollution; Meeting

The National Committee for the Prevention of Marine Pollution (NCPMP), a subcommittee of the Shipping Coordinating Committee, will conduct a special open meeting on July 26, 1990, at 9:30 a.m. in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this special meeting will be to receive comments from public and private sector interests on whether the U.S. should support a proposal to consider designation of the Caribbean Sea as a special area under Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), as amended.

Under Annex V of MARPOL 73/78 a special area means a sea area where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by garbage is required. In these designated special areas, the disposal of all garbage is prohibited with the exception of food wastes which can only be disposed of when greater than 12 nautical miles from nearest land.

The U.S. is a party to Annex V of MARPOL 73/78. The proposal to consider the designation of the Caribbean Sea as a special area is related to the U.S. initiative to designate the Gulf of Mexico as a special area under that same annex.

Members of the public may attend this meeting up to the seating capacity of the room.

For futher information or documentation pertaining to the NCPMP meeting, contact Lieutenant Commander G. R. McEachin, U.S. Coast Guard Headquarters (G-MER-3), 2100 Second Street, SW., Wasshington, DC 20593-0001, Telephone: (202)267-0422.

Dated: June 22, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90-16195 Filed 7-11-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1226]

Soviet and Eastern European Studies Advisory Committee; Meeting

The Department of State announces that the Soviet and Eastern European Studies (title VIII) Advisory Committee will convene on August 10, 1990, beginning at 9 a.m. in room 1107, U.S. Department of State, 2201 C Street NW., Washington, DC. The meeting will be open to the public.

The Advisory Committee will meet in order to assess the accomplishments of the title VIII grant program, and to discuss changes in the Soviet Union and Eastern Europe, and the impact of those changes on title VIII. The morning session will focus on title VIII accomplishments over the past six years, while the afternoon sessions will address the current needs of the Soviet and East European fields and title VIII's role in the future.

While the meeting is open to the general public, attendance will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. Those wishing to attend should notify Joanne Bramble, INR/RES, U.S. Department of State, (202) 632-2066. All attendees must use the C Street entrance to the building.

Dated: June 20, 1990.

Kenneth E. Roberts,

Executive Director, Soviet and Eastern European Studies Advisory Committee.

[FR Doc. 90-16196 Filed 7-11-90; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 90-15]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, August 30, 1990 at Coast Guard Base Galveston, 1 Ferry Road, Galveston, Texas. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: June 27, 1990.

J.M. Loy,

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

[FR Doc. 90-16235 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-14-M

[CGD8 90-16]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, August 30, 1990 at Coast Guard Base Galveston, 1 Ferry Road, Galveston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 Noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: June 27, 1990.

J.M. Loy,

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

[FR Doc. 90-16236 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-14-M

[CGD8 90-14]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of the twenty-fourth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, September 27, 1990 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: June 27, 1990.

J.M. Loy,

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

[FR Doc. 90-16237 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-14-M

[CGD 90-13]

Lower Mississippi River Waterway Safety Advisory Committee; VTS Subcommittee Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of three meetings of the VTS Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee. The first meeting will be held on Thursday, July 26, 1990. A second meeting will be held on Thursday, August 9, 1990. A third meeting will be held on Thursday, August 23, 1990. All meetings will be held at the Crescent River Port Pilots' Office, 409 Belle Chasse Highway South, Belle Chasse, Louisiana. The meetings are scheduled to begin at 9 a.m. The agenda for the meetings consists of the following items:

1. Call to order.
2. Recommendations for a proposed New Orleans Vessel Traffic Service.
3. Adjournment.

All meetings are open to the public. Members of the public may present written or oral statements at the meetings.

Additional information may be obtained from Commander C.T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA

70130-3396, telephone number (504) 589-3074.

Dated: June 27, 1990.

J.M. Loy,

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

[FR Doc. 90-16238 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-14-M

Cosmic Radiation; Symposium

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of FAA symposium on cosmic radiation.

SUMMARY: Notice is hereby given of an FAA sponsored symposium on cosmic radiation exposure of air carrier crewmembers.

DATES: September 18 and 19, 1990.

ADDRESSES: The symposium will be held at the FAA Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., Oklahoma City, OK.

FOR FURTHER INFORMATION CONTACT: Dr. Wallace Friedberg, AAM-624, Civil Aeromedical Institute, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125. Advance registration is required.

SUPPLEMENTARY INFORMATION: The agenda will include (1) Reviews of cosmic radiation exposure of air carrier crewmembers, estimation of associated health risks, and radiation protection guidelines, and (2) workshops on solar flares, monitoring of air crews for radiation exposure, and education of air crews.

Issued in Washington, DC on July 10, 1990.

Robert R. McMeekin,

Federal Air Surgeon.

[FR Doc. 90-16263 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

[Summary Notice No. PE-90-30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, procesing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summar 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.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 1, 1990.

ADDRESSES: 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 CONTACT: 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 July 5, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25950.

Petitioner: Mr. Dagfinn Myrvang.

Sections of the FAR Affected: 14 CFR 61.155(b)(2).

Description of Relief Sought: To allow petitioner to qualify for an airline pilot license by receiving credit for simulator evaluation test hours.

Docket No.: 26204.

Petitioner: Cowley County Community College.

Sections of the FAR Affected: 14 CFR 147.31.

Description of Relief Sought: To allow petitioner to develop and teach the powerplant curriculum without being certified by the FAA as an aviation maintenance technician school. Petitioner expects its program to be ready for certification within the next 12 to 18 months.

Docket No.: 26219.

Petitioner: Mr. A. R. Fisher.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To allow petitioner to serve as a pilot of an aircraft engaged in air carrier operations under part 121 after his 60th birthday.

Docket No.: 26237.

Petitioner: MCI Communications Corporation.

Sections of the FAR Affected: 14 CFR 91.45.

Description of Relief Sought: To allow petitioner to move its three- and four-engine aircraft to a repair facility with an engine inoperative.

Docket No.: 26244.

Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.356.

Description of Relief Sought: To exempt petitioner's Electronic Flight Instrument Systems aircraft from the 20 percent equipage requirement of the TCAS II traffic alert and collision avoidance system regulation.

Docket No.: 26262.

Petitioner: Air Wisconsin, Inc.

Sections of the FAR Affected: 14 CFR 121.404(b).

Description of Relief Sought: To allow a portion of petitioners pilot group (currently flying the BAe 146) to continue in service beyond January 2, 1991, without having completed windshear flight training in petitioner's low-altitude flight training program.

Docket No.: 086CE.

Petitioner: Beech Aircraft Corporation.

Sections of the FAR Affected: 14 CFR 23.201 (e), (f)(4), and (f)(5), 23.203 (c)(4) and (c)(5); and 23.1545 (b)(5) and (b)(6).

Description of Relief Sought: To allow the Beech Model 1900D airplane to comply with certain stall characteristics and airspeed indicator markings that are appropriate to this category of aircraft.

Dispositions of Petitions

Docket No.: 25789.

Petitioner: Martin Aviation, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To allow petitioner's pilots to remove and replace passenger seats to reconfigure its aircraft for passenger and cargo operations.

Partial Grant, June 21, 1990, Exemption No. 5203

[FR Doc. 90-16262 Filed 7-11-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 6, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-00675.
Form Number: IRS Form 1040EZ.
Type of Review: Revision.
Title: Income Tax Return for Single Filers With No Dependents.
Description: This form is used by certain single individuals to report their income subject to income tax and to figure their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistical use.
Respondents: Individuals or households.
Estimated Number of Responses/Recordkeepers: 19,440,201.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 minutes.
Lerning about the law or the form—33 minutes.
Preparing the form—44 minutes.
Copying, assembling, and sending the form to IRS—41 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 26,144,221 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-16243 Filed 7-11-90; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 6, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form *9252.*
Type of Review: New collection.
Title: Order Blank for New Businesses.
Description: Form 9252 enables small businesses who request an EIN (employer's identification number) to order materials which will help them determine and order the forms they need to meet filing requirements.
Respondents: Small businesses or organizations.
Estimated Number of Responses: 10,000.
Estimated Burden Hours Per Respondents/Recordkeeper: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 500 hours.
OMB Number: 1545-1059.
Form Number: IRS Forms 7018 and 7018-A.
Type of Review: Revision.
Title: Employer's Order Blank for Forms (Form 7018) and Agricultural Employer's Order Blank for Forms (7018-A).
Description: Forms 7018 and 7018-A allow taxpayers who must file information returns a systematic way to order information tax forms materials.
Respondents: Businesses or other for-profit.
Estimated Number of Responses: 973,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 48,650 hours.
Clearance Officer: Garrick Shear (202) 535-4297 Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90-16244 Filed 7-11-90; 8:45 am]
BILLING CODE 4830-01-M

Internal Revenue Service

[Delegation Order No. 114 (Rev 9)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation Order designates officials of the Internal Revenue Service to act as "Competent Authority" under tax treaties and tax information exchange agreements.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Calvin Watson, Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, room 3301, Washington, DC 20024, telephone number 202-287-4752 (Not a toll-free number).

Designation to Act as "Competent Authority" Under Tax Treaties and Tax Information Exchange Agreements

1. Pursuant to the authority delegated to the Commissioner by Treasury Order No. 150-17, there is hereby delegated to the Assistant Commissioner (International) the authority to act as "competent or taxation authority" under the tax treaties of the United States and under tax information exchange agreements.

2. The Assistant Commissioner (International) shall have the authority to administer all those functions derived from the operating provisions of the tax treaties and tax information exchange agreements. This authority may not be redelegated.

3. The Assistant Commissioner (International) is also delegated the authority to interpret and apply such tax treaties and tax information exchange agreements, but in such matters shall act only with the concurrence of the Associate Chief Counsel (International). This authority may not be redelegated.

4. Delegation Order No. 114 (Rev. 8), effective December 24, 1987, is hereby superseded.

Dated: June 19, 1990.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90-16183 Filed 7-11-90; 8:45 am]

BILLING CODE 4830-01-M

Office of Foreign Assets Control

Cuban Assets Control Regulations, Fitness and Qualification of Applicants

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: Consistent with the licensing requirements governing persons engaged in travel service to, from, and within Cuba and persons forwarding family remittances to Cuba, the Office of Foreign Assets Control invites public comment concerning the fitness and qualification of license applicants. It also informs the public of the identity of additional travel service providers and family remittance forwarders authorized to engage in these services.

DATES: Comments must be submitted on or before September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief of Enforcement, Tel.: (202) 376-0400, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376-0236, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Sections 515.560 and 515.563 of the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), were amended, effective December 23, 1988, to require that persons engaged in service transactions related to travel to Cuba or the forwarding of remittances to close relatives in Cuba obtain a specific license from the Office of Foreign Assets Control. The Regulations provide that licenses will be issued only upon the applicant's affirmation and demonstration "that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States." 31 CFR 515.560(i)(1)(ii).

On April 21, 1989, June 6, 1989, and on November 30, 1989, the Office of Foreign Assets Control published a list of license applicants, who had been granted provisional authority to provide services pending review of their completed license applications (54 FR 16188, 54 FR 24262 and 54 FR 49390). Provisional authority based on submission of a completed license application is necessary to lawfully provide travel services or family remittance forwarding services. Subsequent to the publications of the earlier notices, 13 additional license applicants, listed below, have submitted completed applications and have been granted provisional authority to engage in these services.

In order to evaluate the assertions made by license applicants that they do not engage in discriminatory practices, and to determine the fitness and qualification of the license applicants listed below, anyone having personal knowledge regarding the applicants (including employees, officers, and directors) is invited to comment concerning the following:

1. Any evidence of discrimination based on race, color, religion, sex, citizenship, place of birth, national origin, or ability to pay (charging different amounts based on the financial means of the travelers) with regard to the provision of or payment required for accommodations and meals, or other services provided in connection with travel to, from, or within Cuba;

2. Any evidence of demanding, soliciting, receiving, or forwarding to Cuba payments or remittances in excess of the amounts permitted by § 515.563 of the Cuban Assets Control Regulations, namely, family remittances to close relatives in amounts not to exceed $500 in any consecutive 3-month period to any one payee or household, and remittances for the purpose of enabling emigration from Cuba on a one-time basis in an amount not to exceed $500 to any one payee; and

3. Any evidence of charging any fees prohibited by U.S. law or any arbitrary and exorbitant fees which exceed the total of official Cuban government consular fees and reasonable service charges.

Comments should be submitted in writing to the Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., room 400, Washington, DC 20220. To the extent permitted by law, the identity of anyone submitting information, as well as any identifying information provided, will be held in confidence and will not be released without the express permission of the person submitting the information. Any information provided will be evaluated by the Director of the Office of Foreign Assets Control to determine its reliability and relevance to the investigation of applicants.

LIST OF APPLICANTS FOR LICENSES TO PERFORM TRAVEL, CARRIER, AND FAMILY REMITTANCE FORWARDING SERVICES

Name of applicant (Company name of individual); Principal officer (If applicant is incorporated); Address (As supplied by applicant)	Travel service provider ("TSP"); Carrier service provider ("CSP"); Family remittance forwarder ("FRF")
Americuba	TSP, FRF
Jose Luis Cabrera	
2116 Palm Avenue	
Hialeah, FL 33010	
California Miami Services	TSP, FRF
Manuel Castro & Griselli Monge	
4164 Tweedy Blvd.	
South Gate, CA 90280	
Escapade Travel, Inc.	TSP
Ileana Gonzalez	
5228 West Flagler Street	
Miami, FL 33134	
Gulf Flite Center, Inc.	CSP
Ronald D. Ciaravella	
P.O. Box 13005-Airgate Station	
Sarasota, FL 33578-3005	
Gulfstream International Airlines, Inc.	CSP
Thomas L. Copper	
1010 Redbird Avenue	
Miami Springs, FL 33166	
Nuevo Miami Esta En Cuba, Inc.	TSP, FRF
Narciso Gonzalez	
4306 SW. 8th Street	
Miami, FL 33134	
Varadero Cuba Envios, Inc	TSP, FRF
Celso Gamazo	
10841 SW. 40th Street	
Miami, FL 33165	
Caribe Express	TSP, FRF
Ramon G. Figueroa	
1205 Bernard	
Pasadena, TX 77506	
Horizon Professional Services, Inc.	TSP, FRF
Julio Vasquez	
1361 Palm Avenue	
Hialeah, FL 33010	
Pro Cuba Corporation	TSP, FRF
Guillermo Garcia	
3648 Palm Avenue	
Hialeah, FL 33012	
Leonardo Castro	TSP, FRF
1250 N.W. 7th Street	
Suite #105	
Miami, FL 33125	
The following company, which was previously listed, has a new owner and new business address:	
Jetflite, Inc.	CSP
Ralph J. Iglio	
1575 W. Commercial Blvd.	
Hanger 33A	
Ft. Lauderdale, FL 33309	

Dated: June 11, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 22, 1990.

Peter K. Nunez,

Assistant Secretary, (Enforcement).

[FR Doc. 90-16250 Filed 7-9-90; 12:36 pm]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 134
Thursday, July 12, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERCY REGULATORY COMMISSION

NOTICE OF CLOSED MEETING

July 9, 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: July 11, 1990, 9:30 a.m.

PLACE: 825 North Capitol Street, NE., room 9306, Washington, DC 20426.

STATUS: Closed.

MATTER TO BE CONSIDERED:

Docket Nos. CP89-2047-000 and CP89-2048-000. Kern River Gas Transmission Company
Docket Nos. CP89-1-000 and CP89-2-000. Mojave Pipeline Company

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

The following Commissioners voted that agency business requires the holding of a closed meeting on less than the seven days' notice requirement of the Government in the Sunshine Act:

Chairman Allday
Commissioner Trabandt
Commissioner Moler
Commissioner Langdon

Lois D. Cashell,

Secretary.

[FR Doc. 90-16473 Filed 7-10-90; 4:07 pm]

BILLING CODE 6717-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 17, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 19, 1990, 10:00 a.m.

By direction of the Federal Election Commission, the meeting of July 19, 1990 is cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90-16442 Filed 7-10-90; 1:30 pm]

BILLING CODE 6715-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Meeting

TIME AND DATE: 4 p.m., Tuesday, July 17, 1990.

PLACE: Opryland Hotel, 2800 Opryland Drive, Nashville, Tennessee 37214. (615) 889-1000.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Final Rule: Parts 722 and 741, NCUA's Rules and Regulations, Appraisals and Requirements for Insurance.
6. Regulatory Review, NCUA's Rules and Regulations:
   a. Final Amendment: Part 724, Trustees and Custodians of Pension Plans, and § 701.19, Retirement Benefits for Employees of Federal Credit Unions.
   b. Final Amendment: Part 749, Records Preservation Program.
7. Request for a Community Charter Expansion by Central Michigan Community Federal Credit Union, Clare, Michigan.
8. Request for Comments: Revised Operating Fee Scale.
9. Legislative Update.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90-16438 Filed 7-10-90; 1:30 pm]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of July 16, 1990.

A closed meeting will be held on Tuesday, July 17, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 17, 1990, at 2:30 p.m., will be:

Institution of administrative proceedings of and enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of and enforcement nature.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Mueller at (202) 272-2200.

Dated: July 10, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16478 Filed 7-10-90; 4:07 pm]

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federal register

Thursday
July 12, 1990

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

National Institute of Justice

Boot Camps for Juvenile Offenders; Constructive Intervention and Early Support; Notices

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Boot Camps for Juvenile Offenders: Constructive Intervention and Early Support

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Program announcement.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) in cooperation with the Bureau of Justice Assistance pursuant to section 243(2) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces an initiative to develop, test and disseminate information on a prototypical juvenile boot camp as an intermediate sanction program.

The purpose of the initiative is to develop and test a juvenile boot camp program. This program will focus on adjudicated, non-violent, juvenile offenders who are under 18 years of age and emphasize discipline, treatment and work (DTW). The program will: Serve as a criminal sanction; promote basic, traditional, moral values inherent in our national heritage; increase academic achievement; provide discipline through physical conditioning and team work; include activities and resources to reduce drug and alcohol abuse among juvenile offenders; encourage participants to become productive law-abiding citizens; promote literacy by using intensive, systematic phonics; and instill a work ethic among juvenile offenders.

OJJDP invites public and private organizations to submit competitive applications to develop a prototypical (model) juvenile boot camp program. Preference will be given to collaborative efforts involving both public and private organizations because they afford authority, access to resources and maximum flexibility in organizing and deploying human and financial resources. The development program includes three stages: (1) Prototype (model) development based on the solicitation design; (2) Development of training and technical assistance materials to transfer the prototype design; and (3) Testing of the prototypes. Concurrent with these three stages and to guide prototype development, a pilot effort will be initiated during the prototype stage. If all of the development activities are successful, the pilot efforts will become test sites.

Upon completion of the prototype stage, OJJDP will determine whether or not to move to the next stage of the development process and continue to pilot activities.

Between $300,000 and $1,000,000 will be made available through a cooperative agreement to support three stages, including the pilot activities, in each site for an eighteen (18) month period. A non-competitive continuation award for training and technical assistance to the test sites, and/or training and technical assistance for additional test sites may be supported. Up to three cooperative agreements will be awarded. Applicants are encouraged to present cost-competitive proposals.

DATES: The deadline for receipt of applications is 5 p.m. EDT August 31, 1990. A workshop for potential applicants is planned for approximately forty-five days prior to the application due date.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas C. Dodge, Special Emphasis Division (202) 307-5914, OJJDP, 633 Indiana Avenue NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The juvenile boot camp program is designed for non-violent juvenile offenders to provide discipline, treatment and work as a constructive intervention and early support in response to their criminal behaviors. Discipline is used to control behavior and to teach self-control which is essential for completing the academic, employment and treatment components of the program, and for making a successful transition back to the community. Drug testing and treatment for illegal use are essential components because drug abuse is physically, psychologically and emotionally debilitating, and often associated with involvement in other crime. Work experience and training related to job skill development are critical for obtaining legitimate employment, and may be important factors in reducing recidivism. Restitution will also be an important component encouraging accountability among the program participants. Literacy will be promoted by requiring intensive systematic phonics instructions for all juvenile offenders.

It is important to emphasize that this program constitutes an "*intermediate sanction*" (*i.e.*, punishment less severe than long-term institutionalization, but more severe than immediate supervised release). While the program will be designed to ensure public safety, it should not be used for violent or serious repeat offenders deserving long-term institutionalization.

Target Population

The target population is non-violent juvenile offenders who are at high risk of continuing involvement in delinquency and/or drug and alcohol abuse. They will be adjudicated juvenile offenders awaiting implementation of the court disposition. Applicants must address one of the following age groups:

- Juveniles under fifteen (15) years of age,
- Juveniles fifteen (15) through seventeen (17) years of age, or
- Juveniles under eighteen (18) years of age

that meet appropriate eligibility criteria. In selecting applicatons for award, consideration will be given to supporting a set of projects that differ with respect to the age group of the target population in order to assess the effectiveness of the juvenile boot camp program for different age groups. As an adjudicated offender eligible for participation in the program they would have to:

- Have no history of mental illness;
- Not be considered violent or have a history of involvement in violent crimes;
- Not be an escape risk; and,
- Demonstrate motivation to participate in the program.

The target population would not include serious habitual offenders who would ordinarily be assigned to a correctional institution.

Approach

The juvenile boot camp program consists of *four phases* each emphasizing constructive intervention and early support. The phases are: Phase I—Selection; Phase II—Intensive Training; Phase III—Preparedness; Phase IV—Accountability. The juvenile boot camp program will:

- Provide a needed intervention for non-violent juvenile offenders;
- Emphasize self-discipline, law-abiding behavior and drug abstinence, as well as work ethic and skills, so that juvenile offenders will be better prepared to pursue legitimate employment opportunities and meaningful career options; and,

• Promote principles of personal accountability, self-esteem, self-motivation, self-discipline, and commitment to traditional moral values.

• Promote literacy through initial training in intensive systematic phonics.

This approach requires that existing system resources (employment, education, drug testing and treatment and other community services) be redeployed and coordinated to give priority to serving program youth, particularly as they move into the third and fourth phases of the program. During these phases, all services supported by the project service provider must be coordinated with local community services for program participants.

Resource Coordination

To implement the approach outlined above, this program will be jointly supported by Federal agencies, private organizations and appropriate state and local public and private services.

II. Program Goals and Objectives

The goals and objectives are as follows:

A. Goals

Develop a cost effective juvenile boot camp that is appropriate for non-violent juvenile offenders;

Support juvenile offenders in becoming productive, law-abiding citizens;

Instill basic, traditional, moral values inherent in our national heritage; increase academic achievement;

Assure that adjudicated juvenile offenders are punished and held accountable for their criminal behaviors;

Provide testing and treatment that serves to reduce drug abuse among juvenile offenders; and

Use intensive systematic phonics for increasing literary skills for juvenile offenders.

B. Objectives

To identify, screen, refer and conduct intake activities;

To conduct individual comprehensive diagnostic reviews;

To provide discipline through a military-like regimen of physical conditioning and team work;

To provide work skills, employment experience and instill a work ethic;

To provide remedial, special and alternative education; including intensive systematic phonics;

To provide intensive drug and alcohol abuse testing and treatment;

To require restitution to the victims; and

To develop and continually revise detailed performance workplans to guide service.

III. Program Design

This development program will be implemented through a competitive solicitation. Each juvenile admitted to the program will proceed through four phases. Applicants must specify and justify the length of time they propose for each stage. The four phases consist of Selection, Intensive Training, Preparedness, and Accountability. The major activities and services for each phase are outlined below.

The first phase, Selection, will consist of initial selection, diagnostic screening, interviewing, examining, and processing of specified numbers of eligible participants. After a juvenile has been selected based on a random assignment process, program staff will screen, interview and complete processing.

The second phase, Intensive Training, will consist of a highly structured residential program that can change the behavior and attitudes of participants while they are isolated from the influences of drugs and crime. Participants should remain in this phase no less than 90 days. Military-like drills and discipline will be emphasized. Performance workplans will be developed that will guide the Intensive Training Phase as well as subsequent phases. It is important to ensure that successful graduates are able to resist negative influences in their communities, complete academic programs and engage in productive employment. To accomplish this, the program design includes a third phase, Preparedness and a fourth and final support phase, Accountability.

The Preparedness phase is designed to continue and reinforce, through intensive supervision, the Intensive Training activities and services. Participants will be given specific direction pursuant to their performance workplans in all aspects of their education, work, drug treatment and other activities to enable them to make the transition to the Accountability Phase. During the Accountability Phase program participants will be encouraged to assume more personal responsibility in their own community.

If participants in the Preparedness and Accountability Phases of the program fail to pursue academic and vocational training or employment, and to participate in community service activities as well as treatment services, their involvement in the program will be terminated pending a review by the court in conjunction with program personnel.

Phase I: Selection

Objective: To select, screen, refer and conduct intake activities.

Process: Adjudicated juvenile offenders who are determined to be eligible for confinement by the court will be randomly assigned to the program. Those referred to the program will be screened to the program by the appropriate youth service agency. They will be screened, interviewed, selected and processed by program staff. Juvenile offenders not assigned to the constructive intervention program will be placed on the control group.

Activities

• Disposition
• Designation of an Eligible Group of Adjudicated Juveniles
• Commitment
• Referral
• Screening/Drug Testing
• Selection
• Intake

Phase II: Intensive Training

Objective: To provide discipline, treatment, and work educational services, and character development.

Process: In this phase of the program juveniles will participate in a rigorous physical conditioning regimen, comprehensive diagnostic assessments and intensive academic and employment skills development. Services will be designed to build confidence, self-esteem, teamwork and promote basic, traditional, moral values inherent in our national heritage.

Activities

• Diagnostic Assessments (drug testing, medical, educational, social, psychological, employment)
• Physical Conditioning and Athletics
• Work Skills
• Education: Remedial, Special, Alternative
• Counseling
• Family Support
• Personal Hygiene/Health Maintenance
• Drug and Alcohol Abuse Testing, Prevention and Treatment
• A Routine Approach to Activities That Reinforce Self-Discipline

Phase III: Preparedness

Objective: To provide discipline, treatment and work experience, educational services, and character development.

Process: Juveniles will continue to participate in a rigorous physical conditioning regimen pursuant to their performance workplan, and focus their academic and work activities in specific

areas, based upon their identified needs and problems. They will gain experience in highly structured settings. Program staff will provide and/or guide all services in conjunction with community service providers.

Activities

- Diagnostic Assessment
- Physical Conditioning and Athletics
- Work Skills Enhancement and Experience
- Education: Remedial, Special, Alternative
- Counseling
- Family Support
- Drug and Alcohol Abuse Testing, Prevention and Treatment
- Community Service

Phase IV: Accountability

Objective: To provide direction and support for self-discipline, treatment and work experience, as well as educational services and drug resistance skills.

Process: Juveniles will continue a rigorous physical conditioning regimen, and academic and employment activities, and make restitution. To the victim, program staff will guide all services which will be provided by a variety of community public agencies and private organizations.

Activities

- Physical Conditioning and Athletics
- Work Experience
- Education
- Counseling
- Family Support
- Drug and Alcohol Abuse Testing, Prevention and Treatment
- Restitution to the Victim
- Monitoring

As the program embraces intensive physical conditioning and discipline, specially qualified military personnel will be sought to assist in curriculum development, staff development, and training and technical assistance.

Evaluation

The evaluation will be implemented by an independent public or private organization selected through a competitive solicitation. It will be designed to determine the extent to which adjudicated juvenile offenders as program participants: Receive punishment and are held accountable for their adjudicated criminal behaviors; continue their education and improve their academic performance; acquire work skills and experience, as well as a work ethic; are motivated to become productive law-abiding citizens; and receive treatment that serves to reduce their involvement in drug and alcohol abuse. Program organization, staffing, services provided to the juvenile participants, staff and community attitudes toward the program, as well as program costs will be documented. Emphasis will be placed on determining the feasibility and cost-effectiveness of a juvenile boot camp that emphasizes DTW for different types of juvenile offenders. The evaluation will consist of two components: (1) A study of the prototype development and implementation process, and (2) a study of program operations and impact.

Random assignment is required for conducting evaluations that are based on experimental designs. Applicants who demonstrate their willingness to assign eligible offenders randomly will be given strong perference. The recipient must work with the court and the State or local corrections agency to assist them in implementing the experimental design.

IV. Program Strategy

OJJDP's planning and program development activities are guided by a framework that specifies four sequential phases of development: Research, Development, Demonstration and Dissemination. This framework guides the decision-making process regarding the funding of future stages of the program. This program is a development initiative. The purpose of the development initiative is to develop a prototype, in conjunction with a pilot activity, and to determine its effectiveness through a controlled testing process. The program will be conducted in three discrete incremental stages. The three stages include: (1) A comprehensive description of the development, implementation and operation of a prototypical program and initiation of a pilot site; (2) The development of a training and technical assistance package in order to provide intensive training to the test site; and (3) testing of the prototype.

Technical and subject matter portions of the program will be guided by recommendations of an advisory committee established specifically for the program. The advisory committee will provide comments and recommendations regarding the strategies and activities for this program. It may be necessary to change or supplement advisory committee members for different stages of the program; however, the objective will be to include technical and subject matter experts capable of addressing issues related to each of the program stages. The advisory committee members should have expertise in juvenile justice system research and evaluation, training and technical assistance development and delivery, and knowledge of intermediate sanctions for juveniles.

Each stage of the incremental program development process detailed below is designed to result in a complete and publishable product and a dissemination strategy to inform the field of the development of the program and the results and products of each stage. This award is providing funds for stages I, II and III. A decision is made at the completion of each stage, based on availability of funds, and the quality and utility of the products, whether to invest additional funds to complete the current stage or to terminate the program.

A. Stage I—Prototype Development

The recipient will develop a prototype design for the development, implementation, and operation of a constructive intervention program. The recipient will simultaneously implement a pilot activity to guide development of the prototype design. The applicant must identify appropriate land, facilities and other resources beyond those provided by the Federal grant, that will be necessary for the implementation of all three stages. This will involve developing detailed service agreements with appropriate agencies. The prototype design will be accompanied by a detailed policy and procedure manual to be developed by the recipient. Appropriate technical and subject matter expertise will be utilized to refine the design and develop the prototype.

The prototype design and related policies and procedures will provide guidance regarding the following: Identification of the appropriate target group; relationship of the program to other public and private youth-serving agencies; program organization and management; the philosophy and content of the intervention; resource development; program monitoring; and evaluation of program effectiveness. The prototype design and the accompanying policies and procedures manual will be used as the basis for the development of a training and technical assistance package. The information will become part of the package to be disseminated to appropriate state and local agencies.

1. Activities

The major activities of this stage are:

- Preparation of a plan for refining the prototype and developing related policies and procedures and for implementing the pilot;
- Development of the prototype and related policies and procedures;
- Participation and review by the program advisory committee; and

• Development and implementation of a dissemination strategy.

2. Products

The products to be completed during this stage are:

• Plan for prototype development and pilot activity specifying, in detail, the approach and activities to be undertaken for each step of this stage, and the projected costs on a monthly basis;

• Draft and final prototype design and related policies and procedures manual; and

• Dissemination strategy to inform the field of the development of the program, products and results of this stage.

B. Stage II—Training and Technical Assistance

While a decision to continue pilot activity, develop training and technical assistance materials and to proceed with the test of the prototype design will be made during or following completion of the prototype development stage, the applicant is expected to explain the methods and approaches that would be employed to implement these stages. In order to ensure the applicant's full understanding of the entire development effort, the initial application must address and explain the implementation and coordination of all three stages of the initiative (i.e., prototype development and pilot implementation, training and technical assistance development, and testing).

Upon successful completion of stage I, and with the approval of OJJDP, the recipient will transfer the prototype design, including policies and procedures, into a training and technical assistance package. A comprehensive training manual must be developed to encourage and facilitate implementation of the prototypes. The training manual must outline the major issues that need to be addressed in developing the constructive intervention program and detail the program prototype. The training manual should be the focal point of the entire training and technical assistance package. The primary audience will be policymakers and practitioners involved in resource allocation and program development related to supervision of youth. The manual must be designed for a formal training setting, and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, the manual should include a complete description of the prototype and incorporate related policies and procedures. The manual should contain instructions and supplementary materials for trainers to facilitate presentation, and ensure understanding and successful adaptation and implementation of the prototype.

1. Activities

The major activities of this stage are:

• Preparation of a plan for developing the training and technical assistance package;

• Development of the training and technical assistance materials;

• Recruitment and preparation of the training and technical assistance personnel;

• Testing of the training curriculum manual;

• Participation and review by the advisory committee; and

• Development and implementation of a dissemination strategy.

2. Products

The products to be completed during this stage are:

• Plan for the development of the training and technical assistance package;

• Identification of training and technical assistance personnel;

• Draft and final training and technical assistance package, including the training curriculum manual and information materials; and

• Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

C. Stage III—Prototype Implementation and Testing

This stage of the program consists of a test of the prototype. The recipient, in cooperation with the appropriate state and/or local agencies will implement the prototype and provide services to eligible adjudicated juvenile offenders by May 1, 1991. In addition, the recipient will be required to assist OJJDP in developing a solicitation to make awards to additional test sites should the Office decide to expand this testing stage accordingly. It will also be required to provide intensive training and technical assistance to help the prototype on an experimental basis. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities. Specifically the recipient must work with the court and the state or local corrections agency to facilitate access to juveniles in both the experimental and the control group for interviews and record checks.

1. Activities

The major activities of this stage are:

• Develop a recommendation as to the suitability of the pilot or an alternate as a test site;

• Develop a plan to implement the prototype;

• Implement the prototype by providing services to the eligible adjudicated juvenile offender population;

• Develop recommendations for a program announcement to select additional test sites if appropriate;

• Assist OJJDP in review and selection of other test sites as appropriate;

• Provide intensive training and technical assistance to the test site, regarding the implementation of the prototype on an experimental basis;

• Develop procedures for working cooperatively with the program evaluator, particularly in the areas of data collection and feedback; and

• Develop and implement a dissemination strategy.

2. Products

The major products for this stage are:

• Recommendation as to the suitability of the pilot or an alternative as a test site:

• Implementation Plan for providing services to the eligible adjudicated juvenile offenders population;

• Recommendations for the program announcement for test sites as appropriate;

• Plan for providing training and technical assistance to the test site; and,

• Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

V. Dollar Amount and Duration

Between $300,000 and $1,000,000 have been allocated for the initial award. Up to three cooperative agreements will be awarded competitively, with an initial budget period of eighteen (18) months. This program consists of three stages, and the initial award will support stages I, II, and III. A non-competitive continuation award for support of training and technical assistance to the test site and direct services; and/or training and technical assistance to additional test sites may be added. The project is scheduled to commence in October of 1990. The entire project period is estimated at thirty-six (36) months.

Non-competitive continuation awards may be made to provide additional support for test sites. These awards for additional budget periods, may be withheld for justifiable reasons. They include: (1) The results do not justify

further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason that would indicate continued funding would not be in the best interest of the Government.

A separate competition will be held to select an organization to perform an independent evaluation of the prototype. The organization selected for this award will be ineligible to compete for the evaluation.

VI. Eligibility Requirements

Applications are invited from public and private organizations. Private for-profit organizations must waive their fee in order to be eligible. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Preference will be given to collaborative efforts involving both public and private organizations because they afford authority, access to resources, and maximum flexibility in organizing and deploying human and financial resources. Applicants and co-applicants must demonstrate that they have prior experience in the design, conduct and implementation of research and development programs; demonstrated knowledge of issues associated with supervision of youth; and prior experience in the development and delivery of training or technical assistance.

The applicants must also demonstrate that they have the management and financial capability to implement a project of this size and scope effectively. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VII. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (Section VI) in Part IV, Program Narrative of the application (SF-424).

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants.

In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant(s). Under this arrangement, each organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate its acceptance of the conditions of joint and several responsibility with the other co-applicant(s).

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The following information must be included in the application (SF-424):

A. Organizational Capability—Applicants must demonstrate that they are eligibile to compete for this cooperative agreement on the basis of the eligibility criteria established in Section V of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section V above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. They must also demonstrate the capability to obtain commitments of resources (e.g., land, facilities, equipment and staff) from appropriate state and local agencies to implement all four phases of the program. Applicants are invited to append *one example* of prior work products of a similar nature to their application.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Programs, Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application by applicants in this category. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions. The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals and Objectives and Design—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a literature review, problem statement and a discussion of the potential contribution of this program to the field. Applicants should include a statement of their understanding of the purpose and philosophy of a constructive intervention program as articulated in the solicitation.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives in relation to the activities and products of the development program. A detailed discussion of how all three stages of the program, including the pilot activity, would be accomplished should be included. Particular attention should be given to: the age, characteristics, and estimated size of the target population; description of the physical facilities for the residential phase; selection and training of residential program staff; and supervision, coordination and monitoring of services for phases III and IV. Applicants must also address how random assignment will be implemented, and must identify the programs to which the control group will be assigned.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involved in implementing the program, describing how they will allocate available resources to implement the program and how the program will be managed.

The plan must also include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the first two major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also provide recommendations for program advisory committee members. This documentation and individual résumés

may be submitted as appendices to the application.

E. Time-Task Plan—Applicants must develop a time-task plan for the project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in Section I, II and III. Applicants should also indicate the anticipated cost schedule per month for the entire project period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. Program Budget—Applicants must provide a budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the second 18 months of the thirty-six month program. This estimate should be based on continuation of the training and technical assistance to the test site. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a three-person Program Advisory Committee to meet twice during the first eighteen month budget period.

VIII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovation in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366–31367. The selection critieria and their point values (weights) are as follows:

A. Organizational Capability (25 Points)

1. The extent and quality of organizational experience in the development, delivery and coordination of juvenile supervision programs. (5 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

3. Demonstrated capability to obtain commitments of specific State or local resources to implement the program design called for in this solicitation. (10 points)

B. Soundness of the Proposed Strategy (25 Points)

Appropriateness and technical adequacy of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 points)

D. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 Points)

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews and site visits, will assist the Administrator in considering competing applications and in selection of the applications for funding. The Administrator may also attempt to select projects that propose to serve different age groups. The final award decision will be made by the OJJDP Administrator.

IX. Deadline for Receipt of Applications

Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

Applications must be received by mail or hand delivered to OJJDP by 5 p.m. EDT on August 31, 1990. Those applications sent by mail should be addressed to: OJJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, room 784, 633 Indiana Avenue NW., Washington, DC between the hours of 8 a.m. and 5 p.m. except Saturdays, Sundays or Federal holidays.

OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

X. Civil Rights and Other Requirements

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d); section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; title IX of the Education Amendments of 1972, 20 U.S.C. 1681; the Age Discrimination Act of 1975, 42 U.S.C. 6101, 6102; and the Department of Justice Non-Discrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with, any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary financial assistance to any other recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary

to enable the primary recipient to assure its civil rights compliance obligations under any award.

D. Applicants must submit the original signed application with a Certification that the organization has not been debarred (Form 4662/2). Additionally, applicants must also provide, with the application, a Certification Regarding Drug-Free Workplace Requirements, (Form 4061/3), which meets the requirements of the Drug-Free Workplace Act of 1988 (102 Stat. 4308, 41 U.S.C. 707), which will be supplied with the application information package. The applicant must also submit a completed and signed standard form LLL ("Disclosure of Lobbying Activities" Report) which will be supplied with an application information package.

Dated: June 22, 1990.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 90-16218 Filed 7-11-90; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF JUSTICE

National Institute of Justice

Boot Camps for Juvenile Offenders: Constructive Intervention and Early Support Implementation Evaluation Solicitation

AGENCY: National Institute of Justice, Justice.

ACTION: Program announcement on "Boot Camps for Juvenile Offenders: Constructive Intervention and Early Support" Implementation Evaluation Solicitation.

SUMMARY: The National Institute of Justice (NIJ), pursuant to section 202(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3722(c), invites proposals to evaluate the implementation of a prototypical intermediate sanctions program for juveniles jointly sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Bureau of Justice Assistance (BJA).

NIJ invites public and private organizations to submit competitive proposals to evaluate the development of this model intermediate sanction program in one or more sites to be selected by OJJDP. The evaluation scope of work is approximately 12 months beginning October 1990. The goals of this first-phase evaluation are to document and assess the programs implemented and to develop the most rigorous impact evaluations possible for the operational phase of the program, scheduled for Summer, 1991. Program applicants are being asked to develop designs that include random assignments of eligible juveniles to the program and a control group. The first-phase evaluation grantee must work closely with sites to document their programs and aid in the development in ways that enhances the rigors of an impact evaluation. Up to $200,000 will be made available through a cooperative agreement to support this 12 month evaluation.

DATES: Eight copies of the fully completed proposal must be received at NIJ by close of business August 31, 1990.

ADDRESSES: The proposals must be sent to the National Insitute of Justice, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: To obtain further information about the program or the application process, interested persons should contact John Spevacek, the Evaluation Manager, at the National Institute of Justice. Mr. Spevacek can be reached by telephone at (202) 307-0141.

SUPPLEMENTARY INFORMATION: The last decade has witnessed significant shifts in sentencing philosophy in the United States as well as dramatic growth in correctional populations. As institutional and probation populations expanded, judges and policy makers sensed increased dissatisfaction with the limited options available for the disposition of adjudicated offenders. Many felt that long-term confinement was a costly and often inappropriate sentence for some offenders. Many others were concerned that probation exerted too little control over high-risk offenders and constituted an unacceptable risk to public safety. Still others believed that neither prison nor probation provided the rehabilitative services needed to induce offenders to desist from crime. These concerns were intensified by the increased drug involvement of offenders and the rising demands for drug treatment as a sentencing component.

Public interest gravitated to the concept of intermediate sanctions—punishments less restrictive than long-term confinement yet more intensive than routine probation. Three examples of intermediate sanctions that emerged in adult correctional populations were house arrest, intensive probation supervision, and shock incarceration or "boot camp." These punishments attempted to achieve multiple goals. House arrest, for example, sought to confine offenders in a home environment that enabled offenders to continue work or school. Intensive probation supervision allowed probation officers to spend more time monitoring each client and offer a greater amount and variety of counseling and other rehabilitative services. Boot camps infused self-discipline and other life skills during a short period of confinement, and frequently provided significant monitoring and correctional services after release. Many intermediate sanctions also contain components of community service and other forms of restitution as part of an expanded concept of justice and offender accountability.

Several evaluations of intermediate sanctions programs have been conducted. Findings are for the most part inconclusive because of lack of appropriate comparison groups or incomplete because of a need for long term follow-up of client groups. See, for example, *The Effectiveness of New Intensive Supervision Programs*, James M. Byrne, Arthur Lurigio, and Christopher Baird, in Research in Corrections, September 1989, and *Shock Incarceration: An Overview of Existing Programs*, National Institute of Justice, June 1989. There are nonetheless "lessons from field experience" that have influenced the design and evaluation of later intermediate sanctions efforts. There is also sustained interest in state and local criminal justice communities in experimenting with intermediate sanctions.

This solicitation requests proposals to evaluate a new initiative in intermediate sanctions—an adaptation of boot camps and expanded rehabilitative services for delinquent juveniles—called Boot Camps for Juvenile Offenders. The initiative is a collaborative effort among the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Bureau of Justice Assistance (BJA), and the National Institute of Justice (NIJ) to design, implement, and evaluate new juvenile programs in several jurisdictions. The evaluation effort solicited is a twelve-month, first-phase implementation evaluation that will access the validity of program assumptions, determine site progress toward implementing key program concepts, and develop alternative designs for subsequent impact evaluations. It will be a cooperative research agreement that requires close collaboration with participating agencies and program sites. The primary goal of the agreement is to plan and prepare for a subsequent rigorous impact evaluation. Support for the impact evaluation is planned for FY91.

Program Concepts

The program is titled *Restorative Justice For Juvenile Offenders: Constructive Intervention and Early Support.* It focuses on juvenile offenders under 18 years of age and emphasizes a combination of discipline, treatment, and work. The goals of the program as stated in the program announcement are to:

- Develop a cost-effective intermediate sanction;
- Support juvenile offenders in becoming productive, law-abiding citizens;
- Instill traditional moral values and standards of academic achievement;
- Assure that adjudicated juvenile offenders are punished and held accountable for their behavior;
- Provide treatment to reduce drug abuse; and
- Use intensive systematic phonics for increasing literacy skills for juveniles offenders.

Achieving these goals is likely to affect future delinquent behavior and the probability of attaining a successful adult life style.

Site proposals are being solicited concurrently with this evaluation solicitation. Evaluation applicants are encouraged to study the program announcement carefully to obtain a complete understanding of program goals and activities. It is therefore impossible to specify all program activities at this time. Among the activities called for in the program solicitation are discipline, work, team tasks, literacy and life skills instruction, personal and group counseling, drug and alcohol resistance training, vocational training, and restitution. An evaluation should anticipate examing these and other activities cited in the program announcement.

Program activities will be delivered in phases with graduated degrees of supervision. The first phase—selection—consists of screening selecting, and processing program participants. The second phase—intensive training—would likely take place in a residential setting and stress physical conditioning, discipline, and teamwork, as well as beginning counseling and instruction. Intensive training should last at least 90 days. The third phase—preparedness—is to take place in a community setting with intensive supervision. It would continue counseling and instruction, develop performance workplans for participants, and deliver other restorative services encompassed by the program. The final phase—accountability—would involve less supervision and monitor the performance of participants in work or school, as well as participation in community service. The duration and structure of each phase will depend heavily on the activities proposed by competing program sites. *Total time in the program may be as long as eighteen months.*

All sites are expected to begin with a development and pilot period lasting approximately six months. During this period, sites will refine their program selection criteria, develop training and counseling objectives, develop services to be delivered, pilot test program concepts, and finalize program design and training materials. Sites are expected to be fully operational in the late spring of 1991.

Evaluation Scope

The *programmatic* scope of work covered by this solicitation is the prototype development activities conducted by the sites from October 1990 to June 1991. The *evaluation* scope of work is an assessment of these activities, and should be performed over approximately 12 months beginning October 1990. The goals of this first-phase evaluation are to document and assess the programs implemented and to develop the most rigorous impact evaluations possible for the operational phase of the program, scheduled for Summer, 1991. Program applicants are being asked to develop designs that include random assignments of eligible juveniles to the program and a control group. The first-phase evaluation grantee must work closely with sites to document their programs and aid in the development in ways that enhance the rigors of an impact evaluation.

Key question that the grantee should address include the following:

- Are program assumptions valid? Are there sound bases for believing that the activities implemented by sites could influence juvenile attitudes, in-program performance, and subsequent behavior?
- Are program activities internally consistent? Do activities establish contradictory goals or promote conflicting behaviors? Are participants likely to be overburdened by program demands?
- How did site implementation efforts influence the integrity of the programs? Were participant activities programmed into appropriate points in the overall design? Were participating agencies coordinated to insure proper transfer of program concepts from each phase to the next?
- Are target populations clearly defined? Are they large enough to maintain a full capacity program as well as random assignment to a control group? Is the control group program well defined?
- What are logical measurement criteria for determining impacts when programs are fully operational? Are there short-term and long-term indicators of performance? What indicators of performance can be obtained during the implementation phase?

Applicants should address these issues as well as others they consider important in their proposals. Applicants should also consider the degree to which these issues can be addressed during the period covered by this solicitation and during an impact evaluation.

Review Process and Selection

Interested researchers should submit proposals according to the guidelines set out in the next section of this solicitation. The points below will be considered in the proposal review process:

- *Conceptualization of the Problem.* The demonstration of a firm grasp of the issues underlying intermediate sanctions and the development of programs for delinquent youth, including research, evaluation, and operational efforts.
- *Soundness of Research Design.* The validity of the procedures work plan, and analyses proposed for the developmental efforts and policy issues described in this solicitation.
- *Management Plan.* Appropriateness of the evaluation implementation plan and the proposed evaluation products.
- *Qualification of the Applicant.* The individual qualifications of the research team and its experience in conducting evaluations, especially as it relates to intermediate sanctions and juvenile programs.
- *Costs.* The reasonableness of cost estimates and staff allocations proposed for the work to be performed.

Proposals will be reviewed competitively by a peer panel to select a single grantee to evaluate the implementation of the Boot Camp for Juvenile Offenders Program. The review panel will be chaired by the NIJ Program Manager. Authority to make awards is of course reserved by the Director of the National Institute of Justice.

How To apply

Eight copies of fully executed proposals should be sent to: Boot Camp for Juvenile Offenders, National Institute of Justice, 633 Indiana Avenue NW., Washington, DC 20531.

In order to be eligible for funding under this program, the eight copies of the fully completed proposal must be received at NIJ *by close of business*

August 31, 1990. A proposal consists of the following: A completed and signed Federal assistance application on Standard Form 424 and OJARS Form 4000/1; a budget narrative; and a program narrative. Copies of the necessary application forms may be obtained from the program manager. The total amount listed on the front page of these forms must be the total dollar amount *currently* sought, including indirect costs.

Budget Narrative

The budget for this effort should not exceed $200,000. Applicants are advised to budget for a twelve-month period beginning in October 1990. *Successful completion of this cooperative agreement by the grantee neither obligates nor implies that a continuation effort will be awarded.*

Program development requires that the grantee spend time at each program location as well as meet periodically for reviews of progress. Applicants should budget for three trips to each site plus four quarterly meetings in Washington, DC to review program and evaluation progress. Applicants are advised to budget for *three fictitious sites* in their application: Sacramento, California; Albany, New York; and Kansas City, Missouri. Travel budgets will be adjusted after sites have been selected.

Program Narrative

The program narrative is the technical description of the work to be undertaken. It is on the basis of the information presented in this part of the proposal that the review panel arrives at its decisions. Applicants should be careful to ensure that this section contains clear and complete descriptions of:

(a) The research and policy questions being addressed;

(b) The significance of this work to our understanding of programs for delinquent youth;

(c) the methodology, research design, and general plan for conduct of the work;

(d) A detailed sequence of project activities and major interim and final products;

(e) Resumes of the *relevant* experience and training of key project personnel;

(f) A project management plan that specifies individual responsibilities for the conduct of the program by the research team; and

(g) A project abstract of not more than 200 words.

The award made under this program will be in the form of a Cooperative Research Agreement. The recipient will have the responsibility for implementing its research projects as agreed upon at the time of award. NIJ has a general programmatic responsibility to assist and coordinate efforts sponsored under this solicitation.

Regular quarterly meetings of project personnel and the NIJ program manager will be scheduled to review progress.

Dated: June 21, 1990.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 90-16217 Filed 7-11-90; 8:45 am]

BILLING CODE 4410-18-M

federal register

Thursday
July 12, 1990

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910 et al.

Occupant Protection in Motor Vehicles; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

[S-776]

Occupant Protection in Motor Vehicles

RIN 1218-AB28

AGENCY: Occupational Safety and Health Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing a generic, performance-oriented regulation addressing the protection of employee occupants of motor vehicles to ensure the safe use of all classes of motor vehicles on the job. Employees have been and continue to be exposed to the hazard of motor vehicle crashes. Motor vehicle accidents are the single largest cause of occupational fatalities. OSHA believes that this proposed standard will reduce the number and the seriousness of occupational motor vehicle accidents. For motor vehicles that are equipped with safety belts or that are required by Federal regulation to have occupant safety belts installed, the proposed rule would mandate that employers require that each employee wear the safety belt when operating or riding in such motor vehicles for official business. The proposal also mandates the use of head protection meeting Federal Motor Vehicle Safety Standard No. 218 by those employees who operate or occupy a motorcycle. The proposed rule would also require the employer to develop and implement an employee driver safety awareness program.

DATES: 1. Comments and information on this proposal must be received on or before November 9, 1990.

2. Hearing requests and notices of intention to appear at a tentatively scheduled informal rulemaking hearing on this proposal must be received on or before September 10, 1990. Documentary evidence and witness statements for the hearing must also be received by September 10, 1990.

3. The public hearing on the proposed standard, if convened in response to requests from the public, would be held in Washington, DC, beginning January 8, 1991 at 10 a.m. in the auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

ADDRESSES: 1. Comments and information on this proposal should be sent in quadruplicate to the Docket Office, Docket No. S-776, Occupational Safety and Health Administration, room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

In order to facilitate a prompt review of the comments and information submitted to the Docket Office, submitters are requested to use the following docket numbers when submitting their comments:

For general comments:

Use Docket No. S-776

For specific comments:

Part 1910 use Docket No. S-776-G
For parts 1915, 1917 and 1918 use Docket No. S-776-M
For part 1926 use Docket No. S-776-C
For part 1928 use Docket No. S-776-A

Comments and information received may be inspected and copied in the Docket Office.

2. Requests for a public hearing must be sent in quadruplicate to the Docket Office, Docket No. S-776, Occupational Safety and Health Administration, room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Requests for hearing received by the Agency may be inspected and ccpied in the Docket Office.

3. Notices of intention to appear at the hearing, testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N-3649, 200 Constitution Avenue NW., Washington, DC; 202-523-8615.

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

Public hearing: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, 202-523-8615.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Administration (OSHA) is proposing a new regulation addressing the protection of employee occupants of motor vehicles that would be added to 29 CFR parts 1910, 1915, 1917, 1918, 1926, and 1928. The proposal is for a generic, performance-oriented standard to be included in each part that would contain three requirements to ensure the safe use of all classes of motor vehicles on the job. For motor vehicles that are equipped with safety belts or that are required by Federal regulation to have occupant safety belts installed, the proposed rule would mandate that employers require that each employee wear the safety belt when operating or riding in such motor vehicles for official business. The proposal also mandates the use of head protection meeting Federal Motor Vehicle Safety Standard No. 218 by those employees who operate or occupy a motorcycle. The proposed rule would also require the employer to develop and implement an employee driver safety awareness program.

Although motor vehicle accidents are the single largest cause of occupational fatalities, OSHA currently has no general regulations requiring employers to ensure that employees use occupant safety belts or motorcycle helmets, or requiring employers to provide employee driver safety awareness about the safe use of motor vehicles on the job. In 1987 alone, occupational motor vehicle crashes, both on-road and off-road, accounted for approximately 36.5 percent of all occupational fatalities in the United States. According to data developed for the preliminary regulatory impact assessment (PRIA) of this proposed standard, each year there are approximately 2,100 fatalities and 91,000 lost-workday injuries due to occupational motor vehicle crashes among employees who would be affected by this regulation.

It is evident that motor vehicle use presents a significant risk to employees. OSHA believes that an occupant protection safety standard developed by the Agency for the protection of employee motor vehicle occupants can reduce this risk and achieve several goals: (1) Significantly reduce the number and seriousness of occupational motor vehicle accidents, including crashes, by requiring employers to ensure that each employee uses occupant safety belts or motorcycle helmets, where applicable, and to provide driver safety awareness to improve employee driver awareness; (2) decrease the number of alcohol and drug related occupational motor vehicle accidents through improved driver awareness; (3) provide a nationwide base level of vehicle occupant protection for all industries; and (4) improve employee driving off-the-job by providing and improving driving safety awareness in the workplace.

According to OSHA's preliminary data, use of safety belts in passenger

cars and light trucks is at least 40 to 50 percent effective in preventing fatalities. Based upon that effectiveness rate, 80 percent overall postregulation usage rate for safety belts and driver safety awareness standard is estimated to save 465 to 684 fatalities and from 22,221 to 31,635 lost-workday injuries annually.

OSHA's preliminary data also indicate that there are currently 40 fatalities per year and 1,820 injuries per year involving the failure to use motorcycle helmets by employees. OSHA estimates that a regulation requiring the use of motorcycle helmets by employees riding motorcycles as part of their job would save 5 lives and prevent 279 injuries per year.

OSHA is issuing this proposal in response to the significant evidence of employee injury due to motor vehicle crashes. The Agency has also received several requests and support for such a standard from interested parties, including the National Safety Council (NSC) and the National Highway Traffic Safety Administration (NHTSA).

The specific sections of OSHA's safety and health standards in title 29 of the Code of Federal Regulations that would be affected by this rulemaking are as follows: §§ 1910.139; 1910.140; 1915.100; 1917.44; 1918.73; 1926.33; and 1928.58.

For the purposes of this discussion, motor vehicle crashes are considered a subset of motor vehicle accidents. Crashes involve the impact of one vehicle into another vehicle or fixed object. They do not include those motor vehicle accidents that involve collisions with people or animals. All types of motor vehicle accidents, including crashes, were considered in developing this proposal.

Basis for Agency Action

In a July 26, 1989 memorandum President Bush requested the heads of the Executive Departments to personally commit themselves to the successful implementation of several objectives in his Management by Objectives system. One objective of that system, directed to the Department of Transportation, called for an overall improvement in transporation safety by supporting programs that reduce transportation fatalities and accidents including a continued emphasis on alcohol and drug countermeasures. Selected milestones identified by the President in his memorandum included:

(i) Increase usage of safety belts to 70 percent by 1992,

(ii) Decrease number and percentage of alcohol and drug-related highway accidents and fatalities, and

(iii) Decrease highway fatality rate to 2.2 deaths per 100 million vehicle-miles by 1992.

OSHA has worked with the Department of Transportation, specifically the National Highway Transportation Safety Administration, during the development of this rulemaking. NHTSA has provided both considerable data and technical support to OSHA. Both OSHA and NHTSA have agreed that a joint effort by both the Department of Labor through OSHA and the Department of Transportation through NHTSA can significantly help the President achieve the above milestones in his Management by Objectives system.

OSHA also believes that there is a sufficient body of data and information upon which a reasonable standard can be based to reduce the number of fatalities and injuries resulting from occupational motor vehicle crashes. This determination is based upon a review of the motor vehicle accident data available to and developed for OSHA, all of which have been entered into the Docket of this rulemaking proceeding.

Although motor vehicle crashes are the single largest cause of occupational fatalities, OSHA currently has no general regulations requiring employers to ensure that employees use occupant safety belts or motorcycle helmets, and to provide employee driver safety awareness concerning the safe use of motor vehicles on the job. In the manufacturing sector, which is the primary target of most OSHA regulations, more workers are killed each year in motor vehicle crashes than by fixed machinery. In addition, NSC estimates that between the years 1950 to 1985, motor vehicle, fatalities, as a percent of total occupational fatalities, increased by 52 percent. The Bureau of Labor Statistics (BLS) reported in 1985 that the number of injuries in occupational motor vehicle crashes increased "strongly" from 1977 to 1983.

BLS estimates that in 1987 there were 3,400 occupational fatalities in the United States involving establishments having more than 10 employees. Of these, 33 percent involved highway accidents. Nine percent involved industrial vehicle or equipment accidents, of which Eastern Research Group, Inc. (ERG) estimated that one-half of the nine percent involved motor vehicles covered by this proposal. The data indicate that 1,242 fatalities, or 36.5 percent of all occupational fatalities in establishments having more than 10 employees, were due to occupational motor vehicle accidents.

An NSC estimate to total occupational fatalities in 1987 was 8,900, excluding government and mining workers. Of that number 3,900 (44 percent) were due to motor vehicle accidents.

OSHA agrees with the data developed by Eastern Research Group, Inc., (ERG) for the PRIA that there are approximately 2,100 occupational motor vehicle fatalities annually among employees that would be affected by this proposed standard. These data also indicate that there are 91,000 lost-workday injuries annually due to motor vehicle accidents. A NHTSA analysis of passenger car occupant restraint systems indicates that front seat lap/shoulder safety belts are estimated to be 40 to 50 percent effective in preventing fatalities, 45 to 55 percent effective in preventing moderate to serious injuries and 10 percent effective in preventing minor injuries. The NHTSA data also showed that lap/shoulder safety belts in light trucks are 60 percent effective in preventing fatalities. In addition the data show that safety belts in medium to heavy trucks are 26 percent effective in preventing fatalities and 50 percent effective in preventing injuries. The NHTSA analysis did not provide a separate estimate of the effectiveness of rear seat safety belt use in trucks.

OSHA, in estimating the benefits of wearing safety belts, has not yet considered the effects of new DOT automatic crash protection requirements (i.e., automatic safety belt or air bag installation) for new cars and light trucks. OSHA will consider the effects of the DOT rule on the cost and benefits of this standard in its regulatory analysis for the final rule.

It is evident that motor vehicle use presents a significant risk to employees. OSHA believes that a vehicle occupant protection safety standard developed by the Agency can reduce this risk and achieve several goals: (1) significantly reduce the number and seriousness of occupational motor vehicle accidents, including crashes, by requiring employers to ensure each employee uses occupant safety belts or motorcycle helmets, and to provide driver safety awareness to improve employee driver awareness; (2) decrease the number of alcohol and drug related occupational motor vehicle accidents through improved driver awareness; (3) provide a nationwide base level of occupant protection safety for all industries; and (4) improve employee driving off-the-job by providing and improving driving safety awareness in the workplace.

Occupant Safety Belts

Although NHTSA studies indicate that passenger car safety belts are 40 to 55 percent effective in preventing fatalities and serious injuries in passenger cars and light trucks, safety belts use rates very widely from state to state. The degree of safety belt use depends upon factors such as differences in public attitudes, enforcement practices, legal provisions, and information and education programs. Across the states safety belts usage rates range from a high of 73 percent to a low of 20 percent, according to NHTSA.

However, states that have enacted safety belt use laws have, on average, both higher use rates and lower fatality rates than states without belt laws. Currently, in the 36 states and the District of Columbia where safety belt use laws have been enacted, the average use rate is 50 percent, which is above the national average of 47 percent, and the number of motor vehicle fatalities is estimated to be an average of seven percent lower than fatalities in states without belt laws. For example, from 1983 through 1989, according to NHTSA, an estimated 20,000 lives were saved and 404,000 moderate to critical injuries were prevented due to safety belts. Of those lives saved, 10,500 (68 percent) were in states that have safety belt use laws.

Other countries that have high safety belt use rates have also significantly reduced motor vehicle fatality rates. In Australia and Great Britain, where belt use rates are high, motor vehicle fatalities have been reduced by 25 and 27 percent respectively. According to NHTSA, if safety belt use rates in the United States had increased to the average level achieved in other countries (85 percent), 12,000 lives would have been saved in 1988 alone.

Companies that have initiated safety belt use rules appear to have achieved some of the highest use rates. According to NHTSA, occupational safety belt program use rates in some companies range from 70 to 90 percent. With safety belt use being capable of reducing fatality rates in motor vehicle crashes by up to one-half, NHTSA estimates that an increase in employee safety belt use rates from the current national average to nearly 100 percent could save 882 lives and could prevent 23,000 moderate to serious injuries each year.

OSHA believes that the hazards faced by employees using motor vehicles for official business could be reduced through the existing technology and the high effectiveness of safety belts. In recent years, OSHA has begun to address these hazards through various programs and regulations. In 1985 OSHA established an outreach program to promote occupational safety belt use which included distributing NSC booklets to employees. In some industries (e.g., construction and agriculture), OSHA has already promulgated safety belt regulations for certain motor vehicles (see 29 CFR 1926.601 and 1928.51). In addition, OSHA has already proposed the installation and use of safety belts in the logging industry (see 54 FR 18798, May 2, 1989).

The Federal government has already recognized the need to protect its own workers against motor vehicle hazards. Since September 1986, when Executive Order 12566 was issued, all Federal employees have been required to use occupant safety belts on the job.

Use of Motorcycle Helmets

OSHA is concerned about the safety of employees working in the motor courier and delivery service. In high-density metropolitan areas these employees often use motorcycles rather than cars or trucks to make these deliveries. They often travel at relatively high speeds through heavily congested traffic patterns. Such speed increases the risk of crashes related to error on the part of motorcycle operators or to error on the part of other vehicle operators who fail to see motorcycle operators, or both.

With this in mind, OSHA recognizes that head injury is the leading cause of death and injury in all motorcycle crashes. Safety helmets can reduce the severity of head injury. In particular, motorcycle helmets have been proven effective in reducing the risk of death, head trauma and other serious injuries. Unhelmeted riders are three times more likely than helmeted riders to incur fatal head injuries and two times more likely to incur head injuries of lesser severity. NHTSA reported that a study by the University of California of 900 motorcycle crashes concluded that safety helmet use was the single most important factor governing survival in motorcycle crashes. The study also concluded that safety helmet use was the single most critical factor in the prevention or reduction of head injury and that helmented riders showed significantly lower rates of head and neck injuries for all types of injuries, at all levels of injury severity.

States that have enacted motorcycle helmet laws have achieved higher use rates and significantly reduced fatality rates as compared to states without helmet laws.

For example, in Louisiana, the first state to repeal and then readopt a full helmet use law, NHTSA reported that the state experienced a 30 percent reduction in fatalities (40 fewer deaths) during 1982, the first year after its helmet law reenactment. This reduction in fatalities occurred even though motorcycle registrations increased 18 percent during the same year.

According to the Insurance Institute for Highway Safety (IIHS), in September 1989, Texas amended its motorcycle helment use law to apply to all riders instead of those younger than 18 years. Sponsored by the Institute, researchers from the Texas Transportation Institute conducted surveys in 18 Texas cities, observing that helmet use increased from less than 50 percent before the law was amended to 90 percent immediately after, even though some Texas officials said only warnings would be issued during the first 90 days of the law. Two months later, helmet use in Texas was 95 percent. During 1968–77, Texas also had a motorcycle helmet use law that applied to all riders. That law is estimated to have saved 650 lives, and "the reinstated 1989 law is likely to be as effective in saving lives," the researchers said. They further concluded the 24 states that presently require helmet use only for young motorcyclists and the three states that do not have helmet laws would be likely to achieve the same results as Texas if they also were to require all motorcyclists to use helmets.

Driver Safety Awareness

The evidence regarding the effectiveness of driver training in reducing motor vehicle accidents is mixed. For example, a 1985 review of 14 controlled studies of the effects of defensive driving courses (DDCs) concluded "* * * the best available evidence does not support the hypothesis that DDCs decrease the likelihood of motor vehicle crashes." Also, a 1989 review of 65 studies of driver improvement programs was funded by the Insurance Institute of Highway Safety (IIHS). This review concluded that although there was evidence that these programs result in a reduction of moving violations, "there is an unpredictable and sometimes undesirable effect on crashes even in the presence of desirable violation effects."

Probably the strongest evidence regarding the effectiveness of driver training in reducing motor vehicle accidents has been the market response to such programs by the automotive insurance industry. Some insurance

companies will only insure business fleets if the company offers some kind of driver safety awareness programs to its employees. Many insurance companies also offer reduced premiums or rates to drivers who have completed driver training programs. For example, in California, drivers 55 years and older can receive a discount on automobile insurance rates if they complete the California Mature Driver Improvement (MDI) course. One reason such a discount is offered is that MDI graduates have better driving records than nonparticipants, according to a study conducted by the California Department of Motor Vehicles (DMV). A California DMV study compared the number of crashes and traffic conviction records of 40,399 MDI graduates and a random sample of 75,064 drivers in the same age category. Researchers found that after six months, MDI graduates had lower rates of both motor vehicle accidents and traffic convictions.

MDI graduates must repeat the course every three years in order to keep the discount. The course, which is given by driver improvement schools, teaches participants about defensive driving, traffic laws, the effects of fatigue, drugs and alcohol on driver performance, and other health issues.

Of course, only a small percentage of the drivers affected by this rule are over 55 years of age. Nevertheless, OSHA believes that the market response by insurance companies to lower insurance rates for drivers who have completed driver safety awareness programs is based on the reasonable assumption that a reduced risk of accidents exists for those driver populations that have received driver training. The Agency requests information from insurance companies and other parties concerning the effectiveness of driver training, including any studies and data on the subject and their relevance for OSHA's proposal.

OSHA currently has limited data to demonstrate the precise degree to which driver safety awareness would further reduce employee motor vehicle fatalities and injuries, but believes the potential for benefits is real. Therefore, the Agency is proposing a driver safety awareness requirement in this proposal and solicits discussion of the issues related to the benefits of driver safety awareness for the driver populations covered by this proposal.

In an effort to develop data on the effectiveness of driver safety awareness on the reduction of motor vehicle crashes, OSHA contacted United Parcel Service in Greenwich, CT. Mr. Michael Moore of OSHA spoke with Mr. Frank Wondrasch, National Safety Manager for UPS. Mr. Wondrasch provided the following explanation of the experience of UPS, "United Parcel Service continues to enforce safe driving habits to UPS drivers throughout the nation. This on-going, hands-on training has been intensely administered since the company's earliest days when it acquired its first vehicle, a 1913 Model T Ford. As a result of Space and Visibility training, UPS's Safe Driving Honor Plan that recognizes UPS drivers for their safety-minded professionalism, and the use of seat belts, the company's auto accident frequency shows a declining trend * * *"

OSHA has always believed, and human nature would indicate, that safe work practices and habits developed through training and education in the workplace can be carried into the home environment by employees. Work habits, good and bad, that are developed in the occupational environment are often used in an employee's personal life and can have an effect on the employee's personal safety and health. In the majority of cases these work habits are good and can help reduce the severity and frequency of off-the-job accidents thereby reducing the costs to society related to off-the-job accidents as well as the costs of on-the-job injuries.

There is also considerable research and experience available from the Department of Transportation about the benefits of providing driver safety awareness to employees with regard to the proper use of occupant safety belts, motorcycle helmets and other occupant protection systems and the risks of impaired driving, speed, and other factors contributing to motor vehicle accidents. Driver safety awareness programs in these areas can take the form of face-to-face classroom instruction, self-study videos, or through providing manuals or brochures for employees to read.

In light of the available data, OSHA has decided to propose requirements for the implementation of a driver safety awareness program. In the driver safety awareness provisions of this proposed rule, the amount of driving an employee does for official business will determine what kind of driver safety awareness that employee must receive. For all employees who routinely use any particular class of motor vehicles as part of their job, OSHA is proposing that the employer provide initial and triennial driver safety awareness. For the purposes of this notice, "routine operation" would typically involve a minimum of one hour of vehicle operation a day, five days a week; however, other time frames will be considered during this rulemaking for possible routine use. For all employees who might be expected to use any particular class of motor vehicles on a non-routine basis as part of their job, OSHA is also proposing that these employees receive an initial and triennial vehicle safety briefing about the safe use of and the safety systems on the motor vehicle that they may be asked to use. OSHA welcomes comments on the appropriate criteria to be used in delineating routine and non-routine drivers. It also welcomes comments on the appropriate class time for initial and triennial training and briefings.

The Agency believes that a properly developed and presented driver safety awareness program combined with enforced use of occupant safety belts and motorcycle helmets can add to the reduction of occupational fatalities for both routine and non-routine motor vehicle operators.

Other Federal Jurisdictions

The U.S. Department of Transportation (DOT) has been accorded jurisdiction to regulate the operation of commercial motor vehicles (see Motor Carrier Safety Act of 1984, 49 U.S.C. app. 2501 *et seq.*, and Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. app. 2701 *et seq.*). The Motor Carrier Safety Act authorizes DOT to regulate any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property if the vehicle (1) has a gross vehicle weight rating of more than 10,000 pounds, or (2) is designed to transport more than 15 passengers including the driver, or (3) is used to transport hazardous materials in a quantity requiring placarding under regulations issued under the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*).

Under this statutory authority, the DOT Federal Highway Administration (FHWA) has promulgated regulations addressing commercial motor vehicle operator safety and health (see 49 CFR part 383 and 49 CFR parts 390–399). The FHWA regulations for commercial motor vehicle operation address some or all of the working conditions involving employee safety and health that are addressed in this proposal (see e.g., 49 CFR 392.16 (safety belt use requirements for all commercial motor vehicle operators); 49 CFR part 391 (establishment of minimum qualifications for commercial motor vehicle operators, including written and road tests)).

Section 4(b)(1) of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 653 (b)(1), states in relevant part: "Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." Therefore, because section 4(b)(1) of the OSH Act by operation of law already provides an exemption, no express exclusion from OSHA coverage is necessary for working conditions involving commercial motor vehicles or hazards addressed by DOT FHWA regulations issued under the Motor Carrier Safety Act or the Commercial Motor Vehicle Safety Act.

Another issue concerning other federal jurisdictions involves MSHA. Section 508 of the Federal Mine Safety and Health Act of 1977 (Mine Safety Act), 30 U.S.C. 957, authorizes MSHA to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction, related operation and preparation and milling of extracted minerals. However, where the provisions of the Mine Safety Act either do not cover or do not otherwise apply to occupational safety and health hazards on mine sites or where there is statutory coverage under the Mine Safety Act but there are no MSHA standards applicable to particular working conditions on mine sites, then regulations issued under the OSHA Act have been found to apply. In addition, because the Mine Safety Act confers authority to MSHA to regulate health and safety issues only on mine sites, the OSH Act would apply where mine employees are working off the mine site.

MSHA has promulgated safety belt installation and use regulations for certain motor vehicles used on surface metal and nonmetal mine sites, surface coal mine sites and surface work areas of underground coal mine sites. MSHA has also promulgated general training provisions covering the health and safety aspects of the tasks to which an employee is assigned, mandatory health and safety standards pertinent to the tasks to which an employee is assigned and annual refresher training in topics including mandatory health and safety standards and prevention of accidents. As to the working conditions, hazards and vehicles addressed by this proposal which are covered by MSHA regulations, the OSHA vehicle safety standard would not apply. OSHA, however, would not be precluded from regulating vehicle safety where those and other motor vehicles are used by miners off mine sites.

II. Summary and Explanation of the Standard

This notice affects regulations in parts 1910, 1915, 1917, 1918, 1926, and 1928. The rules proposed to be added to these sections address occupant safety belts, motorcycle helmets and driver safety awareness. A detailed summary and explanation of each section affected follows.

The employee occupant protection provisions proposed for all parts covered by this notice are essentially identical. OSHA is providing the following table of corresponding provisions to aid the reader in understanding our proposal.

TABLE OF CORRESPONDING PROVISIONS

1910.140 1915.100 1926.33 1928.58	1917.44(p)	1918.73(1)
(a)(1)	(p)(1)	(1)(1)
(a)(2)	(p)(2)	(1)(2)
(a)(3)	(p)(3)	(1)(3)
(b)	(p)(4)	(1)(4)
(c)(1)	(p)(5)	(1)(5)
(c)(2)	(p)(6)	(1)(6)
(d)(1)	(p)(7)	(1)(7)
(d)(2)	(p)(8)	(1)(8)
(d)(3)	(p)(9)	(1)(9)
(d)(4)	(p)(10)	(1)(10)
(d)(5)	(p)(11)	(1)(11)
(d)(6)	(p)(12)	(1)(12)
(d)(7)	(p)(13)	(1)(13)

General Occupant Protection in Motor Vehicle Safety Standard for Part 1910, General Industry and Part 1915, Shipyards

The following new language is proposed for parts 1910 and 1915. For clarity, the proposals for these two parts will be discussed as one regulation although there are two separate proposed regulations, one for each part, identically worded except for their section numbers.

Section 1910.140 is currently titled "Standards organizations," and it contains the address for the American National Standards Institute (ANSI). It is proposed to delete the title of § 1910.140 and to move the address for the ANSI to § 1910.139 which currently contains the ANSI standards referenced in subpart I. That proposed change would place the names of the referenced standards and the address where they can be obtained in the same section. It is then proposed to use § 1910.140 for the regulatory language proposed in this notice for motor vehicle safety, which is outlined below.

In paragraph (a)(1), OSHA proposes to require employers to adopt and enforce requirements for the safe use of all classes of motor vehicles that are used by employees for official business. OSHA believes first, that regulation of occupant protection in motor vehicles is necessary because of the fatality and injury data provided earlier in this notice and second, that a broad scope of coverage is necessary to assure that all employees are provided adequate protection in all of the motor vehicles that they might be expected to use on the job.

The scope of coverage is broad in that OSHA intends the coverage of this proposed standard to include use of motor vehicles both on public highways and within off-highway job sites and intends to cover all defined motor vehicles, regardless of ownership. In addition, the scope not only includes those classes of motor vehicles unique to a specific industry (e.g., material handling equipment and heavy specialty trucks), but also those classes of motor vehicles that may be common to all industries (e.g., cars, light trucks, and vans).

In paragraph (a)(2), OSHA proposes that the regulations would apply to all employees who might be expected to use any particular class of motor vehicles as part of their official duties or work assignments.

In paragraph (a)(3), OSHA is proposing the definitions that would be applicable to this regulation. They include the following terms:

1. *Motor vehicle* means any vehicle, machine, tractor, trailer or semtrailer propelled or drawn by mechanical power in the transportation of employees, passengers or property, or any combination thereof determined by the Occupational Safety and Health Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolly bus operated by electrical power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. This definition includes the current definition of motor vehicle used by the U.S. Department of Transportation and, for the purposes of this rule, would also include motorcycles.

2. *Occupant safety belt* would mean a manual or passive employee restraint system. Automatic safety belts are included within the meaning of passive restraint systems.

In paragraph (b), OSHA proposes to require that the employer develop and implement an occupant protection

program that at a minimum addresses the use of vehicle safety systems, including the use of occupant safety belts, motorcycle helmets and driver safety awareness. OSHA also proposes to require the employer to address in the program the means by which compliance with the occupant protection program will be implemented and enforced by the employer. As discussed earlier in the background section of this notice, these two areas of motor vehicle use can have the greatest impact on reducing employee injuries and fatalities related to motor vehicle crashes.

In paragraph (c)(1), OSHA proposes that the employer shall require that each employee on official business, operating or occupying a motor vehicle that is equipped with safety belts or is otherwise required by Federal regulation to have safety belts, have an occupant safety belt properly fastened at all times while the vehicle is in motion. For example, the regulations in 49 CFR 571.208–571.210 contain the current U.S. Department of Transportation requirements for the design and installation of safety belts installed in certain motor vehicles. The use of safety belts has been shown by data presented elsewhere in this notice to be effective in reducing injuries and fatalities resulting from motor vehicle crashes.

There are, however, situations where the use of occupant safety belts may contribute to potential employee injury or death. One such situation exists with the use of occupant safety belts in open cab or similar types of motor vehicles that do not have roofs or similar overhead protection. The use of occupant safety belts in these types of vehicles would expose employees to possible entrapment during roll-over type accidents. It is not the intent of this standard to require the use of occupant safety belts in open cab type vehicles where the possibility of occupant entrapment by a belt exists during a roll-over event even if the belts have been installed voluntarily by the employer. Further, OSHA is not aware of any Federal regulations that require the use of occupant safety belts in this type of industrial vehicle.

Another situation exists in the maritime industry where motor vehicles are used in piers and wharves with perimeter exposures to water. A hazard exists where employees belted into a motor vehicle may inadvertently drive off a pier or wharf and into the water. The use of occupant safety belts on motor vehicles operating in areas where such an accident could occur may lead to possible entrapment in or on the vehicle and subsequent drowning. OSHA requests information on the severity of this hazard and its frequency of occurrence.

In paragraph (c)(2) OSHA is proposing that head protection meeting the requirements of 49 CFR 571.218, Federal Motor Vehicle Safety Standards No. 218; Motorcycle helmets, dated April 6, 1988, shall be provided and shall be worn by employees on official business while the motorcycle they are operating or occupying is in motion.

Currently, 22 states have comprehensive motorcycle helmet laws. It is likely that employees in these states who operate or occupy motorcycles off the job may already have motorcycle helmets and may wish to use their own helmets while on official business. In addition, for other reasons, employees may wish to provide and use their own motorcycle helmets while operating or occupying a motorcycle on the job. Employers may wish to provide acceptable helmets to employees who operate or occupy motorcycles on official business. Additional comment is requested on whether employees on official business should be permitted to provide their own motorcycle helmets meeting the requirements of this proposal or whether employers should be required to provide the motorcycle helmets to be used by employees while on official business.

In paragraph (d)(1), OSHA is proposing the employer must develop and implement an employee driver safety awareness segment in the occupant protection program required in paragraph (b) of this section that would provide training to each employee who routinely might be expected to use a particular class of motor vehicles for official business. OSHA is also proposing later in paragraph (d)(6) that employees who might be expected to use any particular class of motor vehicles on a non-routine basis as part of their official work assignments be given a triennial safety briefing in safe vehicle use of a particular class of vehicle that they might be asked to use. Employee driver safety awareness programs have been shown in studies conducted by the NSC to increase driver awareness of hazards and in some cases reduce the frequency and severity of motor vehicle crashes.

In paragraph (d)(2), OSHA is proposing that all employee driver safety awareness programs for routine motor vehicle operators also include as a minimum topics addressing vehicle familiarization including the use of vehicle safety systems; the use of safety belts and, were applicable, the use of motorcycle helmets; and the effects of alcohol and other drugs on driver performance. Studies by the NHTSA and NSC have shown that employee awareness in these areas can, as a minimum, help reduce the frequency and severity of motor vehicle crashes.

In paragraph (d)(3), OSHA is proposing that employee driver safety awareness materials for both routine and non-routine drivers be developed by an individual who is qualified in the topices being taught by possession of a recognized degree, certificate, or professional standing, or by extensive individual knowledge training and experience and presented by an individual who is knowledgeable in topics being taught. These individuals may include first line supervisors, company safety officials, insurance carrier representatives or outside instructors. OSHA does not wish to limit employers unduly in the selection of individuals to provide driver safety awareness training. Qualified individuals are available from many sources including the use of employees who have been provided with training materials developed by an outside training resource. The requirements proposed in this paragraph are intended to establish minimum criteria to ensure that the presenter of the training material is qualified to present an effective education program.

In paragraph (d)(4), OSHA is proposing that the employer provide triennial employee driver refresher education to each employee who routinely uses motor vehicles on official business. At a minimum, the refresher training would cover the topics included in paragraph (d)(2) of this section. OSHA believes that a triennial refresher program is necessary and certainly adequate to keep employees aware of new motor vehicle technologies and equipment that become available. Many fleets of motor vehicles are updated on a periodic basis and triennial employee refresher training would keep employees up-to-date on the safe use of new vehicles and their safety equipment.

In paragraph (d)(5), OSHA is proposing that each employee hired after the effective date of this section who routinely uses a particular class of motor vehicle as part of that employee's work assignment be given the employee driver safety awareness imposed in paragraph (d)(1) and (d)(2) of this section before being permitted to use a particular class of motor vehicles, except if they deomonstrate that they have received equivalent training within the past three years. This proposed requirement provides for the recognition of those who have received training

within the past three years. The proposed language would assure that all employees who routinely use motor vehicles on the job have received driver safety awareness from some source within the three years prior to their beginning to use a particular class of motor vehicle.

In paragraph (d)(6), OSHA is proposing that the employer develop and implement a driver awareness segment of the occupant protection program that would provide for the initial and triennial refresher briefing for each employee who uses a particular class of motor vehicle on a non-routine basis before that employee is permitted to use a particular class of motor vehicle, except when the employee can demonstrate that an equivalent briefing on the particular class of motor vehicle has been received within the past three years. There are some employees who are not expected to use motor vehicles as part of their job, but who may be called upon for some reason at a particular time to use a particular class of motor vehicle. There are other employees who may use motor vehicles on a regular basis but less than the "routine" basis defined by OSHA. OSHA is also proposing that the briefing cover, as a minimum, the topics listed in paragraphs (d)(1) and (d)(2). OSHA is proposing this paragraph to ensure that such employees would have an awareness about the safety systems aboard the vehicle.

In paragraph (d)(7) OSHA is proposing that the employer certify that each routine and non-routine driver has received the training or briefing required in this section. There is no specific format for employer certification proposed in this rule. The Certification could, at a minimum, contain the employee's name, the name of the driver safety awareness program, and the date the training or briefing was completed. OSHA believes that some form of evidence is necessary to show that the training has been completed. However, the employer may select any format to show that an employee has been trained or briefed. Company driver licenses, diplomas, and class rosters are examples of the types of certification that may be used, but, there is no requirement for the issuance of these types of documentation.

29 CFR Part 1917, Marine Terminals

Part 1917 addresses the regulation of employment within a marine terminal as defined in § 1917.2(u), including the loading, unloading, movement or other handling of cargo, ship's stores or gear within the terminal or into and out of any land carrier, holding or consolidation areas, or any other activity within and associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment.

At present, vehicle safety in part 1917 is addressed in § 1917.27, Personnel and § 1917.44, General rules applicable to vehicles. However, neither of these sections provide for the installation and use of occupant safety belts or motorcycle helmets. The proposed occupant protection in motor vehicle standard would provide for that and would also require additional driver safety awareness for operators of those powered vehicles listed in § 1917.27 that also meet the definition of motor vehicles in the proposed standard.

OSHA is proposing a new paragraph (p), Motor vehicle occupant protection, in § 1917.44 that would require the general occupant protection program that is the subject of this proposal for all employees working for marine terminal facilities within the scope of part 1917. For the reasons stated above in the proposed amendments to part 1910, OSHA is proposing the same occupant protection provisions for part 1917 as OSHA explained in its earlier discussion of part 1910.

As an explanatory note, the reference to paragraph (p)(4) in § 1917.44(o)(3)(i) is a typographical error that should read as a reference to paragraph (o)(4). This correction is necessary since our proposal contains a new paragraph (p)(4) in § 1917.44 and leaving the current reference to (p)(4) without correction would be confusing.

29 CFR Part 1918, Longshoring

In this part, OSHA is proposing to regulate the use of all classes of motor vehicles that might be used by employees working for private employers engaged in longshoring operations or related employments.

OSHA is proposing a new paragraph (l), Motor vehicle occupant protection, in § 1918.73, Mechanically-powered vehicles used aboard vessels, that would require all mechanically-powered vehicles used aboard vessels to meet the occupant protection requirements that are the subject of this proposed rulemaking. For the reasons stated above in the proposed amendments to part 1910, OSHA is proposing the same occupant protection provisions for § 1917.73(l) as OSHA explained in its discussion earlier for part 1910.

29 CFR Part 1926, Construction

OSHA is proposing as new § 1926.33 the same type of occupant protection program for the construction industry that it has proposed for other industries in this notice. When developing proposed rules for the construction industry, OSHA must consult with the Advisory Committee on Construction Safety and Health (ACCSH) under section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333 and 29 CFR 1911.10. The ACCSH met in Washington, DC on September 13–14, 1989 and was presented with OSHA's proposed occupant protection program for the construction industry. They have organized a work group for this standard and have submitted preliminary comments on the proposal to OSHA. Many of their comments are incorporated in this notice.

29 CFR Part 1928, Agriculture

At this time, nothing proposed in this notice would apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs ten or fewer employees.

For the reasons stated above in the proposals to parts 1910 and others, OSHA is proposing the same occupant protection provisions to be added as § 1928.58 as OSHA explained in its discussion earlier for part 1910.

OSHA notes that § 1928.51(b) already requires installation and use of safety belts on agricultural tractors (including low-profile tractors) that are equipped with ROPS protection. This section also requires that safety belts meet the requirements set forth in the Society of Automotive Engineers standard SAE J4C–1985, Motor Vehicle Safety Belt Assembly, except for noted instances. Under the proposed rule safety belts for agricultural tractors would continue to be required to meet the requirements of 1918.51(b).

Other Relevant Issues Being Considered by OSHA

The following issues have developed during OSHA's work on this notice and warrant further discussion. OSHA is asking interested parties to consider these and other issues raised by the proposal and to submit comments and data on the topics of interest. OSHA requests that interested persons provide as much detail as possible in commenting on the issues and questions set forth below. The Agency requests that commenters please explain the reasons for their responses and discuss why a particular action is advisable. The Agency also requests that interested persons submit comments on other issues deemed relevant that are not specifically addressed by the questions below.

In evaluating the following issues OSHA wants to assure that expected costs are reasonably related to expected benefits as required by the Occupational Safety and Health Act of 1970.

1. Vehicle Safety Inspection and Maintenance Programs

OSHA is considering the inclusion of certain requirements in the final rule that would address either vehicle maintenance plans, vehicle safety inspections, or both. Such requirements could ensure that employees are provided with motor vehicles that have been inspected or maintained in a manner that would ensure that vehicles are equipped and maintained with properly operating safety systems including occupant safety belts.

The Conference Report on the Continuing Resolution for FY 1988 (Pub. L. 100-202) directed NHTSA to conduct a comprehensive evaluation of the effectiveness of state motor vehicle safety inspection programs in (1) reducing highway crashes that result in injuries and deaths, and (2) limiting the number of defective or unsafe motor vehicles on the highways.

The evaluation was conducted by NHTSA task force and the results were published in "Study of the Effectiveness of State Motor Vehicle Inspection Programs, Final Report," U.S. Department of Transportation, National Highway Traffic Safety Administration, August, 1989.

This task force reviewed relevant literature, studied existing Periodic Motor Vehicle Inspection (PMVI) programs, conducted site visits to selected PMVI and non-PMVI states, and analyzed NHTSA's crash data bases. In addition, two public hearings were held and comments requested from the public through two separate notices published in the Federal Register.

Much of the prior research regarding PMVI programs predates 1980. Past studies on vehicle degradation point to the need for more sophisticated inspection equipment and procedures. At the same time, most of the literature concluded that reliability of the current PMVI process is generally poor. Nevertheless, there was a positive correlation between vehicle condition and the presence of an inspection program and "better maintained vehicles" have some potential for lower involvement in crash rates. However there was no conclusive evidence in the literature that periodic motor vehicle inspection programs are, or are not, effective in reducing crashes.

OSHA is interested in obtaining further comments and additional data, including cost/benefit data, from the public that would indicate the effectiveness of a mandatory vehicle maintenance or inspection program in reducing employee injuries and fatalities. What costs are associated with inspection programs? What components of the motor vehicle should be inspected? What qualifications should inspectors have to perform vehicle inspections? What should be done with vehicles that fail inspections?

2. Pre-Trip and Post-Trip Vehicle Inspection and Reports

Related to Issue #1, OSHA is also interested in obtaining data that would support or reject the inclusion in the final rule of a requirement for pre-trip vehicle inspections and post-trip reporting of maintenance problems by employees. There is presently an insufficient amount of evidence availale to OSHA to show that pre-trip inspections of motor vehicles reduce crashes and related employee injuries and fatalities. The same is true for post-trip reporting of vehicle defects. OSHA would appreciate comment on the efficacy of pre-trip inspections and post-trip defect reporting in reducing employee injuries or fatalities. Should OSHA include a requirement for either pre-trip inspections, post-trip defect reporting or both in the final rule? If so, what specific elements of inspection and reporting should be included in the requirement? What are the approximate costs/vehicles for such a requirement? What benefits could be derived from such a requirement? What vehicles should be included in a maintenance/inspection program? How should privately owned or rented vehicles be addressed?

3. Employee Turnover and Training

While meeting with the National Advisory Committee on Construction Safety and Health (ACCSH) in Washington, DC on September 13, 1989, OSHA became aware of several issues on which the Agency requests further comment. For example, ACCSH identified a potential problem with OSHA's requirement that each employer provide driver safety awareness to all new employees. In industries, such as construction, where there is a high turnover of employees due to daily changes in work demands, the requrement for each employer to provide driver safety awareness to each new employee when hired could become quite burdensome often duplicating driver safety awareness given only days before by another employer. OSHA believes that this problem is not limited to the construction industry and believes that it most likely also exists in all other industries where employees move from employer to employer as workloads change. OSHA requests comments on how the Agency should address the issue of frequent employee turnover and the need for each employer to provide driver safety awareness to new employees.

4. Proof of Training

Another issue on which OSHA would appreciate comments concerns the manner by which employers can demonstrate that newly hired employees have successfully completed the necessary driver safety awareness training or briefing either independently or in a program provided by a previous employer. Should a certificate of completion be required for employees who complete appropriate driver safety awareness programs? If so, what should that certificate contain? Should the certificate be valid nationwide or just in the jurisdiction where it was issued? How should an employee be able to demonstrate competency in vehicle use without presenting a certificate of completion in order to use a vehicle? What is the cost of implementing and maintaining a certificaiton system?

The above example illustrates the general need for "portability" of training in industries with high employee turnover. OSHA is requesting comments on this issue and the specific language addressing the area of driver safety awareness in this notice.

5. Impaired Driving Awareness Programs

Impaired and drunk driving is a predominately factor in motor vehicle fatalities and injuries. NHTSA estimates that 50 percent of all motor vehicle fatalities occur in alcohol-related crashes. In 1988, 38 percent of all fatally injured drivers were intoxicated (NHTSA). Each year approximately 500,000 persons suffer injuries in alcohol-related traffic crashes, an average of one injury every minute (NHTSA). About 40,000 of these are serious injuries (NHTSA). OSHA is considering the inclusion of an employee drug and alcohol awareness training program in its final rule. Such a program would involve employee education in the effects of alcohol and other drugs on driving preformance. What type of education program should be developed and how should it be presented? Data are requested on the effectiveness of such awareness programs in preventing accidents, injuries, and fatalities?

6. Vehicle Overcrowding

OSHA is also concerned with overcrowding of motor vehicles. In many areas, in particular the agricultural and construction industries, it is common practice to load employees into motor vehicles, in particular trucks and vans, beyond the designed passenger capacity of the vehicle in order to transport employees quickly to another area within the worksite. Because employees are loaded beyond the designed passenger capacity of the vehicle, there are insufficient occupant safety belts for employee use. This unsafe practice exposes those unbelted employees to the risk of ejection from the vehicle particularly when the vehicle is used over rough terrain. Although OSHA is not presently proposing the retro-fitting of such vehicles with occupant safety belts, the risk of ejection of unbelted employees is an issue. Should OSHA require the retro-fitting or "grandfathering" of vehicles without occupant safety belts? Should OSHA require the installation of seats and occupant safety belts in areas other than the passenger compartment when motor vehicles are expected to be used by the employer to transport employees in areas other than the passenger compartment, such as the cargo area of light trucks and vans? Should OSHA prohibit the use of motor vehicles to transport employees in numbers greater than the number of occupant safety belts required to be installed in the vehicle?

7. Vehicle Overloading and Safe Use

OSHA has become aware of the problems associated with the overloading of motor vehicles beyond the rated load capacity for either the vehicle itself, its tires, or both. The use of overloaded vehicles creates a hazard to employees because of inadequate braking systems or underrated tires. Overloaded vehicles can not be stopped within rated distances and may not be able to be stopped at all prior to brake failure. Use of overloaded vehicles on underrated tires can lead to overheating of the tires and possible tire failure with obvious results. OSHA is interested in obtaining comments on the extent of overloading of motor vehicles and the efficacy of other Federal regulations in controlling this hazard.

8. Automatic Crash Protection and Other Engineering Controls Related to Occupant Protection

OSHA is interested in obtaining addition information supporting or rejecting the required provision of engineering controls such as air bags in addition to the required use of manual or passive safety belts as a means of reducing employee injury or death in motor vehicle crashes. OSHA would like information on the cost of requiring the installation of air bags. Those individuals providing comments or information on both the costs of this standard and/or the cost of air bags should keep in mind the current timetable established by the U.S. Department of Transportation for the required installation of automatic crash protection devices in cars and light trucks by 1996.

9. Employer Enforcement of the Occupant Protection Program

Several questions have arisen during the development of this proposal with regard to employer enforcement of the occupant protection program; for example, while employees are away from the direct supervision of the employer. How can the employer ensure that an employee such as an on-the-road sales representative is complying with the requirements of an occupant protection program while that sales representative is "on-the-road", away from direct supervision, visiting various clients? Should OSHA require the employer to establish a program where an employer representative can observe employees on occasion, such as when the employees' motor vehicle passes a security officer at the plant entrance/exit, to determine compliance with the employer's occupant protection program? How often should the employer representative observe employees to determine compliance? How effective would such an employee observation program be in reducing crashes and employee injuries? What are the costs to employers for such a program? How can the employer control chronic violators of a company occupant protection program? What other methods of enforcement would be appropriate? What would be the burden in terms of employee hours away from the job and other expenses associated with implementing and enforcing an occupant protection program? OSHA request comments on these questions.

10. Occupant Safety Belt and Motorcycle Helmet Use

OSHA is aware that there are companies that have established programs requiring the use of occupant seat belts and, if necessary, motorcycle helmets. OSHA requests information about those programs. In describing the programs, OSHA also requests the following information, if available.

(a) What are the components of the program?

(b) How is safety belt or motorcycle helmet use promoted and how are employees educated about the proper use of the devices?

(c) How is safety belt and motorcycle helmet use enforced?

(d) What employees and vehicles are included in the programs?

(e) What are the annual costs of the programs?

(f) What results have been achieved with the programs (e.g., pre-program vs. post-program accident rate data; reduction in worker compensation claims, lost work days, insurance premiums, and litigation costs)?

(g) What are the pre-program versus post-program safety belt and motorcycle helmet use rates at the company?

(h) How does the company deal with chronic violators?

11. Occupant Safety Belts

(a) What percentage of company vehicles, by class, are equipped with front and rear seat manual occupant safety belts?

(b) What percentage of company vehicles are currently equipped with front automatic safety belts or front air bags?

(c) What are the turnover rates for company motor vehicle fleets?

12. Driver Safety Awareness

OSHA is aware that there are companies that have already instituted driver safety awareness programs for their employees. Driver safety awareness programs can take the form of face-to-face classroom instruction, self-study videos, or through providing manuals or brochures for employees to read. OSHA is considering such flexibility for the final rule and also requests the following information, if available:

(a) Why did the company establish a driver safety awareness program and what does the company believe will be achieved through employee driver safety awareness?

(b) What are the components of the driver safety awareness program (e.g., classroom instruction, road tests, video programs.)?

(c) What topics are covered?

(d) What educational materials have been developed or are used in the program?

(e) What kinds of instructional methods are used?

(f) Where a driver safety awareness instructor is used, what training, education or certification does the individual have?

(g) What employees and vehicles are included in the program?

(h) What results have been achieved with the driver safety awareness program (e.g., pre-training vs. post-training accident rate data; reduction in worker compensation claims, lost work days and litigation costs.)?

13. Routine Drivers

To delineate routine and non-routine drivers in this notice, OSHA assumed that routine motor vehicle use would involve a minimum of one hour of vehicle use per day, five days a week. OSHA realizes other time frames are possible for identifying routine drivers. OSHA requests comment on the appropriate criteria for delineating routine and non-routine drivers.

14. Computing Driver Safety Awareness Time

OSHA also assumed for the costing purposes of this notice that initial training for routine drivers would require one hour and triennial refresher training would require one hour. Initial safety briefings for non-routine drivers would require 30 minutes and triennial refresher briefings would require 30 minutes.

OSHA is interested in obtaining comments on the time frames for driver training and safety briefings used to develop the training costs in this rule. Are the time frames of one hour initial training with one hour of refresher training for routine drivers every three years reasonable? Is the time frame of 30 minutes for an initial briefing and 30 minutes of refresher briefings for non-routine drivers every three years reasonable? What other time requirements for initial and triennial training and safety briefings would be appropriate? For companies that have established a driver safety awareness program, how much time is required for driver safety awareness?

15. Should Bicycles Be Considered in This Rulemaking?

An additional and related issue that has evolved during the Agency's initial discussions on motorcycle operator safety involves the safety of employees who use bicycles in the fast delivery service industry. OSHA is aware that bicycles are being used more and more in this industry particularly in major metropolitan areas. While bicycles are not considered "motor vehicles," they can present some of the same injury exposures to the operator that are found with motorcycles. OSHA is interested in obtaining additional information and facts about the hazards associated with the use of bicycles at the higher speeds related with the delivery service. Should OSHA include bicycles, which are not "motor vehicles," within the scope of this proposed rule or would the protection of bicycle operators be better provided by other OSHA standards? How do injury rates for bicycle operators, in particular those for traumatic head and neck injuries, compare with the injury rates for motorcycle operators?

16. Vehicle Condition Awareness

OSHA is concerned about the potential for motor vehicle accidents that occur as the result of employee operation of unsafe motor vehicles. Although some employers may already have inspection programs for company-owned vehicles, OSHA is concerned about employee operation of vehicles whose condition is not directly within the control of the employer (e.g., rental vehicles). As a result the employer may not be aware of the condition of all vehicles operated by their employees. In light of this concern OSHA is considering the possible inclusion of a requirement in the training provisions of the final rule that would require employers to train employees in the recognition of unsafe motor vehicle conditions that may lead to motor vehicle accidents. OSHA is interested in obtaining additional data on the number of accidents that occur as the result of unsafe motor vehicle conditions rather than as a result of driver error. OSHA would appreciate any data that would identify those components of a motor vehicle that most likely fail and cause motor vehicle crashes or cause injuries/illnesses associated with motor vehicle operation. OSHA is also requesting data and information on what topics or areas of a motor vehicle's physical condition such as tires and brakes should be included in any potential vehicle condition awareness program.

Costs vs. Risk Reduction

The U.S. Supreme Court, in *American Textile Manufacturers Institute* v. *Donovan* 452 U.S. 490 (1981), determined that for standards dealing with toxic substances or harmful physical agents ("section 6(b)(5) standards"), once OSHA determines that there is a "significant risk" to employees, the standards may not be based on a balancing of costs and benefits; rather, the standards must reduce the risk "to the extent feasible." The decision in *American Textile* did not reach the issue of whether cost-benefit analysis is either required or permitted in the issuance of other types of standards under the OSH Act.

In a decision on OSHA's grain handling standard, *National Grain and Feed Association* v. *OSHA*, 866 F.2d 717, 733 (5th Cir., 1989), the U.S. Court of Appeals for the Fifth Circuit held that the grain standard did not deal with a toxic substance or harmful physical agent within the contemplation of section 6(b)(5), and that it was not subject to the "feasibility mandate" under the *American Textile* decision. In *National Grain*, the Fifth Circuit found that standards other than section 6(b)(5) standards must be "reasonably necessary or appropriate" to protect employee safety, and that, in contrast to 6(b)(5) standards, "[t]his determination encompasses a specie of cost-benefit justification." *Id.* The court determined that "[t]he reasonably necessary requirement * * * only demands that the expected costs of OSHA regulations be reasonably related to the expected benefits." *Id.*, (citing its previous decision in *Texas Independent Ginners* v. *Marshall*, 630 F.2d 398, 411 n. 44 (5th Cir. 1980)).

In a subsequent decision involving the grain handling standard, the Fifth Circuit explained that this cost-benefit determination "does not mean a rigid arithmetical exercise or a 'formal, specific weighing of quantified benefits against costs.' " *National Grain and Feed Association* v. *OSHA*, No. 87-4960, slip op. at 7 (5th Cir., April 25, 1990). Rather, the court determined that the grain handling standard must, on balance, produce a benefit the costs of which are not unreasonable. *Id.* "The protection afforded to workers should outweigh the economic consequences to the regulated industry." *Id.* The court concluded that this cost-benefit determination involves a considerable amount of deference to agency discretion. *Id.*, (citing *Texas Independent Ginners Association*, 630 F.2d at 411, n. 44). OSHA believes that its proposed rule on occupant protection in motor vehicles readily meets the test set forth by the Fifth Circuit, insofar as that test is applicable, and requests public comment on the requirements in its proposed rule.

III. Preliminary Regulatory Impact Analysis, Regulatory Flexibility Analysis and Environmental Impact Assessment

In compliance with Executive Order (E.O.) 12291 and the Regulatory Flexibility Act of 1980, OSHA has prepared a Preliminary Regulatory Impact Assessment (PRIA) of the proposed standard for occupant protection in motor vehicles. Based on this analysis, OSHA concludes that the standard is protective and cost-effective. The result of its adoption would provide a nationwide base level of vehicle

safety for all industries, would mitigate the seriousness of occupational motor vehicle accidents as well as reduce the number of accidents and consequently, would reduce occupational fatalities and injuries.

Regulatory History

The Occupational Safety and Health Administration (OSHA) currently has no general regulation that requires employers to ensure that their employees use occupant safety belts, helmets or to provide driver training for their employees in the safe operation of motor vehicles on the job. Data developed for the PRIA indicate that there are approximately 2,100 occupational motor vehicle fatalities and 91,000 occupational motor vehicle lost-workday injuries per year among affected employees. OSHA has received several requests and statements of support for a motor vehicle occupant protection standard from interested parties including the National Safety Council and the National Highway Traffic Safety Administration. OSHA has reviewed other Federal regulations that address motor vehicle safety and has concluded that a federal occupational vehicle safety standard for occupant protection would enhance the safety of employees traveling in motor vehicles as part of their job duties.

OSHA is, therefore, issuing a generic proposal that will be included in parts 1910 (General Industry), 1915 (Shipyards), 1917 (Marine Terminals), 1918 (Longshoring), 1926 (Construction) and 1928 (Agriculture) that would address the safe operation of motor vehicles. The proposed standard addresses two areas affecting the safe operation of motor vehicles where they are used on official business: (1) The employer shall ensure that each employee has safe occupant protection with an occupant safety belt properly fastened at all times while occupying a moving motor vehicle that is equipped with safety belts or is required by Federal regulations to have safety belts and head protection (helmets) meeting the requirements of 49 CFR 571.218, Federal Motor Vehicle Standard No. 218, for motorcyclists operating motorcycles for business; and (2) the employer shall develop and implement an employee driver safety awareness training program.

Summary of Effects

The information presented in the following paragraphs is based primarily on data gathered and analyses performed by OSHA's contractor, Eastern Research Group (ERG). A detailed discussion of ERG's findings is presented in their report, An Economic Analysis for an OSHA Standard for Occupational Motor Vehicle Safety, 1989, and in the Preliminary Regulatory Impact Analysis, both of which will be entered in the public docket of this rule making proceeding.

Affected Industries

Safe vehicle operation can be identified throughout a broad range of four digit Standard Industrial Classification (SICs) codes. The proposed standard covers all major categories of industries except for mining. OSHA has assumed that virtually all firms with employees in these SICs could be affected by the standard.

Feasibility, Benefits and Costs

OSHA has determined that issues of technological feasibility are not evident in this proposal. The analysis of the benefits of the standard was performed using a baseline of the actual fatalities and injuries resulting from occupational motor vehicle accidents. To estimate the potential benefits or probable effectiveness of the standard in preventing fatalities and injuries, an effectiveness rate (fatalities and injuries avoided when safety belts and helmets are worn) for occupant safety belts, helmets and driver training was applied to potential benefits. In addition, it was assumed that 80 percent of affected employees will comply with the safety belt requirement. Based on these projections, from 465 to 684 occupational fatalities and from 22,221 to 31,635 occupational lost-workday injuries per year would be avoided under the proposed standard.

In estimating the industry-wide cost of compliance, it was assumed that establishments will incur costs on a per employee basis (1) to provide training, (2) to install safety belts on regulated vehicles whose original safety belts were removed and (3) to provide helmets for motorcyclists. Initial training for routine drivers was estimated to take one hour, and cost approximately $18.75 per driver (combined driver and trainer time) and is required to be retaken every three years. For non-routine drivers, a 30 minute initial briefing to be retaken every three years was estimated to cost approximately $9.50 per driver. OSHA estimates that $220.5 million in annualized costs will be required to comply with the proposed standard.

The economic impact on individual firms was evaluated by comparing compliance costs with various financial variables. This analysis revealed that if compliance costs were passed forward to the consumer, the maximum price impacts would be less than 0.02 percent. However, it may not be possible for industry to pass forward all cost increases in the form of higher prices. For this reason, OSHA also calculated the maximum impact on profits that the standard could have if the affected industries were forced to absorb all of the compliance costs. Data indicate that the maximum potential impact would be a 0.20 percent decline in profits among some affected industries. Thus, OSHA has determined that the standard will be economically feasible.

Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)), OSHA has assessed the impact of the standard and concludes that it will not significantly affect a substantial number of small entities. This act requires that in proposing new rules, federal regulatory agencies must examine the potential for alleviating disproportionate burdens on small businesses. Nearly 86 percent of the firms covered by the standard employ fewer than 20 employees. For the vast majority of these small firms, it is anticipated that the economic impact of the standard will not be significant given the small magnitude of the compliance costs for individual firms.

Other Impacts

International Trade

The proposed standard is not likely to have a significant effect on international trade because of the extremely small magnitude of any price increase that would be required for passing forward compliance costs. There is very little potential for the proposed standard to have a measurable impact on the prices of U.S. manufactured goods and therefore to affect their competitiveness.

IV. Environmental Assessment

Finding of No Significant Impact

This proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (40 CFR parts 1500 through 1517), and the Department of Labor's NEPA Procedures (29 CFR part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed revisions and additions to 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928 focus on the reduction of

motor vehicle accidents, including crashes, by means of requiring the use of occupant safety belts and motorcycle helmets and driver safety awareness. The proposal also contains language and format changes. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, these revisions are categorized as excluded actions according to subpart B, § 11.10, of the DOL NEPA regulations.

V. Federalism

This proposed regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to preempt state laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption in issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan states must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce they may not unduly burden commerce and must be justified by compelling local conditions.

Currently, 36 states plus the District of Columbia have laws requiring the use of safety belts during use of a motor vehicle and 22 states have comprehensive motorcycle helmet laws. It is OSHA's intent that the proposed OSHA vehicle occupant protection safety standard will have little, if any, preemptive effect on such laws. To this end, the proposed standard has been carefully worded to regulate a safety and health issue distinct from the subject matter addressed by these state laws. The typical state safety belt law is applicable directly to drivers and front seat passengers, only a few apply to rear seat passengers and the laws require occupants to remain belted while operating a vehicle. Typical motorcycle laws are applicable directly to operators and requires them to be helmeted while operating a motorcycle. Individual drivers are legally responsible for compliance, and can be sanctioned in the event of a failure to comply. The proposed OSHA standard, in contrast, is applicable to employers, not employee/drivers. The proposed standard would impose upon employers the obligation to monitor and enforce a comprehensive occupant protection program, which includes the adoption, communication and enforcement of a rule requiring the use of safety belts and motorcycle helmets. As is the case under other OSHA standards requiring the use of personal protective equipment, the employer, not the employee, is ultimately responsible for compliance with the standard. Accordingly, it is OSHA's view that state safety belt and motorcycle helmet laws which apply to vehicle drivers or occupants do not relate to the occupational safety and health issues addressed by this Federal standard, and would not be subject to Federal preemption.

VI. State Plan States

This **Federal Register** document proposes a new standard addressing motor vehicle occupant protection for inclusion in 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928. The standard that is proposed today would be codified into the applicable section of each individual part of the Code of Federal Regulations.

The 25 States or U.S. Territories with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (state and local government employees) sectors within six months of the publication date of a permanent final Federal rule or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective as" the new Federal standard.

These States and Territories are Alaska, Arizona, California, Connecticut (plan covers only state and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (plan covers only state and local government employees), North Carolina, Puerto Rico, South Carolina, Oregon, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming.

After the effective date of a final Federal rule, until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

VII. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by November 9, 1990, and submitted in quadruplicate to the Docket Office, Docket No. S-776, room N-2634, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Public Hearing

OSHA has tentatively scheduled an informal public hearing to begin at 10:00 a.m. on January 8, 1991, depending on whether any hearing requests are received by the Agency. The hearing will be held in the Auditorium, Francis Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC, 20210. Interested persons who wish to request a hearing must file such request by September 10, 1990.

Requests for hearings

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested parties may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office, Docket No. S-776, room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 and must comply with the following conditions:

1. The objections and hearing requests must include the name and address of the individual or organization making the objection or request;

2. The objections and hearing requests must be postmarked by September 10, 1990.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objection is taken or about which the hearing request is made, and must state the grounds therefor;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of

the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

OSHA recognizes that there may also be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

Notice of Intention To Appear

Persons desiring to participate at the hearing, including the right to question witnesses, must file a notice of intention to appear postmarked by September 10, 1990. The notice of intention to appear must contain the following:

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 required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addresses;
6. A statement as to whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for presentation at the hearing or who will present documentary evidence, must provide in quadruplicate, the complete text of its testimony, including, all documentary evidence to be presented at the hearing. These materials must be postmarked no later than September 10, 1990 and sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, at the address given above.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In 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 the fact. Any party who has not substantially complied with the above requirements, may be limited to a 10 minute presentation and may be requested to return for questioning at a later time.

Notices of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket No. S-776, Occupational Safety and Health Administration, room S-2625, 200 Constitution Avenue NW., Washington, DC 20210.

The hearing is scheduled to commence at 10 a.m. on September 10, 1990. The hearing will be presided over by an Administrative Law Judge who will have the powers necessary or 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. 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.

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 a final standard.

If no hearing requests are submitted by interested persons by the deadlines set forth above, no hearing will be held. OSHA will then publish a notice in the **Federal Register**, indicating that there will be no hearing. The Agency will also contact all persons who submitted comments in response to this proposal, to inform them of this fact.

The proposal will be reviewed in light of the comments received, additional comments and testimony received and all other relevant material in the record. Decisions on the provisions of a final standard will be made by the Assistant Secretary based on the entire record of the proceeding.

List of Subjects

29 CFR Part 1910

Driver education, Head protection, Motor vehicles, Motorcycle helmets, Occupant safety belts, Personal protective equipment, Safety belts, Training, Vehicle safety.

29 CFR Part 1915

Shipyard employment, Motor vehicles, Personal protective equipment, Occupational safety.

29 CFR Part 1917

Marine terminals, Motor vehicles, Personal protective equipment, Occupational safety.

29 CFR Part 1918

Longshoring, Motor vehicles, Personal protective equipment, Occupational safety.

29 CFR Part 1926

Construction, Motor vehicles, Personal protective equipment, Occupational safety.

29 CFR Part 1928

Agriculture, Motor vehicles, Personal protective equipment, Occupational safety.

Authority

This document has been 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. Pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), section 41 of the Longshore and Habor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order 1-90 (55 FR 9033) and 29 CFR part 1911, it is proposed to amend, as applicable, parts 1910, 1915, 1917, 1918, 1926 and 1928 of title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, DC this 6th day of July, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—SAFETY AND HEALTH REGULATIONS FOR SHIPYARD EMPLOYMENT

PART 1917—SAFETY AND HEALTH REGULATIONS FOR MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—CONSTRUCTION SAFETY AND HEALTH STANDARDS

PART 1928—AGRICULTURE SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart I of part 1910 would be revised to read as follows:

Authority: Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable. Section 1910.140 also issued under 29 CFR part 1911.

2. The authority citation for part 1915 would be revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable; 29 CFR part 1911. Section 1915.99 also issued under 5 U.S.C. 553.

3. The authority citation for part 1917 would be revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable; 29 CFR part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

4. The authority citation for part 1918 would be revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs.4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR part 1911. Section 1918.73 also issued under 29 CFR part 1911.

5. The authority citation for subpart C of part 1926 would be revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable.

Section 1926.33 is also issued under 29 CFR part 1911.

6. The authority citation for part 1928 would be revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable; 29 CFR part 1911.

Section 1928.21 also issued under 5 U.S.C. 553.

7. Section 1910.139 would be amended by adding the following language to the end of the section:

§ 1910.139 Sources of standards.

* * * * *

Specific standards of the following organization have been referenced in this part. Copies of the referenced materials may be obtained from the issuing organization:

American National Standards Institute, 1430 Broadway, New York, NY 10018.

8. Section 1910.140 would be revised and §§ 1915.100, 1926.33, and 1928.58 would be added to read as follows:

19——.——— Occupant protection in motor vehicles.

(a) *Scope, application and definitions*— (1) *Scope.* This section requires employers to adopt and enforce requirements for the safe use of all classes of motor vehicles that are used by employees for official business.

(2) *Application.* This section applies to each employee operating or occupying any class of motor vehicle as part of that employee's official duties or work assignments.

(3) *Definitions—Motor vehicle* means any vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power in the transportation of employees, passengers or property, or any combination thereof determined by the Occupational Safety and Health Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electrical power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Occupant safety belt means a manual or passive employee restraint system.

(b) *Occupant protection program.* The employer shall develop and implement an occupant protection program that at a minimum addresses the use of vehicle safety systems, including the use of occupant safety belts and motorcycle helmets, and driver safety awareness. The employer shall develop and implement a plan to monitor implementation and enforcement of the occupant protection program.

(c) *Occupant protection*—(1) *Use of safety belts.* The employer shall require that each employee on official business, operating or occupying a motor vehicle equipped with safety belts or otherwise required by Federal regulations to have safety belts, to have an occupant safety belt properly fastened at all times while the vehicle is in motion.

(2) *Use of motorcycle helmets.* Head protection meeting the requirements of 49 CFR 571.218, Federal Motor Vehicle Safety Standard No. 218; Motorcycle helmets, shall be provided, and shall be worn by employees on official business while the motorcycle they are operating or occupying is in motion.

(d) *Driver safety awareness.* (1) The employer shall develop and implement a driver safety awareness segment in the occupant protection program that provides for training in safe vehicle use for each employee who routinely might be expected to use a particular class of motor vehicles as part of that employee's official work assignments.

(2) Employee driver training for routine motor vehicle operators shall include as a minimum, topics addressing vehicle familiarization, including the use of vehicle safety systems; the use of safety belts and, where appropriate, the use of motorcycle helmets; and the effects of alcohol and other drugs on driver performance.

(3) All driver safety awareness materials for routine and non-routine operators shall be developed by an individual who is qualified in the topics being taught by possession of a recognized degree, certificate, or professional standing, or by extensive individual knowledge training and experience and shall be presented by an individual who is knowledgeable in the topics being taught.

(4) The employer shall provide triennial employee driver refresher training to each employee who routinely uses motor vehicles for official business. At a minimum, this refresher training shall cover the topics listed in paragraph (d)(2) of this section.

(5) The employer shall provide each employee hired after the effective date of this section who routinely uses any particular class of motor vehicles as part of that employee's official work assignments with the employee driver safety awareness required in paragraphs (d)(1) and (d)(2) of this section before being permitted to use that motor vehicle, except when employees

demonstrate that they have received equivalent training during the past three years.

(6) The employer shall develop and implement a driver safety awareness segment in the occupant protection program that provides for the initial and triennial refresher briefing of each employee, who is called upon non-routinely to use any particular class of motor vehicle before being permitted to use that motor vehicle, except when the employee can demonstrate that an equivalent briefing has been received during the past three years. At a minimum, this briefing shall cover the topics listed in paragraphs (d)(1) and (d)(2).

(7) The employer shall certify that each routine and non-routine employee has received the training or briefing required in this section.

9. A new paragraph (p) would be added to § 1917.44 to read as follows:

§ 1917.44 General rules applicable to vehicles.

* * *

(p) *Occupant protection in motor vehicles.* (1) This section requires employers to adopt and enforce requirements for the safe use of all classes of motor vehicles that are used by employees for official business.

(2) This section applies to each employee operating or occupying any class of motor vehicles as part of that employee's official duties or work assignments.

(3) *Definitions.*

Motor vehicle means any vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power in the transportation of employees, passengers or property, or any combination thereof determined by the Occupational Safety and Health Administration but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electrical power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Occupant safety belt means a manual or passive employee restraint system.

(4) The employer shall develop and implement an occupant protection program that at a minimum addresses the use of vehicle safety systems, including the use of occupant safety belts and motorcycle helmets, and driver safety awareness. The employer shall develop and implement a plan to monitor implementation and enforcement of the occupant protection program.

(5) The employer shall require that each employee on official business, operating or occupying a motor vehicle equipped with safety belts or otherwise required by Federal regulations to have safety belts, to have an occupant safety belt properly fastened at all times while the vehicle is in motion.

(6) Head protection meeting the requirements of 49 CFR 571.218, Federal Motor Vehicle Safety Standard No. 218; *Motorcycle helmets,* shall be provided, and shall be worn by employees while they are operating or occupying a motorcycle which is in motion.

(7) The employer shall develop and implement a driver safety awareness segment in the occupant protection program that provides for training in safe vehicle use for each employee, who routinely might be expected to use a particular class of motor vehicles as part of that employee's official work assignments.

(8) Employee driver training for routine motor vehicle operators shall include as a minimum, topics addressing vehicle familiarization including the use of vehicle safety systems; the use of safety belts and, where applicable, the use of motorcycle helmets; and the effects of alcohol and other drugs on driver performance.

(9) All driver safety awareness materials for routine and non-routine operators shall be developed by an individual who is qualified in the topics being taught by possession of a recognized degree, certificate, or professional standing, or by extensive individual knowledge training and experience and shall be presented by an individual who is knowledgeable in the topics being taught.

(10) The employer shall provide triennial employee driver refresher training to each employee who routinely uses motor vehicles for offical business. At a minimum, this refresher training shall cover the topics listed in paragraph (p)(8) of this section.

(11) The employer shall provide each employee hired after the effective date of this section who routinely uses any particular class of motor vehicles as part of that employee's official work assignments with the employee driver safety awareness required in paragraphs (p)(7) and (p)(8) of this section before being permitted to use that motor vehicle, except when employees demonstrate that they have received equivalent training during the past three years.

(12) The employer shall develop and implement a driver safety awareness segment in the occupant protection program that provides for the initial and triennial refresher briefing of each employee, who is called upon non-routinely to use any particular class of motor vehicle, on the safe use of that particular class of vehicle before being permitted to use that motor vehicle, except when the employee can demonstrate that an equivalent briefing has been received during the past three years. At a minimum, this briefing shall cover the topics listed in paragraphs (p)(7) and (p)(8) of this section.

(13) The employer shall certify that each routine and non-routine employee has received the training or briefing required in this section.

10. A new paragraph (l) would be added to § 1918.73 to read as follows:

§ 1918.73 Mechanically-powered vehicles used aboard vessels.

* * * * *

(l) *Occupant protection in motor vehicles.* (1) This section requires employers to adopt and enforce requirements for the safe use of all classes of motor vehicles that are used by employees for official business.

(2) This section applies to each employee operating or occupying any class of motor vehicles as part of that employee's official duties or work assignments.

(3) *Definitions*

Motor vehicle means any vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power in the transportation of employees, passengers or property, or any combination thereof determined by the Occupational Safety and Health Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electrical power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

Occupant safety belt means a manual or passive employee restraint system.

(4) The employer shall develop and implement an occupant protection program that at a minimum addresses the use of vehicle safety systems, including the use of occupant safety belts and motorcycle helmets, and driver safety awareness. The employer shall develop and implement a plan to monitor implementation and enforcement of the occupant protection program.

(5) The employer shall require that each employee on official business, operating or occupying a motor vehicle equipped with safety belts or otherwise required by Federal regulations to have safety belts, to have an occupant safety

belt properly fastened at all times while the vehicle is in motion.

(6) Head protection meeting the requirements of 49 CFR 571.218, Federal Motor Vehicle Safety Standard No. 218; *Motorcycle helmets,* shall be provided, and shall be worn by employees on official business while they are operating or occupying a motorcycle which is in motion.

(7) The employer shall develop and implement a driver safety awareness segment in the occupant protection program that provides for training in safe vehicle use for each employee who routinely might be expected to use a particular class of motor vehicles as part of that employee's official work assignments.

(8) Employee driver training for routine motor vehicle operators shall include as a minimum topics addressing vehicle familiarization including the use of vehicle safety systems; the use of safety belts and, where applicable, the use of motorcycle helmets; and the effects of alcohol and other drugs on driver performance.

(9) All driver safety awareness materials for routine and non-routine operators shall be developed by an individual who is qualified in the topics being taught by possession of a recognized degree, certificate, or professional standing, or by extensive individual knowledge training and experience and shall be presented by an individual who is knowledgeable in the topics being taught.

(10) The employer shall provide triennial employee driver refresher training to each employee who routinely uses motor vehicles for official business. At a minimum, this refresher training shall cover the topics listed in paragraph (l)(8) of this section.

(11) The employer shall provide each employee hired after the effective date of this section who routinely uses any particular class of motor vehicles as part of that employee's official work assignments with the employee driver safety awareness required in paragraphs (l)(7) and (l)(8) of this section before being permitted to use that motor vehicle, except when employees demonstrate that they have received equivalent training during the past three years.

(12) The employer shall develop and implement a driver safety awareness segment in the occupant protection program that provides for the initial and triennial refresher briefing of each employee, who is called upon non-routinely to use any particular class of motor vehicle, on the safe use of that particular class of vehicle before being permitted to use that motor vehicle, except when the employee can demonstrate that an equivalent briefing has been received during the past three years. As a minimum, this briefing shall cover the topics listed in paragraphs (l)(7) and (l)(8) of this section.

(13) The employer shall certify that each routine and non-routine vehicle operator has received the training or briefing required in this section.

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Thursday, July 12, 1990

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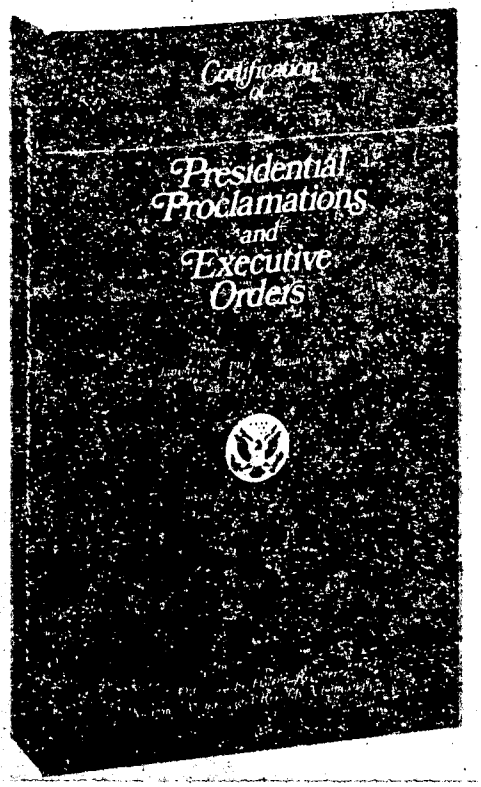

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