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Rules and Regulations

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Continuation of Coverage During a Period of Military Furlough in Support of Operation Desert Shield

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations that waive the employee share of the health benefits premium for employees who continue their coverage under the Federal Employees Health Benefits (FEHB) Program while they are on military furlough (leave without pay) because of military service in support of Operation Desert Shield.

DATES: Interim regulations are effective August 22, 1990. Comments must be received on or before October 25, 1990.

ADDRESSES: Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 606-0780, extension 207.

SUPPLEMENTARY INFORMATION: On August 22, 1990, the President signed Executive Order 12727, by which he ordered certain Armed Forces reservists to active military duty. Under OPM's regulations Federal employees who enter on a leave without pay status to perform active military service may continue their FEHB coverage if their share of the FEHB premium is paid. (They also have the option of postponing payment of their share until they return to their Federal position.) By continuing their FEHB coverage while they are in leave-without-pay status during military service, employees can ensure that their families are able to maintain established relationships with health care providers for up to 12 months of leave without pay.

The call to active service initiates a difficult period in the lives of these employees and their families. It is the responsibility of the Federal Government in its role as employer to make sure that employees who perform active military duty during this period are able to leave their employment temporarily with the knowledge that their affairs are in order and their rights are protected.

On August 23, 1990, the Director of the Office of Personnel Management issued a memorandum to heads of the executive departments and agencies urging them to minimize financial hardship on reservists called to active duty. In furtherance of this goal, OPM is issuing regulations to waive the employee's share of the FEHB premiums for employees who continue their FEHB coverage while they are in a leave-without-pay status because they are performing active military service in support of Operation Desert Shield. The regulations specify the authorities under which employees are called into service for this purpose. Section 673b of title 10, U.S. Code, covers reservists involuntarily recalled by the President's order. Section 688 of title 10, U.S. Code, covers military retirees involuntarily recalled. Section 672(d) of title 10, U.S. Code, covers volunteers who are ordered into military service in support of Operation Desert Shield.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. These interim regulations provide for up to 12 months of continued FEHB coverage for employees (and their families) who are serving in the active military service at no cost to the employee. Delaying the date of implementation of these regulations would be contrary to the public interest and would serve no useful purpose.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 890

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

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c, and 4069c-1.

2. In § 890.502, paragraph (b)(1) is revised and a new paragraph (g) is added to read as set forth below:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b)(1) Except as provided in paragraphs (b)(2) and (g) of this section, an employee or annuitant is responsible for payment of the employee share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness due the United States in the amount of the proper employee withholding required for that pay period.

* * * * *

(g) *Military furlough.* Payment of the employee's share of the cost of enrollment is waived in the case of an employee whose coverage continues under § 890.303(e) following furlough or placement on leave of absence in accordance with the provisions of part

353 of this chapter or other similar authority for the purpose of performing duty not limited to 30 days or less in a uniformed service, if ordered to active duty under 10 U.S.C. 673b or 10 U.S.C. 688, or under 10 U.S.C. 672(d) in support of Operation Desert Shield.

[FR Doc. 90-22681 Filed 9-24-90; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 90-152]

Hot Water Dip Treatments for Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule a proposal we made to amend the Plant Protection and Quarantine regulations concerning the importation of treated mangoes. This rule will allow the importation of all varieties of mangoes from all of South America, Central Ameria, and the West Indies that have been treated with an approved hot water dip treatment. The rule also slightly modifies the current hot water dip treatment for mangoes from the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago. This change will allow importation into the United States of mangoes from these areas without the risk of introducing plant pests associated with them.

EFFECTIVE DATE: October 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fons, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service, United States Department of Agriculture (USDA). Section 300.1 of the regulations incorporates by reference the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual contains procedures and schedules for treating various regulated articles.

In a proposed rule published in the **Federal Register** on June 21, 1990 (55 FR 25313-25315, Docket 90-001), we proposed to amend the regulations in 7 CFR parts 300 and 319 by changing the treatment requirements for mangoes imported from various areas. The most significant provision of that document was a proposal to allow importation of mangoes from Panama and South America after they are treated with a hot water dip treatment similar to a treatment authorized for mangoes imported from other areas. This change would provide the first approved treatment for mangoes from Panama and South America since 1987, when as a result of action taken by the Environmental Protection Agency, ethylene dibromide (EDB) fumigation was disallowed as a treatment for mangoes moved into the United States.

The proposed rule was based on research by the Agricultural Research Service, USDA [1], that has shown that a hot water dip treatment is effective against *Anastrepha* species of fruit flies and the Mediterranean fruit fly in various varieties of mangoes. Specifically, research has shown a hot water dip treatment to be effective for mangoes of the varieties found in all of South America and Panama. The same research has shown that for a hot water dip treatment to be effective for mangoes of the varieties found in the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago, the size, time and temperature requirements formerly listed in the treatment schedule for these mangoes should be adjusted slightly.

Comments on the proposed rule were required to be received on or before July 23, 1990. We received four comments prior to this closing date. Two comments from importers of mangoes supported the proposed rule. One comment from the California Department of Food and Agriculture (CDFA) opposed the proposed rule, and one comment from the Agricultural Export Promotion Project of the Regional Office of Central America and Panama of the United States Agency for International Development (ROCAP/USAID) requested a technical change to a time and temperature requirement in the treatment schedule. These latter two comments are discussed below.

The CDFA comment stated that the potential for artificial spread of serious fruit fly pests via improperly treated host fruits is of critical concern to CDFA. CDFA requested that each lot of mangoes imported in accordance with the regulations, in addition to undergoing the hot water dip treatment, be required to be inspected and sampled prior to treatment, and that any lot found to be infested be rejected for importation into the United States. CDFA requested that at least 300 fruits from each lot be cut open and inspected under close supervision of USDA or the appropriate agency in the origin country as part of this pretreatment inspection.

No change was made in response to this comment. The scientific data cited in support of the proposed rule showed that the proposed hot water dip treatments (HWDT) were efficacious against *Anastrepha* species and *Ceratitis capitata* for mangoes of the varieties we are allowing to be imported. We are approving these treatments because they effectively kill all life stages of these pests. We do not see any valid reason why shipments of mangoes that are treated with an effective treatment should also be required by the regulations to be subjected to extensive inspection. However, work plans developed for mango processing do require visual inspection of the fruit before treatment, and any mango shipments that are found infested during that inspection are not eligible for treatment and importation into the United States.

CDFA also requested that a protocol be developed and submitted for their approval, describing what steps will be taken to assure that hot water dip treatment facilities are properly constructed and tested, what monitoring or supervision is to be performed of the ongoing treatment operations, and what corrective action and penalties will be levied in the event that protocol failures or violations occur.

No change was made in response to this comment. Procedures for the design and operation of treatment facilities are already contained in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations. If a treatment facility fails to follow required procedures, the mangoes it treats would not meet regulatory requirements for importation into the United States, and would therefore be prohibited importation. Persons violating the regulations could also be subjected to civil or criminal penalties in accordance with various Federal statutes.

[1] This research is available upon written request from the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

The ROCAP/USAID comment requested a shorter hot water dip time for elongated and flattened varieties of mangoes from Mexico and Central America north of and including Costa Rica. The comment noted that the proposed rule called for all mangoes from these areas to be treated as follows: 75 minutes for mangoes up to 500 grams; 90 minutes for mangoes up to 700 grams. The comment then noted that for mangoes from Panama and South America, there are two treatment schedules: a shorter dip time for elongated, flattened varieties that heat quickly, and a longer dip time for more round varieties of mangoes. The commenter suggested that since some elongated, flattened varieties of mango, such as the Zill mango, exist in Mexico and Central America, these varieties should be subjected to the same dip time as similar varieties from Panama and South America.

We agree with this comment, and are changing the treatment schedule accordingly. As revised, the treatment schedule will require the same treatment for elongated, flattened types of mangoes from Mexico and Central America north of and including Coasta Rica that is required for similarly shaped mangoes from Panama and South America. The required treatment for these mangoes is 65 minutes for mangoes weighing up to 375 grams, and 75 minutes for mangoes weighing up to 570 grams.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are revising the PPQ Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1, and the fruit and vegetable import regulations, which are contained in "Subpart—Fruits and Vegetables" in 7 CFR 319.56. The PPQ Treatment Manual, as revised, shows the following treatment schedules for mangoes:

Hot Water Dip Treatment for Mangoes

All mangoes must be at a temperature of 21.1 °C or higher before treatment begins. The mangoes must be submerged 4 inches below the surface of water that is heated to 46.1 °C. The water temperature must be kept at 46.1 °C, except that it may fall as low as 45.4 °C for no more than 10 minutes in any treatment lasting 65 to 75 minutes, and for no more than 15 minutes in any treatment lasting 90 minutes. The water temperature must not be allowed to fall below 45.4 °C at any time during the treatment.

Type of Mango	Submersion time
"Francis" and similarly shaped mangoes (elongate, flattened types, including the "Carrot" variety) from Puerto Rico, the U.S. Virgin Islands, and the West Indies, excluding the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(maximum weight 570 g each) 75 minutes. (maximum weight 400 g each) 65 minutes.
Other varieties of mangoes from Central America north of and including Costa Rica, Mexico, Puerto Rico, the U.S. Virgin Islands, and the West Indies, excluding the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(maximum weight 700 g each) 90 minutes. (maximum weight 500 g each) 75 minutes.
"Francis" and similarly shaped mangoes (elongate, flattened types) from Central America north of and including Costa Rica, Mexico, Panama, South America, and the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(maximum weight 570 g each) 75 minutes. (maximum weight 375 g each) 65 minutes.
Other varieties of mangoes (Tommy Atkins, Kent, Keitt, Haden and similarly shaped) from Panama, South America, and the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(maximum weight 650 g each) 90 minutes. (maximum weight 425 g each) 75 minutes.

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.

In the proposed rule we summarized the Initial Regulatory Flexibility Analysis we prepared in accordance with 5 U.S.C. 603, evaluating the potential impact of the proposed rule on small entities. Two importers commenting on the proposed rule noted that failure to adopt the proposed rule or delay in implementing its provisions could have adverse economic impact on growers, shippers, and importers involved in importing mangoes into the United States.

This rule allows hot water dip treatments for specified varieties and sizes of mangoes from certain areas where *Anastrepha* species of fruit flies and the Mediterranean fruit fly exist. These treatments will be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1.

In accordance with the Federal Plant Pest Act and the Plant Quarantine Act, the Secretary of Agriculture is authorized to promulgate regulations concerning the importation or interstate movement of fruits and other plant products to prevent the spread of injurious plant pests.

This rule affects domestic mango producers. Mangoes are a minor agricultural crop in the United States, which has few areas with suitable growing conditions for the fruit. In the continental United States, mango production is limited to about 2,300 acres on approximately 270 farms in Florida, all small entities. Most of these small entities do not produce mangoes as their major crop. Production of mangoes in Florida between 1985 and 1988 ranged from 30,250,000 pounds in 1987 to 19,250,000 pounds in 1988.

By comparison, imports of mangoes into the United States during that same time period ranged from 66,073,940 pounds in 1985 to 43,171,269 pounds in 1988, consistently accounting for more than two-thirds of the mangoes marketed in the continental United States. This rule will have a beneficial economic effect on importers of mangoes, by increasing the number of sources from which mangoes may be imported. Based on available information, most mangoes are imported by a small number of importers which are not small entities.

Mangoes imported into the United States come primarily from Mexico (85 to 95 percent during 1985–1988), with Haiti providing most of the others. In 1987, the last year that mangoes treated with ethylene dibromide could be imported into the United States from the countries that will be affected by this rule, countries other than Mexico and Haiti provided only about 2.2 percent of those mangoes. In 1985 and 1986, they provided between 1 and 2 percent. We anticipate that a resumption of mango imports from these countries will not result in a significant increase in the

amount of mangoes imported into the United States, and therefore will not result in a significant economic impact on a substantial number of small entities.

This rule will not result in any significant increase in reporting, recordkeeping, or compliance requirements.

As an alternative to this rule, we considered retaining the former treatment schedule in the PPQ Treatment Manual. This alternative was rejected because given the existence of additional effective treatments for mangoes, there is no pest risk basis for not allowing use of these treatments.

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 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

7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

7 CFR Part 319

Agricultural commodities, Imports, Incorporation by reference, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through October 1990, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In subpart—Fruits and Vegetables, a new § 319.56–2i is added to read as follows:

§ 319.56–2i Administrative instructions prescribing treatments for mangoes from Central America, Mexico, South America, and the West Indies.

(a) *Authorized treatments.* (1) Treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Central America, South America, and the West Indies. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(2) Treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Mexico. Manila mangoes from Mexico may also be imported into the United States in accordance with § 319.56–2f of this subpart. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter "Materials incorporated by reference."

(b) *Department not responsible for damage.* The treatments for mangoes prescribed in § 319.56–2f of this subpart and in the Plant Protection and Quarantine Treatment Manual are judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–22582 Filed 9–24–90; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 77

[Docket No. 90–173]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis raising the designation of Idaho from a modified accredited State to an accredited-free State. We have determined that Idaho meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective September 25, 1990. Consideration will be given only to comment received on or before November 24, 1990.

ADDRESSES: To help ensure that your comments are considered, 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 Number 90–173. 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. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* The requirements of the regulations concerning the interstate movement of

cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations via incorporation by reference. The status of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis eradication program.

Before publication of this interim rule, Idaho was designated in § 77.1 of the regulations as a modified accredited State. However, Idaho now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Idaho from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Idaho as an accredited-free State. This will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free State.

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 it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. 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 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.

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

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Idaho may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers perfer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

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 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 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 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

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

§ 77.1 [Amended]

2. Section 77.1, paragraph (2) of the definition for "Modified accredited state" is amended by removing "Idaho,".

3. Section 77.1, paragraph (2) of the definition for "Accredited-free state" is amended by adding "Idaho," immediately before "Illinois,".

Done in Washington, DC, this 19th day of September 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–22685 Filed 9–24–90; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

RIN 3064-AB00

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: This regulation implements statutory provisions prohibiting undercapitalized insured depository institutions (banks and savings associations) from accepting, renewing or rolling over brokered deposits except on specific application to and waiver of the prohibition by the FDIC. The regulation provides guidance and further detail on when an institution is considered undercapitalized, when certain deposits are considered "brokered," and the circumstances under which a waiver from the prohibition may be granted. It replaces an interim rule that has been in effect since December 12, 1989, and which is scheduled to "sunset" or terminate on November 9, 1990. The final rule remains essentially unchanged from the interim provisions, except that the final rule expressly applies to insured branches of foreign banks and provides further clarification of the term "normal market area" used in defining the prohibition on paying significantly higher rates of interest on deposits without a waiver from the FDIC.

EFFECTIVE DATE: The final rule is effective October 25, 1990. The interim rule published at 54 FR 51012 (Dec. 12,

1989), and amended at 55 FR 23186 (June 7, 1990) and at 55 FR 28884 (July 16, 1990), terminates on that date and is replaced by the final rule.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898-6892, or Adrienne George, Attorney, Legal Division, (202) 898-3859, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in § 337.6(d) of the final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064-0099. The information will be collected from undercapitalized insured depository institutions applying for a waiver from the prohibition on the acceptance or renewal of brokered deposits contained in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

The estimated annual reporting burden for the collection of information in this final rule is summarized as follows:

Number of Respondents	370
Number of Responses Per Respondent	1
Total Annual Responses	370
Hours Per Response	6
Total Annual Burden Hours	2,220

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), Room F-400, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064-0099), Washington, DC 20503.

Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities because it largely tracks and clarifies strictures previously established by statute and affords a means by which undercapitalized insured depository institutions may avoid the application of those strictures by applying to the FDIC for a waiver. Moreover, it is anticipated that relatively few small entities will be impacted by the regulation since most insured depository institutions are adequately capitalized or, if undercapitalized, do not utilize brokered deposits. Finally, an entire grouping of undercapitalized institutions, namely, those in FDIC or Resolution Trust Corporation ("RTC") receivership or conservatorship, have effectively been excluded from the application of the regulation. Consequently, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

Discussion

Section 224 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") added a new section 29 to the Federal Deposit Insurance Act ("FDIA"). This new section prohibits the acceptance, renewal or rollover of brokered deposits by any "troubled"—*i.e.*, undercapitalized—insured depository institution (bank or thrift) after December 7, 1989, except on specific application to and waiver of the prohibition by the FDIC. On December 5, 1989, the FDIC adopted an interim rule, new § 337.6 of FDIC regulations, which provides guidance and further detail on when an institution is considered undercapitalized, when certain deposits are considered "brokered" for purposes of the prohibition, and the circumstances under which a waiver from the prohibition may be granted. The FDIC solicited comment on this interim rule with a view towards possible revision or modification at a later date. The interim rule adopted by the FDIC on December 5, 1989, was scheduled to terminate six months from its December 12, 1989 publication in the **Federal Register**, *i.e.*, on June 12, 1990. The FDIC, however, determined that it required more time to consider the issues. The FDIC, therefore, extended the effectiveness of the interim rule through amendments adopted on May 22, 1990, and on July 10, 1990. As extended, the interim rule is scheduled to terminate on November 9, 1990, unless sooner terminated, amended, or replaced by the FDIC.

The public comment period has expired and, based on a review and analysis of the comments received as well as the FDIC's experience to date with the interim rule, the FDIC believes the provisions of the interim rule should remain essentially unchanged except for the explicit extension of the rule to insured branches of foreign banks and some further clarification of a term used to define the prohibition on paying significantly higher rates of interest on deposits without a waiver from the FDIC. The comments received and the FDIC's responses are summarized below.

Insured Branches of Foreign Banks

Although the interim rule adopted the generic language of the statute in referring to "undercapitalized insured depository institutions" without explicitly mentioning insured branches of foreign banks, it is clear that the same policy considerations apply to insured branches as well. Consequently, the final rule is explicitly extended to insured branches of foreign banks.

Effect of Capital Plans

The final rule continues the position taken in the interim rule on the relationship between the new capital requirements established by FIRREA for savings associations and the prohibition on the acceptance of brokered deposits by undercapitalized institutions. More specifically, the FDIC continues to believe that any savings institutions whose capital plans have been approved by the Office of Thrift Supervision ("OTS") are not thereby exempted from the prohibition against brokered deposits. Nor is the existence of an approved capital plan grounds for an automatic grant of a waiver from the prohibition against brokered deposits. Of the three commenters that dealt with the capital plan issue, one agreed with the FDIC's position, while two argued that an institution which has submitted a capital plan acceptable to the OTS should be treated as being in compliance with its capital requirements, and therefore, not subject to the brokered deposits rule. The FDIC, however, believes that a capital plan is not capital and therefore, the mere existence of a capital plan and any decision to grant a waiver are separate issues. As a result, an undercapitalized savings association may not accept or renew brokered deposits without a waiver from the FDIC so long as it remains undercapitalized, whether or not it has a capital plan approved by the OTS. The same principle applies to any plan or forbearance approved by a banking regulator for an insured bank.

For purposes of applying for a waiver, an undercapitalized insured savings association may submit to the FDIC, in addition to the information otherwise required by this final rule, the same documentation regarding its capital plans that it submits to the OTS. The FDIC, however, will make its own judgment as to the sufficiency of any plan and its prospects for success in the context of deciding a particular waiver application. In this process, the FDIC will give due deference to the views and

recommendation of the OTS or any other regulators that may be involved when insured banks apply for a waiver.

Significantly Higher Rates of Interest

The final rule continues the anomalous definition of brokered deposits contained in FIRREA. In addition to deposits obtained from or through the mediation of third-party brokers, the definition of deposit broker in FIRREA includes any insured depository institution that solicits deposits by offering rates of interest that are "significantly" higher than the prevailing rates of interest offered by other depository institutions with the same type of charter in its normal market area. In this regard, FIRREA makes no distinction between deposits obtained locally or out-of-territory through the operation of a so-called "money desk."

The final rule also adopts the determination set forth in the interim rule that more than 50 basis points is deemed "significant" for this purpose, and thus establishes what is believed to be a reasonable compromise between the need to permit even undercapitalized institutions to compete on a reasonable basis in their normal market and the need to prevent such institutions from bidding excessively for an increasing share of local deposits or paying excessive rates to fund themselves through the operation of a "money desk" soliciting deposits throughout the country.

One commenter suggested that 50 basis points may be "significant" now but insignificant at some future time in different interest rate environments. This commenter suggested the need for flexibility and possibly varying the interest rate margins deemed significant from time to time or for different types of deposits or in different regions of the country.

The FDIC believes these suggested approaches are more elaborate and burdensome than necessary for the purpose at hand since they would necessarily involve extensive tracking and compilation of interest rate data on an ongoing basis with respect to interest rates on different types of accounts in different areas by both banks and thrifts with frequent updates and notices to the affected bank and thrift industries. The FDIC believes a simple, clear, across-the-board rule is the much better alternative, particularly when exceeding the 50-basis-points difference merely results in the need to apply for a waiver in which context appropriate consideration of all relevant circumstances may be taken into account.

A number of commenters pointed out that banks and thrifts compete head-to-head for deposits in most markets and consequently, there is no basis for distinguishing between institutions based on their charter.

Whatever may be the merit of this argument, the distinction is drawn explicitly in the statute and the FDIC is without authority to alter that basic statutory scheme. Consequently, the final rule continues to distinguish between banks and thrifts when comparing interest rates offered in their normal market areas.

Prevailing Rates and Normal Market Area

One commenter suggested the need to clarify the concept of "prevailing rates" of interest, and two commenters suggested the need to clarify the concept of "normal market area." The FDIC believes the concept of the "prevailing rate" for a particular deposit is sufficiently clear without further elaboration. The final rule does clarify the concept of "normal market area" in a footnote to the relevant definition. Essentially, the "normal market" is the particular area in which a given deposit is being sought or solicited and may vary by office or groups of offices or from one type of deposit to another. The media used and their coverage bear importantly on how the normal market for a deposit is defined.

Definition of "Undercapitalized" Institution

One bank commented that the definition of "undercapitalized" was too strict since it includes many institutions that are not truly "troubled." This commenter suggested that a bank's CAMEL rating should be considered as well.

Regardless of the merits of this suggestion, FIRREA explicitly defines "troubled" in terms of institutions that fail to meet the minimum capital requirements applicable to them. In light of this statutory mandate, the final rule makes no change in the basic statutory definition of "troubled institution."

Other Comments

A savings association recommended that the definition of brokered deposit be revised to cover only deposits on which a commission is paid directly to the broker by the insured depository institution. Without this change, it is argued that an institution may be deemed to have accepted a brokered deposit even though it did not solicit the services of a deposit broker, did not pay a commission to the deposit broker, and did not know the depositor utilized the services or assistance of a deposit broker.

The specific recommended change is rejected since deposit transactions can be readily structured to avoid direct payment of a commission. Moreover, it is irrelevant who solicited the services of a deposit broker.

One commenter noted the differing definitions and approaches in the OTS regulation dealing with brokered deposits (12 CFR 563.4) and urged the FDIC to work with the OTS to make the provisions of the FDIC rule controlling, given the mandate granted the FDIC by FIRREA with respect to all undercapitalized depository institutions.

The OTS rule prohibits a savings association with insufficient regulatory capital from accepting more than five percent of its total deposits from brokers without a waiver from its principal supervisory agent. While there is considerable overlap between this OTS rule and the FDIC rule, the two are not inconsistent and savings associations can comply with both as each may be applicable in the circumstances. The FDIC rule, which implements the statutory prohibition imposed by FIRREA, is broader, uniform for all depository institutions and more stringent while at the same time providing a measure of flexibility on a case-by-case basis through the waiver application process which includes appropriate consultation with the OTS.

One deposit broker seemingly objected to any regulation of brokered deposits. However, this is not an option for the FDIC at this point since the statute (section 29 of the FDI Act) is already in place and would operate of its own force and effect even without a FDIC regulation to provide further guidance.

Another deposit broker emphasized that price is the critical consideration in the acceptance of brokered deposits and suggested the regulation should not preclude the use of "economical" deposits, even if they are brokered.

The FDIC agrees that price is an important consideration and for that reason, both the interim rule and the final rule indicate a waiver may be granted for brokered deposits that serve to reduce an institution's overall cost of funding. On the other hand, the FDIC does not believe that undercapitalized institutions should be permitted to grow through the use of brokered deposits, however "economical" those deposits might be. Margining deposit growth with adequate capital is and always has been a principal supervisory concern and will remain so regardless of the price of deposits. This is why both the interim

and final rules preclude even growth resulting from the direct solicitation of deposits by paying excessive or significantly higher rates than other institutions with the same type of charter.

One commenter suggested that waivers be granted narrowly for brokered deposits of specified maturities with a view towards assuring their repayment in accordance with their original terms.

While repayment according to terms is always an appropriate public policy consideration, it is not the only one. Broader aspects of an institution's overall condition must be taken into account as well. While the FDIC in practice may well grant waivers narrowly to encourage reduced volumes of brokered deposits and short-term maturities, the FDIC believes it unwise to constrain its flexibility by attempting to prescribe waiver limitations by regulation. Consequently, the final rule contains no such limitations and continues to leave terms and conditions of a waiver to be decided on a case-by-case basis.

One commenter suggested that the RTC move aggressively to downsize or shrink savings associations in conservatorship or receivership in order to minimize destructive competition with solvent institutions.

While downsizing may well be an appropriate strategy for a variety of reasons, the FDIC sees no need to address this broad policy issue in the context of promulgating a final regulation on brokered deposits. Consequently, the final rule is silent on how savings associations in RTC conservatorship or receivership should be managed.

Two commenters suggested that by establishing the more than 50 basis points standard, the FDIC was regulating market interest rates without the necessary authority. Still another suggested that the FDIC should not define as brokered those deposits solicited by offering excessive rates. This commenter pointed out that the FDIC had cease-and-desist authority to remedy the payment of excessive interest rates.

The FDIC, of course, is not limiting or controlling the interest rates that insured depository institutions generally, or even undercapitalized institutions, may pay on their deposits. On the contrary, the FDIC is merely providing further and more precise guidance on what is considered "significant" for purposes of the statutory definition of brokered deposits which includes deposits which an insured depository institution is soliciting "by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market." 12 U.S.C. 1831f(f)(3). The FDIC has ample authority to provide such elaboration and further clarification.

Several commenters objected specifically to the exclusion of savings associations in RTC receivership or conservatorship from the prohibition on the acceptance of brokered deposits, particularly that portion of the definition designed to prevent the payment of excessive rates on deposits by undercapitalized institutions. These commenters contend that such institutions have contributed substantially to higher rates in many areas by paying "inflated rates" to attract funds which has resulted in many sound institutions having to pay higher rates to remain competitive.

It must be remembered, however, that the FDIC is the exclusive manager of the RTC and each institution under an RTC conservatorship or receivership is carefully monitored by an RTC managing agent. That managing agent is doing essentially what the FDIC does in granting a waiver—*i.e.* the agent is setting parameters for the institution's acceptance or renewal of brokered deposits to ensure that brokered deposits are both necessary and that any possible negative effect on the institution will be minimal. An institution in RTC conservatorship or receivership generally uses brokered deposits only when needed to meet essential liquidity needs and avoid unnecessary losses. Looking at the broader competitive issue, however, it is true that these institutions may from time to time (certainly less often than in the past) bid up the cost of deposits in certain local markets. This arguably unfair competition from institutions effectively under government control can be justified only as a temporary expedient in an effort to save taxpayer dollars (from which all benefit) by enabling such institutions to maintain necessary liquidity while preserving their franchise value until they can be sold or liquidated in an orderly fashion. Consequently, for purposes of the final regulation, the FDIC believes no change is warranted and savings associations in RTC conservatorship or receivership will continue to be excluded from the scope of application of the final rule.

Section 29(d) of the FDIA, as added by section 224 of FIRREA, authorizes the FDIC to grant an exception from the prohibition on the acceptance of brokered deposits for institutions in FDIC or RTC conservatorship or receivership if the FDIC determines that the acceptance of brokered deposits by such institutions "(1) is not an unsafe or unsound practice, and (2) either (A) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; or (B) is consistent with the conservator's fiduciary duty to minimize the losses of the institution." The FDIC Board of Directors is able to make these findings with respect to all insured depository institutions under FDIC or RTC conservatorship or receivership because such institutions are essentially under FDIC or RTC control and management and therefore pose no risk to the deposit insurance funds beyond the FDIC's control, and because the FDIC, in its own capacity and as exclusive manager for the RTC, intends to direct the brokered deposit activities of the various institutions under FDIC or RTC conservatorship or receivership to ensure that such deposits are used only as necessary to meet essential liquidity needs and minimize losses to the institutions. Accordingly, the FDIC Board has made the requisite findings and has determined to exclude from coverage under the brokered deposits prohibition any insured depository institution for which the FDIC or the RTC has been appointed conservator or receiver. As a result, no such institution need apply to the FDIC for a waiver from the prohibition.

FIRREA amends the Federal Deposit Insurance Act to provide authority to the FDIC to waive the prohibition against brokered deposits if the FDIC finds that acceptance of such deposits does not constitute an unsafe or unsound practice with respect to the affected institution. The FDIC has long recognized the importance of involving other affected agencies, where appropriate, in the exercise of its decision-making authority. For example, the FDIC's Division of Supervision currently has outstanding instructions that the "institution's principal federal and any state regulator, as appropriate, should be consulted by telephone or letter for their comments and any recommendations they may wish to make" in these circumstances. Memorandum to Regional Directors, entitled "Brokered Deposits in Undercapitalized Insured Depository Institutions", dated December 21, 1989, from Paul G. Fritts, Director, Division of Supervision, Federal Deposit Insurance Corporation.

In exercising its FIRREA authority to waive the prohibition against brokered

funds, the Corporation will provide prior notice to the appropriate Federal and state regulatory agency in connection with action proposed to be taken pursuant to this regulation and will consult with such agency with respect to the appropriateness of any such action and any terms or conditions that would apply in connection with the granting of a waiver. The FDIC may waive the prior notice and/or consultation requirements when it determines that the circumstances of a particular case require the FDIC to do so.

Accordingly, notice is hereby given that the FDIC Board of Directors has adopted the following final rule on the acceptance, renewal or rollover of brokered deposits by undercapitalized insured depository institutions. The final rule becomes effective October 25, 1990. The interim rule published at 54 FR 51012 (Dec. 12, 1989), and amended at 55 FR 23186 (June 7, 1990) and at 55 FR 28884 (July 16, 1990), terminates on that date and is replaced by the final rule.

List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set forth in the preamble, the FDIC hereby amends part 337 of title 12 of the Code of Federal Regulations by revising § 337.6 to read as set forth below.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818(a), 1818(b), 1819, 1828(j)(2), 1821(f), 1831f.

2. Section 337.6 is revised to read as follows:

§ 337.6 Brokered deposits in undercapitalized insured depository institutions.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Brokered deposit.* The term "brokered deposit" means any deposit, as that term is defined in section 3(*l*) of the Federal Deposit Insurance Act (18 U.S.C. 1813(*l*)), that is obtained:

(i) From or through the mediation or assistance of a deposit broker; or,

(ii) By offering a rate of interest (with respect to such deposit) that is significantly higher than the prevailing rate of interest on a deposit with similar terms and conditions, including maturity, offered or paid by other insured depository institutions having the same type of charter (bank or thrift) in the institution's normal market area.[11] For this purpose, a rate of interest is deemed "significantly higher" if it is more than 50 basis points higher than the prevailing rate offered or paid at the time for a deposit of comparable amount, maturity and other terms by other insured depository institutions with the same type of charter (bank or thrift) in the institution's market area. A rate of interest on a deposit with an odd maturity is "significantly higher" if it is more than 50 basis points higher than the rate interpolated between the prevailing rates offered or paid by other depository institutions with the same charter on deposits of the next longer and shorter maturities offered in the market. For purposes of comparing interest rates offered on deposits by other insured depository institutions, an insured branch of a foreign bank is deemed to have a bank charter.

(2) *Deposit broker.* (i) The term "deposit broker" means:

(A) Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and,

(B) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(ii) The term "deposit broker" does not include:

(A) An insured depository institution, with respect to funds placed with that depository institution;

(B) An employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) A trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) A person acting as a plan administrator or an investment advisor in connection with a pension plan or other employee benefit plan provided that person is performing managerial functions with respect to the plan;

(F) The trustee of a testamentary account;

(G) The trustee of an irrevocable trust (other than one described in paragraph (a)(2)(i)(B) of this section), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) A trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986; or

(I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(3) *Employee.* The term "employee" means any employee:

(i) Who is employed exclusively by the insured depository institution;

(ii) Whose compensation is primarily in the form of a salary;

(iii) Who does not share such employee's compensation with a deposit broker; and

(iv) Whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(4) *Insured depository institution.* The term "insured depository institution" means any bank, savings association or branch of a foreign bank insured under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(5) *Undercapitalized insured depository institution.* (i) The term "undercapitalized insured depository institution" means any insured depository institution that fails to meet the minimum capital requirements applicable to it at the time and includes any insured depository institution which:

(A) After giving effect to any charge-offs or other capital reductions directed by its principal federal or state regulator, fails to meet any applicable capital standard (*e.g.*, tangible, core, primary, total, risk-based, or leverage) established by law or regulation promulgated by its principal federal or state regulator, as applicable; or

(B) Has been directed by a formal administrative order or advised in

[11] The "normal market area" is the area in which an institution is advertising and soliciting a particular type of deposit and may vary from office to office or for different types of deposits. For example, the market for passbook deposits will normally be local in character but may vary from office to office or groups of offices located in different geographic markets. By the same token, an institution may solicit large denomination certificates in a national market at one rate and offer the same certificate at a different rate in local areas in which it has a physical presence. In each case, the rates offered for the particular deposit must be compared to the rates offered by other institutions with the same type of charter, without regard to size, in the particular geographic market in which that deposit is being solicited, whether the market is national, regional or local in character. The media used to advertise and solicit a particular type of deposit and the normal coverage of those media are important considerations in defining the market for that deposit.

writing by its principal federal or state regulator as part of the supervisory process to achieve a specific higher level of capital (*e.g.*, to margin additional risk inherent in its activities or assets, balance sheet structure, or off-balance sheet liabilities) and has not yet met that higher capital level.

(ii) The term "undercapitalized insured depository institution" includes an insured branch of a foreign bank that fails to maintain either:

(A) The pledge of assets required under § 346.19 of the Federal Deposit Insurance Corporation's rules and regulations (12 CFR 346.19) or;

(B) The required volume of eligible assets prescribed by § 346.20 of the Federal Deposit Insurance Corporation's regulations (12 CFR 346.20).

(iii) The determination of whether an insured depository institution or insured branch is an "undercapitalized depository institution," as defined in paragraphs (a)(5) (i) and (ii) of this section, shall be made without regard to whether it has been granted any forbearance or other relief from any statutory, regulatory, or other capital requirements by any federal or state regulator, whether the institution or branch has submitted to any such regulator a plan to meet applicable capital requirements or standards over time, or whether any such plan has been approved by a federal or state regulator.

(b) *Prohibition.* No undercapitalized insured depository institution may accept, renew or rollover any brokered deposit unless it has applied for and been granted a waiver of this prohibition by the Federal Deposit Insurance Corporation in accordance with the provisions of this section.

(c) *Waiver.* The Federal Deposit Insurance Corporation may, on a case-by-case basis and upon application by an undercapitalized insured depository institution, waive the prohibition on the acceptance, renewal or rollover of brokered deposits upon a finding that such acceptance, renewal or rollover does not constitute an unsafe or unsound practice with respect to such institution. The Federal Deposit Insurance Corporation may conclude that it is not unsafe or unsound and may grant a waiver when the acceptance, renewal or rollover of brokered deposits is necessary to maintain the institution's short-term liquidity or to facilitate a restructuring of its liabilities to reduce costs without materially lengthening maturities and with no significant increase in total assets. A waiver will not be granted to permit an institution to grow appreciably in size.

(d) *Application.* An undercapitalized insured depository institution wishing to accept, renew or rollover brokered deposits may apply to the appropriate Federal Deposit Insurance Corporation regional director for supervision for the region in which the head office of the institution is located. The application may be in letter form and shall be accompanied by a resolution of the board of directors or trustees of the institution authorizing the filing of the application and a copy of a recent consolidated financial statement, including income and cash flow statements. A copy of the application should be submitted to the institution's primary federal regulator and any state regulator, as appropriate. An application shall provide the following additional information:

(1) The institution's plans to meet applicable capital requirements within a reasonable time period;

(2) The volume, rates and maturities on brokered deposits currently held;

(3) The scope of the waiver sought in terms of the volume and cost of brokered deposits to be obtained or retained and the time period for which a waiver may be needed;

(4) Alternative funding sources available to the institution, including prospects for the sale of assets at fair market value;

(5) Reasons the institution believes the acceptance, renewal or rollover of brokered deposits does not constitute an unsafe or unsound practice in its particular circumstances. In this regard, the institution should seek to demonstrate that its acceptance, renewal or rollover of brokered deposits would not likely increase materially the credit, interest-rate or operating risk of the institution; and

(6) The institution's plans for eliminating entirely its reliance on and/or need for brokered deposits, including applicable time frames.

(e) *Decision.* The Federal Deposit Insurance Corporation Director, Division of Supervision, and when confirmed in writing by the Director, an associate director or the appropriate regional director, or deputy regional director, shall have the authority to approve or deny any waiver application properly filed. An application is properly filed when complete and accurate information addressing each of the informational elements stated in paragraph (d) of this section has been provided to the appropriate regional director. Any waiver granted will be for a fixed period, generally no longer than one year, but may be extended upon re-application. The Corporation will provide notice to the financial institution's appropriate Federal and state regulatory agency that a request for waiver has been filed so that such agency may have an opportunity to consult with the Corporation prior to the Corporation's taking action on the institution's request for a waiver. Notwithstanding the foregoing, prior notice and/or consultation shall not be required in any particular case where the Corporation determines that the circumstances require the Corporation to take action without giving such notice and opportunity for consultation.

(f) *Exclusion for institutions in FDIC or RTC conservatorship or receivership.* (1) No insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver shall be subject to this § 337.6 or to section 29 of the Federal Deposit Insurance Act.

(2) So long as the Federal Deposit Insurance Corporation is the exclusive manager of the Resolution Trust Corporation, no insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver shall be subject to this § 337.6 or to section 29 of the Federal Deposit Insurance Act.

(Approved by the Office of Management and Budget under control number 3064–0099)

By order of the Board of Directors.

Dated at Washington, DC this 18th day of September, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–22665 Filed 9–24–90; 8:45 am]

BILLING CODE 6714–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule for Aluminum Sheet Products

AGENCY: Small Business Administration.

ACTION: Notice to waive the nonmanufacturer rule for aluminum sheet products.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "nonmanufacturer rule" for aluminum sheet products. The basis for a waiver is that no small business manufacturer is supplying this class of products to the Federal Government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the 8(a) program.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Chairperson, Size Policy Board, Tel: (202) 653-6635.

SUPPLEMENTARY INFORMATION: Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small business or 8(a) contracts must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the "nonmanufacturer rule." The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

This notice waives the nonmanufacturer rule for aluminum sheet products. The issue of a lack of small business manufacturers of aluminum sheet and plate products was recently brought to the attention of SBA by a dealer in the 8(a) program. In response to this concern, SBA initiated a review of small business manufacturers of aluminum sheet and plate products supplying these classes of products to the Federal Government.

To be considered in the Federal market, a small manufacturer must have been awarded a contract by the Federal Government within the last three years. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. In this case, the classes of products are aluminum sheet and plate products which are two items within the Product and Service Code (PSC) 9535 (Plate, Sheet, Strip and Foil: Nonferrous Base Metal). The definition of these terms is consistent with those previously used to establish a waiver of the nonmanufacturer rule for several types of construction equipment on December 28, 1989 (54 FR 53317), for dictionaries and thesauruses on August 3, 1990 (55 FR 31575), and with those included in a notice of proposed rulemaking to establish Agency procedures on nonmanufacturer waivers on May 17, 1990 (55 FR 20467).

SBA followed two approaches to identify the existence of small business manufacturers—examining contract data and requesting public comment through a **Federal Register** notice. First, SBA reviewed the Federal market by evaluating procurement statistics based on data originated by the U.S. General Services Administration's Federal Procurement Data Center (FPDC). Specifically, SBA examined Federal contract awards for 1987 and 1988 (the latest years available) which lists: the type of product (PSC), the manufacturer, and whether the manufacturer is a small business. The FPDC procurement data for fiscal years 1987 and 1988 initially indicated that no small business manufacturers of aluminum sheet and plate products had received Federal contracts for these products.

Second, on July 13, 1990, SBA published a notice with request for comment in the **Federal Register** proposing to waive the nonmanufacturer rule for aluminum sheet and plate products (55 FR 28773). The notice described the legal provisions for a waiver, the origin of the request, how SBA defines the Federal market, data sources, and requested information as to whether small businesses manufacture aluminum sheet and plate products and sold these classes of products to the Federal Government over the last 3 years.

The only written comment to this notice was a response by a Federal agency. This agency identified three small manufacturing firms that had sold aluminum materials to it within the last 3 years. In every case these materials were aluminum alloyed materials. One firm had both manufactured and sold aluminum plate to the Federal Government. Based on this information, the SBA is denying a waiver of aluminum plate. However, SBA has not found a small manufacturer of aluminum sheet which had sold such products to the Federal Government over the last 3 years and, therefore, is granting a waiver for aluminum sheet.

This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100-656 for the designated class of products. The waiver for the designated class of products shall be issued for an indefinite period, but shall be subject to a regularly scheduled review (approximately every 2 years) or shall be reviewed if SBA receives information that the basis for the waiver is no longer valid. If SBA determines that the conditions required for a waiver no longer exist and that the waiver should be terminated, that decision shall be made through procedures similar to those followed by this notice.

A waiver of the nonmanufacturer rule is established for purposes of allowing an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer on a contract set aside for small business or awarded through the 8(a) program for the following class of products:

- Aluminum Sheet (PSC-9535).

Dated: September 14, 1990.

Sally B. Narey,

Acting Administrator, U.S. Small Business Administration.

[FR Doc. 90-22668 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule for Copper Cathodes, et al.

AGENCY: Small Business Administration.

ACTION: Notice to waive the nonmanufacturer rule for copper cathodes, nickel cathodes, and nickel brickettes.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is establishing a waiver of the "nonmanufacturer rule" for copper cathodes, nickel cathodes, and nickel brickettes. The basis for a waiver is that no small business manufacturer is supplying these classes of products to the Federal government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the 8(a) program.

EFFECTIVE DATES: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Chairperson, Size Policy Board, Tel: (202) 653-6635.

SUPPLEMENTARY INFORMATION: Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small business or 8(a) contracts must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the "nonmanufacturer rule." The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

This notice waives the

nonmanufacturer rule for copper cathodes, nickel cathodes and nickel brickettes, but denies a waiver for zinc slabs and zinc ingots. The issue of a lack of small business manufacturers of these products was recently brought to the attention of SBA by a dealer in the 8(a) program. In response to this concern, SBA initiated a review of small business manufacturers supplying these classes of products to the Federal government.

To be considered in the Federal market, a small manufacturer must have been awarded a contract by the Federal government within the last 3 years. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. In this case, the class of products are: copper cathodes, nickel cathodes, nickel brickettes, zinc slabs, and zinc ingots, five items within PSC-9650 (Nonferrous Base Metal Refining and Intermediate Forms, Includes Ingots and Slabs). The definition of these terms is consistent with those previously used to establish a waiver of the nonmanufacturer rule for several types of construction equipment on December 28, 1989 (54 FR 53317) and for dictionaries and thesauruses on August 3, 1990 (55 FR 31575), and with those included in a notice of proposed rulemaking to establish Agency procedures on nonmanufacturer waivers on May 17, 1990 (55 FR 20467).

SBA followed two approaches to identify the existence of small business manufacturers—examining contract data and requesting public comment through a **Federal Register** notice. First, SBA reviewed the Federal market by evaluating procurement statistics based on data originated by the U.S. General Services Administration's Federal Procurement Data Center (FPDC). Specifically, SBA examined Federal contract awards for 1987 and 1988 (the latest years available) which lists: the type of product (PSC), the manufacturer, and whether the manufacturer is a small business. The FPDC procurement data for fiscal years 1987 and 1988 indicated that no small business manufacturers of copper cathodes, nickel cathodes and nickel brickettes had sold these products to the Federal Government over these years.

Second, on July 13, 1990, SBA published a notice, with request for comment in the **Federal Register** proposing to waive the nonmanufacturer rule for copper cathodes, nickel cathodes and brickettes, and zinc slabs and ingots (55 FR 28774). The notice described the legal provisions for a waiver, the origin of the request, how SBA defines the Federal market, data sources, and requested information as to whether small businesses manufacture these items and have sold them to the Federal government over the past 3 years. SBA received one written comment on this notice by a Federal agency involved in the purchase of metallurgical products. This agency provided the names of three small manufacturing firms which sold some of these classes of products to the Federal government over this period.

The SBA investigated the procurement activities of these three firms with regard to the Federal government. While none of these three firms produce copper cathodes, nickel cathodes or nickel brickettes, two firms produce zinc slabs and zinc ingots, both in a pure and alloyed form, and had sold these products to the Federal government over the last three years. As a result, this notice is denying the request for waivers for zinc slabs and zinc ingots, but granting waivers for copper cathodes, nickel cathodes and nickel brickettes.

This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100-656 for the designated classes of products. The waiver for the designated classes of products shall be issued for an indefinite period, but shall be subject to a regularly scheduled review (approximately every 2 years) or shall be reviewed if SBA receives information that the basis for the waiver is no longer valid. If SBA determines that the conditions required for a waiver no longer exist and that the waiver should be terminated, that decision shall be made through procedures similar to those followed by this notice.

A waiver of the nonmanufacturer rule is established for purposes of allowing an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer on a contract set aside for small business or awarded through the 8(a) program for the following classes of products:

- Copper Cathodes (PSC-9650).
- Nickel Cathodes (PSC-9650).
- Nickel Brickettes (PSC-9650).

Dated: September 14, 1990.

Sally B. Narey,

Acting Administrator, U.S. Small Business Administration.

[FR Doc. 90-22669 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 803

Regulations and Procedures for Review of Projects

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Final rules.

SUMMARY: The Susquehanna River Basin Commission hereby amends its project review regulations in order to clarify language, eliminate redundant sections and modify requirements that are outdated or difficult to implement.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, Secretary to the Commission, SRBC, 1721 N. Front St., Harrisburg, PA. 17102-2391, Telephone: (717) 238-0423.

SUPPLEMENTARY INFORMATION: On August 11, 1989, the Susquehanna River Basin Commission published for public comment in the **Federal Register** (54 FR 33036) an initial proposal to amend 18 CFR part 803. The Commission also published notices of rulemaking in the "New York Register" on August 23, 1989 at page 92, the "Pennsylvania Bulletin" on February 3, 1990 at page 513 and the "Maryland Register" on April 20, 1990 at page 979. The "Maryland Register" notice simply referenced the previous **Federal Register** notice.

In addition, public hearings were held on the proposed regulations on May 10, 1990 at Painted Post, NY and on June 26, 1990 at Harrisburg, PA. Notices of these respective public hearings were published in the **Federal Register** on March 22, 1990 (55 FR 10629) and on May 24, 1990 (55 FR 21390). Hearing notices also appeared in the "New York Register" on April 4, 1990, the "Pennsylvania Bulletin" on June 2, 1990, the "Maryland Register" on June 15, 1990 and in numerous newspapers throughout the Susquehanna Basin. Written comment periods of 45 days were provided after each Register or Bulletin publication and a 30-day written comment period was provided after each public hearing.

Review of Public Comments

Most comments submitted on the proposed amendments were supportive. There were several suggested changes, however, which are discussed and addressed as follows:

1. Susquehanna River Basin Electric Utilities Group (SRBEUG)

Written comments: SRBEUG commented on three sections of the proposed amendments. With respect to § 803.61(c)(1)(iii), it is suggested that the word "reasonably" be inserted before the phrase "assure no diminution of flow * * *." SRBEUG pointed out that SRBC's own studies performed in connection with the development of the Cowanesque Water Storage Project Operations Plan demonstrated the difficulty of strict adherence to this concept of no diminution in flow.

On § 803.61(c)(2), SRBEUG suggested adding "stipulating that the monetary payment shall be in amounts which reasonably reflect the cost that the Commission would incur to provide an equivalent amount of compensation."

Finally, SRBEUG recommends that § 803.61(g) not be adopted because, in their opinion, it unfairly exempts public water suppliers who have numerous small consumptive users on their systems from the consumptive use make-up requirements. These small consumptive users often add up to one large consumptive use which exceeds in magnitude the effect of a single large user who is subject to the regulation.

Response: The Commission has no objection to adding the word "reasonably" to § 803.61(c)(1)(iii) as indicated above.

As for SRBEUG's suggestion on § 803.61(c)(2), the Commission agrees that the cost to the Commission to provide an equivalent amount of compensation should be a factor in the determination of an equitable monetary charge. However, the Commission wishes to retain the right to consider other factors as well in setting a charge by resolution of the Commission.

On § 803.61(g), it is obvious that the Commission cannot charge the consumer and the water purveyor. The Commission feels that the charge should be imposed upon the actual consumptive user rather than the public water supplier who merely purveys the water to a consumptive user.

As far as the cumulative effect of small consumptive uses, consumptive users who consume no more than 20,000 gpd from private sources such as wells are exempt from the regulation though they too may have a cumulative effect. Consumptive users from public distribution systems should be treated in the same way.

2. Merck Chemical Manufacturing Division

Written comments: Merck Chemical Manufacturing Division commented that § 803.62 should be revised to include an exemption for ground water removals that are part of an EPA or Pennsylvania DER ordered or permitted ground water remediation program. Merck argued that requiring Commission approval is an unnecessary duplication of effort because these remediation programs are so carefully monitored by other agencies.

Response: The Commission has routinely permitted such remediation programs with a minimum of difficulty to the applicant. Often, certain requirements of § 803.62 are waived because of the remedial nature of the projects. The Commission feels that its permitting of these type of projects is not duplication because the ground-water information supplied to the Commission is useful in the Commission's overall mission of basinwide water resources management.

3. NY Department of Environmental Conservation

In developing the proposed amendments, the Commission consulted with its signatory parties. Signatory representatives met at the Commission headquarters on May 30, 1989 to review the amendments. After a consensus was reached by the meeting attendees on language and format, the amendments were submitted to the Commission which, at its July 13, 1989 meeting, ordered their publication as proposed regulations. NY DEC nevertheless submitted a few additional comments, as follows:

Written Comments: a. Section 803.61(c)(1)(ii)—It may be appropriate for the Commission to elaborate on how or what options the Commission will use in identifying the appropriate stream gaging station for determining the applicable low flow.

b. Section 803.61(c)(2)—The monetary alternative of compensation does not provide any help during a "low flow" period. It should be made clear that monetary compensation is a temporary option that will be acceptable only under extreme conditions.

c. Section 803.62 (Introductory Text)—The terms "permanent loss" and "substantial impact" need more clarification or defining.

d. Section 803.62(e)—It would seem approvals should be subject to review or modification anytime new information is obtained.

e. Section 803.62(f)—Whose "projection" will be used? Also, who is submitting the required water resources development plan?

f. Section 803.62 (General)—Why has the conservation requirement been deleted in § 803.62?

Response: a. Commission technical staff feels that the inclusions in the regulation of all of the factors used to identify the appropriate gaging station would be too lengthy and cumbersome. This is a task that Commission staff needs to accomplish applying their expertise and judgment to the data presented in each individual case.

b. While a monetary payment alternative does not provide direct relief during low flow, funds so collected will be funneled into a special escrow fund to be used for programs or projects designed to improve flows. The Commission has already made it quite clear by numerous policy pronouncements at its public meetings that it prefers water over monetary payments. In accordance with this policy, staff has, in most cases, recommended monetary payments as an interim measure only. There may, however, be instances where a permanent arrangement for monetary payment may be necessary where, for example, the location of a user in the headwaters of a stream prevents the applicant from locating an adequate source of upstream storage and impacts on that reach of stream are not significant.

c. The loss of aquifer storage capacity occurs through aquifer compaction as a result of excessive withdrawal of ground water (this is primarily a problem in unconsolidated aquifers). Occasionally, the loss in storage capacity is easily observed as land subsidence near the pumping well. More often, the loss in storage is difficult to measure. However, the loss of storage can be minimized by not allowing excessive drawdowns or allowing aquifers to be dewatered. The word "permanent" in the paragraph may be a little misleading. In reality, an aquifer may, through time, regain some or all of the lost storage—if pumping is discontinued. For practical purposes, however, within the timeframe of the project's lifetime, the loss is essentially permanent.

Use of the word "substantial" in describing impact is deliberate as opposed to trying to define some numerical level of impact. This allows for flexibility in management (e.g. the Commissioners can evaluate how "substantial" an impact is based on the use (or value) of a stream).

d. A five-year review period was included for two reasons:

(1) It alerts the applicant that there will be periodic reviews; and

(2) It provides a level of protection to the project sponsor's investment (no major changes to the approval will be made for five years).

There are other provisions within the regulations and in the language of each docket decision that would allow modification of an approval should any unforeseen impacts occur.

e. "Projections" will primarily be those of the Commission, however, any organization or individual can provide information relative to future constraints on a proposed withdrawal.

The project sponsor will be required to develop and submit a plan.

f. The conservation requirement was deemed to be redundant since the Commission has since adopted § 803.63 of the Regulations stipulating conservation requirements for public water suppliers, industrial users and agricultural users.

4. SRBC Staff

After considering the new language of §§ 803.61(b)(2) and 803.62 (Introductory Text) referring respectively to a thirty-day average of 20,000 gpd consumptive use and a thirty-day average of 100,000 gpd ground-water withdrawal SRBC staff suggested that a less ambiguous way of stating such an average, would be to say, "an average of 20,000 gpd (or 100,000 gpd) for any consecutive 30-day period." This editorial change has been incorporated into the final version of the Regulations which appear below.

List of Subjects in 18 CFR Part 803

Administrative practice and procedure, Water resources.

The Amendment

Accordingly, pursuant to the authority granted under the Susquehanna River Basin Compact, Public Law 91-575; 84 Stat. 1509 *et seq.*, the Susquehanna River Basin Commission amends part 803 of its regulations and procedures for review of projects (18 CFR part 803) as follows:

PART 803—REVIEW OF PROJECTS

1. The authority citation for part 803 continues to read as follows:

Authority: Sec. 3.4(9), 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

2. Section 803.4 is amended by revising the section heading, the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

§ 803.4 Projects requiring review and approval.

(a) As determined from applications or otherwise, the Commission shall review and either approve, approve with conditions, or disapprove the following proposed projects within the Susquehanna River Basin.

* * * * *

(2) Any project involving either the consumptive use of water (as described in § 803.61), a ground-water withdrawal (as described in § 803.62), or the transfer of water into or from the basin.

* * * * *

3. Subpart B, § 803.22 is amended by revising the introductory texts of paragraphs (a) and (b) to read as follows:

§ 803.22 Submission of application.

(a) Except as stated in paragraph (b) of this section, projects requiring a permit or other form of regulatory approval from a State or Federal agency having authority regarding water resources use, development, control and conservation.

* * * * *

(b) Projects not subject to the jurisdiction of the above agencies and projects involving a consumptive use of water as regulated under § 803.61 or a ground-water withdrawal as regulated under § 803.62.

* * * * *

4. Subpart B, § 803.23 is amended by revising the introductory texts of paragraphs (a) and (b), paragraph (b)(1) and by removing and reserving paragraph (c)(2)(vii)(*b*) to read as follows:

§ 803.23 Contents of application.

(a) Except as stated in paragraph (b) of this section, projects requiring a permit or other form of regulatory approval from a State or Federal agency having regulatory authority regarding water resources use, development, control and conservation.

* * * * *

(b) Projects not subject to the jurisdiction of the above agencies and projects involving a consumptive use of water as regulated under § 803.61 or a ground-water withdrawal as regulated under § 803.62.

(1) With the exception of applications for ground-water withdrawals under § 803.62 hereof, the sponsor's application shall address the aspects pertinent to the project listed in paragraph (c) of this section. The requirements for ground-water withdrawal applications are described in § 803.62.

* * * * *

5. Subpart D, § 803.61 is amended by revising paragraphs (a)(1), (b)(1), (b)(2), (c)(1) (ii) and (iii), (c)(2), (c)(3), the fourth sentence of (d) and by adding new paragraph (a)(3), (c)(1)(iv) and (g) to read as follows:

§ 803.61 Consumptive uses of water.

(a) * * *

(1) *Consumptive use.* Water withdrawn from ground water or surface water, via a man-made conveyance system, and not returned to the ground water or surface water of the basin thereby making it unavailable for other water uses or purposes.

* * * * *

(3) *Compensation.* Water provided from surface storage or ground water as make-up for a project's consumptive use.

(b) * * *

(1) Compensation shall be required for consumptive uses of water during periods of low flow. Compensation is required during periods of low flow for the purposes of protection of public health; stream quality control; economic development; protection of fisheries; recreation; dilution and abatement of pollution; the regulation of flows and supplies of surface and ground waters; the prevention of undue salinity; protection of the Chesapeake Bay; and other purposes as determined by the Commission.

(2) Consumptive uses by a project not exceeding an average of 20,000 gpd for any consecutive thirty-day period from surface or ground waters are exempt from the requirement unless such uses adversely affect the purposes outlined in paragraph (b)(1) of this section.

(c) * * *

(1) * * *

(ii) *Ground-water source.* Compensation for the project's consumptive use of ground water shall be required when the stream flow is less than the applicable low flow criterion. For the purposes of implementing this regulation, the Commission will identify the appropriate stream gaging station for determining the applicable low flow.

(iii) The required amount of compensation shall be provided by the applicant or project sponsor at the point of taking (for a surface source) or another appropriate site as approved by the Commission to satisfy the purposes outlined in paragraph (b)(1) of this section. If compensation for consumptive use from a surface source is to be provided upstream from the point of taking, such compensation shall reasonably assure no diminution of the flow immediately downstream from the point of taking which would otherwise exist naturally, plus any other dedicated augmentation.

(iv) Compensation may be provided by one, or a combination of the following:

(*a*) Construction or acquisition of storage facilities.

(*b*) Purchase of available water supply storage in existing public or private storage facilities, or in public or private facilities scheduled for completion prior to completion of the applicant's project.

(*c*) Purchase of water to be released as required from a water purveyor.

(*d*) Releases from an existing facility owned and operated by the applicant.

(*e*) Use of water from a public water supplier utilizing raw water storage that maintains a conservation release or flow-by, as applicable, of Q7–10 or greater at the public water supplier's point of taking.

(*f*) Ground water.

(*g*) Purchase and release of waters stored in other subbasins or watersheds.

(*h*) Other alternatives.

(2) Alternatives to compensation may be appropriate such as discontinuance of that part of the project's operation that consumes water, imposition of conservation measures, utilization of an alternative source that is unaffected by the compensation requirement, or a monetary payment to the Commission in an amount to be determined by the Commission from time-to-time.

(3) The Commission shall, in its sole discretion, determine the acceptable manner of compensation or alternatives to compensation, as applicable, for consumptive uses by a project. Such a determination will be made after considering the project location, anticipated amount of consumptive use and its effect on the purposes set forth in paragraph (b)(1) of this section, and any other pertinent factors.

(d) * * * When the project is operational, the Commission shall be responsible for determining when compensation is required and shall notify the project sponsor accordingly. * * *

* * * * *

(g) Public water suppliers, except to the extent that they are diverting the waters of the basin, shall be exempt from the requirements of this section; provided, however, that nothing herein shall be construed to exempt individual consumptive users connected to any such public water supply system from the requirements of the section.

6. Subpart D, § 803.62 is, revised to read as follows:

§ 803.62 Ground-water withdrawals.

Any project sponsor proposing to withdraw ground water from a single well or a well field in excess of an average of 100,000 gpd for any consecutive thirty-day period or proposing to increase an existing withdrawal to more than an average of 100,000 gpd for any consecutive thirty-day period shall obtain Commission approval of the withdrawal. These withdrawals may be limited by the Commission to the amount (quantity and rate) of ground water that can be withdrawn from an aquifer or aquifer system without causing long-term progressive lowering of ground-water levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential ground or surface water use, causing permanent loss of aquifer storage capacity, or having substantial impact on low flow of perennial streams. Projects withdrawing more than an average of 100,000 gallons per day for any consecutive thirty-day period prior to the effective date of this section are exempt from the above approval requirements, provided that the current withdrawal rate does not exceed the amount withdrawn before the said effective date. Any such exempted project that increases the said average withdrawal to a level above that which it was withdrawing prior to the said effective date shall be subject to the monitoring and reporting requirements described in paragraph (c) of this section and the 5-year review described in paragraph (e) of this section. Any sponsor of a project subject to Commission review and approval shall complete a ground-water withdrawal application. Also, after obtaining approval for the withdrawal, the sponsor shall comply with metering, monitoring, and conservation requirements as follows:

(a) Withdrawal Application (Form SRBC #24). Information required by the Commission is specified in the ground-water withdrawal application and includes but is not limited to the following:

(1) Drillers' and/or geologists' reports.

(2) Location map(s) showing all project wells and other pertinent information.

(3) Results of a minimum, 48-hour constant rate pumping test. Note: Review and approval of the test procedures to be used by the applicant are necessary before the test is started.

(4) A chemical analysis of ground water from the proposed source.

(b) Metering. Ground-water users shall meter all approved ground-water sources. The meters shall be accurate to within five percent of the actual flow. Withdrawals for all commercial farm irrigation, sand and gravel operations, and temporary dewatering operations shall be exempt from the requirement for metering. They shall, however, record pump capacity and elapsed hours of operation. This information shall be reported as monthly totals annually or more frequently, if required, by the permitting agency.

(c) Monitoring and Reporting. Periodic monitoring and reporting of water levels, well production, and ground-water quality are required of all approved ground-water withdrawals. The required information is listed in Form SRBC #30 (Ground-Water Withdrawal Reporting Form) and includes but is not limited to the following:

(1) Ground-water levels shall be measured weekly in all approved production wells and reported to the Commission annually. Additional water levels may be required in one or more observation wells as determined by the Commission.

(2) Production from approved ground-water sources shall be recorded weekly and reported to the Commission annually.

(3) Samples of ground water for water quality analysis shall be obtained and the results reported to the Commission every three years. The required chemical constituents to be included in the analysis are listed in Form SRBC #30. Note: The information may be provided to the Commission either on Form SRBC #30 or other similar document containing all of the required information.

(d) The Commission may, in its discretion, modify the requirements of paragraphs (a), (b), or (c) of this section if the essential purposes of the ground-water program continue to be served.

(e) Approvals by the Commission for ground-water withdrawals shall be subject to review at intervals of 5 years, after which the Commission may, at its discretion, choose to modify the approval based on information obtained from monitoring or other sources.

(f) Planning. If projections indicate that a project's ground-water supply will be constrained in the future by either the quantity or quality of available ground water, the Commission may, in its discretion, require the submission of a water resource-development plan prior to accepting any new withdrawal applications for the same or related projects.

(g) Interference with Existing Wells. If review of the application or other substantial data demonstrates that operation of a proposed ground-water withdrawal will significantly affect or interfere with an existing well or wells, the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

Dated: September 17, 1990.

Robert J. Bielo,

Executive Director.

[FR Doc. 90-22591 Filed 9-24-90; 8:45 am]

BILLING CODE 7040-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 260

Appeals Procedures

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends part 260 to make various nomenclature changes. This action is being taken as a result of a reorganization of the claims adjudication functions of the Board under the Railroad Retirement Act, and should eliminate any confusion which could arise from the use of the term "Bureau of Retirement Claims" in part 260 and the use of the amended terms in the Board's correspondence with the public.

EFFECTIVE DATE: This final rule is effective September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: This amendment is being made to remove the term "Bureau of Retirement Claims", as that term is used throughout part 260 of the Board's regulations, and to add various terms as appropriate wherever "Bureau of Retirement Claims" appears in that part. The change results from a reorganization of the claims adjudication functions of the Board under the Railroad Retirement Act. Those functions which previously were located in the Bureau of Retirement Claims have been allocated to the following units:

Bureau of Disability and Medicare Operations

Bureau of Retirement Benefits

Bureau of Survivor Benefits

Office of Retirement and Survivor Programs

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601-611). For purposes of the collection of information within the meaning of the Paperwork Reduction Act of 1980, this nomenclature change will have no legal effect.

List of Subjects in 20 CFR Part 260

Appeal procedures, Railroad employers, Railroad retirement.

For the reasons set forth in the preamble the Board amends part 260 of title 20 of the Code of Federal Regulations as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF DISABILITY AND MEDICARE OPERATIONS, BUREAU OF RETIREMENT BENEFITS, BUREAU OF SURVIVOR BENEFITS, OFFICE OF RETIREMENT AND SURVIVOR PROGRAMS, AND THE BUREAU OF RESEARCH AND EMPLOYMENT ACCOUNTS

1. The authority for part 260 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

2. The title of part 260 is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs" as set forth above.

3. The title of § 260.1 is revised to read as follows:

§ 260.1 Initial decisions by the Bureau of disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Supervisor Benefits and Office of Retirement and Survivor Programs.

4. Section 260.1(a) is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits and Office of Retirement and Survivor Programs".

5. Section 260.1(b) is amended by removing the term "Director of Retirement Claims" and inserting in lieu thereof the term "Director of the appropriate bureau or office".

6. Section 260.1(d) is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "appropriate bureau or office" everywhere it appears.

§ 260.3 [Amended]

7. The title of section 260.3 is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs".

8. Section 260.3(a) is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs".

9. Section 260.3(c) is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs".

§ 260.4 [Amend]

10. The title of § 260.4 is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs".

11. Section 260.4 is amended by removing the term "Director of Retirement Claims" wherever it appears in paragraphs (b), (c), (d), (g), (h), and (i) and inserting in lieu thereof the term "Director of the bureau or office which issued the erroneous payment decision".

12. Section 260.4 is amended by removing the term "Bureau of Retirement Claims" wherever it appears in paragraph (c) and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits or Office of Retirement and Survivor Programs".

§ 260.5 [Amended]

13. The title of 260.5 is amended by removing the term "Bureau of Retirement Claims" and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs".

14. Section 260.5 is amended by removing the term "Bureau of Retirement Claims" wherever it occurs in paragraphs (a), (b), and (c) and inserting in lieu thereof the term "Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs".

Dated: September 17, 1990.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90-22587 Filed 9-24-90; 8:45 am]

BILLING CODE 7905-01-M

20 CFR Parts 395, 396, 397, and 398

RIN 3220-AA86

Employee Protection Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule; removal.

SUMMARY: The Railroad Retirement Board (Board) hereby removes part 395, "Regulations Under title VII of the Regional Rail Reorganization Act," part 396, "Regulations Under section 106 of the Rock Island Railroad Transition and Employee Assistance Act," part 397, "Supplementary Unemployment Insurance," and part 398, "New Career Training Assistance," because these parts are now obsolete.

EFFECTIVE DATE: This regulation is effective September 25, 1990.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4945 (FTS 386-4945).

SUPPLEMENTARY INFORMATION: In 1979, 1980, and 1981, three separate pieces of legislation were enacted which, although they did not amend the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) or the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*), affected the Railroad Retirement Board insofar as they imposed new, additional duties on the agency. Those three statutes—The Milwaukee Railroad Restructuring Act (Pub. L. 96-101, November 4, 1979, 93 Stat. 746), the Rock Island Railroad Transition and Employee Assistance Act (Pub. L. 96-254, May 30, 1980, 94 Stat. 401), and the Northeast Rail Service Act of 1981, which was a part of the Omnibus Budget Reconciliation Act (Pub. L. 97-35, August 13, 1981, 95 Stat. 357)—extended to employees of certain financially troubled railroads a number of protective provisions which were to be administered by the Board.

Parts 397 and 398 of the Board's regulations were published simultaneously as a final rule in a newly established Subchapter I of chapter II of title 20 of the Code of Federal Regulations on December 31, 1980 (45 FR 86423), pursuant to the authorization in The Milwaukee Railroad Restructuring Act (MRRA) for the Board to administer the payment of supplementary unemployment insurance and new career training assistance benefits. The regulations in those parts explained the eligibility requirements for those benefits, described how and when individuals were to file applications for those benefits, and explained the computation of the amount of benefits to be paid. Under section 10 of the MRRA (45 U.S.C. 909), the supplementary unemployment insurance benefits would not be payable after April 1, 1984, unless the employee had not received those benefits for at least eight months by that date. See also 20 CFR 397.3(a). Section 12 of the MRRA (45 U.S.C. 911) provided that no new career training assistance would be provided after April 1, 1984. See also 20 CFR 398.3. Since the programs to which parts 397 and 398 applied have expired, these parts have become obsolete.

Part 396 of the Board's regulations was published as an Interim Final Rule on November 1, 1983 (48 FR 50308), to provide for administration of the benefit schedules issued pursuant to Section 106 of the Rock Island Railroad Transition and Employee Assistance Act (RITA), as amended by the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982 (title II of Pub. L. 97-468, 96 Stat. 2543) (45 U.S.C. 1005). The benefit schedule, as prescribed by the Federal Railroad Administrator, provided for the payment of benefits to former employees of the Rock Island Railroad. The Board had the responsibility to administer the benefit schedule, including the adjudication of claims and award of benefits. Part 396 explained the types of benefits available, the eligibility requirements for those benefits, and the procedures to be followed in claiming benefits. A total of $35 million was appropriated for the benefit schedule pursuant to an authorization for that amount in section 504(c)(2) of Public Law 97-468, and virtually all payments had been made by the end of March 1984. Because part 396 has become obsolete, it is being removed.

Part 395 of the Board's regulations was published as a final rule on November 6, 1984 (49 FR 44277), to provide for the implementation of the benefit schedules issued by the Secretary of Labor under section 701 of the Regional Rail Reorganization Act of 1973 (the "3-R Act") (45 U.S.C. 797), as enacted by section 1143 of the Northeast Rail Service Act of 1981, Public Law 97-35, August 13, 1981. The Board had been delegated the responsibility to administer the benefit schedules, which provided benefits for employees of the Consolidated Rail Corporation (Conrail) who had been deprived of employment as a result of actions taken under the 3-R Act and the Northeast Rail Service Act. Part 395 described the types of benefits available, the eligibility requirements for those benefits, and the procedures to be followed in making claims for benefits.

Section 4024(a) of the Conrail Privatization Act, enacted as part of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509, October 21, 1986, 100 Stat. 1874, amended section 701(d)(2) of the 3-R Act (45 U.S.C. 797(d)(2)) to provide that the administration of the benefit provisions under the benefit schedules was to be turned over to Conrail. This transfer was to occur upon the earlier of the exhaustion of appropriated funds available for payment of benefits or expenses of administration or on the expiration of 60 days after the date of enactment of the Conrail Privatization Act. Thus, effective 60 days after October 21, 1986, that amendment to section 701 of the 3-R Act transferred the responsibility to pay title VII benefits to Contrail.

Conrail and the Board entered into a Transitional Employee Protection Implementation Agreement, dated January 30, 1987. That Agreement set forth the procedures by which benefits would be paid from December 20, 1986, until the date of the sale of Contrail, at which time the title VII employee benefits program would expire. Pursuant to that Agreement, the Board continued to determine eligibility for title VII benefits, and Conrail assumed responsibility for payment of those benefits, upon certification to Conrail by the Board.

Conrail was sold on April 2, 1987. For a time thereafter, the Board performed responsibilities necessary to close out the title VII benefit program. Since the title VII benefit program has expired, part 395 of the Board's regulations is now obsolete.

Because this rule simply removes regulations which are now clearly out of date, public comment was not considered necessary and, thus, this rule was not published in proposed form.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Parts 395, 396, 397, and 398.

Employee benefit plans, Manpower training programs, Railroad employees, Railroad retirement, Relocation assistance.

Under the authority provided in 45 U.S.C. 362(1), and for the reasons set out in the preamble, chapter II of title 20 of

the Code of Federal Regulations is amended as follows:

SUBCHAPTER I—[REMOVED AND RESERVED]

1. The title of Subchapter I is removed and reserved.

PART 395—[REMOVED AND RESERVED]

2. Part 395, consisting of §§ 395.1 through 395.10, is hereby removed and reserved.

PART 396—[REMOVED AND RESERVED]

3. Part 396, consisting of §§ 396.1 through 396.10, is hereby removed and reserved.

PART 397—[REMOVED AND RESERVED]

4. Part 397, consisting of §§ 397.1 through 397.8, is hereby removed and reserved.

PART 398—[REMOVED AND RESERVED]

5. Part 398, consisting of §§ 398.1 through 398.7, is hereby removed and reserved.

Dated: September 17, 1990.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 90-22588 Filed 9-24-90; 8:45 am]

BILLING CODE 7905-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3832-9]

Disapproval of State Implementation Plans; Colorado Carbon Monoxide Plan for the Denver Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: This notice announces that EPA is disapproving the Better Air Campaign (BAC) as an emission reduction measure in the Colorado Carbon Monoxide (CO) State Implementation Plan (SIP) for the Denver Metropolitan Area.

On June 24, 1982, the State of Colorado submitted to EPA a CO nonattainment area plan for Denver which included, in part, the episodic share-a-ride program (re-named the BAC). EPA originally proposed approval of the BAC as an emission reduction measure on July 14, 1987 (52 FR 26419). Information since received from the State of Colorado indicates that the BAC cannot be given credit for reducing CO emissions in the metro Denver area. Additionally, the State of Colorado has since revised the program, making the BAC as identified in the notice of proposed approval obsolete.

DATES: This action will become effective on November 24, 1990, unless notice is received October 25, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the State submittal are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Colorado Department of Health, Air Pollution Control Division, 4210 East 11th Avenue, Denver, Colorado 80220.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769, (FTS) 330-1769.

SUPPLEMENTARY INFORMATION:

Background

The BAC, as outlined in the July 14, 1987, **Federal Register** notice (52 FR 26419), consisted of two components which were in effect between December 15 and January 15, the CO high pollution season for Denver. The first component requested that drivers voluntarily leave their vehicles at home one weekday per week. This "no-drive day" was based on the vehicle's license plate number. The second component requested that everyone voluntarily curtail non-essential driving when a high pollution day was forecasted. This program was in effect during the 1984-85, 1985-86, and 1986-87 high pollution seasons.

Original State Analysis

The State's analysis of the first three years of the BAC indicated that the planned no-drive day portion of the BAC resulted in a vehicle miles traveled (VMT) reduction of about eight percent. For the 1986-87 high pollution season, the eight percent VMT reduction was estimated to result in a nine percent decrease in ambient CO levels. However, the high pollution day driving reduction component was found to have no additional impact on VMT. Also, the 1986-87 BAC included voluntary (mandatory in Denver, Boulder, and Lakewood) restrictions on woodburning during high pollution days, resulting in an additional three percent reduction in ambient CO levels.

The BAC was expanded for the 1987-88 and 1988-89 seasons to run from November 1 through January 31. For the 1988-89 BAC, the no-drive component was revised to encourage drivers to leave their vehicles at home one weekday per week, not according to license plate numbers, but on a weekday that was most convenient. Drivers were also asked to reduce driving whenever possible, especially on forecasted high pollution days. Additionally, many more metropolitan area cities adopted mandatory woodburning bans on high pollution days, which supplemented the voluntary woodburning restrictions.

For the 1987-88 BAC, the State reported a ten percent reduction in ambient CO levels due to the voluntary no-drive program (based on a nine percent reduction in VMT) and a seven percent reduction in ambient CO levels due to the voluntary and mandatory woodburning bans. Thus, the total reduction in ambient CO credited to the 1987-88 BAC was seventeen percent.

Re-evaluation of the No-drive Program and Revised Results

As indicated above, the no-drive program was given credit for up to a ten percent reduction in ambient CO levels during previous BACs. This reduction was based on a computer-modeled comparison of VMT in the base year, 1983-84 (before the inception of the BAC), and VMT during each year of the program. The modeling calculated VMT reductions directly attributable to the BAC. Due to public skepticism of the State's claim of VMT reductions resulting from the no-drive program, the State conducted an evaluation of the program's modeling efforts.

This evaluation concluded that: (1) The model used to determine the no-drive program's effect on VMT was adequate (although it was not sensitive enough to detect a two percent or less change), and (2) the VMT data for the 1983-84 base year, which was acquired from the Colorado Department of Highways, overestimated VMT for the base year by approximately ten percent. Using corrected base year VMT data, the State revised the VMT reduction results from past BACs and for the 1988-89 BAC, finding no measurable VMT reduction and, thus, no ambient CO reduction.

Therefore, for the 1988-89 BAC, the State reported no-significant reduction

in ambient CO levels from the voluntary no-drive program. However, the woodburning component of the BAC reduced ambient CO levels by six to eight percent.

Realizing that the public was not participating in the BAC's voluntary VMT reduction program, the State informed EPA in a letter dated April 7, 1989 (from Bradley J. Beckham, Director of the Colorado Department of Health's Air Pollution Control Division to EPA's Douglas M. Skie, Chief of the Air and Toxics Division's Air Programs Branch) that the BAC would be revised and become a State-wide, year-round program to address the various air pollutants (not just CO) emitted from many different sources. The program would no longer include an intensive public advertising campaign to encourage drivers to reduce driving during the high pollution season. Instead, the State envisioned an outreach program directed at businesses, schools, and government agencies to achieve emission reductions for all air pollutants throughout the year. Additionally, the State did not identify the specifics of the program, nor the means for measuring its success. The State requested EPA to "* * * finalize the BAC as a SIP measure, but refrain from assigning an emission reduction to it until such time as the program is more clearly defined."

EPA Action

On May 17, 1989, EPA responded to Colorado (in a letter from EPA's Douglas M. Skie to Colorado's Brad Beckham), stating, "Because the BAC can no longer claim that the voluntary no-drive program reduces vehicle miles traveled and, subsequently, CO emissions, EPA cannot take final action on the proposed approval of the BAC as an emission reduction measure." Additionally, EPA stated, "EPA cannot approve the BAC in a final action because the structure of the revised BAC * * * is different than the program described in the proposed rulemaking." On that occasion, EPA also encouraged the State to resubmit the BAC for inclusion into the SIP when the program elements are specifically defined. Emission reduction credits could then be assigned to the revised program. Such a program, called "Clean Air Colorado", is now being developed by the State.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective November 24, 1990 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 24, 1990.

Final Action

EPA is today disapproving the BAC as an emission reduction measure in the Colorado CO SIP for metropolitan Denver.

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

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

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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401–7642.

Dated: September 12, 1990.

James J. Scherer,

Regional Administrator.

[FR Doc. 90-22678 Filed 9-24-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3829-8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Indiana State Implementation Plan (SIP) for ozone. On October 15, 1987, the Indiana Department of Environmental Management (IDEM) submitted amendments to the Indiana Administrative Code (IAC) 8-2, Surface Coating Emission Limitations, as a proposed revision to the Indiana SIP.[1] The revision pertains to the control of volatile organic compound (VOC) emissions from wood furniture and cabinet coating facilities, located in the nonattainment counties of Clark, Floyd, Lake, and Porter. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of part D of the Clean Air Act (Act).

DATES: This action will be effective November 24, 1990, unless notice is received by October 25, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available at the following addresses for review: (It is recommended that you telephone E. Marie Huntoon at (312) 886-6034, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of today's revision to the Indiana SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW, Washington, DC 20460.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

[1] On April 9, 1988, the State recodified title 325 of the Indiana Administrative Code (IAC) to title 326. The State submitted this recodification to the USEPA for approval on November 16, 1988. USEPA is currently taking actions to recodify title 326 of the IAC, which will appear in a subsequent **Federal Register** notice. This rule was formally submitted as 325 IAC 8-2.

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

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For Indiana, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.315. For these areas, part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. Part D allows USEPA though, to grant extensions of up to December 31, 1987, to those States that could not demonstrate attainments of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its air pollution program. Indiana requested, and received, an extension to December 31, 1987, for achieving the ozone NAAQS for four counties: Clark, Floyd, Lake, and Porter.

Policy and Guidance

The requirements for an approvable SIP are described in the "General Preamble" for part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979); 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

On January 22, 1981 (46 FR 7182), USEPA published guidance for the development of 1982 ozone SIPs in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension" (46 FR 7182). The Act requires that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT)[2] to sources of VOC.

In partial response to the requirement for RACT VOC rules, on October 15, 1987, the State submitted to the USEPA regulations for incorporation into the Indiana Ozone SIP, which control VOC emissions from wood furniture and cabinet coating sources located in Indiana's post-1982 ozone nonattainment counties. The submittal consists of amendments to 326 IAC 8-2-1, Applicability of rule, and the inclusion of a new rule, 326 IAC 8-2-12, Wood furniture and cabinet coating. USEPA's review of the State's submittal is contained in a technical support document, which is available at the Region V office. The following provides a summary of the State's submittal:

Summary of State's Submittal

1. 326 IAC 8-2-1, Applicability of rule, was amended to state that the requirements of 326 IAC 8-2-12 apply to facilities located in Clark, Floyd, Lake, and Porter Counties, which have potential VOC emissions of 90.7 megagrams (100 tons) or greater per year.

2. 326 IAC 8-2-12(a) provides a description of the types of surface coated furnishings which are affected by this rule.

3. 326 IAC 8-2-12(b) states that an owner or operator of a wood furniture or cabinet coating operation shall apply all coating material using one or more of the following application systems; airless spray, air-assisted airless spray, electrostatic spray, electrostatic bell or disc, heated airless spray, roller coat, brush or wipe, or dip-and-drain. Touch-up and repair operations are exempt provided that no more than ten gallons of such coatings per day are used.

4. 326 IAC 8-2-12(c) states that compliance with the provisions of 326 IAC 8-2-12 shall be achieved on or before December 31, 1987. An owner or operator may submit a petition to the Commissioner to establish an extended schedule for compliance. All such extension requests will be submitted to the USEPA as revisions to the SIP. Final compliance shall in no case extend beyond December 31, 1988.

Summary of USEPA's Final Rulemaking

USEPA concurs with Indiana's determination that its rules are RACT for these Indiana sources. USEPA hereby approves the incorporation of the State's revised 326 IAC 8-2-1 and the new 326 IAC 8-2-12 into the Indiana Ozone SIP.

Because USEPA considers today's action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on November 24, 1990. However, if we receive notice by October 25, 1990 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

This action has been classified as a Table Two 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 Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 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, Environmental protection, Incorporation by reference, Intergovernmental relations, Ozone.

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

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[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

The USEPA published Control Technique Guideline (CTGs) in order to assist the State in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the USEPA considers the "presumptive norm" for RACT. RACT I regulations cover sources which are contained in USEPA's first set of CTGs, i.e., those which were published before January 1, 1978. These CTGs are referred to as "Group I CTGs" and pertain to "Group I Sources". Similarly, RACT II regulations cover sources which are contained in USEPA's second set of CTGs, published between January 1, 1978, and January 1, 1979. These CTGs are referred to as "Group II CTGs" and pertain to "Group II Sources". RACT III regulations cover sources which are contained in USEPA's CTGs published after January 1, 1979. These CTGs are referred to as "Group III CTGs" and pertain to "Group III Sources". As part of Indiana's control strategy for attainment of the NAAQS for ozone, the State has submitted, and USEPA has approved, regulations limiting emissions at all stationary source of VOCs in Indiana covered by CTGs.

All other sources which are not covered by Groups I, II, or III CTGs are referred to as "non-CTG" sources. Major "non-CTG sources" are sources which have the potential to emit more than 100 tons of VOC per year and for which a CTG was not published.

Dated: September 4, 1990.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(80) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(80) On October 15, 1987, the State submitted 325 IAC 8–2–13, Wood Furniture and Cabinet Coating, as a portion of its 1982 ozone plan, which gives provisions and requirements for controlling volatile organic compound (VOC) emissions from sources located in Clark, Floyd, Lake and Porter Counties. On November 16, 1988, the State submitted this rule recodified as 326 IAC 8–2–12, Wood Furniture and Cabinet Coating.

(i) Incorporation by reference.

(A) Title 326 Air Pollution Control Board, Indiana Administrative Code (IAC) 8–2–1, Applicability of rule; and 326 IAC 8–2–12, Wood furniture and cabinet coating, as published in the April 1, 1988, "Indiana Register" (IR), at 11 IR 2536 and corrected on March 1, 1989, at 12 IR 1394. Filed with the Secretary of State on March 10, 1988.

* * * * *

[FR Doc. 90–22676 Filed 9–24–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[AA-250-90-4370-02; Circular No. 2629]

RIN 1004-AB63

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Private Maintenance; Supporting Information and Certification for Private Maintenance of More Than 4 Wild Horses or Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking prohibits the use of power of attorney to adopt wild horses or burros when the adoption would result in the maintenance in one location of more than 4 wild horses or burros whose titles have not been conveyed by the United States. Public Law 92–195, as amended, commonly referred to as the Wild Free-Roaming Horse and Burro Act, limits the number of animals that may be adopted by any individual to not more that 4 per year unless "the Secretary determines in writing that such individual is capable of humanely caring for more than four animals * * *". Section 4750.3–3 of title 43 of the Code of Federal Regulations regulates approval of adoption applications where the applicant requests to adopt more than 4 animals per year or where more than 4 adopted wild horses or burros, title to which remains in the United States, are to be maintained in one location. The purpose of the rulemaking is to prohibit an individual from gaining control of more than 4 wild horses or burros by using one or more powers of attorney. The rule allows the use of power of attorney for transporting wild horses or burros on behalf of an adopter.

EFFECTIVE DATE: October 25, 1990.

ADDRESSES: Inquiries or suggestions should be sent to: Director (250), Bureau of Land Management, Premier Building, Room 901, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the address given above; telephone (202) 653–9215.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend the existing regulation on "Supporting information and certification for private maintenance of more than 4 wild horses or burros" was published in the **Federal Register** on February 6, 1990 (55 FR 3989). Comments were invited for a period of 30 days ending March 8, 1990, during which period two comments were received, one from a private individual, and one on behalf of two humane organizations.

Both comments supported the intent of the proposed rulemaking. One comment expressed general support for the proposed rule. The other comment raised additional issues. That comment expressed concern that the proposed rulemaking did not address the matter of enforcement. Enforcement is not addressed in the proposed rulemaking because the rule merely states a limitation on the circumstances under which the BLM will approve adoptions where four or more animals will be maintained in one location or where four or more animals will be transported by an individual on behalf of an adopter. If an individual circumvents or attempts to circumvent this provision, the Bureau of Land Management will apply the enforcement provisions found in Subpart 4760—Compliance, and Subpart 4770—Prohibited Acts, Administrative Remedies, and Penalties.

The comment urged that BLM further define its enforcement strategy. Such a definition is not appropriately placed in the regulations, but rather is properly addressed in policy statements and program guidance.

The comment also noted that the proposed rulemaking does not define the term "commercial use." The proposed rule makes no reference to commercial use, and therefore a definition would be unnecessary and beyond the scope of the rule.

The proposed rule is adopted without change.

The principal author of this final rule is John S. Boyles, Chief, Division of Wild Horses and Burros, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

The information collection requirements contained in § 4750.3–3 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the authority of the Act of September 8, 1959 (18 U.S.C. 47), the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), the Act of October 21, 1976 (43 U.S.C. 1701 *et seq.*), and the Act

of June 28, 1934, as amended (43 U.S.C. 315), part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4700—[AMENDED]

1. The authority citation for part 4700 continues to read as follows:

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331–1340), Act of Oct. 21, 1976 (43 U.S.C. 1701 *et seq.*), Act of Sept. 8, 1959 (18 U.S.C. 47), Act of June 28, 1934 (43 U.S.C. 315)

2. Section 4750.3–3 is amended by removing the word "for" the first time it appears in the introductory text of paragraph (a) and replacing it with the words "to adopt", removing paragraph (b)(7), redesignating paragraph (b) as paragraph (c), by adding a new paragraph (b) and revising newly designated paragraphs (c) introductory text, (c)(3), (c)(5), and (c)(6) to read as follows:

§ 4750.3–3 [Amended]

* * * * *

(b) The Authorized Officer will not approve an adoption in which the Private Maintenance and Care Agreement will be signed by an individual holding the power of attorney of the adopter where the adopted animals will be maintained in groups of more than 4 untitled wild horses or burros in one location.

(c) Any individual holding one or more powers of attorney to sign the Private Maintenance and Care Agreement(s) and who will transport more than 4 wild horses or burros on behalf of adoption applicants shall provide the following:

* * * * *

(3) Names, addresses, and telephone numbers of all applicants represented by a power of attorney submitted with the request.

* * * * *

(5) A distribution plan for delivering the animals to their assigned adopters; and

(6) Names, addresses, and a concise summary of the experience of the individuals who will handle the adopted animals during transportation and distribution.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 90–22667 Filed 9–24–90; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6802

[NV–930–00–4214–10; N–50250]

Withdrawal of Public Land To Maintain the Physical Integrity of the Subsurface Environment, Yucca Mountain Project; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 4,255.50 acres of public land from the mining and mineral leasing laws for a period of 12 years in order to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site characterization by the Department of Energy at Yucca Mountain are not invalidated or otherwise adversely impacted.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6530.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from location under the United States mining laws (30 U.S.C. ch. 2), and from leasing under the mineral leasing laws, in order to maintain the physical integrity of the subsurface environment to ensure that scientific studies for site characterization by the Department of Energy at Yucca Mountain are not invalidated or otherwise adversely impacted:

Mount Diablo Meridian

T. 13 S., R. 49 E. (Pro. Dia. No. 44),
Secs. 7, 8 and 9;
Secs. 10 and 15, except those lands withdrawn by PLO 2568;
Secs. 16 and 17;
Sec. 20, NE¼;
Sec. 21, N½, N½S½;
Sec. 22, N½, N½S½, except those lands withdrawn by PLO 2568.

The area described contains approximately 4,255.50 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining and mineral leasing laws. BLM will obtain written concurrence from the Department of Energy prior to issuing any use authorizations on the withdrawn lands.

3. The withdrawal will expire 12 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 17, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–22615 Filed 9–24–90; 8:45 am]

BILLING CODE 4310–HC–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 88–2 Phase I; DA 90–1201]

Miscellaneous Rules Relating to Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: On August 6, 1990, five Bell Operating Companies (BOCs) filed petitions seeking partial reconsideration and/or clarification of the Commission's *BOC ONA Amendment Order*, Memorandum Opinion and Order, Filing and Review of Open Network Architecture Plans, CC Docket No. 88–2, Phase I, published July 3, 1990 (55 FR 27468). The BOCs that filed petitions are BellSouth, NYNEX, Pacific Bell, Southwestern Bell, and US West.

DATES: (Oppositions to these petitions must be filed on or before October 25, 1990. Replies to an opposition must be filed within 15 days after the time for filing oppositions has expired).

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Pleading Cycle Established for Oppositions and Replies to Petitions for Partial Reconsideration and/or Clarification of BOC ONA Amendment Order

[CC Docket No. 88–2, Phase I]

Released: September 17, 1990.

On August 6, 1990, five Bell Operating Companies (BOCs) filed petitions

seeking partial reconsideration and/or clarification of the Commission's *BOC ONA Amendment Order*, Memorandum Opinion and Order, Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 5 FCC Rcd 3103 (1990). The BOCs that filed petitions are BellSouth, NYNEX, Pacific Bell, Southwestern Bell, and US West.

Pacific and Southwestern seek reconsideration of the Commission's decisions concerning access to Operation Support Systems (OSS) and in the alternative request clarification of these requirements. Bell South, NYNEX, and US West also seek clarification of the Commission's decision regarding OSS access.

In the *BOC ONA Amendment Order*, the Commission required that the BOCs' enhanced service operations take the same access to OSS ONA services that the BOC provides independent enhanced service providers (ESPs) once the structural separation requirements are lifted. In their amended ONA plans, the BOCs proposed to offer ESPs indirect access to OSS through gateways. The Commission, however, determined that the current record did not provide enough information to allow the FCC to conclude that the indirect gateway access proposed by the BOCs is comparably efficient to direct access.

In its petition, BellSouth also seeks reconsideration of the geographic deployment projection requirement established in the *BOC ONA Amendment Order* so that it may provide end-of-the-year projections instead of mid-year projections.

The full text of these petitions is available for review and copying in Room 239, 1919 M Street, NW., Washington, DC, and copies may be purchased from the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800. Oppositions to these petitions must be filed within 30 days of the date of public notice of the petitions in the **Federal Register**. Replies to an opposition must be filed within 15 days after the time for filing oppositions has expired. *See* § 1.4(b)(1) of the Commission's Rules, 47 CFR 1.4(b)(1). For purposes of this proceeding, the filing deadlines established in § 1.429 of the Commission's Rules, 47 CFR 1.429, are waived.

For further information contact Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau at (202) 632-4047.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-22577 Filed 9-24-90; 8:45 am]

BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 705, 706, 719, 726, and 752

[AIDAR Notice 90-2 (Final)]

Disadvantaged Enterprises

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to adopt as final and make amendments to an interim rule that implemented the provisions of section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, (Pub. L. 101-167), concerning requirements for contracting and subcontracting with disadvantaged enterprises.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen O'Hara, MS/PPE, telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The Agency is implementing the provisions in section 579 of Public Law 101-167 covering contracts with small disadvantaged business concerns (SDBs) using other than full and open competition, notification of AID's Office of Small and Disadvantaged Business Utilization, and a requirement for subcontracting with disadvantaged enterprises.

An interim final rule was issued February 20, 1990 and published in the **Federal Register** on March 8, 1990 (55 FR 8469) with a 30-day comment period. A summary of the comments received and their disposition follows.

Congressman William H. Gray III indicated that the Director of AID's Office of Small and Disadvantaged Business Utilization (OSDBU) should be involved with the contracting officer to determine when to set aside procurements for Small Disadvantaged Businesses under other than full and open competition and when there are no realistic opportunities for U.S. subcontracts. Both suggestions have been implemented by requiring the contracting officer to consult with the Director of OSDBU. In the event of disagreement between the two, the head of the contracting activity will make the final determination.

As a result of Congressman Gray's concerns, the provision for using other than full and open competition makes it clear that an award under the Small Business Administration 8(a) program must be considered first and that the set aside procedure in AIDAR 706.302-71 is competitive.

Congressman Gray also suggested that the definition of economically disadvantaged individuals should reference Section 8(d) of the Small Business Act, rather than 8(a). In reviewing the definition, however, it was determined that section 579 requires that the determination of economic disadvantage shall include consideration of assets and net worth of socially disadvantaged individuals. The new definition states that a person will not be considered economically disadvantaged if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question. Because of the definition change, the FAR certifications for small disadvantaged businesses and women-owned businesses are not appropriate; therefore, 752.226-1 contains a new certification on status as a small disadvantaged business.

Other changes result from comments and questions raised within the Agency. The definitions of ownership and control by socially and economically disadvantaged individuals are separated since, in the case of private voluntary organizations, control alone is relevant.

The subcontracting requirement is clarified to show that the requirement applies to new contracts and modifications outside the scope of an existing contract that constitute new procurement when, and only when, more than $500,000 of covered funds are involved.

The changes being made by this Notice are not considered significant rules under FAR section 1.301 and subpart 1.5. This notice will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. It is not considered a major rule under Executive Order 12291, and has been submitted to OMB for review. This notice does not establish any information collection as contemplated by the Paperwork Reduction Act.

List of Subjects

48 CFR Parts 705 and 706

Government procurement.

48 CFR Part 719

Government procurement, Small business.

48 CFR Part 752

Government procurement, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the Preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 705, 706, 719, and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

1a. The interim amendments to 48 CFR parts 705, 706, 719, 726 and 752 published on March 8, 1990, at 55 FR 8469 are adopted as final with the following changes.

PART 705—PUBLICIZING CONTRACT ACTIONS

Subpart 705.2—Synopsis of Proposed Contract Actions

2. Section 705.202(c) is adopted as final and republished to read as follows:

705.202 Exceptions.

* * * * *

(c) In accordance with section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, (Pub. L. No. 101-167) advance notice is not required for contract actions described in 706.302-71.

3. Section 705.207 is revised to read as follows:

705.207 Preparation and transmittal of certain synopses.

In accordance with section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, the responsible contracting officer shall notify AID's Office of Small and Disadvantaged Business Utilization (OSDBU) at least seven business days before publicizing a solicitation in the Commerce Business Daily for an acquisition (a) which is to be funded from amounts made available for fiscal year 1990 for any development assistance and for assistance for famine recovery and development in Africa and (b) which is expected to exceed $100,000. For exceptions, see 726.104.

PART 706—COMPETITION REQUIREMENTS

Subpart 706.3—Other Than Full and Open Competition

4. Section 706.302-5 is adopted as final and republished to read as follows:

706.302-5 Authorized or required by statute.

AID has authority under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, to contract with small business concerns owned and controlled by socially and economically disadvantaged individuals using other than full and open competition. The provisions implementing this authority are set forth in 706.302-71 and part 726.

5. Section 706.302-71 is revised to read as follows:

706.302-71 Small Disadvantaged Businesses.

(a) *Authority.* (1) Citation: Section 579 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, Public Law No. 101-167, 103 Stat. 1195, 1248-49 (1989).

(2) Section 579(a) of Public Law 101-167 requires that, except to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available for fiscal year 1990 for development assistance and for assistance for famine recovery and development in Africa be used only for activities of disadvantaged enterprises (as defined in 726.101). In order to achieve this goal, section 579(b) authorizes AID to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses), as the terms are defined in 726.101.

(b) *Application.* This authority may be used only if the Agency determines in accordance with 726.103 that:

(1) The acquisition is to be funded from amounts referred to in paragraph (a)(2) of this section;

(2) Award of the acquisition to a small disadvantaged business is appropriate to meet the requirement in paragraph (a)(2) of this section;

(3) After considering whether the acquisition can be made under the authority of section 8(a), award of the acquisition under section 8(a) is not practicable; and

(4) Two or more responsive offers from responsible small disadvantaged businesses can reasonably be expected.

(c) *Limitations.* (1) Offers shall be requested from as many small disadvantaged businesses as is practicable under the circumstances.

(2) Use of this authority is not subject to the requirements in FAR 6.303 and FAR 6.304, provided that the contract file includes a certification by the contracting officer stating that the procurement is being awarded pursuant to 706.302-71 and that the application requirements and limitations of 706.302-71 (b) and (c) have been complied with.

PART 719—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 719.2—Policies

6. Section 719.272 is adopted as final and republished to read as follows:

719.272 Small disadvantaged business policies.

In addition to the requirements in FAR part 19, part 726 provides for contracting and subcontracting with small disadvantaged businesses and other disadvantaged enterprises based on the provisions of section 579 of Public Law 101-167.

7. Part 726 is revised to read as follows:

PART 726—OTHER SOCIOECONOMIC PROGRAMS

Sec.
726.000 Scope of part.

Subpart 726.1—General

726.101 Definitions.
726.102 Policy.
726.103 Determination to use other than full and open competition.
726.104 Exceptions.

Subpart 726.2—Determination of Status

726.201 Determination of status as a small disadvantaged business.

Subpart 726.3—Subcontracting Requirement

726.301 Subcontracting with disadvantaged enterprises.

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O.12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

726.000 Scope of part.

This part supplements FAR part 19 and implements certain provisions of section 579 of the Foreign Operations Export Financing, and Related Programs Appropriations Act, 1990 (Pub. L. 101-167, 103 Stat. 1195, 1248-49 [1989]), which provides in general that not less than ten percent of the aggregate amount made available for fiscal year 1990 for development assistance and for assistance for famine recovery and development in Africa shall be made available to disadvantaged enterprises.

See part 705 and part 706 for additional provisions implementing section 579 with respect to publicizing contract actions and using other than full and open competition.

Subpart 726.1—General

726.101 Definitions.

Disadvantaged enterprises means U.S. organizations or individuals that are:

(a) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(b) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;

(c) Colleges or universities having a student body in which more than 40 percent of the students are Hispanic American; or

(d) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

Controlled by socially and economically disadvantaged individuals means management and daily business are controlled by one or more such individuals.

Owned by socially and economically disadvantaged individuals means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

Economically disadvantaged individuals means socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others who are not socially disadvantaged. An individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

Small disadvantaged business means any small business concern (as defined in FAR 19.001) that is owned and controlled by socially and economically disadvantaged individuals as the terms are defined in this 726.101.

Socially disadvantaged individuals means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Women and any individual who certifies that he or she is a Black American, Hispanic American, Native American (as defined in FAR 19.001), Asian-Pacific American (as defined in FAR 19.001), or a Subcontinent-Asian American (as defined in FAR 19.001) shall be presumed to be a socially disadvantaged individual.

726.102 Policy.

AID promotes participation in its projects by disadvantaged enterprises. In order to achieve the goals in section 579(a) of Public Law 101–167, contracts which are to be funded from amounts made available for fiscal year 1990 for development assistance and for famine recovery and development in Africa are subject to the following policies:

(a) Authority in section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall be used to the maximum practicable extent;

(b) Other than full and open competition in contracting with small disadvantaged businesses shall be authorized in accordance with 706.302–71;

(c) Subcontracting with disadvantaged enterprises shall be carried out in accordance with subpart 726.3;

(d) In accordance with 705.207, the Office of Small and Disadvantaged Business Utilization (OSDBU) shall be notified at least seven business days before publicizing a proposed procurement in excess of $100,000.

726.103 Determination to use other than full and open competition.

The determinations required in order to use the authority under 706.302–71 for other than full and open competition shall be made by the contracting officer in consultation with the Director of OSDBU. In the event of a disagreement between the contracting officer and the Director of OSDBU, the head of the contracting activity shall make the final determination.

726.104 Exceptions.

The notification requirement in 705.207 and the subcontracting requirement in 726.301 are based on statutory requirement and may not be deviated from under the provisions of subpart 701.4. Pursuant to section 579(b) of Public Law 101–167, the Administrator or designee may determine that these requirements do not apply to a particular contract or category of contracts. The Procurement Executive has been designated to make such determinations. One such determination concerning subcontracting is set out in 726.301(b).

Subpart 726.2—Determination of Status

726.201 Determination of status as a small disadvantaged business.

(a) To be eligible for an award under AIDAR 706.302–71 providing for other than full and open competition, the contractor must qualify as a small disadvantaged business, as defined in 726.101, as of both the date of submission of its offer and the date of contract award. The contracting officer shall insert the provision at 752.226–1 in any solicitation or contract to be awarded under the provisions of 706.302–71.

(b) The contracting officer shall accept an offeror's representations and certifications under the provisions referenced above that it is a small disadvantaged business unless he or she determines otherwise based on information contained in a challenge of the offeror's status by the Small Business Administration or another offeror, or otherwise available to the contracting officer.

Subpart 726.3—Subcontracting Requirement

726.301 Subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.101) with respect to which more than $500,000 is to be funded with amounts made available for fiscal year 1990 for development assistance or for assistance for famine recovery and development in Africa shall contain a provision requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged entities.

(b) This requirement does not apply when the contracting officer, with the concurrence of the Director of OSDBU, certifies there is no realistic expectation of U.S. subcontracting opportunities and so documents the file. If the contracting officer and the Director of OSDBU do not agree, the determination will be made by the head of the contracting activity. See 726.104 for guidance on other potential exceptions.

(c) The contracting officer shall insert the clause in 752.226–2 in any solicitation or contract as provided in paragraph (a) of this section, unless exempted in accordance with the provisions of paragraph (b) of this section.

PART 752—TEXTS OF PROVISIONS AND CLAUSES

8. Section 752.226-1 is revised to read as follows:

752.226-1 Determination of status as a small disadvantaged business.

As prescribed in 726.201, insert the following provision:

Small Disadvantaged Business Representation (July 1990)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business.

(b) *Definitions.*

Asian Pacific Americans, as used in this provision means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

Native Americans, as used in this provision means American Indians, Eskimos, Aleuts, and native Hawaiians.

Small business concern, as used in this provision, means a U.S. concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualifies as a small business under the criteria and size standards in 13 CFR part 121.

Small disadvantaged business, as used in this provision, means a small business concern that (a) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals.

Subcontinent Asian Americans, as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women, provided that an individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

(End of Provision)

9. Section 752.226-2 is revised to read as follows:

752.226-2 Subcontracting with disadvantaged enterprises.

As prescribed in 726.301, insert the following clause:

Subcontracting With Disadvantaged Enterprises (July 1990)

Note: This clause does not apply to prime contractors that qualify as disadvantaged enterprises as described below.

(a) Not less than ten (10) percent of the dollar value of this contract must be subcontracted to disadvantaged enterprises as described in paragraph (b) of this clause.

(b) *Definitions.*

Disadvantaged enterprises means U.S. organizations or individuals that are: (1) business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals; (2) institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities; (3) colleges and universities having a student body in which more than 40 percent of the students are Hispanic American; or (4) private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

Controlled by socially and economically disadvantaged individuals means management and daily business are controlled by one or more such individuals.

Owned by socially and economically disadvantaged individuals means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

Socially disadvantaged individuals means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Any individual who certifies that he or she is a Black American, Hispanic American, Native American (as defined in FAR 19.001), Asian-Pacific American (as defined in FAR 19.001), Subcontinent-Asian American (as defined in FAR 19.001), or a woman shall be presumed to be a socially disadvantaged individual.

Economically disadvantaged individuals means socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others who are not socially disadvantaged. An individual shall not be considered an economically disadvantaged individual if his or her personal net worth exceeds $750,000, excluding the equity in his or her primary personal residence and his or her ownership interest in the disadvantaged enterprise in question.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a disadvantaged enterprise.

(End of Clause)

Dated: August 14, 1990.

John F. Owens,

Procurement Executive.

[FR Doc. 90-22269 Filed 9-24-90; 8:45 am]

BILLING CODE 6116-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1807

[NASA FAR Supplement Directive 89-4]

RIN 2700-AA92 and 2700-AB04

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Correction

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule, correction.

SUMMARY: NASA is correcting an error in an amendment to part 1807 which reflected miscellaneous changes to the NASA FAR Supplement (NFS) and which appeared in the **Federal Register** on June 29, 1990 (55 FR 27088).

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8250.

SUPPLEMENTARY INFORMATION: NASA has published miscellaneous amendments to the NASA FAR Supplement. An amendment to part 1807 is in error which is discussed briefly below and is corrected by this notice.

Dated: September 19, 1990.

S.J. Evans,

Assistant Administrator for Procurement.

The following correction is made in the NASA FAR Supplement Directive 89-4, part 1807, published in the **Federal Register** on June 29, 1990 (55 FR 27088).

1807.103 [Corrected]

On page 27088, 3rd column, line 16, change the reference "(a)(1)(i)(A)," to "(a)(1)(i)(B)".

[FR Doc. 90-22701 Filed 9-24-90; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of inseason adjustment and closure.

SUMMARY: NOAA announces an increase in the quota for coho salmon in the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, from 20,000 to 23,600 fish, effective August 30, 1990. NOAA also announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight, September 14, 1990, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial fishery quota of 23,600 coho salmon for the subarea will be reached by September 14, 1990. The closure is necessary to conform to the preseason announcement of 1990 management measures. This action is intended to allow maximum harvest of ocean salmon quotas established for the 1990 season and to ensure conservation of coho salmon.

DATES: *Effective:* Modification of the coho salmon quota for the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective at 0001 hours local time, August 30, 1990, and closure of the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, to commercial salmon fishing is effective at 2400 hours local time, September 14, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until October 5, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

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

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon species in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, would begin on the earlier of 3 days after the August closure of the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, or September 1, and continue through the earliest of October 15 or the attainment of either a subarea quota of 20,000 coho salmon or the overall quota of 37,500 chinook salmon north of Cape Falcon, Oregon. Furthermore, impacts from quota overages or underages from one fishing period or subarea will be subtracted from or added to later fishing periods of the same user group. Inseason modification of quotas is authorized by 50 CFR 661.21(b)(i).

Commerical landings in the fishery from the U.S.-Canada border to Cape Falcon, Oregon, which closed August 26, totaled 78,400 coho salmon, leaving 3,600 fish unharvested of the 82,000 coho quota. Accordingly, the coho salmon quota for the commerical fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, should be increased by 3,600, from 20,000 to 23,600 fish.

Regulations at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

The commercial fishery from Leadbetter Point to Cape Falcon opened on August 30, 1990. According to the best available information on September 14, the commercial fishery catch in the subarea is projected to reach the 23,600 coho salmon quota by midnight, September 14, 1990. Therefore, the fishery in this subarea is closed to further commercial fishing effective 2400 hours local time, September 14, 1990.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this action was given prior to 2400 hours local time, September 14, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice to increase the quota for coho salmon in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, to 23,600 fish, and to close the commercial salmon fishery in the EEZ from Leadbetter Point to Cape Falcon. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this action. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 5, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: September 19, 1990.

Richard H. Schaefer,

Director, Office of Fisheries, Conservation and Management.

[FR Doc. 90-22658 Filed 9-20-90; 10:48 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 186
Tuesday, September 25, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 13

RIN 3150-AD71

Program Fraud Civil Remedies Act, Implementation

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes regulations to implement the Program Fraud Civil Remedies Act of 1986. The Act authorizes certain Federal agencies, including the Nuclear Regulatory Commission, to impose, through administrative adjudication, civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the agency. These proposed regulations establish the procedures the Commission will follow in implementing the provisions of the Act and specifies the hearing and appeal rights of persons subject to penalties and assessments under the Act.

DATES: The comment period expires on November 24, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to the Office of the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays. Copies of any comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC between the hours of 7:45 am and 4:15 pm Federal workdays.

FOR FURTHER INFORMATION CONTACT: John Cho, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-1585.

SUPPLEMENTARY INFORMATION:

Background

In October 1986, Congress enacted the Program Fraud Civil Remedies Act, Pub. L. No. 99-509 (codified 31 U.S.C. 3801 through 3812), to establish an administrative remedy against any person who makes a false claim or written statement to any of certain Federal agencies. In brief, it requires the affected Federal agencies to follow certain procedures in recovering penalties (up to $5000 per claim) and assessments (up to double the amount falsely claimed) against persons who file false claims or statements for which the liability is $150,000 or less. The Act further requires each affected agency to promulgate rules and regulations necessary to implement its provisions.

Following the Act's enactment, at the request of the President's Council on Integrity and Efficiency (PCIE) an interagency task force was established under the leadership of the Department of health and Human Services to develop model regulations for implementation of the Act by all affected agencies. This action was in keeping with the stated desire of the Senate Governmental Affairs Committee that "the regulations would be substantially uniform throughout the government" (S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). Upon their completion, the PCIE recommended adoption of the model rules by all affected agencies.

At that time, the Act did not apply to the Nuclear Regulatory Commission. However, that Act has since become applicable to the Commission as a result of the enactment of the Inspector General Act Amendments, Pub. L. 100-504, October 18, 1988. Those amendments, *inter alia*, added the Nuclear Regulatory Commission as an "establishment" under the Inspector General Act and, by doing so, operated to bring the Commission within the provisions of the Program Fraud Civil Remedies Act.

These proposed regulations are essentially the same as the model rules recommended by the PCIE. They incorporate, where appropriate, definitions to fit the Commission's organization. They prescribe the procedure under which false claims and statements subject to the Act will be investigated and reviewed, and the rules under which any ensuing hearing will be conducted.

Statutory Scheme

Under the Act, false claims and statements subject to its provisions are to be investigated by an agency's investigating official. The results of the investigation are then reviewed by an agency reviewing official who determines whether there is adequate evidence to believe that the person named in the report is liable under the Act. Upon an affirmative finding of adequate evidence, the reviewing official sends to the Attorney General a written notice of the official's intent to refer the matter to a presiding officer for an administrative hearing. The agency institutes administrative proceedings against the person only if the Attorney General or the Attorney General's designee approves. Any penalty or assessment imposed under the Act may be collected by the Attorney General through the filing of a civil action, or by offsetting amounts, other than tax refunds, owed the particular party by the Federal government.

For purposes of this Act, these proposed regulations designate the Inspector General or the Assistant Inspector General for investigations as the agency's investigating official. They also designate the Deputy General Counsel for Licensing and Regulation or his or her designee as the reviewing official. Any administrative adjudication under the Act will be presided over by an Administrative Law Judge and any appeals from the Administrative Law Judge's decision will be decided by the Commission.

A more detailed discussion of the model rules' provisions is found in the promulgations of several of the agencies that adopted them earlier, including those of the Departments of Justice (53 FR 4034; February 11, 1988 and 53 FR 11645; April 8, 1988); Health and Human Services (52 FR 27423; July 21, 1987 and 53 FR 11656, April 8, 1988); and Transportation (52 FR 36968; October 2, 1987 and 53 FR 880, January 14, 1988). Anyone desiring further explanation of

the model rules is referred to the cited references.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The Program Fraud Civil Remedies Act of 1986 (Pub. L. 99-509, 31 U.S.C. 3801-3812) established an administrative remedy for false claims or statements submitted to various agencies. Under the Act, anyone who knowingly submits a false, fictitious, or fraudulent claim to any of these agencies is liable for up to a $5,000 penalty and an assessment of double damages. Each affected agency is required to issue implementing regulations governing the investigation of such claims and their adjudication by the agency. Although the Act did not apply to the NRC at the time of its enactment, its provisions became applicable to the NRC upon later enactment of the Inspector General Act Amendments, Pub. L. 100-504, October 18, 1988.

The proposed rule carries out the requirements of that Act.It essentially adopts the model rules prepared under the auspices of the President's Council on Integrity and Efficiency. This is in keeping with the expectation of the Senate Governmental Affairs Committee, expressed in its report on the Act, that the agency regulations throughout the Government would be substantively uniform, except as necessary to meet the specific needs of a particular agency or progam. S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the procedural mechanism for investigating and adjudicating allegations of false claims or statements made against affected agencies. The proposed rule, by itself, does not impose any obligations on entities including any regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards found in 13 CFR part 121. These obligations would not be created until an order is issued, at which time the person subject to the order would have a right to a hearing in accordance with the regulations.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 13

Claims, Fraud, Organization and function (government agencies), Penalties.

1. A new part 13 is added to 10 CFR chapter I to read as follows:

PART 13—PROGRAM FRAUD CIVIL REMEDIES

Sec.
13.1 Basis and purpose.
13.2 Definitions.
13.3 Basis for civil penalties and assessments.
13.4 Investigation.
13.5 Review by the reviewing official.
13.6 Prerequisites for issuing a compliant.
13.7 Complaint.
13.8 Service of complaint.
13.9 Answer.
13.10 Default upon failure to file an answer.
13.11 Referral of complaint and answer to the ALJ.
13.12 Notice of hearing.
13.13 Parties to the hearing.
13.14 Separation of functions.
13.15 Ex parte contacts.
13.16 Disqualification of reviewing official or ALJ.
13.17 Rights of parties.
13.18 Authority of the ALJ.
13.19 Prehearing conferences.
13.20 Disclosure of documents.
13.21 Discovery.
13.22 Exchange of witness lists, statements, and exhibits.
13.23 Subpoenas for attendance at hearing.
13.24 Protective order.
13.25 Fees.
13.26 Form, filing and service of papers.
13.27 Computation of time.
13.28 Motions.
13.29 Sanctions.
13.30 The hearing and burden of proof.
13.31 Determining the amount of penalties and assessments.
13.32 Location of hearing.
13.33 Witnesses.
13.34 Evidence.
13.35 The record.
13.36 Post-hearing briefs.
13.37 Initial decision.
13.38 Reconsideration of initial decision.
13.39 Appeal to authority head.
13.40 Stays ordered by the Department of Justice.
13.41 Stay pending appeal.
13.42 Judicial review.
13.43 Collection of civil penalties and assessments.
13.44 Right to administrative offset.
13.45 Deposit in Treasury of United States.
13.46 Compromise or settlement.
13.47 Limitations.

Authority: Pub. L. 99-509, secs. 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812).

§ 13.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, sections 6101-6104, 100 Stat. 1874 (October 21, 1986) (31 U.S.C. 3801-3812). 31 U.S.C. 3809 requires each authority head to promulgate regulations necessary to implement the provisions of that Act.

(b) *Purpose.* This part:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 13.2 Definitions.

As used in this part:

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Nuclear Regulatory Commission.

Authority head means the Commission of five members or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974 (88 Stat. 1242).

Benefit means, in the context of "statement", anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 13.7.

Defendant means any person alleged in a complaint under § 13.7 to be liable for a civil penalty or assessment under § 13.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 13.10 or § 13.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Nuclear Regulatory Commission or the Assistant Inspector General for Investigations, Office of the Inspector General.

Knows or has reason to know means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization and includes the plural of that term.

Representative means any person designated by a party in writing.

Reviewing offical means the Deputy General Counsel for Licensing and Regulation of the Nuclear Regulatory Commission or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 13.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred

property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 13.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitable identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 13.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 13.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 13.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 13.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 13.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 13.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 13.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 13.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 13.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 13.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 13.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 13.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 13.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 13.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. Service of an answer shall be made by delivering a copy to the reviewing official or by placing a copy in the United States mail, postage prepaid and addressed to the reviewing official. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the

time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 13.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 13.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 13.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 13.8 a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 13.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 13.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 13.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 13.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 13.8. At the same time, the ALJ shall send a copy of such notice to the representative of the authority.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the authority and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 13.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 13.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 13.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 13.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f) (1) If the ALJ determines that a reviewing official is disqualified, the ALJ

shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of its review of the initial decision upon appeal, if any.

§ 13.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulation of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 13.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 13.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearances at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 13.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 13.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 13.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 13.9.

§ 13.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 13.22 and 13.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 13.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fai, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 13.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 13.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 13.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other times as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 13.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 13.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 13.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 13.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed by opened only be order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 13.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 13.26 Form filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 13.8 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 13.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period,

unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 13.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may required that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 13.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 13.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 13.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 13.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence that ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant atempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 13.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 13.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 13.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be esssential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 13.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 13.24.

§ 13.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 13.24.

§ 13.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 13.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 13.3; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggrevating factors that he or she finds in the case, such as those described in § 13.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 13.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decison of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 13.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 13.39.

§ 13.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 13.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 13.38 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at each hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 13.3 is final and is not subject to judicial review.

§ 13.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 13.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 13.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 13.43 Collection of civil penalties and assessments.

Section 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 13.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 13.42 or § 13.43, or any amount agreed upon in a compromise or settlement under § 13.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 13.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 13.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 13.42 or during the pendency of any action to collect penalties and assessments under § 13.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 13.42 or

of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 13.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 13.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to serve a timely answer, service of a notice under § 13.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated at Rockville, Maryland, this 19th day of September 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-22677 Filed 9-24-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 571

[No. 90-1494]

RIN 1550-AA05

Bonds for Directors, Officers, Employees, and Agents; Form and Amount of Bonds

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("Office") is proposing to amend its regulations pertaining to fidelity bond coverage in order to address the disparity between the fidelity bond insurance requirements of savings associations and those of commercial banks and to recognize the limitations of product availability in the insurance bond marketplace. The Office is proposing to substitute the requirement that savings associations obtain coverage under Standard Form No. 22 with the requirement that they obtain bond coverage under Standard Form No. 24. Savings associations currently holding bonds written on Standard Form No. 22 will be considered in compliance with the revised regulation.

DATES: Comments must be received on or before October 25, 1990.

ADDRESSES: Comments may be submitted to: Director, Information Services Division, Office of Communications, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at 1735 I Street NW., Ninth Floor.

FOR FURTHER INFORMATION CONTACT: William W. Templeton, Staff Attorney, Corporate and Securities Division, (202) 906-7354, Julie L. Williams, Deputy Chief Counsel for Securities and Corporate Structure, (202) 906-6549, Corporate and Securities Division; Linda Matthias, Policy Analyst, (202) 906-5747, Edward Charity, Jr., Policy Analyst, (202) 906-7933, Supervision Policy, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office is proposing to amend its regulations pertaining to fidelity bond coverage. This action is taken in order to address the disparity between the fidelity bond insurance requirements of savings associations and those of commercial banks and in recognition of the limitations of product availability in the insurance bond marketplace.

The Office recognizes that the insurance bond marketplace has undergone changes since 1968 when the Federal Home Loan Bank Board adopted the regulatory requirement that all FSLIC-insured savings associations obtain and maintain fidelity bond insurance under the form known as Standard Form No. 22. That form of coverage has not been widely available to the thrift industry since 1986. In its place, fidelity bond underwriters are offering to savings associations the same form of fidelity bond coverage that is available to commercial banks. The bond form known as the Financial Institution Bond, Standard Form No. 24 is the form of fidelity bond maintained by commercial banks in accordance with the provisions of 12 U.S.C. 1828(e).[1]

The Office notes that banks maintain fidelity bond coverage under Standard Form No. 24. In view of the provisions of 12 U.S.C. 1828(e), and because the Office sees no compelling reason why thrifts should not be placed in a position of parity with banks in this regard, the Office proposes to amend 12 CFR 563.190 to delete the requirement that savings associations must obtain coverage under Standard Form No. 22 and to substitute the requirement that savings associations obtain bond coverage under Standard Form No. 24. Savings associations that currently hold fidelity bonds written on Standard Form No. 22 will be deemed to comply with the amended regulation.[2]

While implementing the Standard Form No. 24 coverage requirement, the proposed amendment removes from the regulation the schedule of the required minimum amounts of coverage. In the Office's view, the appropriate levels of coverage are best determined by the management of each savings association. This position is shared by other bank regulatory agencies. It is the duty of the savings association's management to identify, analyze and treat the risk exposure created by its operations. Management, working together with a reliable insurance professional, can analyze the need for coverage and control the exposure to loss by choosing the appropriate levels of coverage and, when appropriate, purchasing endorsements or riders to the standard form that broaden the scope of coverage. Management should assess this fidelity loss risk by means of a thorough review of all aspects of the association's present and prospective operations. This comprehensive review of internal controls may also reveal the need to take additional procedural steps in order to limit a particular risk. Of course, examiner review and analysis of the adequacy of the savings association's insurance program is necessary.

The amended regulation also requires the board of directors to formally approve the savings association's bond coverage, to monitor the ongoing operations and to assess the need for additional coverage periodically. The Office expects that this amendment, together with regulatory bulletins to be issued subsequently, will provide management with clear guidance on the proper course to set for meeting the savings association's fidelity bond coverage needs. Any deviations from

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[1] Section 18(e) of the Federal Deposit Insurance Act reads as follows:

The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation and other similar insurable losses. Whenever any insured depository institution refuses to comply with such requirement, the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

12 U.S.C. 1828(e) (1982), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73; § 201, 103 Stat. 183 (1989).

[2] Throughout this preamble, "fidelity bond coverage" refers to the coverage provided under Standard Form No. 24.

the prudent identification, assessment and treatment of fidelity related loss exposure will be viewed as a matter of supervisory concern.

Section 571.14 is removed by this amendment. The Office will provide supplementary guidance on acceptable bond underwriters through supervisory bulletins.

Executive Order 12291

The Office has determined that this proposal does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Act Analysis is not required.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Conflicts of interest, Cold, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend chapter v. title 12, Code of Federal Regulations, as set forth below.

PART 563—[AMENDED]

1. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

2. Section 563.190 is revised to read as follows:

§ 563.190 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(a) Each savings association shall maintain bond coverage with a bonding company acceptable to the Office, in the form known as Standard Form 24. The bond shall cover each director, officer, employee, and agent who has control over or access to cash, securities, or other property of such savings association.

(b) The amount of coverage to be required of each savings association shall be determined by the association's management, based on its assessment of the association's potential exposure to risk. The association's board of directors shall approve management's determination of the association's bond coverage, management and the board of directors shall consider factors including, but not necessarily limited to, the following:

(1) The size of the association's asset portfolio and its deposit base;

(2) An overall assessment of the effectiveness of the association's internal operating controls;

(3) The amount of cash, securities, and other property normally held by the association;

(4) The number of the association's employees, their experience and levels of authority, and the turn-over rate in the assiciation's personnel;

(5) The extent of trust powers or EDP activities conducted by the association; and

(6) The extent of coverage provided under the bond coverage of a holding company or other affiliated entity.

(c) Each savings association may maintain bond coverage in addition to that provided by the Standard Form 24, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the association's board of directors, circumstances warrant additional coverage.

(d) The board of directors of each savings association shall formally approve the association's bond coverage, including the adequacy of both the standard and supplemental coverages. Documentation of the board's approval shall be included as a part of the minutes of the meeting at which the board approves coverage. Additionally, the board of directors shall review the association's bond coverage at least annually to assess the ongoing adequacy of coverage.

PART 571—[AMENDED]

3. The authority citation for part 571 continues to read as follows:

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 571.14 [Removed]

4. Section 571.14 is removed.

Dated: August 9, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 90-22708 Filed 9-24-90; 8:45 am]

BILLING CODE 6720-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-3814-8]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Year 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a revision of the Phase I federal gasoline and alcohol blend volatility regulations which were promulgated on March 22, 1989 (54 FR 11886). This proposed revision would apply only to the State of Texas during the 1991 RVP season. The current federal rule requires eastern Texas to comply with a Reid Vapor Pressure (RVP) standard in most summer months that is different from that required for western Texas. The proposed revision would provide a uniform set of federal RVP standards for the entire state for 1991. The federal RVP standard for eastern Texas during the month of May is proposed to change from 10.5 pounds per square inch (psi) to 9.5 psi. During the months of June, July, and August the federal RVP standerd is proposed to change from 9.5 psi to 9.0 psi. This proposed revision is in response to a petition submitted to EPA by the Texas Oil Marketers Association (TOMA) requesting that EPA reconsider the federal Phase I RVP standards for Texas.

DATES: EPA will hold a public hearing to take comments on this proposal. The public hearing will be held at 9 a.m. on November 14, 1990. The public comment period will remain open through December 17, 1990.

ADDRESSES: The public hearing will be held at the Texas Air Control Board's auditorium at 6330 Highway 290 East, Austin, Texas. Requests to speak at the hearing and written questions for the hearing should be directed no later than 7 days before the hearing date, to Alfonse Mannato, Field Operations and Support Division, Environmental Protection Agency, EN-397F, 401 M Street SW., Washington, DC 20460.

Materials relevant to the rulemaking have been placed in Docket A-90-17.

Comments on the proposal should be sent to Docket A-90-17 at: Air Docket Section (A-130), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The docket is located in Room M-1500 Waterside Mall and may be inspected from 8:30 a.m. to 12:00 noon and from 1:30 to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202) 382-2640 or FTS 382-2640.

SUPPLEMENTARY INFORMATION: On August 19, 1987, the Agency proposed a two-phase reduction in summertime gasoline volatility (52 FR 31274). On March 22, 1989 (54 FR 11886), EPA published a notice of final rulemaking promulgating Phase I of these volatility control regulations. These Phase I regulations included a list of applicable standards for geographical areas throughout the 48 contiguous states for the period of May 1 through September 15, effective June 1, 1989.[1]

In the final rule for the Phase I program, the State of Texas was divided along the 99th degree meridian of longitude in accordance with the geographical classification scheme historically used by the American Society of Testing and Materials (ASTM) to designate volatility classes. This was consistent with the August 1987 proposal. Prior to promulgation, no comments were received concerning the proposed division of Texas into two RVP regions.

In the summer of 1989 there was an exchange of correspondence between the State of Texas, TOMA and EPA regarding the perceived problems created in Texas by the division of the state into two volatile classes. In fact TOMA requested, in a letter dated July 10, 1989, that the border within Texas be moved westward to approximately the 105th meridian of longitude. EPA was unable to resolve this issue during the 1989 volatility season. Although there were no reports of severe supply shortages, a number of supply and pricing distortions were reported. (See public docket.)

On December 8, 1989, the Texas Air Control Board adopted reduced volatility standards for the nine-county region in the Dallas/Fort Worth area of 9.0 psi for the period May 1 through September 16 of each year. (This 9.0 psi standard is equivalent to the June, July and August federal Phase I standards for West Texas.) On April 30, 1990 (55 FR 18005), EPA proposed to approve, and on August 3, 1990 (55 FR 31584), EPA approved the State RVP regulation for the Dallas/Fort Worth area as a State Implementation Plan (SIP) revision. Under section 211(c)(4)(A) of the Clean Air Act (the Act), EPA's national RVP regulations preempt state RVP regulation which are not identical to EPA's regulation. However, section 211(c)(4)(C) of the Act provides for approval of state control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary National Ambient Air Quality Standard which the plan implements. In a letter dated January 26, 1990, TOMA asserted that this adoption of the 9.0 psi standard for the Dallas/Fort Worth area would further complicate the distribution and pricing situation for gasoline in Texas.

On March 8, 1990, EPA wrote a letter to William P. Clements, Jr., Governor of Texas, conveying the concerns that had been raised regarding the division of the State of Texas by the current federal volatility standards for the summer months. In the letter, EPA referred to correspondence submitted to the Agency from TOMA which stressed concern that the division within the State in the federal RVP standard would lead to gasoline shortages and/or distribution problems and higher prices. On March 28, 1990 Governor Clements responded to EPA stating his believe that a single set of federal RVP standards for the State would be in the best interest of Texas consumers.

In a letter dated April 26, 1990, TOMA reiterated its concerns regarding the problems with the division of the State of Texas in the federal volatility program. In that letter, TOMA petitioned EPA to take action immediately to establish a uniform federal volatility standard for Texas.

On June 11, 1990 EPA published a notice of final rulemaking promulgating Phase II of a two-phase nationwide reduction in summertime commercial gasoline volatility (55 FR 23658). These federal standards will take effect in the summer of 1992. As part of the Phase II standards, the traditional ASTM boundaries which split various states into separate areas are eliminated. This change was intended to simplify the program in order to make enforcement and compliance easier and to reduce the likelihood of intrastate "border issues" such as the one this rulemaking is addressing. Also, the Phase II regulations provide a mechanism for changes to standards based on unique localized impacts created by the federal Phase II standards. Beginning in 1992, the Phase II standards for the entire state of Texas will be 9.0 psi in May and 7.8 psi for June through September 15.

EPA believes that there will be environmental benefits associated with the reduction of volatility levels proposed in this rulemaking. The level of benefits are discussed in the proposed Texas SIP approval referenced above (see 55 FR 18005). While there will be some incremental costs associated with the production of the lower volatility gasoline in East Texas, these costs will be small and may be offset by the elimination of inequities in the local market which exist under the current dual standards. As noted earlier, both the State of Texas and local gasoline marketers support this proposed revision.

EPA has reviewed TOMA's petition and proposes to find that the request to apply a uniform set of federal RVP standards throughout Texas for 1991 is appropriate because many refiners, jobbers and citizens have expressed concerns regarding gasoline production, transportation and availability along the 99th meridian of longitude. EPA proposes to revise the Phase I volatility standards to make the same set of federal standards applicable to the whole state for 1991. Specifically, for the part of Texas east of the 99th degree meridian of longitude, EPA is proposing to change the federal phase I RVP standard for the month of May from 10.5 psi to 9.5 psi, and for the months of June, July, and August from 9.5 psi to 9.0 psi. Because 1991 is the only remaining year of the phase I program, these standards are proposed only for calendar year 1991. Beginning in the summer of 1992, the federal standards promulgated for the phase II program will apply; this rulemaking action in no way affects the phase II program.

Because of the existence of the approved state standard of 9.0 psi in the nine-county Dallas/Fort Worth area, whenever the State standard is more stringent than the applicable federal standard, the State standard will continue to take precedence. Therefore, even if this action is finalized and put into effect for 1991 as being proposed today, the more stringent State standard for May 1991 and for the period from September 1 through September 16, 1991 will be in effect, unless revised by the State.

Administrative Requirements

The Agency has determined that this action is not a "major" rule as defined in Executive Order (E.O.) 12291. Therefore, a regulatory impact analysis has not been prepared. This regulation was submitted to the Office of Management

[1] In 1989, the standards did not go into effect until June 1.

and Budget (OMB) for review under E.O. 12291. Any written comments have been placed in the rulemaking docket.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulatory revision promulgated in this notice will not have a significant adverse impact on a substantial number of small entities. The regulatory revision should have little economic impact. Therefore, a regulatory flexibility analysis has not been prepared.

This proposed rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060-0178.

Authority for the action promulgated in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: September 18, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 will continue to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. In § 80.27(a) the table is amended by revising under the Texas heading the first entry "East of 99° Longitude" to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

Applicable Standards [1]

[(1) 1989-1991]

State	May	June	July	Aug.	Sept.
* * * * * *			*		
Texas:					
East of 99° Longitude	9.5	9.0	9.0	9.0	9.5
* * * * * *			*		

[1] Standards are expressed in pounds per square inch (psi).

[FR Doc. 90-22074 Filed 9-24-90; 8:45 am]

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40 CFR Part 180

[OPP-300225; FRL-3802-6]

Procymidone Residues in Wine; Request for Comment On Potential EPA Actions Under Federal Food, Drug, and Cosmetic Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking (ANPR).

SUMMARY: This document solicits public comment on EPA consideration of Sumitomo Chemical Corp.'s petition to establish a tolerance of 5 parts per million (ppm) for residues of the fungicide procymidone on grapes and to establish immediately an interim tolerance of 7 ppm to last 1 year. The Agency is issuing this ANPR to (1) give its preliminary assessment of the risk posed by procymidone residues in imported wine; (2) set out its options for a decision; and (3) request public comment on key scientific and policy questions raised by this petition for tolerance.

DATES: Comments, identified by the document control number [OPP-300225], must be received on or before October 25, 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 Hwy., 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 Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday and Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, telephone: (703)-557-1900.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Food and Drug Administration (FDA) has discovered residues of the pesticide procymidone in wine imported from Europe. That pesticide is not registered for use in this country under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and no tolerances exist for residues of the pesticide under the Federal Food, Drug, and Cosmetic Act (FFDCA). The manufacturer of the pesticide, the Sumitomo Chemical Corp., has petitioned EPA to establish a tolerance covering the residues and has requested expedited consideration of the petition. Wine exporting countries in Europe as well as American wine importers have urged EPA to take immediate action to prevent a major disruption in trade. This advanced notice of proposed rulemaking does the following: (1) Gives a preliminary assessment of the risk posed by procymidone residues in imported wine; (2) sets out EPA's options for a decision on procymidone; and (3) requests public comment on key scientific and policy questions raised by this proceeding.

II. Background

In February 1990, residues of the fungicide procymidone were discovered in shipments of imported wine from Italy during a spot inspection performed by

the FDA in Nashville, Tennessee. Procymidone is widely used in wine-producing nations of Europe to control the grape disease botrytis. Procymidone, however, is not registered under FIFRA, and there are no tolerances for procymidone under FFDCA. Because there are no established tolerances, a food containing any detectable residue of procymidone is considered adulterated under FFDCA.

FDA subsequently expanded its monitoring for the chemical and found many more violative shipments of wine originating from France, Italy, and Spain. Once a wine product was found to contain procymidone, future shipments of that product have also been detained by FDA unless the products could be certified procymidone-free. Representatives from European countries have claimed that in response to these detentions, wine exporters have undertaken a massive sampling operation to determine if wine intended for export contains procymidone.

The United States currently imports approximately 1 billion dollars worth of wine per year with European Community nations accounting for over 95 percent of this value. It is difficult to estimate how much of this trade in wine will be affected by the FDA's detentions. EPA has information indicating that the acres of wine grapes treated with procymidone are within the range of 12 to 25 percent in France and 4 to 16 percent in Italy. These two countries account for nearly 80 percent of U.S. wine imports. The figures on the extent of use indicate that between 10 and 20 percent of wine imports may be affected by the FDA detentions. EPA does not have high confidence in this estimate, however, because of (1) no direct independent confirmatory evidence on the percent of acres treated with procymidone; (2) uncertainty whether there is direct equivalence between the acres treated with procymidone and amount of wine which will contain procymidone; and (3) uncertainty as to whether exporting nations can segregate their wine stock such that only procymidone-free wine can be shipped to the United States.

On April 13, 1990, Sumitomo Chemical Corp. of Japan, Ltd., the manufacturer of procymidone, petitioned EPA to establish a tolerance of 5 parts per million (ppm) for residues of procymidone on grapes and to establish immediately an interim tolerance of 7 ppm to last 1 year. Sumitomo submitted 55 volumes of data with the petition. Much of the data, however, was illegible, and a legible copy of these data was not submitted until May 21, 1990. In its petition, Sumitomo noted that the CODEX Committee on Pesticide Residues (CCPR) had proposed a maximum residue limit (MRL) of 5 ppm for procymidone on grapes. The CCPR is a subcommittee of the Codex Alimentarius Commission (CODEX) which is an international body established by the Food and Agricultural Organization (FAO) and the World Health Organization (WHO) for the purpose of setting international food standards. Advice to the CCPR and CODEX concerning the establishment of MRL's is provided by a body of experts called the Joint FAO/WHO Meeting on Pesticide Residues (JMPR). The CODEX MRL is not expected to be final for several years. Groups representing both the exporting countries and U.S. wine importers have met with EPA to stress the importance of quick action on this petition.

EPA has placed review of the procymidone tolerance on an expedited track. EPA estimates it will take from 6 to 9 months from May 21, 1990, to complete review of the petition. However, EPA has made preliminary determinations concerning the quality of the data base and the potential risks from the proposed tolerance, and these are described below.

III. Risk Assessment

A. Summary

The toxicological data submitted by the petitioner have many deficiencies. Although they are not rigorous enough to provide definite conclusions about the effects of procymidone, the studies do not raise expectations of serious risk of health effects from the levels of procymidone which have been found in wine. EPA has made preliminary conclusions regarding the risks of cancer, other chronic effects, and reproductive and developmental toxicity.

EPA is still reviewing the carcinogenicity studies on procymidone. The data suggest that procymidone is carcinogenic, and a preliminary estimate of the risk of cancer has been made. There are a number of uncertainties in this preliminary assessment of risk, due to uncertainties not only in the carcinogenicity studies, but also in the residue data and in the consumption estimates. EPA believes that the overall uncertainty in the preliminary risk assessment is mitigated to a degree by the fact that most of the assumptions used are likely to overestimate the risk.

With these qualifications, the risk assessment appears to show that the risk of cancer for wine consumers is negligible over a period of a few years, and possibly even for the entire 50-plus year period over which an adult may drink wine. Risk even for the 99th percentile wine drinker is below the level that raises concern under most circumstances.

In addition, the risk of other chronic effects appears to be low, since the no-observed-effect level (NOEL) determined in the chronic toxicity study is several orders of magnitude higher than the exposure expected from wine. In addition, procymidone does not appear to cause birth defects, when examined in traditional developmental toxicity tests, although this needs to be confirmed by a second study in rats.

Procymidone does appear to cause effects on reproduction. The data provide evidence for frank effects only at levels that are 5 orders of magnitude above the levels to which humans are likely to be exposed through wine. However, since microscopic examination of tissues was not reported for lower doses, it is possible that changes could be occurring at these doses. Thus, no definitive conclusions can be drawn regarding how close the expected human exposure levels might be to levels which could cause microscopic changes until additional data are submitted.

B. Hazard Concerns

The toxicity studies considered essential for the establishment of a tolerance include a battery of three mutagenicity tests, developmental toxicity studies in rats and rabbits, a combined chronic toxicity/carcinogenicity study in rats, a 1-year chronic toxicity study in dogs, an oncogenicity study in mice, a general metabolism study, and a multigeneration reproductive toxicity study in rats. EPA has reviewed most of the data on the health effects of procymidone. For certain studies, additional review is intended. At this time, it appears that only two of the toxicology studies that have been submitted by the petitioner are fully acceptable in support of the establishment of a tolerance, based on current criteria for acceptability of studies for the reregistration of pesticides: the chronic toxicity/carcinogenicity study in rats and the developmental toxicity study in rabbits. This conclusion may change as review progresses. Six other studies either do not meet guideline requirements and should be repeated or were never performed. These are the developmental toxicity study in rats, the carcinogenicity study in mice, the 1-year chronic toxicity study in dogs, a

multigenerational reproductive toxicity study in rats, the general metabolism study in rats, and the mutagenicity studies.

1. *Acceptable studies.* The studies currently considered to be acceptable are the following:

a. *Chronic feeding study in rats.* This study was conducted as both a chronic study and a carcinogenicity study. Rats were fed 0, 100, 300, 1,000, or 2,000 ppm in the diet. In addition to the effects which are described as part of the carcinogenicity section below, enlarged cells in the liver were seen in both sexes at 1,000 and 2,000 ppm, and increased liver weights were found in females fed 1,000 ppm and in both sexes fed 2,000 ppm.

A conservative approach was used to establish the lowest effect level (LEL) since an inadequate number of males were available for evaluation at termination in each of the 100- and 300-ppm groups. Although body weight/liver effects were not seen at either the 100 or 300 ppm doses, the LEL was established at 300 ppm. This study was sufficient to establish a NOEL of 100 ppm (5.0 mg/kg/day) for chronic effects other than cancer.

b. *Developmental toxicity study in rabbits.* The highest dose tested (1,000 mg/kg/day) was a limit dose (the highest dose that it is practical to test in laboratory animals). Treatment did not induce maternal toxicity at any level nor was any developmental toxicity evident. The NOEL is greater than 1,000 mg/kg/day.

2. *Studies still being reviewed.* EPA has reviewed the two carcinogenicity studies that were submitted in support of this tolerance petition. It intends to submit these studies to further internal and external peer review. The initial review indicates the following:

a. *In mice.* There were increases in the incidence of hepatocellular adenomas and carcinomas, as well as the combination of the two, in both treated males and females. However, these increases were not always dose related or statistically significant, and most were within the range of reported historical control data for each category. Of the four dose groups tested (30, 100, 300, and 1,000 ppm), all treated male groups showed an increase in adenomas, while increased carcinomas were found in 100, 300, and 1,000 ppm males; increased adenomas and combined adenomas/carcinomas were noted in 300 and 1,000 ppm females. There was also an increase in the incidence of hepatoblastomas (observed in male groups only) at 300 and 1,000 ppm. Hepatoblastomas have been classified by the National Cancer Institute, the National Toxicology Program, and the National Center for Toxicological Research as a variant of hepatocellular carcinoma. The combined incidence of adenomas/carcinomas/blastomas was increased in all treated male groups.

The animals in this study could possibly have tolerated higher dosages of procymidone. This question will be addressed in peer review and will be important in determining the acceptability of this study in support of a tolerance petition.

b. *In rats.* Rats were given 0, 100, 300, 1,000, or 2,000 ppm in the diet. There was a dose-related increased incidence of testicular interstitial cell tumors and hyperplasia at the 1,000 and 2,000 ppm dietary levels. There was also an increased incidence of ovarian stromal hyperplasia and pituitary adenomas at 2,000 ppm in females. The conclusions about carcinogenicity that can be drawn from this study will be decided following peer review.

3. *Unacceptable or missing studies.* The subchronic feeding studies in rats and dogs, the developmental toxicity study in rats, the reproductive toxicity study in rats, the mutagenicity studies, and the general metabolism studies in rats and mice are all unacceptable as currently received from the petitioner. The reasons for considering these studies unacceptable are given below. Descriptions of effects (or lack thereof) that were seen in the studies are given, but it should be noted that the deficiencies in the studies do not allow rigorous conclusions to be drawn about the effects of procymidone. In addition, it should be noted that a 1-year nonrodent study was not submitted, but is required.

a. *Subchronic feeding studies*—i. *In rats.* Usually only summary data were provided. Concentrations in the diet and homogeneity of the test material were not verified. The method of animal selection was not indicated; randomness in assignment to dosage groups cannot be verified.

Dose groups were 0, 150, 500, and 1,500 ppm in the diet (0, 7.5, 25, and 75 mg/kg/day). Increased relative liver weight was seen in females at the 500-ppm level. At the high-dosage level after 6 months, lower body weights in both sexes, increased liver weight in both sexes, and increased relative brain weight in females were noted. After 9 months at the high dose level, increased relative brain weight in both sexes and increased absolute and relative testes weight were seen. The NOEL in this study is considered to be 150 ppm (7.5 mg/kg/day).

It seems unlikely that the data on individual animals, which would be needed to interpret this study, will be available from the petitioner since the study is over 10 years old. However, if peer review confirms that the chronic toxicity study in the rat is acceptable, the subchronic study will not have to be repeated.

ii. *In dogs.* Purity and stability of the procymidone used in the test were not adequately specified. The test may be considered to be acceptable if acceptable data on these two factors are submitted.

Dose groups were 0, 20, 100, and 500 mg/kg/day. There were no changes at 20 and 100 mg/kg/day that could be clearly associated with treatment. The high-dose level (500 mg/kg/day) appeared to cause an increased incidence of emesis (gastric juice/food) in both sexes, an increased incidence of diarrhea in females only, a suggestion of elevated alkaline phosphatase levels in both sexes, and a statistically significant increase in blood urea nitrogen in males. There were no histopathological changes which correlated with these findings.

b. *Developmental toxicity study in rats.* The dose levels in this study were not high enough to make an adequate assessment of the potential for developmental and/or maternal toxicity. This in itself is serious enough to require that the study be repeated. In addition, the investigator did not justify the selection of doses, or provide data from a pilot study. The data did not express the litter as the experimental unit of measure; instead, effects on individual fetuses were discussed. (In most developmental toxicity studies, it is the incidence per litter or the number of litters with a particular endpoint that is of concern. A high number of individual fetuses with effects could be of less significance if they are from a small percentage of litters than if they are from a large percentage of litters.) Also, the report did not include historical control data from the test facility for 2 years prior and 2 years subsequent to this study.

There was no evidence of maternal toxicity at any dosage level (30, 100, or 300 mg/kg/day delivered in corn oil via gavage). There was also no evidence of treatment-related developmental toxicity at any dose level.

c. *Reproductive toxicity study in rats.* Data on the ingestion of the substance and on the microscopic findings for the low and mid-dose groups were not provided. If the omitted data are submitted and found to be acceptable, this study may be acceptable. Peer

review would then determine the conclusions about reproductive toxicity that may be made from this study.

Dose groups were 50, 250, or 750 ppm in the diet (2.5, 12.5, or 37.5 mg/kg/day). Systemic toxicity was observed in adults and pups at 250 ppm and above in the form of decreased body weight gain and food consumption (statistically significant in the high-dose group), increased absolute and relative liver weights in the males, increased testes weights and combined and adjusted testes volume, along with decreases in pup prostate and epididymal absolute and relative weights. This toxicity was further corroborated by evidence of macroscopic and microscopic changes in the liver and male external genitalia (data were available only on the high-dose group).

Reproductive/developmental toxicity at the high-dose level caused abnormalities of external genitalia (reduced ano-genital distance and hypospadias) in F_1 and F_2 males and infertility in F_1 males, presumed to be a consequence of malformation induced by *in utero* exposure during late gestation. Minor histological changes in the pituitary and a reduction in size and weight of the accessory sex organs were also seen in these animals. There were no similar effects at any other dose level or on F_0 males.

It should be noted that these results are not inconsistent with the negative results of the developmental toxicity study in rabbits, which is an acceptable study. It is possible that the effects seen in the study of reproductive toxicity were not observed in the developmental toxicity study because of the differences in dosing regimens and/or species.

If the histopathology results for the low and mid dose groups are submitted by the petitioner and found to be acceptable, the results will determine whether a LEL and/or a NOEL can be established from this study. If either of these values can be established, an estimate of how close the exposure from wine consumption would be to the NOEL or LEL may be possible. However, if neither a NOEL nor a LEL can be established from this study, the study will have to be repeated.

At this time, since neither a NOEL nor a LEL has been established, the risk of these effects from procymidone in wine cannot be estimated quantitatively.

d. *Mutagenicity tests.* Procymidone has been tested in several mutagenicity studies, but all of these have been classified by EPA as unacceptable because of various serious deficiencies in methodology. All of the studies appear, on the surface, to be negative.

e. *General metabolism study in rats and mice.* Although this study provided useful information on the metabolism of procymidone in rats and mice, it did not satisfy all of the EPA data requirements for a metabolism study. An acceptable study would include groups of rats of both sexes which receive (1) a single intravenous low dose of labeled material, (2) a single oral low dose of labeled material, (3) a series of single daily oral doses of unlabeled material for 14 days followed by a single oral dose (on day 15) of labeled material, and (4) a single oral high dose of labeled material. All of these regimens are important because both the size of the dose(s) and the number of doses can influence metabolic pathways.

In both rats and mice, a single oral dose of 100 mg/kg was readily absorbed from the gastrointestinal tract and distributed to all tissues examined. Absorption appeared to be slightly faster in mice than in rats, whereas available data indicated that distribution, metabolism, and excretion were comparable between rats and mice. Procymidone-derived radioactivity was cleared from the major tissues at approximately the same rate in both species. Both species metabolized procymidone extensively, so that within 48 hours of administration only minor quantities of the parent were excreted in urine and feces. The metabolic profile in both species was qualitatively and quantitatively comparable.

4. *Additional studies.* The petitioner submitted several additional toxicity studies. A mouse subchronic toxicity study provided evidence that the liver is a target organ. Other studies in mice and rats demonstrated that procymidone is capable of increasing serum testosterone and luteinizing hormone levels and that it has a weak binding affinity for androgen receptors on rodent prostate. These latter studies add support to the concern that procymidone can cause effects on reproduction and development.

C. Exposure Concerns

1. *Residue levels.* EPA based its residue level estimate used in the risk assessment on monitoring data obtained by the Food and Drug Administration in its import sample analysis program. There are 678 samples of wine, from 18 countries, that have been analyzed for procymidone, 75 of which contained procymidone at levels of 0.02 ppm or above. (The limit of quantitation of the analytical method is 0.02 ppm.) Residues were found in both red and white wines. The levels in the samples whose concentration of procymidone could be quantified ranged from 0.02 ppm to 0.28 ppm. For its risk assessment, EPA used 0.3 ppm as the level that it assumed would be found in all wines that contain procymidone, realizing that this may be an overestimate.

The petitioner provided residue data from several field trials of procymidone on grapes conducted in West Germany, Italy, France, Spain, and South Africa during 1976, 1977, and 1978. Insufficient details were given about the conduct and analysis of several of these trials; analyses in other studies were performed using procedures different from the proposed enforcement methodology. In general, the data are not sufficient to support a permanent tolerance since raw data and other supporting information were not submitted, and since the data are not geographically representative.

2. *Consumption of procymidone-containing wine.* Procymidone is currently not allowed on any food items in the U.S. Therefore, EPA assumed in its risk assessment that the only exposure to procymidone would come from wine. The assumptions used in estimating exposure to procymidone through wine are explained below.

a. *Total consumption of all wine.* Estimates of total wine consumption were obtained from the Alcohol Epidemiologic Data System of the National Institute on Alcohol Abuse and Alcoholism (NIAAA). The most recent pertinent information available is for 1987; data were gathered as part of the Cancer Epidemiology section of the Supplement to the 1987 National Health Interview Survey, which is conducted by the National Center for Health Statistics. This section of the survey included 22,080 people of ages 18 and over, and was designed to be representative of the civilian, noninstitutionalized population residing in the United States.

The data were obtained by asking the respondent to estimate the number of glasses of wine he or she consumed per day, week, month, or year, over the previous year, and to report whether the glasses were large, medium, or small. The NIAAA assumed that the volumes of wine for each glass size were 5, 4, and 3 fluid ounces respectively, when it converted the survey responses to number of fluid ounces consumed per day. Both the reliance on recall and the necessity of assuming the volume of wine in a "glass" introduce error in the risk assessment; a discussion of the uncertainties in wine consumption data is included below.

b. *Correction for consumption of imported wine only.* Since procymidone is not allowed to be used on grapes

grown in the U.S., EPA assumed that exposure to procymidone would come only from imported, not domestic, wine. The assessment of risk therefore considered the likelihood of drinking imported, rather than domestic wine. EPA knows of no data which would allow identification of particular groups of people (e.g., based on geographic or socioeconomic factors), which are more likely than other groups to drink imported wine as opposed to domestic wine. It therefore assumed that each consumer has the same likelihood of drinking imported wine as any other consumer, when he or she drinks any wine at all. This likelihood was assumed to be the same as the percent of commercially produced wine entering distribution channels in the U.S. from foreign sources (i.e., the percentage of wine that is imported each year). The most recent value for this parameter is 14.5 percent (Wine Institute, Economic Research Report ER 55, August 1989). Thus, EPA assumed that 14.5 percent of the wine that each person consumes is imported.

c. *Percent of imported wine that contains procymidone.* EPA is aware, from the monitoring data available from FDA, that not all imported wine contains quantifiable levels of procymidone. The FDA monitoring program under which the procymidone levels have been found is not designed to provide statistically representative information, but it found that only 75 of 678 samples (11 percent) had quantifiable residues. A higher value of 20 percent was chosen for use in this risk assessment, to allow for a reasonable amount of error that might be due to a sampling program that is not statistically valid. This value is supported by the estimate that the highest percentage of wine containing quantifiable amounts of procymidone that is imported from any single country is around 20 percent, and by the estimate that the highest percentage of the wine-grape crop treated in any single country is around 20 percent.

D. Estimate of the Risk of Effects on Health

1. *Cancer.* Although the carcinogenicity studies must still be reviewed by internal and external peer review committees, EPA has proceeded under the assumption that procymidone may be carcinogenic and has done a preliminary quantitative risk assessment. Peer review may persuade EPA that the data do not support a finding of carcinogenicity, or that even if they do, quantification of the potency is not appropriate.

EPA believes at this time that the data on female mouse liver tumors can be used to provide a preliminary estimate of carcinogenic potency; it estimates a Q* (upper-bound estimate of potency) value of 0.023 $(mg/kg/day)^{-1}$, using the linearized multistage procedure. Q*s estimated from male mouse liver tumors and male rat testicular tumors are 0.018 and 0.021 $(mg/kg/day)^{-1}$, respectively; the similarity in the values lends support to the value derived from the female mouse liver tumor data. The female mouse liver tumor data were used in this risk assessment because they provided the highest Q* value; this maximizes the estimate of risk and is consistent with guidance provided in EPA's risk assessment guidelines for cancer.

EPA estimated the upper-bound risk of cancer for a given level of wine consumption by using the following formula:

Upper-bound risk = A * B * C * (D * E / F) * G * H where:

A = Concentration of procymidone in wine (assumed, 0.3 mg procymidone/kg wine).

B = Likelihood of drinking imported wine when any wine is consumed (assumed, 0.145, unitless).

C = Likelihood of imported wine containing quantifiable amounts of procymidone (assumed, 0.20, unitless).

D = Fluid ounces of wine consumed per day (variable; data from survey).

E = Grams of wine per fluid ounce (density assumed equal to that of water, 29.57 g/fl-oz).

F = Average body mass of an adult human, 18 or more years old (assumed, 70 kg).

G = Equivalence factor (1 kg wine/1,000 g wine)

H = Carcinogenic potency (estimated, 0.023 (mg procymidone/kg body weight/day)$^{-1}$).

The resulting number is an estimate of the upper-bound risk of cancer over a 70-year lifetime of exposure for a given level of wine consumption.

EPA estimates that it will take 5 years to generate additional information on carcinogenicity, if such information is needed to complete the petition for a tolerance. The upper bound to the risk of cancer that would be incurred during this period was estimated by multiplying the 70-year upper-bound risk by 5/70. Similarly, the upper-bound risk for a 2-year period which might be required in order to generate information on noncancer effects was estimated by multiplying the 70-year upper-bound risk by 2/70. The upper-bound risk over a wine-consuming lifetime of 52 years, representing continuous exposure from age 18 to age 70, was estimated by multiplying the 70-year upper-bound risk by 52/70.

By assuming that all the factors listed above are constant except for wine consumption rate, EPA estimated the carcinogenic risk for each level of wine consumption reported in the 1987 survey. The upper-bound risk at the mean, median, and 99th percentile of wine consumption, given the assumptions outlined above, are shown in Table I below. The median, mean, and 99th percentile of wine consumption were derived for consumers only, and do not include the 53 percent of the population who claimed not to have drunk any wine in approximately 1 year.

Table I.—Upper-bound Estimate to Risk of Cancer

Rate of wine consumption	g/kg/day	Glasses/day	No. people who drink X or more	Procymidone mg/kg/day	2 Years	5 Years	52 Years
Median	0.068	1 glass/25 days	40.4 million	5.9 E-7	4.0 E-10	9.9 E-10	1.0 E-8
Mean	0.321	1 glass/5.3 days	19.1 million	2.7 E-6	1.8 E-9	4.5 E-9	4.6 E-8
99.0 percentile	3.376	2 glasses/day	1.1 million	2.9 E-5	1.9 E-8	4.8 E-8	5.0 E-7

2. *Noncancer effects.* Procymidone appears to cause effects on reproduction and development of reproductive organs. Since neither a LEL nor a NOEL has been established, a quantitative assessment is not possible at this time. However, in view of the 5 orders of magnitude difference between the dose that did not cause frank effects in rats and the exposure expected for even the 99th percentile of wine consumers, it does not appear that reproductive effects would be expected.

The kinds of effects measured in the chronic toxicity study are not likely to result from exposure to procymidone in wine at 0.3 ppm. The NOEL for chronic effects was established at 5.0 mg/kg/day; the level of exposure for even the 99th percentile consumer of wine is

expected to be on the order of 10^{-5} mg/kg/day. However, the lack of effects needs to be confirmed in a nonrodent study.

Developmental toxicity is also not expected. The NOEL from the acceptable study is above 1,000 mg/kg/day; exposure to the 99th percentile of wine consumers is expected to be approximately 8 orders of magnitude less. However, the lack of effects must be confirmed in a second study before the EPA can confidently assess the risk.

It is difficult to evaluate the risk of effects from subchronic exposure to procymidone, since the studies are of poor quality. It appears that effects are seen only at relatively high doses: from the information available, the NOEL seems to be 7.5 mg/kg/day. This is 5 to 6 orders of magnitude higher than the exposure for the 99th percentile of wine consumers, if the wine contains procymidone at 0.3 ppm.

The risk of mutagenicity cannot be assessed either qualitatively or quantitatively at this time, because the studies are of such poor quality. However, since EPA has assumed that procymidone may be carcinogenic and has estimated that carcinogenic risks are negligible, even to high wine consumers, the results of additional mutagenicity tests are unlikely to increase the estimate of carcinogenic risk significantly.

E. Uncertainties

There are a large number of uncertainties in this risk assessment, most of which cannot be quantified or manipulated statistically due to a lack of sufficient data. While EPA believes it has chosen reasonable, if somewhat high, assumptions to use in its risk assessment, other values could have been chosen. The effects of other assumptions are examined here.

1. *Carcinogenic potency.* The most critical assumption is that procymidone is capable of causing cancer. As noted above, this assumption will be subjected to internal and external peer review. A decision that there is insufficient evidence for carcinogenicity, or that the data do not support quantification of potency, would preclude a quantitative risk assessment.

If peer review indicates that the "maximum tolerated dose" was not reached in the mouse study, it may be necessary to run the carcinogenicity test at a higher dose. Even assuming the worst case that could reasonably be expected in a repeat study (i.e., that the incidence of tumors would be at the upper end of the confidence limits for the doses tested in the current study, and as high as 80 percent at a dose that might reasonably be chosen as the next higher dose level), EPA would not expect the estimate of carcinogenic potency to increase by more than a factor of about 3. This would not change the estimate of carcinogenic risk significantly, given the current information about exposure.

2. *Level of procymidone in wine.* The monitoring information currently available was not derived from a statistically designed sampling program. Therefore, EPA felt it appropriate to assume a value that would be above the "normal" value seen in the monitoring program and yet still be reasonable. As noted above, it chose the highest value seen in the monitoring program, rounded to one significant digit (viz., 0.3 ppm).

If the monitoring data are representative of all wine entering the U.S., the mean of the quantifiable samples would be 0.06 ppm. The estimate of the upper-bound risk would be only 1/5th (i.e., 0.06/0.3), the level noted in Table I if the lower levels of procymidone seen in the monitoring program are taken into account.

3. *Likelihood of drinking imported wine when any wine is consumed.* It seems reasonable to believe that some segments of the population might drink mainly imported wine and that others drink mainly domestic wine. Socioeconomic factors, for example, may influence whether a person drinks imported wine or domestic wine when he or she drinks wine. Holding all other values at the levels assumed in the risk assessment given above, an assumption that a person drinks only imported wine would raise that person's risk by a factor of 7 (i.e., 100 / 14.5). As noted above, EPA has no way of estimating how many people fall into this category.

4. *Percent of imported wine that contains quantifiable amounts of procymidone.* As stated above, the monitoring data currently available may not be statistically representative of the wine coming into the U.S. If it were, the value of 11 percent might be appropriate to use for this factor, rather than the 20 percent which EPA used in its risk assessment. The estimates of upper-bound risk noted in Table I would be multiplied by 0.55 (i.e., would be roughly one-half the value noted in the table above).

EPA notes that wines from certain countries may be more likely to contain procymidone than wines from other countries. To the extent that a person drinks wine exclusively from a country whose average detection rate is different from the average for all countries, the risk forthat person will differ from what is presented here. EPA does not have any data from which to estimate the frequency of consumption of wines from specific countries.

5. *Fluid ounces of wine consumed per day.* EPA is aware that the National Health Interview Survey accounts for only 30 percent of the volume of wine sold in the U.S. in 1987. Underreporting appears to be a general problem with all surveys of alcohol consumption. EPA has not been able to locate information which might allow estimation of the degree of underreporting; it is only aware that underreporting is likely. If the wine consumption data were adjusted to account for total sales, the risk estimates would be multiplied by 3.3.

No correction has been attempted for consumption of those wines which are not made from grapes (e.g., Japanese sake), or wines which are unlikely to have been made from treated grapes because botrytis growth is desirable for those wines (e.g., certain dessert wines).

6. *Body mass of the consumer.* The NHIS survey collected information about the body mass of each individual who responded to the survey. Therefore, it should be possible to estimate more closely the grams of wine consumed per kilogram of body weight than is presented in EPA's risk assessment, which used an average for the U.S. population of 70 kg (154 pounds) per adult. However, even if it were assumed that all consumers of wine had an average body mass of only 50 kg (110 pounds), which is a rather extreme assumption, the estimates of risk would increase by a factor of only 70/50, or 1.4. Considering the other uncertainties involved, increasing the precision for body weight will negligibly affect the estimate of risk.

Finally, the risk assessment assumes that all values related to exposure through wine consumption remain constant for the period to which the risk assessment applies. Specifically, it assumes that the concentration of procymidone in wine, the percent of wine imported, the percent of imported wine that contains procymidone, and the amount of wine consumed will not change significantly. This appears to be a reasonable assumption for short-term extrapolation; no sudden, significant changes would be expected in these factors over a 2-to-5-year period. Trends in two of these factors, the percent of wine imported and the amount of wine consumed, suggest that consumption of imported wine has been decreasing, so that if the trends continue, exposure to procymidone may be less than what is estimated here, at least over the short term. Changes in these variables over the long term could affect the estimates

for the 52-year upper-bound risk more significantly.

IV. Data Requested From Sumitomo

Sumitomo has been informed of the following data deficiencies pertaining to its tolerance request.

1. Product chemistry data:

a. Details concerning the beginning materials and the manufacturing process.

b. Details concerning the procedures for quantifying the amounts of major impurities. Sample chromatograms and spectra of standards should be submitted.

c. Additional information on the physical and chemical properties to fulfill requirements as outlined in guidelines sections 63-4, -6, -7, and 63-9 through 13.

d. The composition of the various formulations used on grapes and grape products which may be imported to the U.S.

2. Grape metabolism study.

3. Ruminant and poultry metabolism studies.

4. The analytical methodology specific for procymidone and any metabolites or impurities which must be regulated will have to be validated by an independent laboratory prior to EPA validation.

5. Field trial data conducted in geographically representative locations for representative grape varieties which will likely to be imported into the U.S.

6. A grape processing study.

7. Additional information concerning the amount of grape processed commodities which are exported to the U.S.

8. Additional information concerning the amount of meat and poultry products which are exported to the U.S.

9. Information on the use of procymidone on other commodities exported to the U.S. and whether tolerance petitions for these commodities will be forthcoming.

10. The labels of all procymidone products for all countries exporting grapes and grape products to the U.S.

11. The purity and stability of procymidone used in 6-month dog study.

12. A dog chronic feeding study.

13. A rat developmental toxicity (teratogenicity) study.

14. Substance intake data and microscopic findings on the low- and mid-dose groups for the multigenerational rat reproduction study.

15. Mutagenicity testing: (a) Gene mutation, (b) structural chromosomal aberration, and (c) other genotoxic effects.

16. General metabolism study.

17. The mouse oncogenicity study will undergo internal and external peer review. Apparently the animals in this study could possible have tolerated higher dosage of procymidone. If EPA determines that the maximum tolerated dose (MTD) was not achieved, this study will have to be repeated.

V. General Policy Issues

Because the Sumitomo petition presents EPA with important issues involving FFDCA tolerances and it is quite possible that the circumstances which produced this petition will recur, EPA is requesting comment on the general policy issues raised by the petition. These issues are summarized below.

A. What criteria should be used in deciding when EPA takes extraordinary action to grant interim relief in response to a tolerance petition?

Several factors are relevant to a decision to take extraordinary action: The potential impact on the food supply; the adequacy of the data base; the ability of EPA to ensure that any data gaps will be promptly filled; the degree to which the circumstances leading to the need for the tolerance were unanticipated by the petitioner; and the relative fairness to other parties with pending petitions.

As to impact on the food supply, the absence of a tolerance for residues of a pesticide may have a significant effect on the price and availability of the commodity either because of substantial prior use of the pesticide or because of the criticality of the pesticide to production of a food. Where use of a pesticide is not critical to food production, impact on the food supply generally will be less since agricultural producers can produce crops free of the offending pesticide in the next growing season. In regard to procymidone, the European countries and U.S. wine importers have argued that the availability of European wines for export to the United States has been drastically affected by the FDA detentions and the actions taken in Europe to prevent future detentions. Although it has not been asserted that use of procymidone is essential to the production of wine, ceasing the use of procymidone-treated grapes in wine now will not significantly affect the amount of wine marketed which contains procymidone for several years due to storage and aging of vintage wines. Thus, any disruption in trade cannot be quickly curtailed by altering agricultural or processing practices in the future. Although wine is not a critical part of the food supply, in evaluating the impact on the food supply, EPA will also have to take into consideration whether international reaction to import detentions potentially could result in other trade disruptions which have wider impacts on the adequacy and affordability of the food supply. EPA will also have to consider whether the United States foreign policy efforts to obtain compliance by other countries with FFDCA's requirements applicable to foods imported to the United States will be undermined if EPA fails to take extraordinary action in this instance.

An equally important factor is the adequacy of the data base. Certainly, no action can be taken in the total absence of data. However, as the procymidone situation illustrates, EPA may often be presented with data bases which do not meet EPA guidelines but still allow some preliminary judgments to be made regarding the risks posed by the pesticide. This issue is further discussed in section V.D. below. Related to the adequacy of the data base is the ability of EPA to compel prompt completion of any missing studies or the repetition of flawed studies. Where the petitioner is also seeking registration under FIFRA, EPA has sufficient authority in this regard. However, if the pesticide is not covered by FIFRA, EPA has limited authority to compel the production of data. Thus, in the situation where EPA is considering action only under the FFDCA, one of the key issues is what commitment for generating data should EPA expect before it considers extraordinary preliminary action on a tolerance petition.

Finally, in any case where EPA was to take extraordinary action, EPA would have to consider the effect on the perceived fairness of its tolerance system. Given EPA's limited resources, granting extraordinary relief to one petitioner may delay Agency action on other petitions or Agency responsibilities. Further, EPA believes it is important that all petitioners, whether the petition involves a domestic or foreign use of a pesticide, should be held to the same substantive data requirements and standards for the approval of tolerance petitions.

In the procymidone case, Sumitomo is a large pesticide manufacturer and presumably is aware of the requirements of the FFDCA and that procymidone was being used on grapes ultimately imported to the U.S. in the form of wine. Although procymidone was used for several years without any detention of procymidone in wine imported to the United States, procymidone was detected by FDA in

Chilean grapes in 1986, and those grapes were detained. Detection of procymidone residues in wine has only occurred subsequent to FDA's refinement of the analytical method for detecting procymidone. Further, foreign growers did not violate the laws of their countries in using procymidone on grapes nor did the wine makers who purchased procymidone-treated grapes.

On the other hand, action on the petition in the timeframe demanded by the petitioner and other interested parties would have substantially delayed most, if not all, EPA toxicological reviews of other new chemicals and new uses as well as pesticides involved in reregistration. Additionally, as noted below, Sumitomo's petition is inadequate to establish a tolerance in that several of the major studies submitted by Sumitomo will have to be redone.

B. If some form of interim relief is appropriate when all of the data generally required for a tolerance is not available, what should be the mechanism for granting such relief?

One option which has been suggested for dealing with situations such as the one posed by the Sumitomo petition is for EPA to adopt as an interim tolerance level the MRL proposed by CODEX for that pesticide pending completion of action on the tolerance petition. This option would foster harmonization of international environmental standards. It would also not involve expedited review of data by EPA and a concomitant reshuffling of existing resource priorities.

Even temporary acceptance of CODEX MRL's without independent EPA review, however, is a controversial issue. In evaluating proposals concerning harmonization of CODEX MRL's and tolerances, EPA has noted several significant differences from EPA procedures in how the JMPR, the expert body which advises the CCPR, evaluates both toxicological and residue chemistry issues. As to toxicology, EPA takes a more conservative approach in cancer classification decisions regarding pesticides than the JMPR, especially in regard to substances that the JMPR finds to be nongenotoxic. Differences between the JMPR and EPA regarding residue chemistry analysis include the JMPR's liberal use of indicator compounds, JMPR's tendency to exclude outlier values in residue studies, and JMPR's definition of what constitutes a residue and good agricultural practices. These residue chemistry differences may result in the selection of dissimilar levels for tolerances and MRL's. The variances in approach to toxicological and residue issues between JMPR and EPA prevent EPA from adopting CODEX MRL's as permanent tolerances absent a complete review and evaluation of the underlying data.

Nonetheless, EPA believes that in appropriate circumstances it may be possible to rely upon CODEX MRL's for the establishment of interim tolerances pending final EPA action on a petition provided that EPA determines that U.S. consumption patterns of the treated food do not create an unacceptable risk. As to the acceptability of CODEX MRL's pending approval of a permanent tolerance, EPA notes that (1) CODEX is a group established under the auspices of the Food and Agricultural Organization and World Health Organization each of which is part of the United Nations; (2) the United States is a fully participating member of CODEX and the CCPR, and EPA scientists make significant contributions to the MRL-setting process through involvement with the JMPR; (3) CODEX MRL's are established following a detailed review of the appropriate scientific data by a committee of experts, the JMPR; and (4) where EPA and CODEX have established a tolerance for a pesticide on a similar commodity, in the overwhelming majority of situations, the CODEX MRL has been judged acceptable to EPA as long as EPA's definition of residue and the portion of the commodity tested are followed. In considering whether to accept a CODEX MRL, EPA would have to examine whether the scientific differences between CODEX and EPA would be likely to affect significantly how EPA would analyze the data and such other factors as whether the CODEX MRL had been given final approval and whether the MRL had been generally accepted by other nations.

A second option would be for EPA to expedite the process for establishment of a tolerance. EPA could take a number of steps to expedite the process. These steps could be used singly or in combination. For example, EPA could expedite the process by diverting a significant portion of its science staff to a review of the incoming studies. As noted above, this would delay work on other petitions as well as registration applications and reregistration actions. EPA could also hasten the establishment of a legal limit by setting an interim tolerance where time was needed to complete additional studies.

A third option would be for EPA to expedite its review of the scientific data base for the purpose of developing an enforcement level which could be recommended to FDA. The use of an enforcement level could also be used in combination with the other approaches laid out above.

C. What constraints should EPA place on any of these extraordinary measures to ensure that they are not requested as a routine matter?

EPA is looking at use of the following measures to ensure that petitioners do not treat these proposed extraordinary measures as a means of avoiding standard tolerance procedures. First, EPA would place strict time limitations on the duration of any extraordinary measure. Second, EPA would require special interim reports and updates to assure that the missing data will be supplied in a timely fashion and that the interim measure could be revoked if progress is not satisfactory. Third, if the extraordinary measure does not involve a CODEX MRL, EPA would establish the interim level in a manner which protects no commodities other than the commodities specifically involved in the petition. Care would also be taken to set a conservative level for the legal limit.

EPA requests comment on other steps which could be taken to limit the availability of these extraordinary measures.

D. What is the minimum level of scientific data on which a risk assessment can be done sufficient to support some form of interim tolerance or enforcement level? What scientific review procedures should EPA go through before making determinations on limited data?

In some instances, EPA will not only be asked to expedite its review but to make a risk determination on less than a complete data base. EPA will be faced with making difficult decisions on a case-by-case basis as to what amount of scientific data is necessary to make a reasonably certain scientific estimate of risk. For example, five of the seven major toxicological studies submitted with Sumitomo's petition are inadequate for various reasons. Residue studies supplied by the petitioner are spotty, and the sampling data from FDA are not a scientific sample of procymidone residues in wine. Although EPA believes its scientists can compute a risk estimate from these data, EPA does not have sufficient confidence in that risk estimate at this time to base a regulatory decision on it.

One check on making risk assessments with less than a complete data base available to EPA is seeking additional peer review. EPA has a number of alternatives in seeking peer

review of its assessment of the data including its internal peer review process, the Science Advisory Panel (SAP) review, review by a SAP subcommittee, and other Agency review procedures.

VI. Course of Action EPA Is Considering

EPA plans to consider carefully the public comments received on this document before taking any regulatory action on procymidone. As one of its options, EPA is considering proposing an interim tolerance for procymidone in the summer of 1991. At that time, EPA will have completed a review of data submitted with the petition as well as data to be submitted within the next 6 months. Because a permanent tolerance generally is not established before all needed studies have been submitted and reviewed, if a tolerance is proposed at that time it will be time-limited to ensure that all requested data are submitted. Although the FFDCA does not explicitly provide for the use of interim tolerances, EPA believes that that authority is inherent in the greater authority to establish permanent tolerances.

Because of the uncertainties in the risk assessment that result from deficiencies and gaps in the data base, EPA and FDA have decided that it would not be appropriate to establish a specific enforcement level at this time. EPA believes that a proposal for an interim tolerance may be appropriate in the summer of 1991 taking into consideration a number of factors. First, as detailed above, EPA's preliminary review of the data has revealed that procymidone residues in wine appear to pose, at most, negligible health risks to the public. Following this in-depth review of the already- submitted data and the additional information, EPA believes it may be able to confirm its preliminary risk assessment. By the summer of 1991, not only will EPA have had the opportunity to complete an in-depth review of the submitted data, but Sumitomo will have had time to provide supplementary information on deficient studies and to repeat some of those studies which cannot be repaired by providing further data to EPA. Second, Sumitomo has verbally agreed to all of EPA's requests concerning provision of additional data. Finally, the disruption of trade in wine caused by detentions of wine is of sufficient magnitude that some expedition of the tolerance establishment process is warranted. Although the exact extent of the affect on trade is difficult to quantify, whatever effects there are will be felt most strongly by those parties — wine grape growers, wine makers, and wine importers — least responsible for the absence of a procymidone tolerance.

At the same time, EPA remains troubled at the gaps in the data base due to the submission of inadequate studies. Although certain conclusion can be drawn about the risk from procymidone residues in wine despite the absence of a complete data base, EPA is concerned at the precedent set by disregarding established practices for making science determinations. Nonetheless, EPA recognizes that where confronted with extraordinary circumstances, extraordinary action may be appropriate. Those parties urging extraordinary action on the procymidone tolerance, however, bear the burden of demonstrating to EPA that further steps should be taken to expedite the tolerance in this instance.

One additional issue which may be raised by establishing a legal limit under the FFDCA for procymidone residues is whether such a limit would comply with the Delaney clause in section 409 of the FFDCA. The Delaney clause prohibits the establishment of a food additive regulation "if it is found * * * to induce cancer in man or animal." 15 U.S.C. 348(c)(3)(A). The Delaney clause is not applicable to the petition submitted by Sumitomo since it involves establishing a tolerance on the raw agricultural commodity grapes under section 408 of the FFDCA. Approval of a section 408 tolerance on grapes would legalize residues of procymidone on the processed food wine because procymidone does not concentrate in wine. See 15 U.S.C. 342(a)(2)(C). However, if EPA determines that procymidone is a carcinogen, and if in assessing the risk posed by residues of procymidone on both grapes and wine EPA finds the risk unacceptable, EPA may consider whether a section 409 food additive regulation covering only procymidone residues in wine should be established. Once EPA shifts from section 408 to section 409, the Delaney clause would govern any decision on procymidone. EPA could not approve a food additive regulation for procymidone unless the cancer risk of procymidone on wine fell within the *de minimis* exception to the Delaney clause. See the **Federal Register** of October 19, 1988 (53 FR 41104).

VII. Conclusion

As noted, EPA is considering proposing an interim tolerance for procymidone the summer of 1991. No proposal will be made, however, unless EPA can determine that establishment of a procymidone tolerance will conform to statutory requirements. At this time, EPA solicits comments on its planned course of action, its preliminary risk assessment, and the more general policy issues discussed in this notice. EPA will also closely consider all comments received on this advanced notice of proposed rulemaking in deciding on whether to issue a proposal.

Dated: September 18, 1990.

Linda J. Fisher,

Assistant Administrator, Office of Pesiticides and Toxic Substances.

[FR Doc. 90-22706 Filed 9-24-90; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 300

[SW-FRL-3834-5]

National Oil and Hazardous Substances Contingency Plan; the National Priorities List; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete a site form the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Union Scrap Iron and Metal Co. site from the National Priorities List (NPL) and requests public comment. As specified in Appendix B of the National Oil and Hazardous Substances Pollution Contengency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), it has been determined that all appropriate Fund-financed responses under CERCLA have been implemented. EPA, in consultation with the State of Minnesota, has determined that no further cleanup is appropriate. Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such action, however. The purpose of this notice is to request public comment on the intent of EPA to delete the Union Scrap Iron and Metal Co. site from the NPL.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted until October 25, 1990.

ADDRESSES: Comments may be mailed to James Van der Kloot (5HS-11), Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, IL 60604. The comprehensive information on the site is available at the local information repository located at the

Minnesota Pollution Control Agency, 520 Lafayette Street, St Paul, MN 55155. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. The address for the Regional Docket Office is C. Freeman (5HS-12), Region V, U.S. EPA, 230 South Dearborn Street, Chicago, IL 60604, (312) 886-6214.

FOR FURTHER INFORMATION CONTACT: James Van der Kloot (5HS-11), U.S. EPA, Region V, Office of Superfund, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-9309; or Gina Weber (5PA-14), Office of Public Affairs, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6128.

SUPPLEMENTARY INFORMATION:

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II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) announces its intent to delete the Union Scrap Iron and Metal site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Superfund (Fund) Fund-financed remedial actions. Any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The 1985 amendments to the NCP established the criteria the Agency uses to delete sites from the NPL, 40 CFR 300.66(c)(7), provide that sites "may be deleted or recategorized on the NPL where no further response is appropriate." In making this decision, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA have been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate.

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions. Section 300.68(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in section 300.66(c)(7) has been met, EPA may formally begin deletion procedures. The first steps are the preparation of a Superfund Close Out Report and the establishment of the local information repository and the Regional deletion docket. These actions have been completed. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA still determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the **Federal Register**. However, it is not until the next official NPL rulemaking that the site would be actually deleted.

IV. Basis for Proposed Site Deletion

The following summary provides the Agency's rationale for deleting the Site from the NPL.

The Union Scrap Iron and Metal Co. site (the Site) is located at 1608 Washington Avenue North, in Minneapolis, Minnesota. The Site has an area of approximately ¼ acre. The Union Scrap Iron and Metal Company owned and operated a scrap metal and battery casing processing facility at the Site from approximately 1972 until 1983. The company filed for bankruptcy in 1985. As a result of these operations, the Site became contaminated with lead, PCBs and battery acid.

Beginning in 1979, a series of studies were conducted at the Site to determine the nature and extent of the environmental contamination. These studies indicated that the Site soils were highly contaminated with lead, PCBs and sulfate. The Site was placed on the National Priorities List in September, 1984 due to the presence of contaminated waste materials and soil on the Site. In 1985, a Site Assessment was performed by U.S. EPA.

Beginning in 1985, a series of response actions were taken at the Site; a security fence was constructed and the waste piles were stabilized with tarpaulins. In 1986 and 1987, a potentially responsible party (PRP), under the supervision of the U.S. EPA, removed approximately 773 tons of battery casing material from the Site.

In 1988, the U.S. EPA removed approximately 3,000 tons of contaminated materials from the Site. This included scrap materials, a cement pad, and the upper one to three feet of soil. Clean backfill materials were brought in, and used to bring the Site surface back up to grade.

A Remedial Investigation was conducted at the Site during 1989 under the lead of the Minnesota Pollution Control Agency. Field data was collected to determine the concentrations of contaminants remaining in Site soils, and to determine whether the Site is a source of contamination of the groundwater. No Site-related contaminants were found in the Site soils or in the groundwater at levels which exceed the Applicable or Relevant and Appropriate Requirements (ARARs) or health-based levels.

Therefore, the conclusion of the site-specific Remedial Investigation and Risk Assessment was that the Site does not pose a current or potential threat to human health or the environment.

On March 30, 1990, the Regional Administrator of U.S. EPA Region V approved a Record of Decision which selected the No Action alternative as the remedy for the Union Scrap Iron and Metal Co. Site. This No Action remedy includes no further limitation of Site use, and no further monitoring or maintenance whatsoever. Therefore, no 5-year review of the selected remedy under section 121(c) of CERCLA will be required.

The EPA, with the concurrence of the Minnesota Pollution Control Agency, has determined that all appropriate responses under CERCLA at the Union Scrap Iron and Metal Co. Site have been completed.

Dated: September 18, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90-22705 Filed 9-24-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 90-25]

Publication and Filing of Payments Made by Common Carriers to Foreign Freight Forwarders and Ocean Freight Brokers in Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") proposes to amend its foreign tariff filing regulations to require common carriers and conferences to state in their tariffs the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders of ocean freight brokers. The Proposed Rule defines foreign freight forwarders and ocean freight brokers. The Proposed Rule also amends the FMC's service contract filing regulations to require common carriers and conferences to state in service contracts the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders or ocean freight brokers. The Proposed Rule will require public disclosure of any payments made by common carriers for services provided by foreign freight forwarders and ocean freight brokers. the proposal is intended to facilitate enforcement efforts to detect and prevent unlawful activity related to such payments.

DATES: Comments due November 24, 1990.

ADDRESSES: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington DC 20573-0001, (202) 523-5787.

SUPPLEMENTARY INFORMATION: The interrelationship of carriers and conferences and so-called "intermediaries" poses significant enforcement problems for the Commission and possible disruption in the industry. In many foreign countries such intermediaries are referred to as "freight forwarders" of "freight brokers." Their functions often go beyond those of licensed United Stated ocean freight forwarders. Some of these firms are conglomerates consisting of carriers, warehouse companies, trucking companies, etc. Commercial sources, particularly foreign ones, may refer to any and all of these entities as either "foreign freight forwarders" or "brokers". In comparison with FMC-licensed ocean freight forwarders, these intermediaries may have greater influence in determining the selection of a carrier, the selection of the providers of ancillary services, and the terms of the movement.[1]

The variety of activities and the lack of common terminology can obscure what services these intermediaries perform and for what services they are being paid by the carriers, i.e., for packing and warehousing, for inland transportation, for securing ocean transportation, for preparing documentation, etc. As a result, more and more intermediary entities are in a position to take advantage of this situation to pass some or all of the payments back to the shipper, directly or indirectly.

Sections 8(a)(1)(C) and 19(d)(3) of the 1984 Act, 46 U.S.C. app. 1707(a)(1)(C) and 1718(d)(3), require carriers and conferences to set forth in their traiffs the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments; FMC Tariff Rule No. 9, 46 CFR 580.5(d)(9), implements this requirement. There is, however, no express statutory requirement that carriers and conferences describe in their respective tariffs or service contracts compensation paid to "intermediary" entities that are not statutorily defined—e.g., forwarders on import shipments. Because the present tariff and service contract filing requirements apply only to licensed ocean freight forwarders, who operate only in the United States export trades, and do not cover common carrier and conference activities involving intermediaries operating in the United States import trades,[2] uncertainly exists concerning the responsibility of carriers and conferences to publish in their tariffs and service contracts the amount of payments to be made to such intermediaries. In order to ensure that it has the means to ascertain the extent and legality of such payments, the Commission has determined to impose these requirements by rule under the authority set forth below.

Section 8(a)(1) of the 1984 Act requires, inter alia, that carriers and conferences shall "* * * file with the Commission * * * tariffs showing all * * * practices * * * that have been established * * *." Furthermore, section 10(b)(2) of the 1984 Act, 46 U.S.C. app. 1709(b)(2), makes it unlawful for a "common carrier, either alone or in

[1] The terms "freight brokers" and "brokerage" are subject to varying interpretations. The FMC's rules at 46 CFR 510.2(m) define an ocean freight broker as a person who matches up cargo with available cargo space and who receives from the carrier a sum of money for that service (defined as "brokerage"). The industry often uses the term "broker" in the widest possible sense, meaning a party acting on behalf of another party, almost with the meaning of "agent". The industry also often uses "broker" to distinguish between those persons who arrange for booking cargo and who provide documentation service on outbound ocean shipment (defined in the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701, and by the Commissions as "ocean freight forwarders") and those who do parallel work on inbound shipments (i.e., persons currently defined neither by the 1984 Act, not by regulations issued by the Commission). This latter type of "broker" is usually foreign based, often has connections to foreign firms (including shippers and consignees) and provides a broader spectrum of services, including intermodal links, than an "ocean freight forwarder" as defined by the Commission. The situation is made more complex by the use of the term "brokerage" to describe what the Commission defines as "compensation" (i.e., payment by carriers to FMC licensed forwarders for services performed on outbound shipments) (46 CFR 510.2(d)).

[2] Section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19), defines an ocean freight forwarder as a person that dispatches shipments from the United States via common carriers, books space for those shipments and processes the documents incident to those shipments. Section 19 of the 1984 Act, 46 U.S.C. app. 1718, requires that persons who perform ocean freight forwarding functions obtain a license from the Commission and that only they are entitled to compensation from the carriers.

conjunction with any other person, directly or indirectly, * * * (to) rebate, refund, or remit in any manner, or by any device, any portion of its rates except in accordance with its tariffs or service contracts." This would include rebates and refunds paid to intermediaries.

Section 8(c) of the 1984 Act, 46 U.S.C. app. 1707(c), requires not only the confidential filing of a service contract, but also the filing of a concise statement of its essential terms which are to be made available to the general public in tariff format. Those essential terms are to be made available to all shippers similarly situated. The FMC's service contract filing regulations at 46 CFR 581.4(a)(2)(i) require that service contracts contain the complete terms of the contract, including all essential terms.

Section 17 of the 1984 Act, 46 U.S.C. app. 1716, authorizes the Commission to prescribe rules and regulations necessary to carry out the purposes of the Act.

The Proposed Rule would (1) Define "foreign freight forwarder" and "foreign freight forwarder services"; (2) restate the definition of "ocean freight broker" (the pertinent language for this definition will be the same as that now set forth in 46 CFR 510.2(m)); (3) require common carriers and conferences to include in rule 23 of their tariffs any and all payments, whether direct or indirect, which are made to foreign freight forwarders or ocean freight brokers, along with the description of the services for which such payments are made; and (4) require service contracts to include an essential term with a statement of an and all payments, whether direct or indirect, which are made by ocean common carriers or conferences to foreign freight forwarders or ocean freight brokers, along with a description of the services for which the payments are made. Definitions of "foreign freight forwarder" and "ocean freight broker",[3] and a requirement that carrier tariffs and service contracts describe services and list payments connected to "foreign freight forwarders" or "ocean freight brokers", will facilitate enforcement of the 1984 Act's tariff-filing and essential terms-filing provisions as well as the proscriptions against rebating.

Commenting parties are encouraged to submit, along with any comments, draft language for any changes suggested.

The Commission has determined that this Proposed Rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission also finds that the Proposed Rule in this proceeding is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, regarding the economic impact on small entities. Section 601(2) of that Act excepts from its purview any "rule of particular applicability to rates or practices relating to such rates * * *." As the Proposed Rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this Proposed Rule have been submitted to the Office of Management and Budget for review under section 3503(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). Public reporting burden for this collection of information is estimated to be 20 minutes for each tariff and service contract revision. Since the common carriers and conferences already have commercial documentation procedures in operation for the handling of any payments made, only nominal time or paperwork will be required for any changes that result, if the Proposed Rule is adopted. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Parts 580 and 581

Freight, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Service contracts.

Therefore, pursuant to 5 U.S.C. 553; sections 8, 9, 10 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1708, 1709 and 1716, the Federal Maritime Commission proposes to amend parts 580 and 581 of title 46 of the Code of Federal Regulations as follows:

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. 1702–1705, 1707–1709, 1712, 1714–1716 and 1718.

2. Section 580.2 is amended by adding paragraphs (x), (y) and (z) as follows:

§ 580.2 Definitions.

* * * * *

(x) *Foreign freight forwarder* means a person that performs foreign freight forwarding services as specified in paragraph (y) of this section.

(y) *Foreign freight forwarding services* refers to the dispatching of shipments to the United States on behalf of others, in order to facilitate shipment by a common carrier, and may include but is not limited to, the following:

(1) Ordering cargo to port;

(2) Preparing and/or processing state-required shipping documentation not otherwise herein specified;

(3) Booking, arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing ocean bills of lading;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage; and

(8) Arranging for cargo insurance.

(z) *Ocean freight broker* is an entity which is engaged by a carrier to secure cargo for such carrier and/or to sell or offer for sale ocean transportation services and which holds itself out to the public as one who negotiates between shipper or consignee and carrier for the purchase, sale, conditions and terms of transportation.

3. Section 580.5 is amended by adding and reserving paragraph (d)(22) and by adding paragaph (d)(23) as follows:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(22) [Reserved]

(23) *Payments by common carriers for services provided by foreign freight forwarders and ocean freight brokers operating in the import/export trades.* Common carriers and conferences shall specify in their tariffs any and all payments which are to be made by common carriers or conferences directly or indirectly to foreign freight forwarders or ocean freight brokers (as defined in § 580.2 (x) and (z), respectively, along with the description of the services for which such payments are made.

[3] Specifically those operating in the inbound trades.

PART 581—[AMENDED]

1. The following citation for part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

2. Section 581.5 is amended by redesignating paragraphs (a)(3)(vii) and (a)(3)(viii) as paragraphs (a)(3)(viii) and (a)(3)(ix), respectively, and by adding paragaph a new paragraph (a)(3)(vii) as follows:

§ 581.5 Content of essential terms; contingency clauses.

(a) * * *

(3) * * *

(vii) a statement of any and all payments which are to be made by ocean common carriers or conferences directly or indirectly to foreign freight forwarders or ocean freight brokers (as defined in § 580.2 (x) and (z), respectively, of this chapter, along with the description of the services for which such payments are made.

* * * * *

By the Commission.[4]

Joseph C. Polking,

Secretary.

Statement of Commissioner Quartel in Opposition to the Proposed Rule

While I am sympathetic to the enforcement concerns with which this rule is intended to deal, and while I certainly recognize that this is a proposed rather than final rule, the fact remains that any such proposal carries with it the weight of apparent reason and authority. The particular application of this proposed rule is both beyond the intent of the law and is a classic, albeit well-intended, case of regulatory overreach. Notwithstanding assertions to the contrary, the rule would clearly extend FMC regulation and possible jeopardy attendant to that regulation to certain kinds of services provided by a class of persons, the services of which are not now, nor were they countemplated to be, regulated; and, it would do so not directly as law would intend, but through an indirect third party means. Moreover, the rule as proposed would create another form of liability for carriers through a new tariff disclosure burden, and thus a new basis for future violations of the law. While I support the public comment process and will reserve final judgement until this process is completed, I oppose issuing this proposed rule for the reasons stated above.

[FR Doc. 90–22339 Filed 9–24–90; 8:45 am]

BILLING CODE 6730–01–M

[4] Statement of Commissioner Quartel is attached.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[DA 90–1209; (RM–7400)]

Establishment of Satellite and Terrestrial CD Quality Broadcasting Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the extension of comment date for a proposed rule regarding establishment of a satellite and terrestrial CD quality broadcasting service (DA 90–1183, September 5, 1990) which contains a typographical error. Specifically, in paragraph 3 of that document, the comment due date for the Notice of Inquiry, GEN Docket 90–357, originally published at 55 FR 34940 (August 27, 1990)), is listed as October 14, 1990. The correct due date is October 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Frequency Allocations Branch Office of Engineering and Technology (202) 653–8114.

SUPPLEMENTARY INFORMATION: In DA 90–1183 (RM–7400), released September 5, 1990, published September 11, 1990 (55 FR 37339), the following correction is made: (1) In paragraph 3, line 7, the date "October 14, 1990," should read October 12, 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–22576 Filed 9–24–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Feeding Wild Populations of Marine Mammals

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

ACTION: Proposed rule; notice of public hearing.

SUMMARY: On August 29, 1990 (55 FR 35328), NMFS issued a proposed rule that would amend the definition of "take" to include feeding marine mammals in the wild. The regulations would prohibit activities such as "dolphin feeding" cruises and feeding marine mammals from docks and piers. NMFS has scheduled a publich hearing on this proposed rule in Panama City, Florida (See **DATES** and **ADDRESSES**). The public is invited to provide comments on the proposed rule at the hearing. Additional hearings are being scheduled, and they will be announced in the **Federal Register**.

DATES: The public hearing will be held on Thursday, October 4, 1990, from 7 to 10 p.m. Written comments will be accepted until October 15, 1990.

ADDRESSES: The public hearing will be held in Room 115, Health Science's Building, Gulf Coast Community College, Highway 98 West, Panama City, Florida.

Written comments should be submitted to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD. 20910.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brown (813) 893–3366 or Margaret Lorenz (301) 427–2322.

Dated: September 19, 1990.

Dr. Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90–22626 Filed 9–24–90; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 186
Tuesday, September 25, 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

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intention To Solicit Comments on Matters Relating to Subsistence Take of Fish and Wildlife on Public Lands in Alaska

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Request for public comments.

SUMMARY: The Federal Subsistence Board (Board), on behalf of the Department of Agriculture and Department of the Interior land managing agencies in Alaska, announces that it will be conducting meetings and is soliciting comments on the environmental effects of a Federal subsistence management program and the effects of the program on the subsistence user and resources in accordance with the provisions of section 810 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Comments will be accepted on the adequacy of the present system of local advisory committee/regional councils. The Board is also soliciting public comments relative to rural/nonrural considerations and to the definition of "customary and traditional" use of fish and wildlife. Additionally, comments on the Temporary Subsistence Management Regulations (55 FR 27114) will be taken in order to begin drafting a set of proposed final subsistence management regulations at a later date.

DATES: Written comments will be accepted until December 31, 1990. Public meetings to receive comments will be held throughout Alaska, in Washington, DC and Seattle, Washington during October and November. Widespread local announcement of these meetings will be provided as soon as possible.

ADDRESSES: Comments should be addressed to the Chairman of the Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, ATTN: Richard Pospahala, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447.

SUPPLEMENTARY INFORMATION: Title VIII of ANILCA (16 U.S.C. 3111-3126) requires the Secretaries of Agriculture and the Interior to implement a program to grant preference in favor of subsistence uses of fish and wildlife on Federal public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska had such a program that was found by the Department of the Interior to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court rules in *McDowell* v. *State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990. Once the decision took effect, State subsistence law was no longer in compliance with ANILCA.

As a result of the decision, the Departments of Agriculture and the Interior were required to take over implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. The Federal Subsistence Board, as the managing entity, is continuing the process of collecting public comments relating to a number of issues on subsistence management on public lands.

Federal subsistence management would guide the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Air Force, Army and possibly other Federal land managing agencies.

Special efforts will be made to collect comments on environmental effects, potential restrictions to subsistence users and resources, rural/nonrural considerations, the definition of "customary and traditional" and the adequacy of the present local advisory committee/regional council system as it relates to subsistence users. Comments will also be accepted on the existing Temporary Subsistence Management Regulations in order that the Board may begin drafting a set of proposed regulations to be published for public review at a later date.

Environmental effects—As part of the evaluation of environmental effects, the Board will initially conduct meetings to determine the significant issues and concerns relative to the development of a Federal subsistence management program. These issues and concerns will be addressed in an appropriate National Environmental Policy Act (NEPA) document. After a draft NEPA document is developed, a public review period will be provided and meetings held to receive comments prior to the preparation of a final document.

Section 810—This section of ANILCA requires that Federal agencies evaluate the effects of proposed actions on Federal lands with regard to subsistence users and the resources.

Customary and traditional definition—The definition of "customary and traditional" is a key element in the regulations. ANILCA did not define "customary and traditional". A significant part of the Board's early actions will be to define "customary and traditional" as it applies to the use of fish and wildlife by rural communities of Federal public lands. In order to assist in developing the definition, the Board requests comments from the public. As required by the Temporary Subsistence Management Regulations, determinations of "customary and traditional" use of fish and wildlife on public lands will be made in the future. The information obtained from this public process will also serve as a source of information by the Board to make these determinations.

Regional councils and local advisory committees—Councils and committees are required by ANILCA Section 805. The existing State advisory system has broad responsibilities not only with subsistence take and uses but also sport and commercial take statewide. The temporary regulations require the Secretaries to review the existing subsistence resource regions, regional advisory councils and local advisory committees to determine their adequacy for fulfilling the functions outlined in

section 805. This will be accomplished by June 30, 1991. If the Secretaries determined that the resouce regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions outlined in section 805, then a system of resource regions, councils, and committees, which are focused on subsistence uses specific to public lands will be established.

Public involvement will occur throughout the process of making this determination. Establishment of councils and committees by the Board will occur within 12 months after the date of the Secretaries' determination if they determine that the existing regions, councils or committees do not adequately perform and fulfill the functions in section 805.

Rural determinations—The definition of rural is a key element in the regulations which ANILCA did not define. A significant part of the Federal Subsistence Board's early actions will be to make rural/nonrural determinations.

In order to allow the Board adequate time to effectively consider all current available information associated with making rural determinations, a separate announcement of the preliminary recommendations of the Board on this issue will be released during October. That announcement will solicit comments on the Baord's recommended rural/nonrural determinations and provide for a 60 day public comment period. The public comment period for the rural determinations will end December 10, 1990. The public meetings announced in this request will also be used to receive public comments on rural determinations.

As previously mentioned, this request solicits comments on environmental effects of the Federal program, the existing local advisory committee/regional council system, and on the definition of "customary and traditional" as it applies to the use of fish and wildlife by rural residents on federal public lands. Comments should delineate where concerns exist, provide information and data to support any comment and suggest proposed changes or offer new concepts.

In addition, comments are requested on current Federal Subsistence Regulations, and the public is being advised that a section 810 Evaluation will be prepared. The public is also being advised that a second Request for Public Comment will be published during October of 1990 which specifcially addresses rural determinations obtained from this process.

It remains the Federal government's intention to work in close cooperation with the State. Title VIII allows reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources on public lands by rural Alaskan residents for subsistence purposes are of paramount importance to the Federal government and to the public as a whole.

Extensive public involvement will also be included in the development of final regulations and annual setting of seasons and bag limits. The regulation writing effort will include a Notice of Intent, a public comment period and the acceptance of written and verbal comments throughout the process.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board, Regional Director, U.S. Fish and Wildlife Service, For the Secretary of the Interior.

Michael A. Barton,

Regional Forester, USDA—Forest Service, For the Secretary of Agriculture.

[FR Doc. 90-22655 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-55-M

Wildcat River Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Wildcat River Advisory Commission meeting.

SUMMARY: The Wildcat River Advisory Commission will meet on October 18, 1990 at the US Forest Service, Saco Ranger District Office in Conway, New Hampshire. The meeting will begin at 7 p.m. An agenda for the meeting includes review of a draft cooperative agreement between the Town of Jackson, State of New Hampshire and US Forest Service; a review of riverside activities currently underway in the Jackson area; and bridge construction on the Wildcat River.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Carl F. Gebhardt, Staff Officer, White Mountain National Forest, 719 Main Street, Laconia, NH 03247, (phone 603-528-8778).

Dated: September 14, 1990.

Rick D. Cables,

Forest Supervisor.

[FR Doc. 90-22584 Filed 9-24-90; 8:45 am]

BILLING CODE 9-24-90

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Mission-LaPawi Creek Watershed Protection Project, Lewis and Nez Perce Counties, Idaho

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho 83705, telephone (208) 334-1601.

Notice: 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 Mission-Lapwai Creek Watershed Protection Project, Lewis and Nez Perce Counties, Idaho.

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, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Mission-LaPawi Creek Watershed Protection Project consists of a system of land treatment measures designed to protect the resource base, reduce off-site sediment and improve the quality of waters entering the Clearwater River. Planned land treatment practices include pasture and hayland planting, critical area planting, grassed wateways, terraces, and sediment basins.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent 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 address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register**

Dated: September 14, 1990.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Paul H. Calverley,

State Conservationist.

[FR Doc. 90-22654 Filed 9-24-90; 8:45 am]

BILLING CODE 2410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 486]

Resolution and Order Approving the Application of the Indianapolis Airport Authority for Subzone Status at the Alpine Auto Audio Products Plants Greenwood and Indianapolis, IN

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Indianapolis Airport authority, grantee of FTZ 72, filed with the Foreign-Trade Zones Board on October 29, 1987, requesting special-purpose subzone status for the automobile audio and electronic equipment manufacturing plant and warehouse of Alpine Electronics Manufacturing of America, Inc., located in Greenwood and Indianapolis, Indiana, adjacent to the Indianapolis Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Grant of Authority

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act,), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, Indianapolis, Indiana, has made application (filed October 29, 1987, FTZ Docket 27–87, 52 FR 43217), in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile audio equipement and electronic components manufacturing plant and warehouse facility of Alpine Electronics Manufacturing of America, Inc., located in Greenwood and Indianapolis, Indiana, adjacent to the Indianapolis Customs port of entry;

Whereas, Notice of said application has been given and published, and full opportunity has been offorded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act of the Board's requlations are satisfied and that the proposal is in the public interest;

Now, therefore, in accordance with the application filed October 29, 1987, the Board hereby authorizes the establishment of a subzone at the Alpine plants in Greenwood and Indianapolis, designated on the records of the Board as Foreign-Trade Subzone 72I at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is therefor subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revene of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its chairman and Executive Officer at Washington, DC, this 17th day of September, 1990, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-22663 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review

SUMMARY: On August 6, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covers two manufacturers/exporters of this merchandise to the United States and the period December 1, 1987 through November 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in our preliminary results.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 31870) the preliminary results of its administrative

review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico (52 FR 43415; December 2, 1986). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 654.0818 of the *Tariff Schedules of the United States Annotated* (TSUSA). These products are currently classifiable under the *Harmonized Tariff Schedule* (HTS) item number 7323.94.00. Kitchenware currently entering under item number 7323.94.00.10 is not subject to the order. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, Troqueles y Esmaltes, S.A. (TRES) and CINSA, S.A. de C.V., to the United States of Mexican porcelain-on-steel cooking ware and the period December 1, 1987 through November 30, 1988.

Final Results of the Review

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of our review, therefore, are the same as those presented in the preliminary results of review, and we determine the margins to be:

Manufacturer/ Exporter	Time Period	Margin (Percent)
TRES	12/1/87-11/30/88	1.02
CINSA	12/1/87-11/30/88	1.09

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review, the cash deposit will continue to be at the latest rate applicable to each of those firms. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1988 and who is unrelated to the reviewed firms or any previously reviewed firm, a cash deposit of 1.09 percent shall be required. These deposit requirements are effective for all shipments of Mexican porcelain-on-steel cooking ware entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 18, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-22661 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Open Meeting; European Community Common Approach to Standards Testing and Certification in 1992 Advisory Committee

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Federal Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992 was established on February 23, 1990, to advise the Secretary of Commerce for the purpose of keeping him adequately informed regarding EC '92 standards-related activities in order for him to: (a) Identify those standards, testing procedures, and certification processes which may substantially affect the commerce of the United States; (b) represent U.S. interests to EC organizations; and (c) develop strategies for improving the coordination and cooperation of U.S. Federal, State, local and private sector standards activities.

TIME AND PLACE: October 10, 1990 at 10 a.m.. The meeting will take place in the Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC.

Agenda

1. Introduction of Members and Structure of the Committee.
2. Overview and Discussion of EC Issues in Standards, Testing and Certification.
3. Overview and Discussion of U.S. issues in Standards and Product Acceptance.
4. Discussion of the Challege to U.S. Competitiveness from EC 1992 and the Response from the Standards and Business Community.
5. Open Discussion of Views from Advisory Committee.
6. Discussion of Next Step.

PUBLIC PARTICIPATION: The meeting will be open to the public, and a limited number of seats will be available. Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. Minutes will be available 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Charles M. Ludolph, Director, Office of European Community Affairs, room H3036, U.S. Department of Commerce, Washington, DC 20230, phone (202) 377-5276.

Dated: September 14, 1990.

Charles M. Ludolph

Director, Office of European Community Affairs.

[FR Doc. 90-22662 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-OA-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a public meeting on September 24-25, 1990, beginning at 9 a.m. each day, at the Ala Moana Hotel, Anthurium Room, 410 Atkinson Drive, Honolulu, HI.

The SSC's meeting agenda items are: (1) National Marine Fisheries Service research results regarding bottomfish and lobsters; (2) a review of crustaceans overfishing amendment; (3) limited access for the Northwestern Hawaiian Islands lobster fishery; (4) a review of bottomfish overfishing amendment; (5) an evaluation of alternative management measures for Main Hawaiian Islands; (6) a report on the Bottomfish Advisory Review Board meeting; (7) a review of precious corals overfishing amendment; (8) Status of Federal regulations to improve compliance with State/Territorial reporting requirements; (9) emergency regulations for the longline fishery; (10)

a review of pelagics draft amendment #1; (11) a report from Bottomfish and Pelagics Plan Monitoring Team meetings; (12) a review of Pelagics overfishing definition; (13) long-range planning; (14) Magnuson Act reauthorization; (15) a discussion of SSC duties; (16) other business.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: September 19, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Services.

[FR Doc. 90-22629 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold its 70th Council Meeting on September 26-28, 1990, at the Ala Moana Hotel, Anthurium Room, 410 Atkinson Drive, Honolulu, HI. The Council's Standing Committees will meet on September 26, beginning at 8 a.m., and the Council meeting will begin at 9 a.m. on September 27 and 28.

The Council will hear reports from islanders and government fisheries representatives from American Samoa, Guam, Hawaii, and the Northern Mariana Islands. The status of Fishery Management Plans (FMPs) covering crustaceans, bottomfish/seamount groundfish, pelagics and precious corals will be discussed. The Council will also discuss and take action, as appropriate, on the following: (1) A review of crustaceans overfishing amendment; (2) limited access in the Northwestern Hawaiian Islands lobster fishery; (3) the bottomfish annual report; (4) a review of bottomfish overfishing amendment; (5) an evaluation of alternative management measures for Main Hawaiian Islands; (6) a report on the Bottomfish Advisory Review Board meeting; (7) a review of Precious Corals overfishing amendment; (8) status of federal regulation to improve compliance with State/Territorial reporting requirements; (9) emergency regulations for the longline fishery; (10) a review of pelagics draft amendment #1; (11) a review of the pelagics overfishing definition; (12) further discussion of a control date for the longline fishery; (13) election of Council officers; (14) BARB, Plan Team and Advisory Panel appointments; (15) data needs; (16) the Council Milestone Document; and (17) Administrative matters and other business.

The Council will take comments from the public during the Council meeting. The public may also respond in writing to the address listed below.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: September 19, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

FR Doc. 90-22630 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License and Notice of Availability of the Invention; U.S. Bioscience

This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the inventions embodied in U.S. Patents 4,146,622, "Aziridinyl Quinone Anti-Transplanted Tumor Agents", 4,233,215, "Aziridinyl Quinone Antitumor Agents", and 4,704,384, "Aziridinyl Quinone Antitumor Agents" to U.S. Bioscience having a place of business at Blue Bell, PA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive licenses may be granted unless, within ninety days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent 4,146,622 describes a method of treating tumors in mice comprising administering to a tumor-bearing mouse an antitumorically effective amount of the compound 2,5-diaziridinyl-3,6-bis (carboethoxyamino)-1,4-benzoquinone. U.S. Patent 4,233,215 describes 5 aziridinyl quinone antitumor compositions and U.S. Patent 4,704,384 describes a chemotherapeutic method for the treatment of malignant tumors located in the central nervous system of a human patient which comprises administering to said patient an antitumor-effective amount of (a) 2,5-diaziridinyl-3,6-bis (carboethoxyamino)-1,4-benzoquinone.

In accordance with 37 CFR 404.7(a)(1) the announcement is concurrently made that U.S. Patents 4,146,622, 4,233,215, and 4,704,384 are available for licensing.

Copies of these patents may be obtained for $1.50 each from: Box 9, U.S. Patent and Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Camplon,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-22583 Filed 9-24-90; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Statutory Interpretation Concerning Forward Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Statutory interpretation.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing this statutory interpretation regarding certain commercial trnsactions. The development of these transactions has raised questions concerning their status under the Commodity Exchange Act ("Act"), 7 U.S.C. 1, *et seq.* Through this interpretation, the Commission is making clear that these transactions are excluded from regulation under the Act as sales of cash commodities for deferred shipment or delivery.

EFFECTIVE DATE: September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne T. Medero, General Counsel, or David R. Merrill, Deputy General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION: The Commission has received numerous inquiries concerning the applicability of the exclusion from Commission

jurisdiction set forth in section 2(a)(1) of the Act for sales of cash commodities for deferred shipment or delivery (hereinafter "the section 2(a)(1) exclusion") to various, specific commercial transactions. For example, the Commission has recently received inquiries concerning the applicability of the exclusion to certain transactions for the purchase or sale or Brent crude oil commonly known as 15-day Brent contracts.[1] To date, the Commission generally has responded to such inquiries on a case-by-case basis.[2] However, the evolution of commercial transactions of this variety suggests that more guidance by the Commission is appropriate than can be accomplished through case-by-case analysis. Thus, the Commission is issuing this interpretation to make clear its view that certain transactions between commercial parties as discussed below are encompassed by the section 2(a)(1) exclusion and therefore are outside the scope of the Commission's regulatory jurisdiction under the Commodity Exchange Act.[3]

I. Description of Certain Commercial Transactions

As noted, recent inquiries to the Commission have focused on the market which has evolved in 15-day Brent contracts. The Commission understands this market, as currently constituted, to function in relevent part as follows.[4]

Brent system crude oil is a blend of the production of a number of fields in the North Sea which make up the Brent system. The production from these fields in pumped through an underwater pipeline to a loading terminal at Sullom Voe in Scotland.

Cargoes of Brent system crude oil are bought and sold among participants in the Brent market in privately negotiated transactions. A single cargo of Brent system crude oil consists of 500,000 barrels (plus or minus 5% at the buyer's option) of oil, having a current market value of approximately $17 million. The participants in the Brent market are commercial entities, including producers, processors, refiners and merchandisers of petroleum products as well as other entities that buy and sell petroleum products in connection with a line of business, all of which have the capacity to make or take delivery of Brent oil.

Brent oil is purchased and sold in two principal ways. "Dated Brent" contracts specify the date of delivery of the cargo at the time the contract is executed. "15-Day Brent" contracts specify that delivery of the cargo is to be made during a specific month in the future. The seller of the 15-Day Brent cargo must give the purchaser at least 15 day's prior notice of the three-day period during the delivery month in which the cargo must be lifted by the purchaser's designated vessel. While 15-day Brent contracts typically incorporate standard terms and conditions, the contract which governs transactions between particular counterparties is individually negotiated by such counterparties. These negotiations may address a number of the terms and conditions of such contracts, particularly credit terms. Because these tansactions involve a large dollar value, credit risk is substantial and, accordingly, financial terms take on great significance. 15-day Brent contracts have no right of offset, do not rely on a variation margining and settlement system and do not permit assignment of contractual obligations without counterparty consent. Thus, parties enter into such contracts with the recognition that they may be required to make or take delivery.

Each month's production of Brent system crude oil is allocated among the various producers of the crude oil which make up the Brent system, and the system's terminal operator identifies both a producer and a three-day range within each month for each cargo to be lifted. If a producer chooses to apply a particular cargo against its obligations under a contract for the sale of 15-day Brent, it must give the requisite 15-days notice to its purchaser who in turn must provide timely notice to its purchaser. This notification process is repeated forming a chain of buyers and sellers until notice is received by a buyer who elects not to pass the notice further or who has insufficient time to pass on the notice. Participants in the chain effect delivery as the cargo allocated to the particular producer initiating the chain is loaded onto a qualifying cargo vessel designated by the ultimate F.O.P. purchaser of the cargo and nominated in turn by each buyer in the chain to its seller. Title to the cargo passes through each intermediate participant in the chain as the crude oil passes the designated vessel's flange at the loading terminal. Each seller in the delivery chain must provide a bill of lading for the cargo to its purchaser. A seller that fails timely to produce an original bill of

[1] These inquiries were triggered by an opinion and order endered on April 18, 1990 in *Transnor (Bermuda) Limited* v. *BP North America Petroleum, et al.*, 86 Civ. 1493 (WCC) (S.D.N.Y.). Among other things, the District Court in its opinion and order, which denied the motion of several dependents for summary judgment, found that certain 15-day Brent contracts are futures contracts within the meaning of the Commodity Exchange Act. The facts found by the District Court for purposes of its summary judgment ruling indicate that the specific transactions at issue in *Transnor* apparently created no specific delivery obligations between the parties thereto because the contracts, which were entered into solely for purposes relating to the creation of tax benefits under United Kingdom law, were executed as part of an arrangement between the parties that they would be offset. *See* Opinion and Order at pp 13, 44, 53, 57.

[2] *See, e.g.*, CFTC Interpretative Letter No. 90-4 (Off-Exchange Task Force); CFTC Interpretative Letter No. 86-7, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH ¶ 23,456 (Office of the General Counsel); CFTC Interpretative Letter No. 89-19 (Off-Exchange Task Force); "Characteristics Distinguishing Cash and Forward Contracts and 'Trade' Options", 50 FR 39656 (September 30, 1985). *See also* Letter from Andrea M. Corcoran and Joanne T. Medero, Co-Chairmen, Off-Exchange Task Force, Commodity Futures Trading Commission, dated May 16, 1990 which accompanies Commodity Futures Trading Commission News Release No. 3248-90 dated May 16, 1990; "Policy Statement Concerning Swap Transactions," 54 FR 30694 (July 21, 1989).

Additionally, the Commission in December 1987 published an Advance Notice of Proposed Rulemaking Concerning the Regulation of Hybrid and Related Instruments ("Advanced Notice") in which it solicited and received a number of written comments concerning the appropriateness of a no-action position for certain commercial-to-commercial transactions that resembled traditional forward contracts but for the lack of delivery as the normal culmination of the transactions. 52 FR 47022, 47026-47028 (December 11, 1987). These comments, four of which specifically addressed the market in 15-day Brent contracts, are contained in the Commision's public comment file pertaining to the Advance Notice. The Commission has taken these comments into consideration in issuing this statutory interpretation.

The Commission also has received a number of suggestions that the section 2(a)(1) exclusion should be interpreted to include certain commercial transactions which are only settled in cash. The Commission intends to address at a later date the status of transaction of this type under the Commodity Exchange Act.

[3] On June 29, 1990 the Commission publicly issued a draft of this Statutory Interpretation as prepared by its staff and invited public comment on the draft until July 13, 1990. In response, the Commission received a total of thirteen written comments. The Commision has taken these comments into consideration in finalizing this Interpretation for publication.

[4] The Commission's understanding of this market is, in part, based upon information recently provided by participants in the market. *See, e.g.*, Letter to Joanne T. Medero, Esq. and Andrea M. Corcoran, Esq., Co-Chairman, Task Force on Off-Exchange Instruments, Commodity Futures Trading Commission, from Andrew Hall, President, Phibro Energy, Inc. dated May 2, 1990; Letter to Joanne T. Medero, Esq. and Andrea M. Corcoran, Esq., Co-Chairpersons, Task Force on Off-Exchange Instruments, Commodity Futures Trading Commission, from Christopher Fallon, Bear, Stearns & Co. Inc. dated April 30, 1990; Letter to Joanne T. Medero, Esq. and Andrea M. Corcoran, Esq., Co-Chairpersons, Task Force on Off-Exchange Instruments, Commodity Futures Trading Commission, from Neal A. Shear, Managing Director, Morgan Stanley Capital Group Inc. dated May 8, 1990; and Letter to Wendy Lee Gramm, Chairman, Commodity Futures Trading Commission from Richard A. Miller, Newman, Tannenbaum Helpern Syracuse & Hirschtritt dated September 12, 1989. For a discussion of the market in Brent 15-day contracts, *see generally* R. Mabro, R. Bacon, M. Chadwick, M. Halliwell & D. Long, *The Market for North Sea Crude Oil* (1986).

lading is obligated to provide its purchaser with a letter of indemnity.

Each purchaser in the delivery chain is obligated to pay to its seller the full purchase price negotiated by it for the cargo and each seller is responsible to its purchaser for the delivery of the cargo. As a result, each seller, in effect, is responsible to its purchaser for its performance regardless of the non-performance of its sellers in the chain, and similarly each purchaser in the chain assumes the risk of loss resulting from the failure of its purchaser to pay the purchase price of the cargo. The full purchase price of the cargo is paid in cash by each purchaser in the chain, in some cases more than once if the purchaser has more than one position in a single chain. The contracts do not contain any provisions specifying or requiring either party to consent to an offset or cash settlement. A party to a 15-day contract has no right under the contract to net obligations under one such contract against obligations arising under another such contract. Each purchaser has the right to require physical delivery under each contract.

The cost of inspection is passed on as part of the purchase price to each participant in the delivery chain. Demurrage charges resulting from overruns in the time permitted to load the cargo are similarly owed by each seller to its purchaser. The ultimate purchaser is obligated to pay any incurred demurrage charges to the ship owner.

In the course of entering into 15-day contracts for delivery of a cargo during a particular month, situations often arise in which two counterparties have multiple, offsetting positions with each other. These situations arise as a result of the effectuation of multiple, independent commercial transactions. In such circumstances, rather than requiring the effectuation of redundant deliveries and the assumption of the credit, delivery and related risks attendant thereto, the parties may, but are not obligated to and may elect not to, terminate their contracts and forego such deliveries and instead negotiate payment-of-differences pursuant to a separate, individually-negotiated cancellation agreement referred to as a "book-out."

Similarly, situations regularly arise when participants find themselves selling and purchasing oil more than once in the delivery chain for a particular cargo. The participants comprising these "circles" or "loops" will frequently attempt to negotiate separate cancellation agreements among themselves for the same reasons and with the same effect described above. Cancellation agreements may also be negotiated among three or more participants who can identify a "circle" or "loop" of transactions among themselves before a cargo is nominated into a chain. Such individually negotiated cancellation agreements can be entered into only with the agreement of all participants in the "circle" or "loop."

In addition to the market in 15-day Brent contracts, U.S. commercial entities participate in other similar markets, both domestic and foreign. Certain participants have represented that these markets use delivery processes analogous to those described above.

II. The Scope of the Commodity Exchange Act

Section 2(a)(1)(A) of the Act grants the Commission exclusive jurisdiction over "accounts, agreements * * * and transactions involving contracts of sale of a commodity for future delivery * * *." 7 U.S.C. 2. The Act requires that transactions in commodity futures contracts occur only on or subject to the rules of boards of trade which have been designated by the Commission as contract markets.[5]

Expressly excluded from the term future delivery under the Act and thus from the Commission's jurisdiction is "any sale of any cash commodity for deferred shipment or delivery" (the section 2(a)(1) exclusion). *Id.* Such sales are commonly referred to as cash forward contracts. The Act sets forth no further definitions of the terms "future delivery" or of the phrase "cash commodity for deferred shipment or delivery."

In determining whether a transaction constitutes a futures contract, the Commission and the courts have assessed the transaction "as a whole with a critical eye toward its underlying purpose." [6] Such an assessment entails a review of the "overall effect" of the transaction as well as a determination as to "what the parties intended." [7] Although there is no definitive list of the elements of futures contracts, the Commission and the courts recognize certain indicia as being characteristic of such contracts.[8]

Just as there is no definitive list of the elements of a futures contract, there is no definitive list of the elements of those transactions which are excluded from regulation under section 2(a)(1) of the Act. However, as is discussed more fully below, in considering whether a particular instrument falls within the section 2(a)(1) exclusion for forward contracts, the Commission and courts traditionally have considered various factors, predicated primarily on the congressional intent underlying the original enactment of the exclusion. The underlying postulate of the exclusion is that the Acts' regulatory scheme for futures trading simply should not apply to private commercial merchandising transactions which create enforceable obligations to deliver but in which delivery is deferred for reasons of commercial convenience or necessity.[9]

In *CFTC* versus *Co-Petro Marketing Group, Inc.*, the Court of Appeals for the Ninth Circuit expressed this traditional view by stating that "a cash forward contract is one in which the parties contemplate physical transfer of the actual commodity." 680 F.2d at 578. Similarly, in 1985, the Office of General Counsel issued an interpretive statement which contained this description of a forward contract:

First, the contract must be a binding agreement on both parties to the contract: one must agree to make delivery and the other to take delivery of the commodity. Second, because forward contracts are commercial merchandising transactions which result in delivery, the courts and the Commission have looked for evidence of the

[5] Specifically, section 4(a) of the Act provides, *inter alia*, that it is unlawful to enter into a transaction involving a commodity futures contract that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contact market' for such commodity 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. *Id.* The exchange trading requirement reflects Congress' view that such an environment would control speculation and promote hedging. H.R. Rep. No. 44, 67th Cong. 1st Sess. 2 (1921). *See also* section 3 of the Act, 7 U.S.C. 5 (Congressional findings concerning necessity for regulation of futures and commodity option transactions). Pursuant to section 4c(b) and 4c(d), 7 U.S.C. 6c(b) and 6c(d) of the Act, the Commission has authority to permit transactions involving commodity options which do not take place on contract markets.

[6] *CFTC* v. *Co Petro Marketing Group, Inc.*, 680 F.2d 573, 581(9th Cir. 1982).

[7] *CFTC* v. *Trinity Metals Exchange*, No. 85-1482-CV-W-3(W.D. Mo. January 21, 1986) (citing *CFTC* v. *National Coal Exchange, Inc.* [1980-1982 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 21,424 at 26,046 (W.D. Tenn. 1982)).

[8] *See generally* Advance Notice, 52 FR 47022, 47023 (December 11, 1987) *(citing In the Matter of First National Monetary Corp.* [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985)]). *See also CFTC* v. *CoPetro Marketing Group Inc., supra; CFTC* v. *Comercial Petrolera Internacional S.A.*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,222 at 25,088 (S.D.N.Y. 1981); Interpretative Statement, "The Regulation of Leverage Transactions and Other Off-Exchange Future Delivery Type Instruments," 50 FR 11656 (March 25, 1985).

[9] For a general discussion of the traditional usage of forward contracts, *see* A Paul, R. Heifner & J. Helmuth, *Farmers' Use of Forward Contracts and Futures Market* (U.S. Department of Agriculture, Agricultural Economic Report No. 320 (1976)).

transactions' use in commerce. Thus, the courts and the Commission have examined whether the parties to the contracts are commercial entities that have the capacity to make or take delivery and whether delivery, in fact, routinely occurs under such contracts.

50 FR 39657 (Sept. 30, 1985) (footnotes omited.)[10]

The Commission's emphasis on delivery as the feature distinguishing transactions within the scope of the section 2(a)(1) exclusion from futures contracts has it roots in the legislative history of the Act.[11] The section 2(a)(1) exclusion was first enacted in 1921 as part of the Future Trading Act. Originally, the exclusion referred to "grain"—the only agricultural commodities then covered by the law—and was intended to exclude from regulation off-exchange private commercial transactions where delivery of the grain was delayed. After the 1921 Act was declared unconstitutional in *Hill* v. *Wallace*, 259 U.S. 44 (1922), its substantive provisions were reenacted as the Grain Futures Act in 1922. That Act was amended in 1936 and renamed the Commodity Exchange Act. Among other things, in 1936 Congress expanded the jurisdiction of the Act to include agricultural "commodities" other than grain which had become the subject of exchange-traded futures contracts and it correspondingly modified the exclusion to refer to "any cash commodity" sold for deferred shipment or delivery. No substantive change was intended by this modification and, while the Act was substantially amended in 1974 again to expand the meaning of the term "commodity" to encompass a broad spectrum of items which may be the subject of futures contracts in addition to the enumerated agricultural commodities,[12] the language of the exclusion in section 2(a)(1) has remained unchanged.

Certain other distinguishing characteristics of such contracts have been identified. In this regard, forward contracts have been described as transactions entered into for commercial purposes related to the business of a producer, processor, fabricator, refiner or merchandiser who may wish to purchase or sell a commodity for deferred shipment or delivery in connection with the conduct of its business.[13] Thus forward contracts may be used to acquire raw material, to purchase and sell inventory or for other merchandising or commercial purposes and, concomitantly, to shift future price risks incident to commercial operations and other forward commitments. Forwards also typically have been described by reference to the commercial nature of the counterparties which have the capacity to make or take delivery. In addition, forward contracts generally are individually and privately negotiated principal-to-principal transactions. The contracts are generally not assignable without the consent of the parties, and do not provide for exchange-style offset. In addition, there is no clearinghouse and no variation margining or settlement system involved.

Despite the breadth of the amendments to the Act it has passed since 1922, Congress has not addressed the reach of the section 2(a)(1) exclusion in the content of today's commercial environment, including with regard to the concept of what constitutes delivery for purposes of the exclusion.[14] Against this background, since 1974 and with increasing frequency, there have evolved in the commercial segments of the economy a diverse variety of transactions involving commodities, examples of which have been described above. These transactions, which are entered into between commercial counterparties in normal commercial channels, serve the same commercial functions as did those forward contracts which originally were the subject of the section 2(a)(1) exclusion notwithstanding the fact that, in specific cases and as separately agreed to between the parties, the transactions may ultimately result in performance through the payment of cash as an alternative to actual physical transfer or delivery of the commodity.

As a result of this evolution, the Commission has determined to issue this statutory interpretation regarding the delivery features of commercial-to-commercial transactions involving commodities it considers to be within the scope of the section 2(a)(1) exclusion.[15] Specifically, with regard to transactions of the type described above, it is significant that the transactions create specific delivery obligations. Moreover, the delivery obligations of these transactions create substantial economic risk of a commercial nature to the parties required to make or take delivery thereunder. These include the risks of demurrage, damage, theft or deterioration of the commodity as well as other risks associated with owning the commodity delivered. All parties entering into these contracts must have the capacity to bear such risks and cannot discharge these obligations through exchange-style offset.

In the case of 15-day Brent contracts, as discussed above, the contracts mature when specific Brent cargos are identified or "nominated" for sale to those commercial participants who remain in the distribution chains resulting from contracts which have been previously entered into among the participants. As to these participants, delivery is effected by the physical loading of the cargo into a qualifying vessel, with title to the cargo as well as a bill of lading passing through the hands of each participant in the chain.

As is noted above, a party to contracts of this type may individually negotiate cancellation agreements, commonly known as "book-outs," "close-outs" or "by-passes," with other parties in a chain, circle or loop in a distribution chain and which may result

[10] *See also In re Stovall, supra*, wherein the Commission reviewed the history of the forward exclusion in a case charging the unlawful sale of off-exchange futures contracts. The Commission concluded that the exclusion was enacted "to make clear that the 1921 [Future Trading] Act was not intended to interfere with the cash grain." ¶ 20,941 at 23,777. *Stovall* holds that "the cash commodity exclusion was intended to cover only contracts for sale which are entered into with the expectation that delivery of the actual commodity will eventually occur through performance on the contract. The seller would necessarily have the ability to deliver and the buyer would have the ability to accept delivery in fulfillment of the contract." *Id.*

[11] For a detailed discussion of the history of the forward contract exclusion, *see* the September 5, 1978 Memorandum to the Commission from its Office of the General Counsel appearing at 44 FR 13494, 13498 (March 12, 1979).

[12] In particular, the 1974 amendments to the Act, among other things, expanded the definition of "commodity" to include, in addition to enumerated agricultural products, all other goods and articles (except onions) as well as "all services, rights and interests in which contracts for future delivery are presently or in the future dealt in." Thus, since 1974, commodities of all varieties, both tangible and intangible, may be the subject of futures contracts.

[13] *See, e.g.*, T. Hieronymous, *Economics of Futures Trading for Commercial and Personal Profit*, 32, 75, 218 (1977).

[14] On several occasions during the 1970s, various members of Congress have introduced or proposed to introduce bills concerning forward contracting of domestic agricultural commodities, and Congress on several occasions held hearings concerning such contracts. For a detailed recitation of these bills and hearings, *see* Gillen and Jaeger, *Forward Contracting in Agricultural Commodities: A Case History Analysis of the Cotton Industry*, 12 John Marshall Journal of Practice and Procedure 253, 284–286 (1979). None of these bills or heareings, however, focused upon the applicability of the section 2(a)(1) exclusion to transactions of the type discussed herein.

[15] As has been noted above, as the range of commodities which are the subject of exchange-traded futures contracts has evolved and expanded, Congress has expanded the Act's definition of what constitutes a commodity which may be the subject of a futures contract regulated by the Commission. The Commission by this interpretation is not, at this time, addressing the applicability of the section 2(a)(1) exclusion to transactions involving commodities which cannot be physically delivered.

in a cash payment-of-differences between the parties involved. It is noteworthy that while such agreements may extinguish a party's delivery obligation, they are separate, individually negotiated, new agreements, there is no obligation or arrangement to enter into such agreements, they are not provided for by the terms of the contracts as initially entered into, and any party that is in a position in a distribution chain that provides for the opportunity to book-out with another party or parties in the chain is nevertheless entitled to require delivery of the commodity to be made through it, as required under the contracts.

Under these circumstances, the Commission is of the view that transactions of this type which are entered into between commercial participants in connection with their business, which create specific delivery obligations that impose substantial economic risks of a commercial nature to these participants, but which may involve, in certain circumstances, string or chain deliveries of the type described above, are within the scope of the section 2(a)(1) exclusion from the Commission's regulatory jurisdiction.[16]

III. Conclusion

This statutory interpretation is intended to clarify the treatment of certain commercial transactions of the type discussed above in order to facilitate legitimate economic activity.

The Commission will continue to review on a case-by-case basis transactions that do not fall within the scope of section 2(a)(1) exclusion as discussed in this statutory interpretation.

Issued in Washington, DC on September 19, 1990 by the Commission (Chairman Gramm and Commissioners Hineman and Albrecht) (Commissioner West, dissenting).

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-22695 Filed 9-24-90; 8:45 am]

BILLING CODE 6351-01-M

[16] This does not mean, however, that these transactions or persons who engage in them are wholly outside the reach of the Commodity Exchange Act for all purposes. *See, e.g.*, section 8(d) of the Act, 7 U.S.C. 12(d), which directs the Commission to investigate the marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges; and sections 6(b), 6(c) and 9(b), 7 U.S.C. 9, 13b, 13(b), which proscribe any manipulation or attempt to manipulate the price of any commodity in interstate commerce.

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration; DOE

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et. seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following informtion: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATED: Comments must be filed by October 25, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73) Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Civilian Radioactive Waste Management.
2. RW-859.
3. 1901-0287.
4. Nuclear Fuel Data Form.
5. Revision.
6. Annually, on occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 59 respondents.
10. 127 responses.
11. 30 hours per response.
12. 3,810 hours.
13. The Form RW-859 collects data to be used by the Office of Civilian Radioactive Waste Management to define, develop, and operate its programs which require information on spent nuclear fuel inventories, generation rates, and storage capacities. Respondents are all owners of nuclear power plants and owners of spent nuclear fuel.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a, and the Nuclear Waste Policy Act, 42 U.S.C. 10101 *et seq.*

Issued in Washington, DC, September 18, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-22710 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES90-48-888, et al.]

UtiliCorp United Inc., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES90-48-000]

September 14, 1990.

Take notice that on September 11, 1990, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission

("Commission") pursuant to section 204 of the Federal Power Act authorizing the Applicant to issue up to and including 4,000,000 shares of common stock, par value $1.00 per share, and for exemption from the competitive bidding requirements of the Commission.

Comment date: October 10, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Upper Peninsular Power Co.

[Docket No. ES90-47-000]

September 17, 1990.

Take notice that on September 11, 1990, Upper Peninsula Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authority to issue $12,000,000 principal amount of short-term notes on or before October 1, 1992 with a final maturity date no later than October 1, 1993.

Comment date: September 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER90-568-000]

September 17, 1990.

Take notice that PSI Energy, Inc. (PSI) on September 4, 1990, tendered for filing an Interchange Agreement, dated August 31, 1990, between PSI Energy, Inc. and American Municipal Power-Ohio, Inc. (AMP-Ohio). The Agreement provides for the following types of interchange services from PSI:

1. Short-Term Power.
2. Scheduled Supplemental Power.
3. Bulk Transmission Service.

AMP-Ohio is to arrange with other utilities interconnected with PSI for receipt of such power and energy.

Also PSI and AMP-Ohio have agreed to terminate the present agreements between the parties as follows:

Rate schedule FERC No.	Description
237	Transmission Service Agreement.
238	Interim Power Agreement.
239	Short-Term Power Agreement.

Copies of the filing were served on AMP-Ohio, the Public Utilities Commission of Ohio, and the Indiana Utility Regulatory Commission.

The parties have requested a waiver on the Commission's Rules and Regulations to permit the proposed service to become effective August 1, 1990

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Metropolitan Edison Co.

[Docket No. ER90-569-000]

September 17, 1990.

Take notice that on August 30, 1990, Metropolitan Edison Company, pursuant to the Commission's order of July 19, 1990, tendered for filing requisite copies of the 1977 Agreement between General Public Utilities Corporation and its subsidiaries and Allegheny Electric Cooperative, Inc.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Safe Harbor Water Power Corp.

[Docket No. EL89-46-001]

September 17, 1990.

Take notice that on August 13, 1990, Safe Harbor Water Power Corporation tendered for filing its refund report in compliance with the Commission's order issued on July 20, 1990 in this docket.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Bangor Hydro-Electric Co., UNITIL Power Corp.

[Docket No. ER90-32-000]

September 17, 1990.

Take notice that Bangor Hydro-Electric Company (Bangor) and UNITIL Power Corporation (UNITIL) on August 31, 1990 tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to UNITIL of 10,000 KW of electric generating capability during November 1, 1989 through October 31, 1990 and the total output associated therewith.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Dartmouth Power Associates Limited Partnership

[Docket No. ER90-278-000]

September 17, 1990.

Take notice that on September 10, 1990, Dartmouth Power Associates Limited Partnership, organized under the laws of the Commonwealth of Massachusetts, submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Commonwealth Electric Company. The initial rate schedule includes an August 3, 1990, amendment of the initial rate schedule filed by Dartmouth in this docket on March 21, 1990 to provide for the sale to Commonwealth of additional capacity and associated energy.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa Power Inc.

[Docket No. ER90-575-000]

September 17, 1990.

Take notice that on September 5, 1990, Iowa Power Inc. (Iowa Power) tendered for filing a Second Seasonal Diversity Exchange Agreement between Iowa Power and Central Iowa Power Cooperative (CIPCO) dated April 30, 1990.

Iowa Power states that the Second Diversity Exchange Agreement is a negotiated Agreement for the exchange of 20 MW of power and energy on a seasonal basis, with Iowa Power providing to CIPCO 20 MW of capacity for the 1990 winter season and CIPCO providing to Iowa Power 20 MW for the 1990 summer season; and Iowa Power states that the Iowa State Utilities Board and CIPCO have been mailed copies of the Agreement.

Iowa Power requests an effective date of May 1, 1990, and therefore requests waiver of the Commission's notice requirements.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Bangor Hydro-Electric Co., Public Service Co. of New Hampshire

[Docket No. ER90-21-000]

September 17, 1990.

Take notice that Bangor Hydro-Electric Company (Bangor) and Public Service Company of New Hampshire (PSNH) on August 31, 1990 tendered for filing as an Initial Rate Schedule an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to PSNH of 5,000 KW of electric generating capability during November 1, 1989 through April 30, 1990 and the total output associated therewith.

Comment date: October 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Power Administration

[Docket No. EF90-3011-000]

September 17, 1990.

Take notice that on August 29, 1990, the Deputy Secretary of Energy tendered for filing on behalf of the Southeastern Power Administration (Southeastern) for confirmation and approval on a final basis effective October 1, 1990, pursuant to Delegation Order No. 0204-108, Rate

Schedules GA-1-C, GA-2-C, GA-3-B, GU-1-C, ALA-1-G, ALA-3-C, MiSS-1-G, MISS-2-C, SC-3-B, SC-4-A, SC-5-A, CAR-3-B, CAR-4-A, SCE-2-B, SCE-4-A, and GAMF-2-F for power from Southeastern's Georgia-Alabama System of Projects. The Deputy Secretary states that the rates have been approved on an interim basis through September 30, 1993. The Deputy Secretary also tendered Rate and Repayment Data and copies of power contract amendments not now contained in the Commission's files.

Comment date: October 1, 1990 in accordance with Standard Paragraph E at the end of this notice.

11. North Carolina Electric Membership Corp. v. Virginia Electric and Power Co.

[Docket No. EL90-49-000]

September 17, 1990.

Take notice that on September 10, 1990 North Carolina Electric Membership Corporation (NCEMC) tendered for filing a complaint against Virginia Electric Power Company (VEPCO) requesting the initiation of an investigation to determine whether VEPCO's present rates for wholesale firm power under FERC Rate Schedule 105, as well as the increased rates VEPCO has sought in its filing in Docket No. ER90-540-000 are unjust, unreasonable and unduly discriminatory and, if so, to decrease those rates to a just, reasonable and non-unduly discriminatory level. NCEMC also requests the Commission to set a refund effective date of not more than 60 days after the filing of the complaint or at the end of any suspension period ordered in Docket No. ER90-540-000 whichever is later, and to consolidate this docket with Docket No. ER90-540-0000.

Comment date: October 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Co.

[Docket No. FA89-17-000]

September 17, 1990.

On July 20, 1990, the Office of Chief Accountant issued a report on the examination of the books and records of Central Maine Power Company (Central Maine) for the years 1984-1988. 52 FERC ¶ 62,045. As noted in that report, Central Maine disagrees with Correcting Entry No. 1 on Schedule No. 2 and other Compliance Exception No. 1 on Schedule No. 5 concerning the accounting for premiums paid to reacquire preferred stock and the related expenses. By letter filed August 15, 1990, Central Maine consented to disposition of this matter under the shortened procedures set forth in 18 CFR part 41.

Therefore, initial memoranda of facts and arguments shall be due on or before October 17, 1990. Replies shall be due on or before November 6, 1990.

13. Northern States Power Co. (Minnesota)

[Docket No. ER90-344-000]

September 14, 1990.

Take notice that on August 22, 1990, Northern States Power Company (Minnesota) tendered for filing Supplement No. 5, dated August 17, 1990, to the Interconnection and Interchange Agreement, dated January 25, 1968, between NSP-MN, Northern States Power Company (Wisconsin Company), and Wisconsin Public Service Corporation (WSP).

This Supplement No. 5 serves as an amendment to NSP-MN's original filing (Docket No. ER90-344-000) which was submitted after Supplement No. 4 to the Interconnection and Interchange Agreement was executed.

The Interconnection and Interchange Agreement provides for interconnected electrical operation between the parties' systems, as well as for the interchange of electrical power and energy between the parties. Supplement No. 4, dated April 23, 1990, modified the agreement by adding the new Arpin Substation point of interconnection, and adding two new service schedules, System Power and Supplement Energy, under which NSP, as seller, may enter into transactions with WPS.

NSP-MN filed Supplement No. 4 with the Federal Energy Regulatory Commission on April 30, 1990. This filing is now being amended by this Supplement No. 5 which modifies NSP-MN's Supplemental Energy rate set forth in the service schedule.

As in the original filing, NSP-MN still requests that the Commission make May 1, 1990 the effective date of the proposed System Power and Supplemental Energy Schedules (Service Schedules G & H) to allow the parties to immediately realize the mutual benefits available. The parties are currently interchanging power and energy under those schedules, pending the outcome of this filing.

Comment date: September 28, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. Gulf States Utilities Co.

[Docket No. ER90-578-000]

September 19, 1990.

Take notice that Gulf States Utilities Company (Gulf States) on September 7, 1990, tendered for filing a description of an oral agreement between Gulf States and Alabama Electric Cooperative, Inc. (AEC) for the short-term sale of up to 200 MW of replacement energy at a rate of 21.54 mills/kwh beginning September 8, 1990.

Gulf States states that it and AEC are currently negotiating an Interchange Agreement which, among other things, would provide for the sale and purchase of replacement energy. However, the negotiation of the Interchange Agreement will not be completed in time to allow for the short-term transaction beginning September 8, 1990.

Pursuant to § 35.11 of the Commission's regulations, Gulf States requests an effective date for the oral agreement of September 8, 1990, the date on which the short-term sale will begin. Gulf States requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to allow this effective date.

Copies of the filing were served on Alabama Electric Cooperative, Inc.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

15. Oklahoma Public Service Co.

[Docket No. ER90-580-000]

September 19, 1990.

Take notice that on September 7, 1990, Oklahoma Public Service Company (PSO) tendered for filing a proposed decrease in rates to its full-requirements wholesale customers. PSO seeks an effective date of September 1, 1990, and, accordingly, seeks waiver of the Commission's notice requirements.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Power & Light Co.

[Docket No. ER90-581-000]

September 19, 1990.

Take notice that on September 10, 1990, Wisconsin Power & Light Company (WP&L) tendered for filing the Amendment to the Wholesale Power Agreement between the Rock County Electric Cooperative and WP&L. WP&L states that this amendment amends the previous agreement between the WP&L and the Rock County Electric Cooperative dated November 17, 1989.

WP&L requests an effective date of July 30, 1990, and therefore requests waiver of the Commission's notice requirements.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

17. American Electric Power Service Corp.

[Docket Nos. ER84-348-013 and ER84-348-014]

September 19, 1990.

Take notice that on August 31, 1990, American Electric Power Service Corporation tendered for filing its Revised Compliance Report in the above referenced dockets.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corp.

[Docket No. ER90-582-000]

September 19, 1990.

Take notice that on September 10, 1990, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate schedule No. 142, an agreement between Niagara Mohawk and the Long Island Lighting Company (LILCO).

Rate Schedule No. 142 provides for the wheeling of certain loads by Niagara Mohawk to LILCO. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1990 and requests waiver of the Commission's notice requirements. In support thereof, Niagara Mohawk states that LILCO has consented to this proposed effective date.

Niagara Mohawk states that copies of this filing were served upon the Public Service Commission of the State of New York and the Long Island Lighting Company.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

19. Montaup Electric Co.

[Docket No. ER90-577-000]

September 19, 1990.

Take notice that on September 6, 1990 Montaup Electric Company (Montaup) filed a Letter Agreement under which Montaup sold 2.5685% (15 MW) of capacity and associated energy from Canal 2, an oil-fired cycling unit, to Boston Edison Company (BECo) for the period November 1, 1989 through April 30, 1990.

The sale provided BECo with needed capacity and energy while enabling Montaup to sell temporary surplus capacity. By paying the negotiated demand charge of $10.00/kW-month for the purchase of Canal 2, BECo avoided capacity deficiency charges from the New England Power Pool and filled a portion of the energy void caused by the prolonged outage of its Pilgrim nuclear power plant.

BECo's need for capacity and energy could not be determined in time to prepare and file the Letter Agreement in compliance with the required 60-day notice period. Montaup requests waiver of the notice requirement to permit the Letter Agreement to become effective on November 1, 1989 according to its terms.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER90-576-000]

September 19, 1990.

Take notice that on September 6, 1990, Southern Company Services, Inc. tendered for filing a new Short-term Unit Power Sales Agreement between Florida Power & Light Company and SCS.

Comment-date: October 3, 1990, in accordance with Standard Paragraph E end of this notice.

21. Boston Edison Co.

[Docket No. ER90-585-000]

September 19, 1990.

Take notice that on September 14, 1990, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Cambridge Electric Light Company (Cambridge), under its FERC Electric Tariff, Original Volume No. IV, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Cambridge under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, May 1, 1990.

Edison states that it has served the filing on Cambridge and the Massachusetts Department of Public Utilities.

Comment date: October 4, 1990, in accordance with Standard Paragraph E end of this notice.

22. Pacific Gas and Electric Co.

[Docket No. ER90-586-000]

September 19, 1990.

Take notice that on September 14, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing as an initial rate schedule, an agreement entitled Special Facilities Agreement for Interconnection of NCPA's Combustion Turbine at Roseville (Special Facilities Agreement), between Northern California Power Agency and PG&E.

The Special Facilities Agreement pertains to the rate, terms, and conditions under which PG&E will own, operate, and maintain the facilities specially installed in order to provide the interconnection. Under the Special Facilities Agreement, PG&E changes NCPA a customer advance and a montly Cost of Ownership Rate, equal to the Cost of Ownership Rate for Transmission-level, Customer-financed facilities filed with the California Public Utilities Commission (CPUC) pursuant to Electric Rule 2. The Cost of Ownership Rate is expressed as a montly percentage of the installed cost of the facilities.

PG&E has also requested to be allowed automatic rate adjustments whenever the CPUC authorizes new Electric Rule 2 Cost of Ownership Rate.

Copies of this filing were served upon NCPA and the CPUC.

Comment date: October 4, 1990, in accordance with Standard Paragraph E end of this notice.

23. Montana Power Co.

[Docket No. ER90-584-000]

September 19, 1990.

Take notice that on September 13, 1990, Montana Power Company (MPC) tendered for filing the Notice of Assignment of Rate Schedule FPC Nol. 40 and Supplement No. 14 (Supersedes Supplement No. 13 to Rate Schedule FPC No. 40), effective July 1, 1990, filed by MPC from Big Horn County Electric Cooperative, Inc. to Central Montana Electric Power Cooperative, Inc.

Comment date: October 4, 1990, in accordance with Standard Paragraph E end of this notice.

24. Gulf States Utilities Co.

[Docket No. ER90-583-000]

September 19, 1990.

Take notice that on December 12, 1990, Gulf States Utilities Company tendered for filing (1) an Agreement For Wholesale Electric Service between Gulf States Utilities Company (Gulf States) and Tex-La Electric Cooperative of Texas, Inc. (Tex-La) (Agreement), (2) Exhibit A to the Agreement, (3) Rate Schedule WPS—Wholesale Power Service, (4) Rider A to the Agreement, and (5) Service Schedule EP Emergency Power.

Gulf States that Tex-La will become a new wholesale customer of Gulf States. The rates for the wholesale service to be provided to Tex-La as set forth in Rate Schedule WPS are the same as Gulf States' rates for wholesale service to other customers.

Gulf States requests an effective date for the Agreement and rate and service

schedule so that service may begin on December 3, 1990.

Copies of the filing were served on Tex-La and each wholesale customer of Gulf States which purchases service under Rate Schedule WPS or a comparable rate schedule.

Comment date: October 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

25. PSI Energy, Inc.

[Docket No. ER90-538-000]

September 19, 1990.

Take notice that on September 10, 1990, PSI Energy, Inc. submitted for filing additional information requested by Staff in this docket.

Comment date: October 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

26. Southern California Edison

[Docket No. ER90-579-000]

September 19, 1990.

Take notice that on September 10, 1990, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following Agreement, executed on July 27, 1990, by the respective parties:

Edison-PG&E Transmission Agreement

Between

Southern California Edison Company

and

Pacific Gas and Electric Company

The filed Agreement establishes the terms and conditions under which Transmission Service will be provided to PG&E from Edison over certain Edison facilities.

In addition, Edison requests implementation of the Commission Annual Charge Tariff to be reimbursed for the annual charge imposed by FERC under 18 CFR, part 382.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not sesrve 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. 90-22631 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6310-000, Washington]

Gull Industries, Inc.; Availability of Environmental Assessment

September 18, 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 Barclay Creek Project located on Barclay Creek in Snohomish County near Baring, Washington, 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 mitigation 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 Commissioner's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22625 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3511-004 New York]

UAH-Groveville Hydro Associates, Availability of Environmental Assessment

September 19, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license for the Groveville Mills Hydroelectric Project to include 3-foot-high flashboards as part of the licensed project. The project is located on Fishkill Creek in Dutchess County, New York. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license 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 Reference and Information Center, room 3308, of the Commission' s Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22628 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-13-22-003]

CNG Transmission Corp. Proposed Supplemental Filing

September 18, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on September 14, 1990, pursuant to Section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, et al., and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Traiff, filed six (6) copies of the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Substitute First Revised Sheet No. 211

The tariff sheets are proposed to become effective on August 1, 1990.

The purpose of the filing is to correct an inadvertent error appearing on "First Revised Sheet No. 211." CNG also withdraws First Revised Sheet No. 211.

CNG states that copies of this filing were served upon CNG's customers as well as interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22620 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-14-001]

CNG Transmission Corp.; Proposed Supplemental Filing

September 18, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on September 14, 1990, pursuant to section 4 of the National Gas Act, the stipulation and agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217, *et al.*, and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed six (6) copies of the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Substitute First Revised Sheet No. 53

The tariff sheets are proposed to become effective on September 1, 1990.

The purpose of the filing is to correct an inadvertent error appearing on "First Revised Sheet No. 53". CNG also withdraws First Revised Sheet No. 53.

CNG states that copies of this filing were served upon CNG's customers as well as interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22621 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-249-002]

Columbia Gulf Transmission Corp.; Motion to Supplement Compliance Filing

September 18, 1990.

Take notice that on September 10, 1990, Columbia Gulf Transmission Corporation (Columbia Gulf) filed a motion to supplement its March 27, 1990 compliance filing, which included a Motion to Place Proposed Rate Into Effect. The March 27 filings purported to list the tariff sheets to be placed into effect, but inadvertently omitted referencing certain of the tariff sheets originally filed by Columbia Gulf and accepted by the Commission. Columbia Gulf now seeks authorization to complete the list of tariff sheets included with its March 27 filing.

Columbia Gulf states that it submitted its compliance filing pursuant to the Commission's October 31, 1989 order that accepted subject to refund and suspension Columbia's tariff sheets, filed on September 29, 1989, with an effective date of April 1, 1990. *Columbia Gulf Transmission Corp.*, 49 FERC ¶ 61,110 (1989) (*Columbia Gulf*). The tariff sheets reflected proposed revisions to Columbia Gulf's FERC Gas Tariffs, Original Vol. Nos. 1 and 2. Columbia Gulf states that the Commission by order of April 30, 1990, accepted the March 27 filing, subject to refund.

Columbia Gulf states that it recently discovered that it had inadvertently omitted from the listing of tariff sheets contained in its Motion to Place Proposed Rates Into Effect some tariff sheets originally filed in the instant docket and which the Commission approved in *Columbia Gulf*. It asserts that acceptance of the omitted sheets accords with the Commission's intent, conforms Columbia Gulf's tariff with Columbia Gas Transmission Corporation's essentially identical tariff filing which was accepted effective April 1, 1990, and prejudices no party. Columbia Gulf also requests any necessary waivers to permit the tariff sheets to become effective on April 1, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22624 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 18, 1990.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on September 14, 1990 a revised tariff sheet included in appendix A attached to the filing. Such sheet is proposed to be effective October 1, 1990.

ESNG states that the purpose of the filing is to "track" Transcontinental Gas Pipe Line Corporation's (Transco) increased fixed monthly TOP charges as filed with the Federal Energy Regulatory Commission on August 31, 1990. The impact on ESNG is to increase its fixed monthly take-or pay costs by $3,593 per month for the twelve-month period commencing October 1, 1990.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 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 September 25, 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. 90-22617 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7560-004-Texas]

Electric Utility Department of the City of Austin, TX; Surrender of Exemption

September 19, 1990.

Take notice that the Electric Utility Department of the City of Austin, Texas, exemptee for the Longhorn Dam Hydroelectric Project No. 7560 located on the Colorado River, in Travis County, Texas, has requested that its exemption from licensing be terminated. The exemption was issued on April 18, 1986. The exemptee states that no construction has been done on this project and that the project is not economically feasible.

The exemptee filed the request on July 12, 1990, and the exemption for Project No. 7560 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22627 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-2198-000]

Granite State Gas Transmission Inc.; Application

September 18, 1990.

Take notice that on September 14, 1990, Granite State Gas Transmission, Inc. (Applicant), 120 Royall Street, Canton, Massachusetts 02021, filed pursuant to section 7(c) of the Natural Gas Act, an application for a temporary and permanent certificate of public convenience and necessity, with pre-granted abandonment, authorizing interruptible transportation services for two shippers on its pipeline system during the 1990-91 winter season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant proposes to transport up to 2,000 MMBtu per day for Domtar Gypsum, Inc. (Domtar), a wallboard manufacturer located in Newington, New Hampshire, and up to 3,500 MMBtu per day for WGP, Inc., a cogeneration facility located in Lewiston, Maine. Applicant proposes to provide the transportation services on an interruptible basis for the period from November 1, 1990, through March 31, 1991.

It is stated that both shippers require a short-term interim supply of gas to enable them to continue operations throughout the 1990-91 heating season. Domtar has planned to operate with propane but, because of a delay in contracting for the propane, it will not be available this winter; to meet its combined power supply and steam sales contracts with Central Maine Power and its industrial customers, WGP must have access to a gas supply. It is further stated that both shippers have arranged to purchase an interim supply of vaporized LNG from Distrigas of Massachusetts Corporation (DOMAC) which Tennessee Gas Pipeline Company (Tennessee) will receive through its connection with Boston Gas Company which, in turn, is connected with the DOMAC LNG terminal in Everett, Massachusetts. Tennessee will transport and deliver the gas to Applicant at the point where Tennessee and Granite State interconnect at Haverhill, Massachusetts. Both the Domtar plant in Newington, New Hampshire, and the WGP cogeneration facility in Lewiston, Maine, are located within distribution systems operated by Northern Utilities, Inc. (Northern Utilities), Applicant's affiliated distribution company customer. After receipt of the vaporized LNG from Tennessee, Applicant will transport the gas for the account of Domtar and WGP to existing connections with Northern Utilities, and Northern Utilities will complete the deliveries by transportation through its distribution systems in Newington and Lewiston. No new facilities are required to provide the proposed transportation services.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 1, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211 and the Regulations under the Natural Gas Act [18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22622 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-33-009]

Northern Border Pipeline Co.; Compliance Tariff Filing

September 18, 1990.

Take notice that on September 13, 1990, in compliance with the Commission's July 30, 1990 Order in Docket No. RP89-33-000, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Seventh Revised Sheet No. 158

As a result of Northern Border accepting on August 29, 1990 the Commission's July 30, 1990 order in Docket No. RP89-33, Northern Border has filed to decrease the Minimum Revenue Credit of Rate Schedule IT-1 from 3.809 to 2.956 cents per 100 Dekatherm-Miles.

Northern Border has requested that this compliance tariff sheet be effective July 1, 1990. Northern Border states that copies of this filing have been sent to all parties of record in this proceeding and to all concerned Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestant 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. 90-22618 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-52-002]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

September 18, 1990.

Take notice that Western Gas Interstate Company ("Western"), on September 14, 1990, in compliance with the Commission's Order of July 31, 1990 in this proceeding, tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Twenty-Second Revised Sheet No. 10

The proposed effective date for the tariff sheet is August 1, 1990.

Western further states that the tariff sheet reflects in the cost of purchased gas based on the following:

(1) An increase in cost under Western's Rate Schedule G-N of 0.02 cents per Mcf; and (2) a decrease in cost under Western's Rate Schedule G-S of 9.34 cents per Mcf from Western's previously filed rates in this Docket No.

Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22619 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2195-000, et al.]

U-T Offshore System, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. U-T Offshore System

[Docket No. CP90-2195-000]

Sepember 17, 1990.

Take notice that on September 13, 1990, U-T Offshore System (UTOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-2195-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas for CNG Producing Company (CNG), a producer of natural gas, under UTOS' blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

UTOS proposes to transport on an interruptible basis up to 103,000 Mcf of natural gas on a peak day, 103,000 Mcf on an average day and 37,595,000 Mcf on an annual basis for CNG. UTOS indicates that it would receive the gas at an existing interconnection with the High Island Offshore System at West Cameron Block 167, offshore Louisiana, and would deliver the gas for the account of CNG at the Johnson Bayou Plant in Cameron Parish, Louisiana. UTOS indicates that it would transport the gas for CNG pursuant to UTOS' Rate Schedule IT for a primary term of five years and on a yearly basis thereafter.

It is explained that the service commenced August 1, 1990, under the automatic authorization provisions of section 284.223 of the Commission's Regulations, as reported in Docket No. ST90-90-4487. UTOS indicates that no new facilities would be necessary to provide the subject service.

Comment date: November 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. U-T Offshore System, Columbia Gulf Transmission Corp.

[Docket No. CP90-2173-000, Docket No. CP90-2174-000]

September 17, 1990.

Take notice that U-T Offshore System, 2800 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251, and Columbia Gulf Transmission Corporation, P.O. Box 683, Houston, Texas 77001 (Applicants), 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 bahalf of various shippers under the blanket certificates issued in Order 509 and Docket No. CP86-239-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests that are open to public inspection.[1]

Information applicable to each transaction, including the shipper's identity, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket (start-up date)
CP90-2173-000 (9-10-90)	Seagull Marketing Services, Inc. (Marketer).	60,000 60,000 21,900,000	OKA	LA	7-1-90, IT, Interruptible	ST90-4486-000 (8-1-90)
CP90-2174-000 (9-10-90)	Entrade Corporation (Marketer).	75,000 30,000 10,950,000	OLA, LA	TN	5-31-90, ITS-1/ITS-2, Interruptible.	ST90-4164-000 (7-16-90)

[1] Offshore Louisiana is shown as OLA.

3. Stingray Pipeline Co.; Florida Gas Transmission Co.

[Docket No. CP90-2176-000, Docket No. CP90-2177-000]

September 17, 1990.

Take notice that Stingray Pipeline Company, P.O. Box 1642, Houston, Texas 77251-1642, and Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 (Applicants), 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 the blanket certificates issued in Order No. 509 and Docket No. RP89-50, *et al.*, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[2]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; and the initiation service dates with the related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points[1]	Delivery points	Contract date, rate schedule, service type,	Related docket, (start-up date)
CP90-2176-000 (9-11-90).	Elf Exploration, Inc. (Marketer).	75,000 30,000 10,950,000	LA, OLA, OTX	LA, OTX	3-23-90, and 7-18-90 ITS, Interruptible.	ST90-4027 (7-1-90)
CP90-2177-000 (9-11-90).	Kerr-McGee Corporation, (Producer).	50,000 37,500 18,250,000	AL, FL, LA, OLA, MS, TX, OTX.	AL, LA, MS, TX	2-23-90, ITS, Interruptible.	ST90-4437 (8-1-90)

[1] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

4. Columbia Gas Transmission Corp.

[Docket No. CP90-2175-000]

September 17, 1990.

Take notice that on September 10, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue S.E. Charleston, West Virginia 25314, filed in Docket No. CP90-2023-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to construct and operate additional points of delivery for existing wholesale customers, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia requests authorization to construct and operate the facilities necessary to provide twenty-eight (28) additional points of delivery, i.e., 7 commercial, 16 residential, and 5 industrial for various wholesale customers detailed in the application. Columbia states that the volumes Columbia's currently authorized level of service and will be within existing peak day and annual proposed Seasonal Entitlements of such customers. Columbia indicates further that the sales to be made through the proposed points of delivery will be under Rate Schedule CDS and SGS.

Comment date: November 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Co. of America

[Docket No. CP90-2193-000]

Take notice that on September 13, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street Lombard, IL 60148, filed in Docket No. CP90-2193-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Mobil Natural Gas, Inc. (Mobil), a marketer of natrual gas, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for Mobil between a receipt point in Oklahoma and a delivery point in Illinois.

Natural further states that the maximum daily, average daily and annual quantities that it would transport for Mobil would be 50,000 MMBtu equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 30,000 MMBtu equivalent of natural gas and 10,950,000 MMBtu equivalent of natural gas, respectively.

Natural indicates that it reported in Docket No. ST90-4725 that transportation service for Mobil had begun on July 12, 1990 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: November 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Co. of America

[Docket No. CP90-2164-000]

September 18, 1990.

Take notice that on September 10, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, IL 60148, filed an application in Docket No. CP90-2164-000, pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon Natural's Rate Schedule MS-3 storage service; for permission and approval to abandon its participation in related storage and transportation services provided by Michigan Consolidated Gas Company (MichCon) and ANR Pipeline Company; and request for consolidation of the filing herein with an application for abandonment filed April 10, 1990 by MichCon's Interstate Storage Division (ISD) in Docket No. CP90-1169-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it is currently a storage customer of MichCon under MichCon's Rate Schedule X-15, which among other things, is the subject of MichCon's abandonment filing in

Docket No. CP90-1169-000. Natural states that this service from MichCon support storage services provided under Natural's Rate Schedule MS-3 to thirteen of Natural's firm sales customers. Natural states that MichCon has advised Natural that it will not renew the storage agreement under Rate Schedule X-15, after April 1, 1991. Further, Natural states that because MichCon's storage service underlies Natural's Rate Schedule MS-3 service, it will no longer be possible for Natural to provide service under Rate Schedule MS-3 after April 1, 1991, and that abandonment of service as proposed herein is a necessary consequence of the decision by MichCon not to continue storage service to Natural.

Comment date: October 9, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropirate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commisson, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22623 Filed 9-24-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 90-20; Certification Notice-68]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another altrnate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Indeck Energy Services of Olean, Inc., Wheeling, IL.	9-10-90	Combine Cycle.	79	Olean, NY

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for futher information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on September 19, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-22709 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals, Issuance of Decisions and Orders During the Week of April 23 Through April 27, 1990

During the week of April 23 through April 27, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Center for Community Action, 4/27/90, LFA-0034

The Center for Community Action (CCA) filed an Appeal from a denial by the Office of Management and Review, Office of Conservation and Renewable Energy (CRE), of a Request for Information which the organization had

submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that CRE correctly applied Exemption 5 of the FOIA to most of the information requested by CCA, but that certain factual information was incorrectly withheld under that exemption. In addition, the DOE found that the justification for withholding the names of DOE employees under Exemption 6 was insufficient. Accordingly, the DOE ordered CRE to release certain factual informaiton and to either release the DOE employee names or issue a new determination consistent with the criteria set forth in the Decision and Order. The DOE also ordered CRE to conduct a further search for responsive documents.

San Jose Mercury News, 4/25/90, KFA-0231

The San Jose Mercury News filed an Appeal from a determination issued by the San Francisco Operations Office in which San Francisco informed the San Jose Mercury News that the document requested in its Freedom of Information Act (the FOIA) request was classified. In considering the Appeal, the DOE found that much of the document, "Pillars of Fire in the Valley of the Giant Mushrooms: Working with X-Ray Laser Beams on the Valley Floor," had been declassified and released already. However, some information remained properly classified and is still exempt from mandatory disclosure. Accordingly, the Appeal was therefore granted in part and denied as to the portions still classified.

Refund Applications

Alabama River Pulp Co., Inc., 4/23/90, RF272-392, RD272-392

The DOE issued a Decision and Order concerning an Application for Refund filed by the Alabama River Pulp Company, Inc. (Alabama) in the subpart V crude oil special refund proceeding. Alabama was an end-user of petroleum products during the price control period. The DOE found no support for the contentions of a group of U.S. states and territories that the applicant had passed through the crude oil overcharges. Nor did the DOE find that augmentation of the cases through discovery was appropriate. As a result, the States' Motion for Discovery was denied. The DOE decided that Alabama is entitled to rely on the end-user presumption of injury and granted a total refund of $23,323.

Exxon Corp./Pargas, Inc., 4/24/90, RF307-5259

The DOE issued a Supplemental Decision and Order in the Exxon Corporation special refund proceeding regarding Pargas, Inc. In *Exxon Corp./Suburban Propane Gas Corp.*, 20 DOE ¶ 85, 134 (1990), the DOE granted a refund of $50,000 plus interest to Quantum Chemical Corp. (Quantum) for purchases made by its affiliates, Suburban Propane Gas, Vangas, Inc., and Pargas, Inc. The DOE had previously issued a Decision granting Pargas a refund for Exxon products purchased by its New Bern, N.C., facility. However, the New Bern purchases were duplicated in the Quantum filing. Accordingly, the refund granted to Quantum was reduced by the amount previously granted to the New Bern facility.

Getty Oil Co./Aristech Chemical Corp., 4/27/90, RF265-2882

Aristech Chemical Corporation (Aristech) filed an Application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with Getty Oil. Since Aristech filed more than two and a half years after the established filing deadline and did not show good cause for the extremely late filing, the submission was dismissed with prejudice.

Gulf Oil Corp./Braddy's Auto Servicenter, et al., 4/23/90, RF300-8151, et Al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved under the presumption of injury. The total refund granted in this Decision, including accrued interest, is $5,297.

Gulf Oil Corp./Castleberry's, Inc. Big "A" Oil Co., 4/24/90, RF300-5700, RF300-5753

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Big "A" Oil Company, a reseller, and Castleberry's, Inc., a reseller and a consignee. Since Big "A" Oil Company and Castleberry's Inc., are commonly owned, their claims were considered on an aggregate basis. The firms' total allocable share as a reseller plus Castleberry's allocable share as a consignee exceeded $5,000. Therefore, under the presumption of injury, each firm received 40 percent of its allocable share as a reseller. In addition, Castleberry's received 10 percent of its allocable share as a consignee. The total refund granted in this Decision, including accrued interest, is $17,531.

Hilo Coast Processing Co., Michigan Sugar Co., 4/24/90, RF272-14145, RF272-21866

The DOE issued a Decision and Order concerning two Applications for Refund filed in the crude oil special refund proceeding being conducted by the DOE under 10 CFR part 205, subpart V. The DOE determined that the refund claims were meritorious and granted a refund of $70,636. A consortium of states and two territories of the United States filed Objections to these Applications. The DOE denied the objections finding that the industry-wide econometric data submitted by the states did not rebut the presumption that the Applicants were injured by the crude oil overcharges.

Holly Sugar Corp., 4/27/90, RF272-51725, RD272-51725

The DOE's (DOE) Office of Hearings and Appeals (OHA) granted an Application for Refund filed by Holly Sugar Corporation (Holly) in the subpart V crude oil special refund proceeding. A group of twenty-eight states and two territories of the United States (the States) filed consolidated Objections and Comments in opposition to Holly's application. The States also submitted a Motion for Discovery. OHA rejected the State's objections and Motions for Discovery. The refund granted in this case was $68,994.

International Financial Corp., 4/26/90, RR272-55

The DOE issued a Decision and Order which granted, in part, a Motion for Reconsideration submitted on behalf of the International Financial Corporation (IFC). IFC sought reconsideration of a Decision and Order in which its original Application for Refund was denied. *International Financial Corp.*, 20 DOE ¶85,005 (1990). During the period August 19, 1973, through January 27, 1981 (period of crude oil price controls), Saturn Petroleum, an IFC subsidiary, was a reseller of refined petroleum products. In its Motion for Reconsideration, IFC was unable to demonstrate that Saturn Petroleum was unable to pass through the crude oil overcharges to its down-stream customers, and therefore, IFC was unable to receive a refund based upon gallons purchased by Saturn Petroleum. However, in its Motion for Reconsideration, IFC also stated that a portion of its claim was based upon gallons purchased by Windward Air, another of its subsidiaries during the period of crude oil price controls. This Decision stated that because these gallons were purchased for ultimate end-use, we will presume that the firm

was injured by crude oil overcharges with respect to this portion of its claim. Accordingly, based upon gallons purchased by Windward Air, the total refund granted to IFC in this Decision is $930.

J.P. Stevens & Co., Inc., 4/25/90, RF272-4531, RD272-4531.

The DOE issued a Decision and Order dismissing an Application for Refund filed by J.P. Stevens & Co., Inc., in the DOE's subpart V crude oil special refund proceeding. In that Decision and Order, the DOE found that J.P. Stevens had waived its right to a refund by filing an Application for Refund from the surface Transporter's escrow account. A Motion for Discovery filed by a consortium of states and territories was also dismissed.

Minnesota Mining Manufacturing Co. 4/26/90, RD272-5110, RF272-5110

The DOE issued a Decision and Order granting a refund from the crude oil overcharge funds to Minnesota Mining & Manufacturing Company (3M), a manufacturer of industrial chemicals, compounds, and consumer products. The Decision also denied a Motion for Discovery filed by a consortium of 31 states and two territories (States) of the United States in opposition to 3M's refund claim. During the period of price controls, 3M was an end-user of numerous refined petroleum products. These products were used to fuel company delivery and sales/service fleets, as chemical plant feedstock, for process heat, and facility heating. None of the products which form the basis of 3M's refund claim were purchased for resale. The States challenged 3M's refund claim, stating that the firm was not injured by crude oil overcharges because it passed these overcharges along to the purchasers of its products. The States supported their claim that 3M was not injured by reference to an analysis of the firm's financial and operating statements which indicated that 3M was a profitable enterprise during the period of price controls. The DOE rejected the States' objections to 3M's refund claim, noting that the fact that a firm generated profits during the price control period does not preclude that firm from receiving a refund for the crude oil refund proceeding. The DOE found that 3M was eligible for a refund of $348,926.

Murphy Oil Corp./Good Oil Comp., et al., 4/27/90, RF309-1040, et al.

The DOE issued a Decision and Order granting three Applications for Refund and denying two Applications for Refund, each filed by The Jacobus Company (Jacobus), in the Murphy Oil Corporation special refund proceeding. The claims were based upon the purchases made by Jacobus and the purchases of three companies which it acquired. The DOE determined that Jacobus was eligible to receive refunds based on its purchases and those of one company which it acquired through a purchase of corporate stock. However, the DOE found with respect to the remaining two acquisitions, that Jacobus was not the eligible recipient of any refunds based on the purchases made by those firms. Because Jacobus had only acquired certain specified assets of the two firms. The total volume approved in this Decision was 4,487,989 gallons and the total of the refund granted was $4,630 (comprised of $3,667 in principal and $963 in interest).

Newton Falls Paper Mills, Inc., 4/24/90, RF272-26238, RD272-26238

The DOE granted an Application for Refund filed by Newton Falls Paper Mills, Inc. (Newton) in the subpart V crude oil special refund proceeding. A group of twenty-eight states and two territories of the United States (the States) filed consolidated Objections and Comments in opposition to Newton's application. The States also submitted a Motion for Discovery. The DOE rejected the States' objections and the Motions for Discovery. The refund granted in this case was $63,884.

Okeelanta Corp. Hamakua Sugar Co., Inc., 4/27/90, RF272-18009, RD272-18009, RF272-41358, RD272-41358

The DOE issued a Decision and Order concerning two Applications for Refund filed in the subpart V crude oil special refund proceeding being conducted by the DOE under 10 CFR part 205, subpart V. The DOE determined that the refund claims were meritorious and granted a refund of $83,917. The DOE also denied a Motion for Discovery filed by a consortium of States and 2 Territories and rejected their challenge to the claims. The DOE denied the States' Objections, finding that the industry-wide economic data submitted by the States did not rebut the presumption that the Applicants were injured by the crude oil overcharges.

Ozarks Gas and Appliance Co., Inc. Ray Ralls Exxon Service, 4/25/90, RF272-51112, RF272-51566

The DOE considered and rejected two Applications for Refund filed in the subpart V crude oil special refund proceeding by the parties whose names appear above (the Parties). OHA found that the Parties were resellers or retailers who had failed to submit sufficient evidence of injury.

Pedersen Oil, Inc./West Star Corp., 4/25/90, RF318-3

The DOE issued a Decision and Order concerning an Application for Refund filed by West Star Corporation in the Pedersen Oil, Inc., special refund proceeding. West Star Purchased Maxwell Oil Company (one of the ERA-identified potential claimants) in February 1983 and claims the refund due to Maxwell. Based on the ERA audit file, Maxwell is eligible for a refund of $319 in principal. However, Maxwell is currently in default (over $8,700 in interest) in its obligations pursuant to a settlement agreement it entered into with the DOE on September 1, 1981. We have determined that Maxwell's refund in the Pedersen proceeding should be used to fund the firms's consent order escrow account therefore, Maxwell's refund of $483 ($319 in principal plus $164 in interest) will be remitted to the DOE Office of Departmental Accounting in partial satisfaction of its debt for interest accrued.

Redco Corp., Inc., 4/26/90, RC272-85

A Supplemental Decision was issued rescinding a refund previously granted to Redco Corporation in the subpart V crude oil special refund proceeding after the refund check sent to the firm was returned as undeliverable and efforts to locate the firm were unsuccessful.

Robert C. McGary/Lunar Oil Co./Bart McElvaney Service/Copeland Oil Co./Gentile Oil Co./Middletown Oil Co., 4/25/90, RR272-48, RR272-49, RR272-50, RR272-51, RR272-52, RR272-53

The DOE considered and rejected six identical Motions for Reconsideration of a decision to deny their Applications for Refund in the subpart V crude oil special refund proceeding. In the original decision, the DOE had found that the parties were resellers and retailers who failed to submit sufficient evidence of injury. The Parties claimed that their incorporation by reference of the testimony of an expert witness at the Stripper Well refiner evidentiary hearings, held by the DOE, was sufficient to establish that they were injured. OHA ruled that the testimony at that hearing was not relevant to the issues involved in the present motions.

Shippers Imperial, Inc., 4/26/90, RC272-84

The DOE issued a Supplemental Order rescinding a refund of $5,265 which had been granted to Shippers Imperial, Inc., in the subpart V crude oil special refund proceeding. Our original Decision and Order granting the funds

had been returned to us, and we were unable to locate the applicant.

Texaco, Inc./Riggs Texaco, 4/26/90, RF321-1256, RF321-1790

The owner of Riggs Texaco filed two Applications for Refund in the Texaco special refund application on the Texaco refund proceeding. Both Applications were signed by the same person and requested a refund for the exact same purchases. Since the Applications were signed prior to the issuance of the Decision and Order implementing refund procedures in the Texaco proceeding, the applicant was required by that Decision to recertify his Applications. The applicant filed two recertifications, each of which certified that he had filed only one refund application in the Texaco refund proceeding. In view of these false certifications, the DOE determined that the applicant did not have "clean hands" and that both refund claims should therefore be denied.

The Hertz Corp., 4/24/90, RR272-11

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted by The Hertz Corporation. Hertz requested that the DOE reconsider a Decision and Order in which Hertz's Application for Refund in the subpart V crude oil special refund proceeding was denied. *National Car Rental; The Hertz Corp.; Ryder Truck Rental, Inc.*, 17 DOE ¶ 85,733 (1988). Hertz claimed that it was eligible for a subpart V crude oil refund under the end-user presumption of injury. To support this claim, Hertz argued that because it was denied a refund from the Retailers Escrow in the Stripper Well proceedings, it must therefore be considered an end-user in the OHA's subpart V crude oil proceeding. The OHA found Hertz's argument to be without merit and stated that for the purposes of DOE regulations and refund proceedings, rental car agencies are consistently considered to be retailers. As a retailer, Hertz failed to submit a detailed demonstration that it was injured by the crude oil overcharges, and accordingly, its Motion for Reconsideration was denied.

W.R. Johns, 4/26/90, RC272-86

The DOE issued a Supplemental Order rescinding the refund of $17 previously granted to W.R. Johns in *Russell J. Ham, et al.*, because the claimant's refund check had been returned to the DOE, and the DOE was unable to obtain a correct address for the claimant. The DOE also directed that no additional crude oil refunds be dispersed to W.R. Johns.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co., Hometown Gas Co., Inc., *et al.*	RF304-4553	4/24/90
Atlantic Richfield Co./ Ray's Arco, et al.	RF304-8904	4/26/90
Exxon Corp./Davie Oil Co., *et al.*	RF307-5986	4/23/90
Gulf Oil Corp./Dupree Tire & Supply Co. Inc., et al.	RF300-5897	4/25/90
Gulf Oil Corp./Heltzel & Son Gulf.	RF300-10266	4/24/90
Gulf Oil Corp./Ortego Services, Inc.	RF300-8767	4/23/90
Gulf Oil Corp./Palacia Gulf Service, *et al.*	RF300-10429	4/23/90
Gulf Oil Corp./Richard W. Kyke.	RF300-9310	4/27/90

Dismissals

The following submissions were dismissed:

Name	Case No.
A.B.C. Gas Co	RF321-269
Action Texaco	RF321-2166
Agnew Bros. Service	RF321-2612
Al Ranson's Texaco Service	RF321-734
Al's Texaco Service	RF321-741
Al's Texaco Service	RF321-2611
Allison Lane Texaco	RF321-750
Alvernon Way Texaco	RF321-754
Anthony's Texaco at 909	RF321-2714
Arkmo Texaco	RF321-764
Armona Texaco	RF321-765
B.L. Womack	RF321-2722
B&J Texaco	RF321-774
B&L Texaco	RF321-776
BNZ Texaco	RF321-779
Baker's Texaco	RF321-2156
Barrett's Exxon	RF307-17
Barrow's Texaco	RF321-789
Bay & Quaker Texaco	RF321-2610
Bayou Texaco	RF321-2186
Beauvais Texaco	RF321-797
Beck's Texaco	RF321-798
Bell's So. University Tex	RF321-805
Belle Chasse Texaco	RF321-804
Ben's Texaco of La Crosse	RF321-2892
Bennie Field Texaco & Rad	RF321-2185
Berger's Texaco	RF321-813
Berry's Texaco	RF321-816
Bert's Texaco	RF321-2182
Berwick Exxon	RF307-208
Big John's Texaco	RF321-2613
Bill Loeffert Texaco	RF321-2701
Bill's Texaco	RF321-834
Bill's Texaco	RF321-837
Bob's Texaco	RF321-2198
Bob's Texaco in Seward	RF321-2706
Bowman & Sieber Texaco	RF321-875
Bowman's Texaco	RF321-876
Boyle's Texaco	RF321-880
Boysen's Texaco	RF321-881
Bozeman Trail Texaco	RF321-2725
Brackett Avenue Texaco	RF321-2614
Bradley's Texaco	RF321-2615
Brooks Texaco	RF321-894
Brown'sTexaco	RF321-896
Bryant Texaco	RF321-901
Bud's Texaco	RF321-907
Buff's Texaco	RF321-909
	RF321-910
Burden's Texaco & Towing	RF321-912
Burnett's Texaco	RF321-915
C&C Grocery	RF321-922
C&C Texaco	RF321-923
C.R. Mullins Texaco	RF321-928
Canterberry's Texaco	RF321-2203
Carroll's Texaco	RF321-951
Carter's Texaco	RF321-952
Central Garage, Inc	RF307-212
Chala's Texaco	RF321-2617
Chalen Park Texaco	RF321-1188
Charlie York Texaco	RF321-965
Charron's Texaco	RF321-969
Christian Texaco	RF321-106
Christie's Texaco	RF321-107
Christy's Texaco Stockton	RF321-108
Chuck's State St. Texaco	RF321-2213
Claudio's Texaco Service	RF321-125
Clint's Texaco	RF321-2618
Coe's Boulder Basic Texaco	RF321-871
Cookenour Texaco	RF321-2232
Cothern's Texaco	RF321-149
Cross Texaco	RF321-2229
Crowe Peel Texaco	RF321-2711
Crum's Texaco	RF321-2621
Curtis O. Labansky	RF321-159
Custer Road Texaco	RF321-160
D.H. Marshall Westgate Texaco	RF321-162
D.W. Texaco	RF321-165
D&D Texaco	RF321-2622
Dave Goulet's Texaco	RF321-172
Dave's Texaco	RF321-2633
Davis Texaco	RF321-2624
Dedham Avenue Texaco	RF321-182
Del's Texaco Service	RF321-183
Denison Texaco Service Center	RF321-188
Dennis Texaco	RF321-189
Dewayne Texaco on First	RF321-2793
Dick's Texaco	RF321-253
Dick's Texaco Service, Inc	RF321-1927
Dick's Texaco Stockton	RF321-3292
Dillon Texaco	RF321-975
Doc's Texaco	RF321-2626
Dodson Texaco	RF321-977
Donald E. Smith Texaco	RF321-987
Doug & Emile Texaco	RF321-990
Doug's Texaco	RF321-2627
East End Texaco	RF321-1006
East End Texaco	RF321-1007
Eastmont Texaco	RF321-1010
Ed's Texaco of Garberville	RF321-1021
Eddie's Texaco	RF321-1026
Eddie's Texaco	RF321-1941
Eddie's P.S. Texaco	RF321-2628
Eddis Bohn's Texaco	RF321-1023
Elkn Texaco	RF321-2629
Elliott Petroleum	RF321-1031
Elmer's Texaco	RF321-1035
Elrod's Exxon	RF307-160
Embreton Texaco Service	RF321-1036
Emory & Steve's Texaco	RF321-2630
Engler's Texaco	RF321-204
Eudy's Texaco	RF321-210
Exit 19 Texaco	RF321-2631
Fairview Texaco, Inc	RF321-2704
Farlow's Texaco	RF321-2632
Felkins Texaco	RF321-218
Field Texaco Service	RF321-219
Fort Findlay Texaco	RF321-235
Frank's Arco	RF304-9342
Frank's Texaco	RF321-239
Frank's Texaco	RF321-244
Frank's Texaco of St. Pete	RF321-1622
Freeman's Texaco	RF321-258
Freeman's Texaco Service	RF321-257
G&M Texaco	RF321-267
Gates Texaco	RF321-275
Geo. Stone Texaco Service	RF321-2634
George's Texaco	RF321-286

Name	Case No.
George's Texaco Auto Clinic	RF321-2635
Gibson's Texaco	RF321-289
Gillespie Texaco	RF321-2681
Girton's Texaco	RF321-2682
Glaub's Texaco Service	RF321-1929
Glenn's Freeway Texaco	RF321-297
Goebel's Texaco	RF321-2067
Grand River Texaco	RF321-307
Grant's Texaco	RF321-2065
Gregoire Distribution	RF321-312
Grimes Texaco	RF321-318
Gulf of Bay Texaco	RF321-324
Haddad and Brooks, Inc	LEE-0014
Hall's Texaco	RF321-2064
Han's Texaco	RF321-2940
Haner's Texaco	RF321-337
Hank's Texaco Service Station	RF321-338
Harold's Texaco on Div	RF321-344
Harrell's Texaco	RF321-345
Harry's Super Service	RF321-1956
Harry's Texaco	RF321-349
Heard's Texaco	RF321-2938
Heartwell Texaco	RF321-358
Henderson's Air Base Texaco	RF321-360
Henwood Texaco	RF321-2720
Herb's Texaco Service	RF321-364
Herndos's Texaco	RF321-1952
Heskett Texaco Service	RF321-2689
High School Texaco	RF321-1037
Hilltop Texaco	RF321-1041
Homer's Exxon	RF307-997
Homer's Texaco	RF321-1055
Hudson's Texaco	RF321-1062
Hugo Service	RF321-2691
Ike's Texaco of Redwood	RF321-1072
Isakson Oil Co	RF321-2692
Isreal Palceres Texaco Ser	RF321-1077
J.C. Auto Repair	RF321-1078
J.C. Murphy's Texaco #1&2	RF321-1079
	RF321-1080
Jack's Texaco	RF321-2641
Jacob's Northwest Texaco	RF321-1087
Jay's Texaco	RF321-1092
Jim's Texaco	RF321-1111
Joe's Texaco	RF321-1126
Joe's Texaco	RF321-1124
John's Texaco on 45th	RF321-2932
Johnny's Texaco on 45th	RF321-2643
Jone's Oil Co., Inc	RF321-2693
Julie's Service Station	RF321-1147
Juntura Gas Grocery	RF321-1150
K&D Texaco	RF321-1151
K&D Texaco	RF321-1152
Keith Nichols Texaco	RF321-542
Keizer Texaco #1	RF321-545
Keizer Texaco #2	RF321-546
Kelley's Texaco	RF321-2070
Ken's Texaco of Reno	RF321-1834
Kern Place Texaco	RF321-555
Kettler Tier Co	RF321-2696
Kim's Texaco	RF321-557
Kingsway Texaco	RF321-559
Kocian Texaco	RF321-564
Krause Texaco of Seguin	RF321-2699
Kuffel's Texaco Service	RF321-565
L.E. Ruffin	RF321-2715
Lake Texaco Service	RF321-573
Lakeview Service Station	RF321-575
Larry Powers Texaco	RF321-587
Larry's Texaco in Taloga	RF321-2105
Leduc's Texaco	RF321-595
M&H Texaco	RF321-638
Mac's Texaco	RF321-641
Mac's Texaco	RF321-643
Main Street Texaco	RF321-648
Maine's Texaco	RF321-650
Mallory's Texaco #1, 2 & 3	RF321-651
	RF321-652
	RF321-653
Mark's Texaco Service Station	RF321-660
Mass University Texaco	RF321-792
Matt's Texaco	RF321-670
May's Texaco	RF321-674
Max's Texaco	RF321-2685
	RF321-2686
McCormix Corp.	RF304-8949
McCourt's Texaco	RF321-681
McCutcheon Texaco	RF321-2115
Merritt's Texaco	RF321-698
Miyakawa Service, Inc	RF321-373
Morales Brothers Texaco	RF321-378
Morris Texaco	RF321-386
Mullin's Texaco	RF321-393
Murphy's Texaco	RF321-395
Nelson's Texaco Station	RF321-402
Newby's Texaco	RF321-406
Nick's Texaco	RF321-408
Nick's Triangle Texaco	RF321-2133
Nine's Texaco Service	RF321-2638
Ninety Six Texaco	RF321-2132
Nixon's Texaco	RF321-412
No. 8 Texaco Service Sta	RF321-2671
Noble Texaco	RF321-413
Norm's Texaco	RF321-420
Norm's Texaco #1	RF321-419
North Hills Texaco	RF321-2910
North Market Texaco	RF321-424
North Star Mall Texaco	RF321-426
Northside Texaco	RF321-430
Odom's Texaco Service	RF321-439
Ole's Texaco Service	RF321-441
Ollie R. Brest Texaco Ser	RF321-2120
Olm's Texaco	RF321-444
Ordie's Texaco	RF321-446
Oregon City Texaco	RF321-447
Pacific Beach Texaco	RF321-1154
Parklane Texaco	RF321-1161
Pat's Texaco of Stockton	RF321-1166
Pesson's Texaco Ser	RF321-2147
Philpot Texaco	RF321-1192
Pineapple's Texaco	RF321-1197
Plantview Texaco	RF321-1199
Pollin Texaco	RF321-138
Pontel Service Center	RF321-1204
Pop's Texaco	RF321-1202
Porter Road Texaco	RF321-1205
Porter's Texaco on Bean	RF321-2712
Portillo's Texaco	RF321-1206
Porty's Texaco	RF321-2633
Puckett's Texaco	RF321-1212
Quisto Service	RF321-323
R&R Texaco	RF321-1218
Ramirez Bros. Texaco	RF321-1224
Ray Craig's Texaco Ser	RF321-2674
Ray's Texaco	RF321-1230
Rester's Service Station	RF321-1243
Ritze's Texaco S/S	RF321-1259
Riverside Texaco	RF321-2023
Robin Wood Texaco	RF321-1362
Rockhill Texaco	RF321-1363
Roger's Texaco	RF321-1371
Ron's Texaco, Inc	RF321-1379
Rooney's Texaco	RF321-1384
Roy Akin Texaco	RF321-458
Roy's Texaco	RF321-460
Royal Texaco of Statesville	RF321-2032
Rudy Johnson's Texaco	RF321-3215
ET AL (See Attached List)	
Sample Texaco	RF321-2716
Sheckler's Texaco	RF321-2038
Shenandoah Hills Texaco	RF321-2039
Silver Spring Motor Service	RF321-496
Simmons Texaco	RF321-498
Sines & Son, Inc	RF321-502
Sitton Motor Co	RF321-503
Smith Brothers Texaco	RF321-2045
Sonny Young Texaco	RF321-2047
Sothmann's Texaco	RF321-515
South Main Texaco	RF321-517
South Main Texaco of Green	RF321-2049
Southside	RF321-525
Stanfield Texaco	RF321-1392
Stan's Texaco Service	RF321-1388
Stephen E. Tilley	LFA-0037
Stoker Texaco #1&2	RF321-1402
	RF321-1403
Sullivan Texaco	RF321-1407
Summer Street Texaco	RF321-2929
Sunny Texaco, Inc	RF321-1409
T-Anchor Texaco	RF321-1323
T.B. Lightfoot Texaco	RF321-1324
Tarrytown Texaco	RF321-1843
Terrytown Texaco	RF321-1334
Texaco Service Center #1&2	RF321-1341
	RF321-1342
Thompson's Texaco	RF321-1347
Tim's Texaco	RF321-1352
Tom Brown's Crater Lake Texaco	RF321-1356
Tom Smith's Texaco	RF321-1357
Tom's Glendale Texaco	RF321-2679
Tom's Texaco	RF321-1359
Tom's Texaco	RF321-2936
Totman's Texaco	RF321-1418
Tradewinds Texaco	RF321-1420
Traynor Texaco	RF321-1275
Trinmex Texaco	RF321-1278
Triphammer Texaco	RF321-2644
Tumwater Texaco Service	RF321-1429
Uscola Oil Co	RF321-1438
Van Arsdale's Texaco	RF321-1443
Villa Capri Texaco	RF321-1455
Walt's Texaco	RF321-1991
Walter's Texaco of Longview	RF321-1475
Warren's Texaco	RF321-1477
Wayne Murphy's Texaco	RF321-394
Wayne's Texaco of Aberdeen	RF321-1482
Weinbach Texaco	RF321-1987
Well's Texaco	RF321-1490
Westside Texaco	RF321-1279
Willakenzie Texaco	RF321-1281
William's Texaco	RF321-1285
William's Texaco at 131	RF321-2724
Wilson Texaco	RF321-1288
Woody's Texaco	RF321-1974
Wright Texaco	RF321-1296
Wristen Texaco	RF321-1299
Yost Texaco Service	RF321-1303
Ysleta Texaco	RF321-1306
3=Way Grocery	RF321-716
558 S. Main Street	RF321-2901
7846 Colonial Drive	RF321-271

APPENDIX

Name of applicant	Case No.
Rudy Johnson's Texaco Station	RF321-3215
Strictland Texaco	RF321-3214
Capitol Texaco	RF321-3210
Colorado County Oil Co., Inc	RF321-3211
McMinn Texaco	RF321-3212
Dan's Getty	RF321-2373
Charles R. Brown Inc	RF321-2377
Bratz Oil Corp	RF321-2381
Al's Auto Serv	RF321-2392
E.J. Skelly	RF321-2396
West Center Skelly	RF321-2397
Truck Harbor Stottlemyre TRK S	RF321-2398
Struble Gas Service	RF321-2399
Marvin's Texaco	RF321-2406
R & J Getty	RF321-2408
Five Corners Getty	RF321-2413
Farmers Co-Op. Grain & Supply	RF321-2414
S.A.C. Tire Service, Inc	RF321-2449
R.L. Auto SVC., Inc	RF321-2450
Mike's Texaco	RF321-2451
Marr Texaco	RF321-2452
Jim's Texaco Services	RF321-2453
Hayes' Texaco	RF321-2455
Bud's Getty	RF321-2456
Jack Sees' Auto Service	RF321-2457
D.S. Buck Inc	RF321-2458
Henry's Texaco	RF321-2459
Thacker's Texaco	RF321-2461

APPENDIX—Continued

Name of applicant	Case No.
Robert L. Lamkin	RF321-2463
Conner's Texaco	RF321-2464
Albert J. Branch Texaco	RF321-2466
Wood's Texaco	RF321-2468
Warner's Central Garage, Inc	RF321-2469
Warren's Texaco	RF321-2470
Logan's Texaco	RF321-1693

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published losse leaf reporter system.

Dated: September 18, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-22714 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of June 15 Through June 22, 1990

During the Week of June 15 through June 22, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, which ever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 18, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 15 through June 22, 1990]

Date	Name and location of applicant	Case No.	Type of submission
June 18, 1990	Donald J. Anderson, Idaho Falls, Idaho	LFA-0052	Appeal of an information request denial. If granted: The May 11, 1990 Freedom of Information Request denial issued by the Albuquerque Operations Office would be rescinded, and Donald J. Anderson would receive access to requested documents stating the name of the DOE-RL Contract Specialist who prepared the memorandum addressed to Mr. Dave Fredrickson.
June 19, 1990	Posillico Brothers Asphalt Co., Farmingdale, New York.	RR272-58	Request for modification/rescission in the crude oil refund proceeding. If granted: The June 13, 1990 Dismissal Letter (Case No. RF272-34433) issued to Posillico Brothers Asphalt Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
June 20, 1990	Radiation Sterilizers, Inc., Washington, DC	LFA-0053	Appeal of an information request denial. If granted: The May 17, 1990 Freedom of Information Request Denial issued by the Oak Ridge Operations would be rescinded, and Radiation Sterilizers, Inc., would receive access to documents related to the Nuclear Regulatory Commission's licensing of Radiation sterilizers, Inc., to use radioactive cesium capsules owned by the DOE and manufactured at the Waste Encapsulation and Storage facility.
June 21, 1990	Grove, Inc., Seattle, Washington	LFA-0054	Appeal of an information request denial. If granted: The May 18, 1990 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and Grove, Inc., would receive access to the requested appraisal document titled "C-1 Building Cost Estimate."
June 21	Robert J. Martin, Washington, DC	LRD-0002	Motion for discovery. If granted: Discovery would be granted to Robert J. Martin in connection with the statement of objections submitted in the response to the proposed remedial order (Case No. LRO-0001) issued to Robert J. Martin.
June 21, 1990	Robert J. Martin, Washington, DC	LRH-0001	Request for evidentiary hearing. If granted: An evidentiary hearing would be convened in connection with statements of objections submitted by Robert J. Martin in response to the proposed remedial order issued to Robert J. Martin.

REFUND APPLICATIONS RECEIVED

[Week of June 15 through June 22, 1990]

Received	Name of firm	Case No.
4/30/90	Kelly's Texaco	RF321-4554
6/15/90 thru 6/22/90.	Texaco Oil Refund Applications Received.	RF321-6872 thru RF321-7217
6/15/90 thru 6/22/90.	ARCO Refund Applications Received.	RF304-11877 thru RF304-11890
6/18/90	Village Shop Food Store.	RF309-1405
6/18/90	Eddie Gato Spur	RF309-1406
6/18/90	N&A Auto Service	RF300-11148

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 15 through June 22, 1990]

Received	Name of firm	Case No.
6/18/90	BTU Energy Corporation.	RF300-11149
6/18/90	Suwanee Exxon	RF307-10128
6/19/90	Edward S. Zelley	RF307-10129
6/20/90	Victor C. Smith	RF307-10130
6/21/90	Spradlin Trucking Company.	RF272-78646
6/21/90	Kay & Herring Butane Gas Co.	RF300-11150

REFUND APPLICATIONS RECEIVED—Continued

[Week of June 15 through June 22, 1990]

Received	Name of firm	Case No.
6/22/90	George R. Brown Lease Service.	RF300-11151
6/22/90	Carolina Feed Mills.	RF300-11152
6/22/90	Trezevant Gulf	RF300-11153
6/22/90	L G & R Service	RF300-11154

[FR Doc. 90-22711 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Cases Filed During the Week of July 13 through July 20, 1990

During the Week of July 13 through July 20, 1990, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 18, 1990.

George B. Breznay,

Director, Office of Hearing and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

Date	Name and Location of Applicant	Case No.	Type of Submission
July 16, 1990	Natural Resources Defense Council, Washington, DC.	LFA-0059	Appeal of an Information Request Denial. If Granted: The June 12, 1990 Freedom of Information Request Denial issued by the Office of Military Application of the Office of Defense Programs would be rescinded and the Natural Resources Defense Council would receive access to the briefing materials concerning the restart of plutonium processing activities at the Rocky Flats Plant.
July 17, 1990	Benton Pruet d/b/a P & R Trading Company, Clyde, TX.	LEF-0018	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the February 26, 1990 Consent Order entered into with Benton Pruet d/b/a P & R Trading Co.
July 17, 1990	Corum Energy, Houston, TX	LEF-0017	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the January 3, 1990 Consent Order entered into with Corum Energy.
July 17, 1990	Government Accountability Project Washington, DC.	LFA-0060	Appeal of an Information Request Denial. If Granted: The July 10, 1990 Freedom of Infomation Request Denial issued by the Richland Operations Office would be rescinded, and the Government Accountability Project would receive access to all records regarding the amount of time the agency and its contractor(s) have spent regarding all legal work billable to Edwin L. Bricker.
July 17, 1990	Trigon Exploration, Inc., Lafayette, LA	KEF-0019	Implementation of Special Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the April 21, 1987 Consent Order enterd into with Trigon Exploration Company, Inc. and C. William Rogers; Trigon Exploration Company, Inc. and Omni Drilling Partnership No. 1978-2; Trigon Exploration Company, Inc. and D. Bryan Ferguson; and Trigon Exploration Company, Inc. and Entex.
July 18, 1990	John R. Adams, Guymon, OK	LEF-0020	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the February 20, 1990 compromise settlement of a court judgment entered in the U.S. District Court for the Western Disitrict of Oklahoma with respect to a Consent Order with John R. Adams.
July 19, 1990	Davis & Forbes, Hebbronville, TX	LEF-0021	Implementation of Special Refund Procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with the June 22, 1988 Agrees Judgment entered in the U.S. District Court for the Southern District of Texas in connection with the Remedial Order issued to Davis & Forbes.
July 20, 1990	Robert L. Jackman, Northport, WA	LFA-0061	Appeal of an Information Request Denial. If Granted: The June 25, 1990 Freedom of Information Request Denial issued by the Freedom of Information and Privacy Acts Branch would be rescinded and Robert L. Jackman would receive access to all DOE information concerning electrical health hazards and electrical efficiency or conservation techniques.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
7/13/90 thru 7/20/90.	Texaco Refund, Applications Received.	RF321-7839 thru RF321-8076
Do	Crude Oil Refund, Applications Received.	RF272-78673 thru RF272-78719
7/13/90	Willie Thompson Arco.	RF304-11943
Do	Drake's Arco	RF304-11944
Do	Willis Hershberger	RF304-11945
Do	Varie Convenience	RF304-11946
7/16/90	Armco Steel Co. LP.	RF322-2
Do	Boise Cascade Corp.	RF323-1
Do	Chuck's Ballard Arco.	RF304-11947
Do	David Wagner Spur.	RF309-1409
Do	Red Carpet Car Wash.	RF315-10003
Do	Red Carpet Car Wash.	RF307-10138
7/17/90	Hefner Bros. Co., Inc.	RF300-11196
Do	A&M Gulf	RF300-11197

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
7/18/90	F.M. Wood Distributor.	RF300-11198
Do	C.M. Dukes Oil Co.	RF307-10140
7/19/90	H&I Grocery	RF304-11948
Do	Helena Marine Service.	RF300-11199
Do	Scott Paper Co.	RF323-2
Do	Transcontinental Shell.	RF315-10002
Do	Inter City Oil Co., Inc.	RF315-10004

[FR Doc. 90-22712 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of August 10 Through August 17, 1990

During the week of August 10 through August 17, 1990, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of these regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 19, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 10 thorugh August 17, 1990]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 14, 1990	Texaco/Abbott's Texaco, Hardin, KY	RR321-14	Modification/Rescission in the Texaco Refund Proceeding. If Granted: The June 25, 1990 Decision and Order (Case Nos. RF321-21, RF321-5603) issued to Abbott's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Aug. 17, 1990	Rockwell International, Washington, DC	LFA-0063	Appeal of an Information Request Denial. If Granted: The July 16, 1990 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded, and Rockwell International would receive access to the list of responsive documents.

REFUND APPLICATIONS RECEIVED

Date Received	Name of Refund Proceeding/Name of Refund Application	Case No.
8/10/90 thru 8/17/90.	Crude Oil Refund, Application Received.	RF272-79977 thru RF272-80490
Do	Texaco Oil Refund, Application Received.	RF321-8915 thru RF321-9069
Do	Gulf Oil Refund, Application Received.	RF300-11403 thru RF300-11538
8/10/90	Henry Oil Co., Inc.	RF323-3
Do	Hutter's Arco	RF304-11954
8/13/90	Clarke Bros., Inc.	RF323-4
Do	William Mills Fuel	RF304-11955
Do	Fred Partridge	RF304-11956
Do	Tires Unlimited Inc. #2.	RF309-1412

REFUND APPLICATIONS RECEIVED—Continued

Date Received	Name of Refund Proceeding/Name of Refund Application	Case No.
8/15/90	McGovern's Shell Gasoline.	RF315-10034
Do	Christie's Oil Co.	RF323-5
Do	Stewart's Exxon Center.	RF307-10146
8/16/90	Leonard Van Dér Linden.	RA272-29
Do	Carroll L. Edwards	RC272-94
Do	Edwards Trucking	RC272-95
Do	Bothoff's Garage	RF304-11957
8/17/90	Earl L. Elliott Co.	RF323-6
Do	Scott Gardens	RA272-30

[FR Doc. 90-22713 Filed 9-24-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-81015B; FRL-3799-5]

TSCA Chemical Substance Inventory; Removal of 207 Incorrectly Reported Chemical Substances from the TSCA Inventory; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the Federal Register of August 1, 1990 (55 FR 31312), EPA issued a notice announcing the removal of 207 incorrectly listed chemicals from the Toxic Substances Control Act (TSCA) Chemical Substances Inventory. The

chemical substance cobaltate(3-), hexakis(cyano-C)-, zinc (2:3), (OC-6-11) was inadvertently listed as a chemical to be deleted from the TSCA Inventory. This document corrects that error. Therefore, the CAS Registry Number 14049-79-7 will be retained on the TSCA Inventory and removed from the list of 207 chemical substances being deleted from the Inventory, as it appears in the **Federal Register** of August 1, 1990, FR Doc. 90-17896, on page 31313, bottom table.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404; TDD: (202) 554-0551.

Dated: September 18, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Pesticides and Toxic Substances.

[FR Doc. 90-22707 Filed 9-24-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

[Agreement No. 207-011298]

FMG/CSAV Joint Service Agreement

Reference is made to the **Federal Register** Notice of September 6, 1990 (55 FR 36701).

The above named Agreement has been redesignated as Agreement No. 203-011298, FMG/CSAV Cooperative Working Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: September 19, 1990.

[FR Doc. 90-22649 Filed 9-24-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 212-011234-009

Title: U.S.A./South Europe Pool Agreement

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Container Lines, S.p.A.
Evergreen Marine Corporation;
Italia di Navigazione S.p.A.
Lykes Lines
Nedlloyd Lines
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would permit any member to withdraw from the Agreement by giving written notice to the Pool Administrator, effective November 29, 1990. Any member withdrawing pursuant to this new provision would be required to fulfill all obligations under the Pool Agreement, excluding liquidated damages provided under Article 7.B.2, including payment for overcarriage, and compensation for undercarriage. This amendment also provides that any withdrawal under the agreement may be rescinded or postponed by written notice to the Pool Administrator. Any such postponement may not be for a period exceeding 30 days. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 19, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22650 Filed 9-24-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 224-200419

Title: Georgia Ports Authority/Evergreen Marine Corporation (Taiwan), Ltd./Italia Di Navigazione/Compagnie Generale Maritime Terminal Agreement

Georgia Ports Authority (GPA) Evergreen Marine Corporation (Taiwan), Ltd. (EMC) Italia Di Navigazione S.P.A. (Italia) Compagnie Generale Maritime (CGM)

Synopsis: The Agreement provides that GPA will perform certain terminal services for EMC, Italia and CGM at Containerport Savannah, Georgia. The Agreement sets forth a consolidated per container rate for wharfage, crane rental and slot lease applicable to containers loaded on an off ships, and dockage. The Agreement also provides that field services will be submittee on individual rate schedules, and services not included in consolidated rates will be performed at 80% of current tariff. The rates will increase each October 1 in an amount equal to the U.S. Consumer Price Index for the South but not to exceed 5% over the previous year's rate. The term of the Agreement is for three years and may be extended for successive 3-year periods continuing as long as the Lines have vessels calling Savannah.

Agreement no.: 224-200418

Title: Maryland Port Administration/Columbus Line Terminal Agreement

Parties:

Maryland Port Administraton (MPA)
Columbus Line (CL)

Synopsis: The Agreement provides CL with a $3.00 incentive per loaded container and $0.40 per ton for Ro/Ro cargo, restricted to containers and Ro/Ro Cargo coming into or going out of MPA marine terminals by direct vessel calls. The term of the Agreement ends December 31, 1990.

By Order of the Federal Maritime Commission.

Dated: September 19, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22637 Filed 9-24-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 19, 1990.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on

Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340)

Final Approval Under OMB Delegated Authority of the Extension, Without Revision, of the Following Report:

Report title: Community Reinvestment Act Questionnaire.

Agency form number: FR 1283.

OMB Docket number: 7100-0052.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 1500

Estimated average hours per response: 2.5.

Number of respondents: 600.

Small businesses are affected:

General Description of Report

This information collection is voluntary [15 U.S.C. 325 and 2901(b)] and is given confidential treatment [5 U.S.C. 552(b)(8)].

During a comprehensive consumer affairs compliance examination, the state member bank is required to complete this form, which is called the CRA Questionnaire. After it is completed by a senior bank officer, the questionnaire provides information regarding the bank's efforts to serve the credit needs of its local community.

Board of Governors of the Federal Reserve System, Septemer 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22642 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

Amsterdam-Rotterdam Bank, N.V. et al.; Proposal to Engage in the Execution and Clearance of Securities, Futures Contracts, and Options on Futures Contracts; Correction

This notice corrects three previous **Federal Register** Notices, (FR Doc. 90-11020) published at page 19,786 of the issue for Friday, May 11, 1990; the correction notice (FR Doc. 90-12556) published at page 22098 of the issue for Thursday, May 31, 1990; and the correction notice (FR Doc. 90-19019) published at page 33159 of the issue for Tuesday, August 14, 1990.

The notice for ABN/AMRO Holding N.V., Preferred Stichting; and Priority Stichting is revised to read as follows:

1. The name of Applicants should read Amsterdam-Rotterdam Bank N.V.; Stichting Amro; ABN/AMRO Holding N.V.; Stichting Prioriteit ABN AMRO Holding and Stichting Administratiekantoor ABN ARMO Holding, all of The Netherlands.

Comments on this application must be received by October 9, 1990.

Board of Governors of the Federal Reserve System, September 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22643 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

Banc One Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to acquire Banc One Capital Corporation, Columbus, Ohio, and thereby engage in private placement and related advisory activities as approved by the Board in *Bankers Trust New York Corp.*, 75 Federal Reserve Bulletin 829 (1989) ("*Bankers Trust*") and *J.P. Morgan & Co., Inc.*, 76 Fed. Res. Bull. 26 (1990), and subject to limitations previously approved by the Board, and riskless principal activities as approved by the Board's 1989 *Bankers Trust* order, and subject to limitations previously approved by the Board. Applicant proposes to conduct these activities on a nationwide basis. Banc One Capital received Board approval on July 16, 1990, to engage in underwriting and dealing in bank-eligible securities as permitted by § 225.25(b)(16) of Regulation Y and in four types of bank-ineligible securities, namely, municipal revenue bonds, 1-4 family mortgage-related securities, commercial paper, and consumer receivable-related securities. At the same time, Banc One Capital also received Board approval to engage in offering futures commission merchant services, financial advisory services, and full-serve brokerage services. *Banc One Corp.*, 76 Fed. Res. Bull. _____ (July 16, 1990).

Board of Governors of the Federal Reserve System, September 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22644 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

The Fuji Bank, Limited, et al.; Application To Engage de novo in Permissible Nonbanking Activities; correction

This notice corrects a previous **Federal Register** notice (FR Doc. 90-22115) published beginning at page 38581 of the issue for Wednesday, September 19, 1990.

Under the Federal Reserve Bank of New York, on page 38582 (first column), the entry for Fuji Securities Inc. is amended to read as follows:

1. *The Fuji Bank, Limited*, Tokyo, Japan; to engage *de novo* through its indirect subsidiary, Fuji Securities, Inc., Chicago, Illinois, in serving as investment adviser to an investment company registered under the Investment Company Act of 1940, including sponsoring, organizing and

managing a closed-end investment company; providing portfolios investment advice to any other person; furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

In addition, the heading should have read as set forth above.

Comments on this application must be received by October 8, 1990.

Board of Governors of the Federal Reserve System, September 19, 1990.

Jennifer J. Jonhson,

Associate Secretary of the Board.

[FR Doc. 90-22645 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

Midwest R & S Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Midwest R & S Corporation,* Brookings, South Dakota; to retain the general insurance agencies it currently operates as division of Midwest R & S Corporation, Fishback Insurance Agency, Bates Insurance Agency, and First Trust Agency pursuant to § 225.25(b)(8)(vi). These activities will be conducted in Brookings, South Dakota.

Board of Governors of the Federal Reserve System, September 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22646 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

G. Thomas Wrenholdt; Change in Bank Control Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 9, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *G. Thomas Wrenholdt,* and Patty Lou Wrenholdt, Leadville, Colorado; to acquire an additional 28.44 percent of the voting shares of Ore Bancorporation, Inc., Leadville, Colorado, and thereby indirectly acquire First National Bank of Leadville, Leadville, Colorado.

Board of Governors of the Federal Reserve System, September 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-22647 Filed 9-24-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Omnibus Budget Reconciliation Act of 1989; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authority vested in the Secretary of Health and Human Services under the Omnibus Budget Reconciliation Act of 1989, as amended hereafter, as follows:

Section 6506(a) Development of Model Application for Maternal and Child Assistance Programs (42 U.S.C. 701 note).

Section 6507 Research and Infant Mortality and Medicaid Services (42 U.S.C. 701 note).

Section 6508 Health Insurance for Medically Uninsurable Children (42 U.S.C. 701 note).

Section 6509 Maternal and Child Health Handbook (42 U.S.C. 701 note).

These authorities are to be exercised only after consultation and in cooperation with the Health Care Financing Administration.

This delegation excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective upon the date of signature. In addition, I have affirmed and ratified any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: September 17, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-22684 Filed 9-24-90; 8:45 am]

BILLING CODE 4160-17-M

Centers for Disease Control

Assessment of Immunization Status in the Preschool Population; Meeting

The Center for Prevention Services (CPS) of the Centers for Disease Control (CDC) announces the following public meeting between CDC and State/local public health officials as well as statistician consultants.

Name: Assessment of Immunization Status in the Preschool Population.

Time and Date: 8:30 a.m.–4:30 p.m., October 9–10, 1990.

Place: Centers for Disease Control, Freeway Park Facility, room105, 1677 Tullie Circle. NE., Atlanta, Georgia 30329.

Status: Open to the public for participation, comments, and observation, limited only by the space available.

Purpose of Meeting: To obtain individual input and recommendations from officials currently working in State/local immunization programs and experts in sampling methods for the express purpose of developing procedures and methods to measure current preschool immunization levels in the United States.

Contact Person for More Information: Donald L. Eddins, Chief, Data Managment Branch, Division of Immunization, CPS, CDC, Mailstop E05, 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone 404/639–1875 or FTS 236–1875.

Dated: September 19, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–22687 Filed 9–24–90; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced.

Ophthalmic Devices Panel

Date, time, and place. October 11, 1990, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W.C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 27, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues and specific premarket approval applications (PMA's) and the specific requirements needed for PMA approval for intraocular lenses (IOL's), class III surgical or diagnostic devices, contact lenses, and other associated devices.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information relevant to PMA's for IOL's, surgical or diagnostic devices, contact lenses, or other ophthalmic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Gastroenterology-Urology Devices Panel

Date, time, and place. October 18, 1990, 8:30 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 4:30 p.m.; Ruth W. Hubbard, Center for Devices and Radiological Health (HUFZ–430), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1220.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an extracorporeal shockwave device to treat urinary incontinence.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding these devices. This portion of the meeting will be closed to permit discussion of ths information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. October 29, 1990, 8:30 a.m., Rms. 503–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2 p.m.; closed presentation of data, 2 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 15, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for an angioplasty stent, a percutaneous transluminal coronary angioplasty catheter, and a laser coronary angioplasty catheter.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding these devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee

discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 17, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-22657 Filed 9-24-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 15-16, 1990, Executive Plaza North, Conference Room H, 6130 Executive Boulevard Rockville, MD 20852.

This meeting will be open to the public on October 15 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on October 15 from 10 a.m. to recess and on October 16 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10a06, National Institutes of

Health, Bethesda, MD 20892. 301/496-5708 will provide summaries of the meeting and rosters of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, room 807, Bethesda, MD 20892 (301/496-7030) will furnish substantive program information.

Dated: September 14, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-22703 Filed 9-24-90; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Social Security Administration (SSA) announces a meeting of the Supplemental Security Income (SSI) Modernization Project (the Project). This notice also describes the proposed agenda, purpose, and structure of the Project.

DATES: October 23-24, 1990, 9 a.m. to 5 p.m.

ADDRESSES: First Floor Central Auditorium, Harold Washington Social Security Center, 600 West Madison, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-3571.

SUPPLEMENTARY INFORMATION: SSA is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation over 16 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy, aged, blind, and disabled.

To begin this dialogue, the Commissioner of Social Security has involved 25 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Like members of the public attending this meeting, the experts will be able to express their individual views and concerns about the SSI program. Dr. Arthur S. Flemming, former Secretary of Health, Education, and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program. This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy-groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

The meeting is open to the public. Public officials, representatives of the professional and advocacy organizations, concerned citizens, and SSI recipients may speak and submit written comments on the issues to be discussed. (This is the third in a series of meetings to be held throughout the country. Each of these meetings will also be open to the public. All meetings will be announced in the **Federal Register**. If you are interested in the Project but cannot attend the meeting on October 23-24, 1990, please call the Project staff at (301) 965-3571 so we may notify you of future meetings.)

There will be a public comment portion of the meeting beginning in the afternoon of October 23, 1990. A second public comment session will be held on October 24, 1990, in the morning. In order to ensure that as many individuals as possible are given the opportunity to speak in the time allotted for public comment, each individual will be limited to a maximum of 10 minutes. Because of the time limitation, individuals are requested to present comments in their order of importance. A written copy of comments should be prepared and presented to us, preferably in advance of the meeting. To ensure our full understanding and consideration of all of each speaker's concerns, we welcome written comments that provide a detailed and elaborative discussion of the subjects presented orally, as well as further written comments on other issues not presented orally. Individuals unable to attend or speak at the meeting also may submit written comments. Written comments will receive the same consideration as oral comments.

To requests to speak, please telephone the Project Staff, at (301) 965-3571, and provide the following: (1) Name; (2) business or residence address; (3) telephone number (including area code) during normal working hours; (4) capacity in which presentation will be made; i.e., public official, representative of an organization, or citizen; and (5) time of day desired. To guarantee an opportunity to speak, requests must be received by October 16, 1990. Late requests to speak will be honored, if time permits.

A transcript of the meeting will be available at an at-cost basis. Transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

(Catalog of Federal Domestic Assistance Programs No. 93.807—Supplemental Security Income)

Dated: September 18, 1990.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 90-22680 Filed 9-24-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Alaska Federal Subsistence Board Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

TIME AND DATE: 8:30 a.m.; September 26, 1990.

PLACE: Captain Cook Hotel, 5th and "K" Streets, Anchorage, Alaska.

STATUS: Parts of this meeting will be open to the public. The public is invited to attend and observe the proceedings. Public testimony, however, will not be accepted at this meeting. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: *Portions open to the public:* The board will discuss business relative to management of the Federal subsistence management program on Federal lands. The major categories to be discussed include:

a. **Federal Register** Announcement on Rural Determinations.

b. Regulation Corrections.

c. Appeals.

d. Communications to the Board.

e. National Environmental Policy Act Process.

f. Harvest Reports.

g. Indian Self Determination Act Proposals.

Portions closed to the public: The board will discuss business relative to management of the Federal Subsistence Board activities. The major categories to be discussed include:

a. Procedural and organizational items.

b. Relationship with the State of Alaska.

c. Litigation.

CONTACT PERSON FOR MORE INFORMATION: Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board, Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-22656 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-55-M

Office of the Secretary

Privacy Act of 1974; Revision of System of Records

Pursuant to the provisions of the Privary Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a Departmentwide system of records maintained by the Office of Personnel in the Office of the Secretary. The notice being revised is titled "Employee Experience, Skills, Performance, Training and Career Development Records—Interior, Office of the Secretary—76," and was previously published in the **Federal Register** on March 8, 1984 (49 FR 8682). Except as noted below, all changes being published are editorial in nature, and reflect organizational changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register.**

The existing routine disclosure statement is being amended to add a compatible routine use disclosure to employees and contractors of the Department of Energy and the Nuclear Regulatory Commission in the conduct of quality assurance compliance audits of Department of the Interior programs related to high level nuclear waste.

The existing portions of the notice describing the system location, categories of individuals covered by the system, and retention and disposal are revised to reflect that: (1) The records on employees assigned to the Department's high level nuclear-waste activities are maintained in an appropriate local records center; (2) the categories of individuals include individuals who are current, former, and contract employees assigned to high level nuclear-waste activities of the Department of the Interior; and (3) the retention and disposal of records on current, former, and contract employees assigned to high level nuclear-waste activities are maintained for the life of the project to which the activities are applicable, and according to appropriate records disposition schedules. The revised notice is published in its entirety below.

5 U.S.C. 552a(e)(11) requires that the public be provided 30-days in which to comment on the proposed new routine use of the information in the system of records. Therefore, written comments on this notice can be addressed to the Department Privacy Act Officer, U.S. Department of the Interior, Office of the Secretary (PMI), Room 2242, 1849 C Street NW., Washington, DC 20240. Comments received on or before October 25, 1990, will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: September 12, 1990.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

Interior/OS-76

SYSTEM NAME:

Employee Experience, Skills, Performance, Training, and Career Development Records—Interior, Office of the Secretary—76.

SYSTEM LOCATION:

Servicing personnel office and/or administrative office of all bureaus and offices of the Department of the Interior. For Contracting Officers' Warrant System records the head of each bureau's central contracting office and the Office of Acquisition and Property Management in the Office of the Secretary. Records on employees assigned to the Department's high level nuclear-waste activities are maintained in an appropriate local records center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Department of the Interior and current, former, and contract employees assigned to high level nuclear-waste activities of the Department of the Interior.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records relate to employees and contain such information as: Name; date of birth; social security number; office address and phone; service computation date; physical limitations or interests which might affect type or location of assignment; career interests; education history; work or skills experience; position descriptions; availability for geographic relocation; outside activities including membership in professional organizations; listing of special qualifications; licenses and certificates held; listing of honors and awards; career goals and objectives of the employee; training records; annual supervisory evaluation or proficiency statement; verification records of employment and education.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 2951, 4118, 4308, 4506, 3101, 43 U.S.C. 1457, Reorganization Plan 3 of 1950, Executive Order 10561, Executive Order 12352.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) by bureau officials for purposes of review in connection with transfers, promotions, reassignments, adverse actions, disciplinary actions, and determination of qualifications, of an individual, (b) by bureau officials for setting out career goals and objectives of the employee and for documenting attainment of these targets, and (c) by bureau and Departmental officials in monitoring qualifications for maintaining a Contracting Officer's Warrant.

Disclosures outside the Department of the Interior may be made (1) to the U.S. Department of Justice when related to litigation or anticipated litigation; (2) to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting a violation or potential violation, or for enforcing or implementing a statute, regulation, rule, order, or license; (3) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual; and (4) to employees and contractors of the Department of Energy and the Nuclear Regulatory Commission in the conduct of quality assurance compliance audits of Department of the Interior programs related to high level nuclear waste.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained manually in file folders or on preprinted forms in file cabinets or on computer media.

Retrievability:

Records may be indexed by name of the subject employee.

SAFEGUARDS:

Records are maintained with safeguards meeting minimum security requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Most records are maintained only on current employees. Records are destroyed upon departure of employees, except that records on current, former, and contract employees assigned to high level nuclear-waste activities are maintained for the life of the project to which the activities are applicable, and according to appropriate records disposition schedules.

SYSTEM MANAGER(S) AND ADDRESS:

For all records other than Contracting Officers' Warrant System Records: (1) The Personnel Officer of each bureau of the Department for records maintained in the bureau. (See Appendix for addresses of bureau headquarters offices), and (2) Chief, Division of Personnel Services, Office of Administrative Services, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240, for records maintained in the Office of the Secretary. For all Contracting Officers' Warrant System Records: Director, Office of Acquisition and Property Management, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

Individuals may inquire whether or not the system contains records pertaining to them by contacting the personnel officer and/or administrative officer servicing the facility where they are employed. Contracting Officers may submit inquiries regarding Contracting Officers' Warrant System Records to the head of the procuring activity of the bureau in which the individual is employed, or to the Director, Office of Acquisition and Property Management. See 43 CFR 2.60 for notification procedure requirements.

RECORD ACCESS PROCEDURES:

Employees who wish to gain access to their records should contact the same officials listed under "Notification procedure" above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Employees who wish to contest their records should contact the pertinent System Manager listed above. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies or is derived from information he/she supplied, except information provided by agency officials.

[FR Doc. 90-22586 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[OR-090-00-4212-14; GPO-406; OR 46221]

Realty Action; Direct Sale of Public Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—direct sale of public lands in Lane County, Oregon.

SUMMARY: The following land is suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 18 S., R. 1 W.
Sec. 33: Lot 5.
Containing 15.38 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to Amvesco, Inc., dba Western Pioneer Title Co., using the direct sale procedures authorized under 43 CFR 2711.3-3. Direct sale is appropriate since the land has been inadvertently occupied and utilized as part of private ranching operations pursuant to private deeds originating in 1890 and direct sale will resolve the title conflict and unauthorized use while preserving the occupants' equity in the property.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. Direct purchasers must submit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

3. Patent will be issued subject to all valid existing rights and reservations of record.

DATES: Until November 9, 1990, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226, 1255 Pearl Street, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Date: September 17, 1990.

Ronald L. Kaufman,

District Manager.

[FR Doc. 90-22585 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-33-M

[NM-030-00-7122-09-8004]

Availability for the Final Environmental Impact Statement of Federal Coal Leasing in the Fence Lake Area of Catron and Cibola Counties, New Mexico

AGENCY: Bureau of Land Management, Las Cruces District, New Mexico.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of a Final Environmental Impact Statement (EIS) on the leasing of Federal coal on public land and Federal

mineral ownership in the Fence Lake area of Catron and Cibola Counties, New Mexico.

The Draft EIS was made available for a 60-day public comment period from May 3 through July 2, 1990. Comments received were considered and incorporated in the Final EIS.

DATES: Written comments on the Final EIS must be postmarked on or before October 29, 1990.

ADDRESSES: Written comments should be sent to: Charles Hodgin, Project Coordinator, BLM Las Cruces District, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Charles Hodgin, Project Coordinator (505) 525–8228 or John Kenny, Environmental Specialist (505) 988–6204.

SUPPLEMENTARY INFORMATION: The regulations set forth in title 43 of the Code of Federal Regulations (CFR) provide the framework under which the Department of the Interior conducts leasing of rights to extract Federal coal. The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental impact analysis. Additionally, the regulations are intended to ensure that coal deposits are developed in consultation, cooperation, and coordination with State and local governments, Indian tribes, involved Federal agencies, and the general public.

Two primary alternatives were assessed in the Fence Lake Project Draft EIS. These are approval of a Federal coal lease and disapproval of a Federal coal lease (No Action). Under the lease-approval alternative, two separate leasing actions were assessed.

Lease-Approval Alternative 1, Salt River Project's (SRP) Lease Application, would involve SRP's proposed action to lease 6,840 acres of Federal coal. Lease-Approval Alternative 2 would involve a Federal coal lease of up to 8,780 acres. The additional coal areas added for Alternative 2 are based on preliminary estimates of acres that may be added to the lease to provide for enhanced recovery of the coal resource. BLM is preparing a Maximum Economic Recovery (MER) report which will review these estimates and the lease application in light of all available coal exploration drilling. Also under Alternative 2, certain areas may be deleted from leasing or have stipulations imposed to protect sensitive biological and cultural resources identified under the unsuitability and multiple-use coal screens in the Socorro Resource Management Plan.

For each of the Federal coal lease approval scenarios, the subsequent mining would encompass both the State, private, and Federal lease areas together as a unit.

The No Action Alternative consists of disapproval of a Federal coal lease for the Fence Lake Project. If a Federal coal lease were not approved, SRP would mine only its existing private and State coal leases in the Fence Lake Project area.

Public participation has occurred throughout the EIS process. A Notice of Intent was filed in the **Federal Register** on December 30, 1988. Since that time several meetings, public hearings, and mailouts were conducted to solicit comments and concerns, including the Draft EIS which was made available for public comment for a 60-day period beginning on May 3, 1990. All comments presented throughout the process have been considered.

Following the end of the 30-day availability period on the Final EIS, a Record of Decision (ROD) will be prepared. Comments received on the Final EIS will be considered in the preparation of the ROD. Also, the final trace configuration (subject to surface owner consent) will be included in the ROD for the EIS and will take into account both sensitive biological and cultural resources and the results of the MER report.

Copies of the Final EIS have been distributed to a mailing list of identified interested parties. Single copies of the Final EIS may be obtained from the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico; the BLM Santa Fe, New Mexico; and the Socorro Resource Area Office, 198 Neel Avenue NW., Socorro, New Mexico. Public reading copies are available for review at the BLM State Office, U.S. Federal Building, Santa Fe, New Mexico and at public and university libraries in Las Cruces, Socorro, Albuquerque, Truth or Consequences, Gallup, and Grants, New Mexico, the Apache County Library in St. Johns, Arizona, and the Native American Library in Window Rock, Arizona.

Dated: Septenber 20, 1990.

Larry L. Woodard,

State Director.

[FR Doc. 90–22688 Filed 9–24–90; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Meeting; National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the National Park System Advisory Board will be held at the Denver Service Center of the National Park Service, 12795 West Alameda Parkway, Lakewood, Colorado on October 23 and 24, 1990. The site is a few blocks west of the Denver Federal Center in Lakewood.

The general business session will start at 8 a.m. on Tuesday, October 23 in room 7 of the building and is planned to conclude by noon on Wednesday, October 24.

The Board will consider potential National Historic Landmark nominations, plus a variety of matters relating to the National Park System and other related areas. Potential National Historic Landmarks will be taken up about 10 a.m. the first morning, for approximately two hours. Other topics will include, but not be limited to, urban park issues, education and volunteerism in the National Park System, the Presidio of San Francisco, the upcoming Columbus Quincentennial, tourism matters and an American labor history study. Officials of the Department of the Interior and the National Park Service will also address the Board. The meeting will follow orientation tours and briefings on Rocky Mountain National Park and the National Park Service's Denver-area offices.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed.

This is also to notify all concerned and interested parties that under the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, commonly known as Gramm-Rudman-Hollings, a sequestration of funds may be necessary for the Federal Government's Fiscal Year 1991, which begins on October 1, 1990. If a sequestration should occur, this meeting may be cancelled on very short notice.

Those planning to attend may call the contact person below, after October 1, to ascertain whether the meeting will in fact occur.

Persons wishing further information concerning the meeting, who wish to submit written statements for it, or who wish to verify (after October 1) that it will occur, may contact, Mr. David L.

Jervis, Office of Policy, National Park Service. P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-208-4030).

Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in Room 1220, Main Interior Building, 18th and C Streets, NW., Washington, DC.

F. Eugene Hester,

Acting Deputy Director.

[FR Doc. 90-22652 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 15, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service. P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by October 10, 1990.

Carol D. Shull,

Chief of Registration, National Register.

DISTRICT OF COLUMBIA

District of Columbia (State equivalent)

Corcoran Hall, 721 21st St., NW., Washington, 90001545

Lisner Auditorium, 730 21st St., NW., Washington, 90001548

President's Office, George Washington University, 2003 G St., NW. and 700 20th St., NW., Washington, 90001544

Stockton Hall, 720 20th St., NW., Washington, 90001546

Strong Hattie M., Residence Hall, 620 21st St., NW., Washington, 90001547

Wetzel Margaret, House, 714 21st St., NW., Washington, 90001542

Woodhull, Maxuell, House, 2033 G St., NW., Washington, 90001543

FLORIDA

Pinellas County

Tarpon Springs High School, Old, 324 E. Pine St., Tarpon Springs, 90001538

MASSACHUSETTS

Suffolk County

Monument Square Historic Distric, Roughly bounded by Jamaicaway, Pond, Centre and Eliot Sts., Boston, 90001536

Upham's Corner Market, 600 Columbia Rd., Boston, 90001537

MISSOURI

Shannon County

Akers Ferry Archeological District, Address Restricted, Rector vicinity, 90001541

PENNSYLVANIA

Philadelphia County

US Court House and Post Office Building, Jct. of Ninth and Markets Sts., Philadelphia, 90001540

TEXAS

Bexar County

Guenther, Carl Hilmar, House 205 E. Guenther St., San Antonio, 90001539

The following property is also being considered for listing in the National Register:

PENNSYLVANIA

Chester County

Downing, Hunt, House (West Whiteland Township MRA), 600 W. Lincoln Hwy., West Whiteland Twp., 84003960

[FR Doc. 90-22651 Filed 9-24-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub 102X)]

Norfolk and Western Railway Company, Discontinuance Exemption; in Buchanan County, VA

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments and Discontinuances to discontinue service over its 0.4-mile line of railroad between milepost LS-0.0, at Long Spur Junction, and the end of the line near Grundy, in Buchanan County, VA.

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 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 discontinuance 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 October 25, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues[1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)[2] must be filed by October 5, 1990. Petitions for reconsideration must be filed by October 15, 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: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

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 discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by September 28, 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 conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 18, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-22574 Filed 9-24-90; 8:45 am]

BILLING CODE 7035-01-M

[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).

DEPARTMENT OF JUSTICE

Lodging a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; CertainTeed Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 12, 1990 a Complaint and proposed Consent Decree in *United States* v. *CertainTeed Corp.*, DJ No. 90-11-2-538, were lodged with the United States District Court for the Eastern District of Pennsylvania. The United States' Complaint is being filed under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, for injunctive relief and reimbursement for the United States' response costs at the CertainTeed Pile, a portion of the "Ambler Asbestos Site" in Ambler, Pennsylvania.

The only defendant is CertainTeed Corp., which presently owns the CertainTeed Pile. The Consent Decree will resolve the United States' claims against CertainTeed. Under the Decree, CertainTeed will implement the remedy called for by EPA's Record of Decision regarding the CertainTeed Pile, and pay to EPA all of the response costs of which EPA advised it. In paragraph VI.A, CertainTeed has agreed to commence work prior to the entry of the Decree. CertainTeed has agreed to perform operation and maintenance at the Site for 30 years. (Para. V.D). The Decree contains in Paragraph VII.A the standard provision for the five-year reviews mandated under section 121(c) of CERCLA, 42 U.S.C. 9621(c), for sites at which hazardous substances will remain following completion of the remedy. In section IX, EPA has received all of the quality assurance and quality control measures which it requested. In section XVII, CertainTeed has agreed to reimburse the United States for all of its oversight costs, not inconsistent with the National Contingency Plan ("NCP"), incurred following entry of the Decree.

In return for these obligations, CertainTeed will receive a covenant not to sue, with standard reopener provisions provided for under section 122 of CERCLA, 42 U.S.C. 9622, and will receive the contribution protection provided for under section 113(f)(3) of CERCLA, 42 U.S.C. 9613(f)(3).

The United States has incurred thus far approximately $91,500 in costs at the CertainTeed Pile. It has expended these funds, *inter alia*, to review an Environmental Investigation performed by CertainTeed and to prepare a focused feasibility study regarding the CertainTeed pile.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CertainTeed Corp.*, DOJ Ref. No. 90-11-2-538.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $16.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22589 Filed 9-24-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Stanley Kessler & Company, Inc., et al.

Notice is hereby given that on September 6, 1990, a proposed consent decree in *United States* v. *Stanley Kessler & Company, Inc., et al.*, Civil Action Nos. 80-3438 and 89-7384, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree requires the defendants to perform a Remedial Investigation/Feasibility Study for the Site, to pay all costs incurred by EPA to oversee the RI/FS, and to pay a portion of the response costs incurred by the United States prior to October 13, 1989.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Stanley Kessler & Company, Inc., et al.*, Civil Action Nos. 80-3438 and 89-7384, DOJ Ref. No. 90-7-1-106. The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 601 Market Street, Philadelphia, Pennsylvania, or at the office of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $34.50 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22590 Filed 9-24-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: October 24, 1990, 1-5 p.m., rm. S-5310, Seminar Room 1-B, Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523-2752.

Signed at Washington, DC this 17th day of September.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 90-22641 Filed 9-24-90; 8:45 am]

BILLING CODE 4510-28-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OPM Form 1495 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension to a form which collects information from the public. OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs, is completed by students applying for Federal positions in the Stay-in-School, Summer Aid and Federal Junior Fellowship Programs. Federal agencies use the information to determine if applications meet the financial needs criteria required by these programs. There are 10,000 individuals who respond annually for a total public burden of 2,500 hours. For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be received by October 5, 1990.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, room 6410, 1900 E Street NW., Washington, DC 20415.

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marsha Frost, (202) 606-0870.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-22682 Filed 9-24-90; 8:45 am]

BILLING CODE 6325-01-M

Personnel Management Demonstration Project; Alternative Personnel Management System at the National Institute of Standards and Technology

AGENCY: Office of Personnel Management.

ACTION: Final notice of amendment.

SUMMARY: This action provides for changes to the final project plan published October 2, 1987 (52 FR 37082), and amended August 16, 1989 (54 FR 33790) primarily to revise the performance appraisal system and the pay administration system in order to better link pay with performance. The proposed amendment with request for comments was published in the **Federal Register** on May 10, 1990 (55 FR 19688). On reviewing 13 written comments OPM has decided to finalize the proposed amendment without change.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: at the Office of Personnel Management, Marilyn Geldzahler, (202) 606-2890; at the National Institute of Standards and Technology, Allen Cassady, (301) 975-3031.

SUPPLEMENTARY INFORMATION: In the new performance appraisal system adjectival ratings to describe levels of performance will be replaced by numerical scores which allow managers to make finer distinctions among employees and rank them accordingly. Those given a score below a set cut-off point on any element will be rated "Unsatisfactory" and will not be considered for performance-based pay increases, bonuses, or total compensation comparability (TCC) increases. Those with scores above the cut-off point on all elements will be rated "Eligible" for consideration for performance-based pay increases and bonuses, and will receive TCC increases. The individual's rank in the pay pool determines the proportion of the possible percentage salary increase that employee will receive (within the range prescribed by the PMB), that is, each individual will be awarded a greater proportion of his or her possible increase than those ranked lower than that individual.

The May 10, 1990, amendment also (1) clarified the relationships between NIST pay bands and General Schedule grades for the purpose of applying OPM reduction-in-force regulations, (2) revised the membership of the Personnel Management Board (PMB) to anticipate plans for reorganizing major organizational components, (3) clarified the impact of pay for performance on student and faculty appointments, and (4) corrected a typographical error in the original plan.

Summary of Comments and Responses

OPM received 13 letters in response to our request for comments; one of these letters had fifteen signatures. NIST also made three presentations to employees during which questions were fielded and comments noted. Approximately 200 employees attended the first Gaithersburg, Maryland, meeting on May 25, 1990, and 13 had questions or comments. Approximately 250 employees attended the Boulder, Colorado, presentation on May 30, 1990; 31 had comments or questions. On June 7, 1990, approximately 100 employees attended the second presentation at the Gaithersburg NIST site, and 25 asked questions or offered comments. Most of the people speaking at these presentations asked for more information or for clarification of the design or implementation of the new performance appraisal system.

Eight letters and several of the comments at the presentations expressed concern over the competitive nature of a pay-for-performance system, especially one that used ranking among peers. OPM believes that competition is not necessarily unhealthy and that the new system is flexible enough to reward the cooperative aspects of work at NIST. For example, in units characterized by a high level of cooperative work, supervisors may include contributions to the team in performance plans and rate employees accordingly. To address related concerns that rankings might become public, the numerical rankings will not be publicized, although individuals may request information about their own rank. Records of ranks will be kept to calculate RIF credit; however, numerical rank will not be included in employees' Official Personnel Folders.

Another concern mentioned in one letter was the possible lack of management flexibility in a payout system which links rank directly with percent pay increases. OPM believes that the new system affords flexibility to all levels of management. Supervisors will continue to develop performance plans that reflect their expectations for each employee, considering the individual's experience, band, occupation, and position in the organization. Pay pool managers, in concert with supervisors, have latitude (within the guidelines set by the PMB) in how they interleave employees from different units, including the option of ranking two or more employees the same. The PMB retains the authority to change the payout matrix. For instance, if certain career paths or experience intervals have historically received fewer promotions and awards, the payout matrix can be adjusted. The PMB or its designee, at the request of the pay pool manager, may also grant a higher than normal pay increase for extraordinary achievement. Thus, the new performance management system gives management many opportunities to fine tune the match between salary increases and performance.

Three letters and some of the comments at the presentations expressed concerns about the complexity of the ranking system and the difficulty both supervisors and employees have with communicating about standards and performance ratings. NIST will be conducting training sessions throughout the organization which will address these issues.

No letters or comments addressed the other changes offered in the May 10, 1990, amendment.

After considering all comments, OPM has decided to make the May 10, 1990, proposed amendment to the NIST Personnel Management Demonstration Project effective as published.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-22683 Filed 9-24-90; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28450; File No. SR-NASD-89-12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Rule Change Requiring Display of Quote Size in NASDAQ

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 20, 1989, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] and rule 19b-4 thereunder,[2] and amended on September 8, and December 20, 1989, a proposed rule change to require NASDAQ market makers to display quotation size equal to the maximum order size displayed in the Small Order Execution System ("SOES") and honor such size to all parties except firms making a market in the subject security. At the same time, with regard to the market maker exception to the honoring of quote size, the NASD requested a temporary, six-month exemption from the requirements of rule 11Ac1-1(c)(2) under the Act ("Quote Rule"),[3] which provides that a broker-dealer is obligated to execute any order to buy or sell a security in any amount up to the broker-dealer's published quotation size.

Notice of the proposal, together with the substance of the terms of the proposed rule change, was given by the issuance of a Commission release (Securities Exchange Act Release No. 27601, January 9, 1990) and by publication in the **Federal Register** (55 FR 1743, January 18, 1990). No comments were received on the proposal.

Under current practice, NASDAQ market makers are not obligated to display quotations in excess of the normal unit of trading, 100 shares. As a result, few market makers display larger quotations in NASDAQ. Nonetheless, market makers in NASDAQ generally trade in a size greater than that displayed in their published quotations. Indeed, the Rules of Practice and Procedure for SOES require NASDAQ market makers that are also SOES market makers to execute orders through SOES in sizes up to the maximum SOES order size, *i.e.*, 1,000, 500 or 200 shares, depending upon the trading characteristics of the particular security. Accordingly, as stated by the NASD, mandating the display of size in NASDAQ at least equal to the maximum size of an order eligible for automatic execution in SOES would provide a more realistic picture of the actual size of execution available and the depth of the market in each security.

The Commission agrees with the NASD that the proposed rule change will enhance the quality, liquidity and depth of the NASDAQ market and provide greater information to investors. Market makers presently are willing to execute trades well in excess of the 100 share size that is typically displayed on NASDAQ. For this reason, the Commission has favored realistic display of size since the early 1980s.[4] We believe that the NASD's proposal will have a minimal impact on market makers and will provide issuers and the public with a better view of the depth of the market in any particular security. This positive development in the over-the-counter market should be beneficial to the public, issuers, and the marketplace as a whole. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, with the requirements of section 15A(b)(6),[5] which requires that the Association's rules be designed to "remove impediments to and perfect the mechanism of a free and open market and a national market system," and section 15A(b)(11),[6] which requires that the Association's rules relating to quotations be designed to "produce fair and informative quotations." Indeed, the proposal also furthers Congressional expectations in enacting the Securities Acts Amendments of 1975 which were intended, in part, "to assure the prompt and accurate, reliable and fair * * * publication of (quotation and transaction information) and the fairness and usefulness of the form and content of information with respect to quotation(s) and transactions." [7] Moreover, the rule change permits investors greater access to market information concerning the depth of the market for a particular security that previously was not readily available to public investors.[8]

The Commission staff today also has granted the NASD a six month exemption from the firmness requirement of the Quote Rule. The Commission is concerned over the disparate treatment that may be provided NASDAQ market makers under such an exemption. Nevertheless, the Commission recognizes the concerns of some NASD members over the possible financial exposure resulting from the combined effect of the new size requirement and the NASD requirement that a market maker in a NASDAQ security deal with all other NASDAQ market makers in the security. Accordingly, the Commission believes that a temporary exemption from the Quote Rule's firmness requirement for market maker trades, while the NASD reviews the effect of its rules, is appropriate.[9]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] 17 CFR 240.11Ac1-1(c)(2) (1989). A letter granting an exemption from the Quote Rule has been issued. *See* letter from Richard G. Ketchum, Director, SEC, to Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated September 18, 1990.

[4] Securities Exchange Act Release No. 16590 at 51 (February 19, 1980); 45 FR 12391 (February 26, 1980) ("Vendor Display Rule Release"). Division of Market Regulation, "The October 1987 Market Break", (February 1988) at 9-27. *Cf.* "Report of the Special Committee of the Regulatory Review Task Force On the Quality of Markets," NASD, July 1988, at 28 ("Quality of Markets Committee") (similar recommendation made by the NASD's Committee).

[5] 15 U.S.C. 78o-3(b)(6) (1982).

[6] 15 U.S.C. 78o-3(b)(11) (1982).

[7] S. Rep. No. 94-75, 94th Cong., 1st Sess. 104, reprinted in 1975 U.S. Code Cong. and Ad. News 179, 282.

[8] The NASD has agreed to monitor participation by non-NMS market makers in SOES to determine whether the rule affects the level of voluntary participation in SOES by those market makers. *See* letter from Kathryn V. Natale, Assistant Director, SEC, to Robert E. Aber, Vice President and Deputy General Counsel, NASD, dated May 14, 1990, and reply letter dated June 6, 1990.

[9] After the expiration of the temporary exemption, the NASD has undertaken to monitor the effects of the proposed rule change on market makers to determine the extent to which the increase in the size requirement causes a problem with failed trades. The NASD agreed to report on

Continued

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-89-12, be, and hereby is, approved, effective December 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22635 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28439; File No. SR-NASD-90-47]

Self Regulatory Organizations; Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Order of Closing Arguments in Arbitration Proceedings

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 6, 1990 the National Association of Securities Dealers, Inc. ("NASD or Association") filed with the Securities and Exchange Commission ("SEC or Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change was filed by NASD in order to clarify that it is the practice in NASD arbitration proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedures may however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present the respective cases.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is clarifying its practice with respect to the order of closing statements in NASD arbitration proceedings at the request of members of the public and the SEC. The purpose of the stated policy is to clarify that claimants in arbitration proceedings may proceed first in closing argument, with rebuttal argument being permitted, and that claimants may reserve their entire closing for rebuttal. This clarification is made with the caveat that the hearing procedures may, in the discretion of the arbitrators, be varied provided all parties are allowed a full and fair opportunity to present their respective cases.

The NASD believes that the policy is consistent with section 15A(b)(6) of the Act, which provides, *inter alia,* that the rules of a national securities association shall be designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period. (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and be submitted by October 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 17, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22633 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28438; File No. SR-NSCC-90-15]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corporation Regarding a Modification to its Fund/SERV Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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the results of its monitoring within six months after expiration of the exemption. *See* letter from Robert E. Aber, Vice President and Deputy General Counsel, NASD, to Kathryn Natale, Assistant Director, SEC, dated June 6, 1990.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify that NSCC may delete pending items from Fund/SERV with the exception of ACAT-Fund/SERV items, upon the withdrawal by a member from participation in Fund/SERV when such member continues as an NSCC member or is merged into or acquired by another member which is not a participant in Fund/SERV.

NSCC does not restrict a member's ability to withdraw from participation in Fund/SERV regardless of the status of the member's Fund/SERV orders. This rule makes it clear that upon withdrawal from participation NSCC may delete any pending item requiring further action in Fund/SERV. As with other items deleted from NSCC processing, the rule specifies that responsibility for the completion, if any, of pending transactions will be between the member and the Fund member or Mutual Fund processor.

Since the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible, it is consistent with the requirements of section 17A of the Act, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of NSCC. All submissions should refer to File No. SR-NSCC-90-15 and should be submitted by October 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 14, 1990

Margaret H. McFarland,

Deputy Secretary.

Amend NSCC's rule 52 as follows:

Italics indicate additions, [Brackets] indicate deletions.

Mutual Fund Settlement, Entry, and Registration Verification Service

* * * * *

Sec. 17. The Corporation may delete from the Fund/Serv Service any incompleted Fund/Serv items, with the exception of incompleted ACAT-Fund/Serv items, upon the withdrawal of a Settling Member from participation in Fund/Serv where such Settling Member continues as a Settling Member or is merged into or acquired by another Settling Member which is not a participant in the Fund/Serv Service.

* * * * *

[FR Doc. 90-22634 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28453; File No. SR-NYSE-90-39]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to Exchange Rule 72—Priority and Precedence of Bids and Offers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 72 to provide that agency block cross transactions, where both orders are for an account other than that of a member or member organization, can be effected without interference at the proposed cross price. It also provides that the cross may be broken up at a price that is better than the proposed price for one side or the other.

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 member who has an order to buy and an order to sell an equivalent amount of the same stock generally wishes to execute the orders against each other in what is commonly referred to as a "cross" transaction. In such instances, the member is not seeking to interact with other market interest, as he already has both sides of the trade. A member must, however, make a public bid and offer on behalf of both sides of the cross in accordance with the provisions of Exchange Rule 76.

Under the Exchange's auction market procedures as codified in Rule 72, a member who makes the first bid or offer at a particular price has "priority" at that price, which means that he is the first one in the market entitled to receive an execution at that price. If no member can claim priority, for example, when members announce their bids or offers simultaneously or after a trade takes place, all members who are bidding or offering at a particular price are deemed to be on "parity" with each other. When members are on parity and no member's bid or offer can fill the entire offer or bid, the member whose bid or offer is larger than other bids or offers may claim "precedence based on size," and thereby be entitled to the next execution at that price. "Precedence based on size" also may be claimed by members on parity who can fill a bid or offer in its entirety when others on parity cannot fill the entire bid or offer. This aspect of Rule 72 commonly is referred to as "sizing out" other market interest.

A member who tries to execute a cross transaction on the Exchange Floor may be "sized out" by other market interest at the same price or he may run the risk that other members will "break up" the cross by trading with either the bid or offer side of the transaction. The proposed amendment to Rule 72 would facilitate members being able to execute certain types of cross transactions on the Exchange at the cross price, while still providing the opportunity in the auction market for another member to offer price improvement to the buyer or seller, as the case may be.

The proposed amendment would allow a member who has an order to buy 10,000 shares or more and an order to sell an equal amount of the same security, where neither order is for the account of a member or member organization, to cross those orders at a price that is at the prevailing quotation without being broken up at such cross price, irrespective of pre-existing bids or offers at that price. The member must follow the crossing procedures of Exchange Rule 76 and make a public bid and offer on behalf of both sides of the cross. Another member may trade with either the bid or offer side of the cross transaction (as the case may be) to provide a price which is better than the proposed cross price, but he could not trade with a bid or offer which is the same as the cross price. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction.

This amendment maintains the auction market principle of price improvement by allowing the cross to be broken up at a better price. It also preserves the principle of priority by requiring that a member who wants to break up a cross by providing a better price first satisfy all other market interest having priority at that better price, before trading with any part of the cross transaction. Conversely, granting priority to a member at the cross price does not necessarily, as a practical matter, disadvantage other orders at that price. The proposal is limited to block-size transactions only, and does not disadvantage market interest of smaller size at the cross price, as, under current rules, the member may trade 100 shares, put himself on parity with other bids or offers at the cross price, and then claim precedence based on size as to such bids or offers and consummate the cross transaction. In situations where a member has probed the market on the NYSE Floor and determined that he will not be able to claim precedence based on size on behalf of the cross transaction, it is likely that the cross will be executed at another market center at the agreed-upon cross price with no opportunity for other orders to interact with the cross, either at the cross price or at a better price.

The proposal simply makes it easier for public customers to effect block-size transactions on the NYSE at the cross price, while still providing the opportunity for other market interest, consistent with auction market principles, to provide a better price to one side or the other of the cross. The proposal is limited to block-size orders of public customers only, and thus is neither applicable to, nor gives any advantage to, members and member organizations in their proprietary trading, including facilitations of block transactions.

2. Statutory Basis—The proposed rule change is consistent with the requirement under section 6(b)(5) of the Acts that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change. However, the Exchange has reviewed the proposal with Constituent Committees representing institutional and upstairs traders, and commission house and independent Floor brokers, all of whom expressed general support for the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Reigster** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-39 and should be submitted by October 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22693 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 17749; International Series Rel. No. 156; 812-7526]

Banco Hispano Americano, S.A.; Application

September 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Banco Hispano Americano, S.A.

RELEVANT 1940 ACT SECTION: Section 6(c).

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) exempting it from all of the provisions of the 1940 Act in connection with the issuance and sale of its equity securities in the United States.

FILING DATE: The application was filed on June 4, 1990, and an amendment was filed on September 7, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 15, 1990, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Clyde Mitchell, Esq., White & Case, 1155 Avenue of the Americas, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a commercial bank incorporated in Spain that is engaged primarily in the business of receiving time and demand deposits and making loans through itself and its subsidiaries and affiliated companies. Applicant maintains an extensive network of branches in Spain and maintains branches, subsidiaries, and/or agency offices in a number of other countries, including the United States. Applicant was the sixth largest bank in Spain in terms of total assets at the end of 1988.

2. The operations of applicant are subject to a wide range of regulation and administrative supervision under Spanish law. Applicant is authorized to conduct business by the banking laws of Spain, which provide for, among other things, the protection of depositors through continuing supervision and examination and regulation of statutory reserve deposits, foreign currency and exchange, loan policies, interest rates, and equity. Applicant is subject to regulation by the Bank of Spain, a public law institution and the central bank of Spain.

3. Applicant conducts its banking activities in the United States through a branch office in New York, New York, an agency office in Miami, Florida, and a representative office in Los Angeles, California. These banking activities subject applicant to the supervisory authority of the Board of Governors of the Federal Reserve System and the banking authorities of the States of New York, Florida, and California. Applicant is a registered foreign bank holding company subject to the Bank Holding Company Act of 1956 and the International Banking Act of 1978 (the "IBA").

4. Applicant wishes to have access to the United States capital markets through private placements or public offerings of its equity securities.

Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to issue conditional or unconditional exemptions from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]." Applicant submits that the application meets these requirements.

2. Applicant states that the proposed exemption will advance the policies underlying the IBA by expanding the United States market for applicant's securities. Affording applicant access to the United States market for its securities would provide applicant with a new source of capital and would thereby benefit applicant's United States depositors by increasing applicant's sources of capital.

3. Applicant submits that the exception for domestic banks from the 1940 Act definition of investment company was provided because the particular abuses against which the 1940 Act was directed, including excessive management fees and self-dealing, were not deemed applicable to commercial banking entities because of the comprehensive regulation and supervision to which such banks are subject. Applicant asserts that the same reasoning should apply to it because its operations in Spain are controlled and overseen by Spanish banking authorities and its United States operations are subject to United States banking laws and various state banking laws.

4. On August 15, 1990, the Commission approved for comment amendments to Rule 6C-9 under the 1940 Act. Investment Company Act Release No. 17682 (Aug. 17, 1990). In its present form, Rule 6c-9 provides a conditional exemption from the 1940 Act that permits foreign banks to offer and sell debt securities and non-voting preferred stock without registering under the 1940 Act.

The proposed amendments would, among other things, extend the exemption from registration under the 1940 Act to foreign banks offering or selling their equity securities in the United States. Applicant has agreed to comply with Rule 6c-9 as it is proposed to be amended and as it may be

reproposed, adopted, or amended in the future in connection with the issuance and sale of its securities in the United States.

Applicant's Condition

As a condition to the requested relief, applicant will comply with the proposed amendments to Rule 6c-9 under the 1940 Act as they are currently proposed and as they may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22689 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17751; 811-151]

National Aviation & Technology Corp.; Application for Deregistration

September 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: National Aviation & Technology Corporation.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on form N-8F was filed on September 4, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 50 Broa Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations.

1. Applicant was organized as a corporation under the laws of the State of New York on June 23, 1928. Applicant commenced operations as an investment company in 1928 and registered under the Act as a closed-end investment company in 1941. Applicant converted to an open-end investment company and filed a registration statement on Form N-1 pursuant to the Securities Act of 1933 on March 9, 1979. The registration statement became effective on May 1, 1979, and applicant's initial public offering as an open-end investment company commenced on that date.

2. On February 12, 1990, applicant's board of directors, including a majority of the directors who were not interested persons of applicant, approved a merger agreement between applicant and AFA Funds, Inc. ("AFA Funds"), a Maryland corporation organized in January 5, 1990, by which applicant would be merged into National Aviation & Technology Fund (the "Series"), a series of AFA Funds.

3. Applicant's stockholders approved the merger agreement at the annual meeting of stockholders held on April 25, 1990. In approving the agreement, the stockholders authorized applicant, as sole stockholder of the Series prior to the merger, to approve an investment management agreement between the Series and American Fund Advisors, Inc., applicant's investment adviser; to approve the election of directors of AFA Funds; and to ratify the selection of accountants. Applicant took such actions on April 26, 1990.

4. Pursuant to the merger agreement, on May 1, 1990, the Series assumed all of the assets and liabilities of applicant. Each share of applicant issued and outstanding immediately prior to the merger was converted by the merger into one share of the Series, with the same net asset value per share. Upon completion of the merger, the stockholders of applicant owned as many full and fractional shares of the Series, with the same net asset value, as the number of shares of applicant owned by the stockholders immediately before the merger.

5. The expenses incurred in connection with the merger were $57,014, of which $44,014 was for legal expenses and $13,000 was for proxy solicitation expenses. All expenses relating to the merger were borne by AFA Funds.

6. Applicant filed a Certificate of Merger dated April 25, 1990 with the New York State Secretary of State and Articles of Merger dated April 25, 1990 with the Maryland State Department of Assessments and Taxation.

7. As of the date of the application, applicant had no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22690 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17748; 811-6101]

The Poland Fund, Inc.; Application for Deregistration

September 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICATION: The Poland Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on September 10, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 141 East 56th Street, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland Corporation and a closed-end non-diversified management investment company registered under the Act. On April 19, 1990, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act.

2. Applicant has never made a public offering of its securities.

3. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22691 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17750; 811-4129]

Victory Fixed-Income Investments, Inc.; Application for Deregistration

September 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Victory Fixed-Income Investments, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on September 7, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personnally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 16, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Battery Park Plaza, New York, NY 10004

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland Corporation and an open-end diversified management investment company registered under the Act. On October 11, 1984, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On February 21, 1985, applicant filed a registration statement on Form N-1A.

2. At a meeting held on May 11, 1990, applicant's board of directors adopted a plan of liquidation under which applicant would liquidate all of its holding and then make a liquidating distribution to each of its shareholders, with each shareholder receiving a dollar amount per share representing the net asset value of each share on the distribution date.

3. Applicant's shareholders unanimously approved the plan of liquidation at a special meeting held on June 22, 1990. The liquidating distribution took place June 27, 1990.

4. Liquidation expenses of $27,915.41 were borne by applicant.

5. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22692 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17744; International Series Rel. No. 155; 812-7484]

Standard Chartered, PLC; Application

September 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Standard Chartered, PLC.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it from the provisions of the 1940 Act in connection with the offer and sale of its equity securities in the United States, either directly or in the form of American depositary shares represented by American Depositary Receipts, rights and other convertible or equity related securities, and its short and long term debt securities (the "Securities").

FILING DATE: The application was filed on March 5, 1990, and amended on July 23 and September 10, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o James M. Bartos, Esq., Shearman & Sterling, St. Helen's, One Undershaft, London EC3A 8HX, England.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, at (202) 272-3567 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Research Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is the ultimate parent holding company of the Standard Chartered group of companies, one of the largest banking and financial groups in the United Kingdom. Like similar major financial institutions in the United Kingdom and the United States, Applicant, through its consolidated subsidiaries and associated companies (with Applicant, the "Group"), primarily operates as an international commercial bank, receiving deposits and making commercial loans. At December 31, 1989, on a consolidated basis, approximately 81% of the Group's total assests were represented by advances to customers and other accounts, and approximately 93% of its total liabilities (excluding shareholders' funds and minority interests) were current, deposit and other accounts.

2. The Group's activities are in the following main areas: commercial banking, merchant banking (including fund management and trustee services), treasury operations (including metal and energy futures trading) and installment finance and leasing.

3. The Group's banking operations are subject to comprehensive regulation by United Kingdom and United States national banking authorities by virtue of the Group's activities in those countries, as well as regulatory authorities in New York and certain other states of the United States and other jurisdictions in which the Group operates branches, agencies and representative offices.

4. Applicant wishes to be in a position to offer and sell its Securities in the United States. Such offers and sales may be accomplished through public offerings registered under the Securities Act of 1933, as amended (the "1933 Act"), or private placements made pursuant to an exemption from registration under the 1933 Act.

Applicant's Legal Analysis

1. Applicant submits that approval of this application is necessary or appropriate in the public interest. In this regard, such an approval is consistent with and would advance the policies underlying the International Banking Act of 1978, which seeks to place United States banks and foreign banks on a basis of competitive equality in their United States transactions. In this regard, the SEC previously has issued orders granting exemptions from the provisions of the 1940 Act to other foreign banks and foreign bank holding companies in order to enable them to sell their equity securities in the United States. Applicant submits that the circumstances descibed in the application are substantially identical to those which supported issuance of those orders. In addition, Applicant states that the granting of the relief requested would benefit institutional and other sophisticated investors in the United States by making Applicant's equity securities more readily available to such investors.

2. Applicant submits that the relief requested is consistent with the protection of investors for the same reasons that United States banks are exempt from the 1940 Act—there are already in place regulatory requirements which afford sufficient protection for investors. As set forth in the application, Applicant and the Group are extensively regulated under both United Kingdom and United States banking laws as well under the laws of other countries in which it maintains operations. The United States operations of Applicant are extensively controlled and overseen by state banking departments and are subject to the reserve requirements established by the Board of Governors of the Federal Reserve System.

3. Applicant states that approval of the application is consistent with the purposes of the 1940 Act because commercial banks were not intended to be regulated by the 1940 Act. Commercial bank operations do not give rise to the abuses sought to be prevented by the 1940 Act, and the legislative history of the 1940 Act supports the position that commercial banking groups, such as Applicant and the Group, were not within the intended purview of the 1940 Act.

Applicant's Condition

If the requested order is granted, Applicant agrees to comply with the proposed amendments to rule 6c-9 under the 1940 Act as they are currently proposed, and as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-22636 Filed 9-24-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2454]

Tennessee; Declaration of Disaster Loan Area

Cumberland County and the contiguous counties of Bledsoe, Fentress, Morgan, Putnam, Rhea, Roane, and White in the State of Tennessee constitute a disaster area as a result of damages caused by severe storms and hail which occurred on August 29, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 15, 1990 and for economic injury until the close of business on June 14, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

For Physical Damage:

Homeowners With Credit Available Elsewhere....8.000%

Homeowners Without Credit Available Elsewhere....4.000%

Businesses With Credit Available Elsewhere....8.000%

Business and Non-Profit Organizations Without Credit Available Elsewhere....4.000%

Others (Including Non-Profit Organizations) With Credit Available Elsewhere.... 9.250%

For Economic Injury:

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere.... 4.000%

The number assigned to this disaster for physical damage is 245411 and for economic injury the number is 713000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated September 14, 1990.

Kay Bulow,

Acting Administrator.

[FR Doc. 90-22673 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2453]

Texas, Declaration of Disaster Loan Area

Dimmit County and the contiguous counties of Frio, LaSalle, Maverick, Webb, and Zavala in the State of Texas constitute a disaster area as a result of damages caused by heavy rains and flooding which occurred July 15-17, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 13, 1990 and for economic injury until the close of business on June

13, 1991 at the address listed below: Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

For Physical Damage:
Homeowners With Credit Available Elsewhere 8.000%
Homeowners Without Credit Available Elsewhere 4.000%
Businesses With Credit Available Elsewhere 8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere 4.000%
Others (Including Non-Profit Organizations) Without Credit Available Elsewhere 9.250%
For Economic Injury:
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere 4.000%

The number assigned to this disaster for physical damage is 245306 and for economic injury the numbers is 712800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 13, 1990.

Sally Narey,

Acting Administrator.

[FR Doc. 90-22674 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2455, #2456 & #2457]

West Virginia and Contiguous Counties in Ohio and Pennsylvania; Declaration of Disaster Loan Area

Brooke County and the contiguous counties of Hancock and Ohio in the State of West Virginia Jefferson County in the State of Ohio, and Washington County in the State of Pennsylvania constitute a disaster area as a result of damages caused by flooding which occurred on September 6-7, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the cose of business on November 15, 1990 and for economic injury until the close of business on June 14, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th FL., Atlanta, Georgia 30308 or other locally announced locations.

The interest rates are:

For Physical Damage:
Homeowners With Credit Available Elsewhere 8.000%
Homeowners Without Credit Available Elsewhere 4.000%
Businesses With Credit Available Elsewhere 8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere 4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere 9.250%
For Economic Injury:
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere 4.000%

The numbers assigned to this disaster for physical damage are 245506 for the State of West Virginia, 245606 for the State of Ohio, and 245706 for the State of Pennsylvania. For economic injury the numbers are 713100 for West Virginia; 713200 for Ohio; and 713300 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 14, 1990.

Kay Bulow,

Acting Administrator.

[FR Doc. 90-22675 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10 a.m. on Wednesday, October 10, 1990, in the James Cleveland Federal Building, Room B-16, 55 Pleasant Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, 55 Pleasant Street, Concord, New Hampshire 03302-1257, telephone (603) 225-1440.

Dated: September 18, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-22670 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Corpus Christi, will hold a public meeting at 1:30 p.m. on Tuesday, October 23, 1990, at the U.S. Small Business Administration Office, 400 Main Street, Suite 403, Corpus Christi, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call David Royal, Business Development Specialist, U.S. Small Business Administration, Government Plaza, 400 Main Street, Suite 403, Corpus Christi, Texas 78401 phone (512) 888-3333.

Dated: September 18, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-22671 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Rio Grande Valley, will hold a public meeting at 1 p.m. on Tuesday, October 30, 1990, at the Rio Grande Valley Chamber of Commerce, FM 1015 & Expressway 83, Weslaco, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Miguel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas 78550, phone (512) 427-8625.

Dated: September 18, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-22672 Filed 9-24-90; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee and Services Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Investment Policy Advisory Committee (INPAC) to be held October 2, 1990 in Washington, DC, from 9:30 a.m. to 12:30 p.m., and the Services Policy Advisory Committee (SPAC) to be held October 25, 1990 in Washington, DC, from 1:30 p.m. to 5 p.m., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosures of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive

Office of the President, Washington, DC 20506.

Julius L. Katz,

Acting United States Trade Representative.

[FR Doc. 90-22702 Filed 9-24-90; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 19, 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.

Bureau of Alcohol, Tobacco and Firearms

OMB number: 1512-0058.

Form number: ATF F 5120.25.

Type of Review: Extension

Title: Application to Establish and Operate Wine Premises.

Description: AFT F 5120.25 is used to establish the qualifications of an applicant for a bonded wine cellar of winery. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use.

Respondents: Businesses or other for-profit, Small businesses or organizations,.

Estimated Number of respondents: 1,620.

Estimated burden hours per Response: 1 hour.

Fequency of response: On occasion.

Estimated total reporting burden: 810 hours.

Clearance officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

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. 90-22659 Filed 9-24-90 8:45 am]

BILLING CODE 4010-31-M

Public Information Collection Requirements Submitted to OMB for Review

September 19, 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.

U.S. Customs Service

OMB number: 1515-0020.

Form number: CF 7539.

Type of review: Extension.

Title: Drawback Entry Covering Rejected Merchandise and Same Condition Merchandise.

Description: CF 7539 is needed to establish the eligibility of rejected, same condition, substitution same condition or destroyed merchandise for return of duty. The form is used by the claimant to provide the necessary information for Customs to approve the drawback claim.

Respondents: Businesses or other for-profit.

Estimated number of respondents/recordkeepers: 2,100.

Estimated burden hours per response/recordkeeper: 2 hours.

Frequency of response: On occasion.

Estimated total reporting burden: 22,550 hours.

Clearance officer: Dennis Dore (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.

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. 90-22660 Filed 9-24-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by October 25, 1990.

Dated: September 20, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Statement of Marital Relations.
3. VA Form 21–4170.
4. The form is used to gather the necessary information to determine if the veteran has established an other than ceremonial marriage. The information is used to determine entitlement to spousal benefits.
5. On occasion.
6. Individuals or households.
7. 6,000 repsonses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90–22715 Filed 9–24–90; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 186
Tuesday, September 25, 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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, September 26, 1990. 10:00 a.m., Commission Meeting.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

ANPR on Infant Bean Bag Cushions

The staff will brief the Commission on an Advance Notice of Proposed Rulemaking (ANPR) concerning the risk of injury and death which may be presented by infant cushions filled with foam plastic beads or other granular material.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800

Dated: September 20, 1990.

[FR Doc. 90-22808 Filed 8-21-90; 3:36 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Friday, September 28, 1990, 2:00 p.m., Commission Meeting.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 4174

The Commission will consider issues related to enforcement matter OS# 4174.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301-492-6800

Dated: September 20, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-22809 Filed 9-21-90; 3:36 pm]

BILLING CODE 6355-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, September 28, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed revision of subpart B to Regulation J (Collection of Checks and Other Items and Wire Transfers of Funds by Federal Reserve Banks) to make it consistent with Article 4A of the Uniform Commercial Code, Funds Transfers. (Proposed earlier for public comment; Docket No. R-0697)

Discussion Agenda:

2. Proposed requirement that Federal Reserve Banks notify receivers of off-line Fedwire funds transfers. (Proposed earlier for public comment; Docket No. R-0690)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: September 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22759 Filed 9-21-90; 10:51 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Friday, September 28, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This matter was originally announced for a closed meeting on September 12, 1990.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-22760 Filed 9-21-90; 10:51 am]

BILLING CODE 6210-01-M

UNITED STATES INSTITUTE OF PEACE

DATES: September 27 and 28, 1990.

TIME: 9:00 a.m. to 5:30 p.m.

PLACE: 1550 M Street, NW., Washington, DC (ground floor, Board Room).

STATUS: Open session—(portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. (98-525).

AGENDA: (Tentative):

Meeting of the Board of Directors convened. Chariman's Report. President Report. Committee Reports. Consideration of the Minutes of the Fortieth meeting of the Board of Directors. Consideration of grant application matters.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs, telephone (202) 457-1700.

Dated: September 20, 1990.

Ms. Bernice J. Carney,

Director of Administration, The United States Institute of Peace.

[FR Doc. 90-22732 Filed 9-20-90; 4:41 am]

BILLING CODE 3155-01-M

federal register

Tuesday
September 25, 1990

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

OJJDP Competition and Peer Review Procedures; Final Competition and Peer Review Regulation

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

OJJDP Competition and Peer Review Procedures

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Final competition and peer review regulation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has revised its competition and peer review regulation, originally published at 50 FR 31361, August 2, 1985, and codified at 28 CFR part 34, to implement the expanded competition and peer review requirements of section 262(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Public Law 100-690, November 18, 1988 (hereinafter "Act"). The regulation governs the award of categorical grant funds under part C—National Programs, of the Act.

EFFECTIVE DATE: This regulation is effective on September 25, 1990.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Office of the Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, DC 20531. Telephone: (202) 307-0668.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided.

Background Information

A proposed rule was published in the **Federal Register** on February 7, 1989, for public comment. No comments were received. This final regulation is essentially the same as the proposed rule. However, the "Peer Review Manual" referenced in the proposed rule is hereinafter known as the "Peer Review Guideline" in conformity with the directives system of the Office of Justice Programs. Copies of "Guideline" are available upon request from the Office of the Administrator, 633 Indiana Avenue, NW., Washington, DC 20531.

This regulation implements the competition and peer review requirements added to OJJDP's categorical assistance programs by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Public Law 100-690, November 18, 1988. These amendments consolidated OJJDP'S title II categorical programs in part C of the Act. Previously, title II contained different, or had no, competition and peer review requirements for each of the three categorical programs established in parts A, B and C of title II. Now, pursuant to section 262(d), competition and peer review requirements have been standardized for all categorical programs funded under part C—National Programs. The technical assistance and training program authority, which had been in part A, is now incorporated in part C, subpart I. Special Emphasis Prevention and Treatment Programs which had been under part B, subpart II, are now covered under subpart II of part C. The National Institute for Juvenile Justice and Delinquency Prevention programs remain in part C under subpart I. The retitled part C consolidates all these categorical programs, and all part C funds are governed by this revised regulation unless expressly excluded. (See § 34.2.)

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This rule does not have "significant" economic impact on substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96-354).

Paperwork Reduction Act

There are no collection of information requirements contained in this regulation required to be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 34

Grant programs, Juvenile delinquency.

Accordingly, title 28 Code of Federal Regulations, part 34, is revised to read as follows:

PART 34—OJJDP COMPETITION AND PEER REVIEW PROCEDURES

Subpart A—Competition

Sec.
34.1 Purpose and applicability.
34.2 Exceptions to applicability.
34.3 Selection criteria.
34.4 Additional competitive application requirements and procedures.

Subpart B—Peer Review

34.100 Purpose and applicability.
34.101 Exceptions to applicability.
34.102 Peer review procedures.
34.103 Definition.
34.104 Use of peer review.
34.105 Peer review methods.
34.106 Number of peer reviewers.
34.107 Use of Department of Justice staff.
34.108 Selection of reviewers.
34.109 Qualifications of peer reviewers.
34.110 Management of peer reviews.
34.111 Compensation.

Subpart C—Emergency Expedited Review [Reserved]

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 *et seq.*).

Subpart A—Competition

§ 34.1 Purpose and applicability.

(a) This subpart of the regulation implements section 262(d)(1) (A) and (B) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*). This provision requires that project applications, selected for categorical assistance awards under part C—National Programs shall be selected through a competitive process established by rule by the Administrator, OJJDP. The statute specifies that this process must include announcement in the **Federal Register** of the availability of funds for assistance programs, the general criteria applicable to the selection of applications for assistance, and a description of the procedures applicable to the submission and review of assistance applications.

(b) This subpart of the regulation applies to all grant, cooperative agreement, and other assistance awards selected by the Administrator, OJJDP, or the Administrator's designee, under part C—National Programs, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, except as provided in the exceptions to applicability set forth below.

§ 34.2 Exceptions to applicability.

The following are assistance and procurement contract award situations that OJJDP considers to be outside the scope of the section 262(d)(1) competition requirement:

(a) Assistance awards to initially fund or continue projects if the Administrator has made a written determination that the proposed program is not within the scope of any program announcement expected to be issued, is otherwise eligible for an award, and the proposed

project is of such outstanding merit, as determined through peer review under subpart B of this part, that an assistance award without competition is justified (section 262(d)(1)(B)(i));

(b) Assistance awards to initially fund or continue training services to be funded under part C, section 244, if the Administrator has made a written determination that the applicant is uniquely qualified to provide proposed training services and other qualified sources are not capable of providing such services (section 262(d)(1)(B)(ii));

(c) Assistance awards of funds transferred to OJJDP by another Federal agency to augment authorized juvenile justice programs, projects, or purposes;

(d) Funds transferred to other Federal agencies by OJJDP for program purposes as authorized by law;

(e) Procurement contract awards which are subject to applicable Federal laws and regulations governing the procurement of goods and services for the benefit and use of the government;

(f) Assistance awards from the 5% "set aside" of Special Emphasis funds under section 261(e); and

(g) Assistance awards under section 241(f).

§ 34.3 Selection criteria.

(a) All individual project applications will, at a minimum, be subject to review based on the extent to which they meet the following general selection criteria:

(1) The problem to be addressed by the project is clearly stated;

(2) The objectives of the proposed project are clearly defined;

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives;

(4) The project management structure is adequate to the successful conduct of the project;

(5) Organizational capability is demonstrated at a level sufficient to successfully support the project; and

(6) Budgeted costs are reasonable, allowable and cost effective for the activities proposed to be undertaken.

(b) The general selection criteria set forth under paragraph (a) of this section, may be supplemented for each announced competitive program by program-specific selection criteria for the particular part C program. Such announcements may also modify the general selection criteria to provide greater specificity or otherwise improve their applicability to a given program. The relative weight (point value) for each selection criterion will be specified in the program announcement.

§ 34.4 Additional competitive application requirements and procedures.

(a) *Applications for grants.* Any applicant eligible for assistance may submit on or before such submission deadline date or dates as the Administrator may establish in program announcements, an application containing such pertinent information and in accordance with the forms and instructions as prescribed therein and any additional forms and instructions as may be specified by the Administrator. Such application shall be executed by the applicant or an official or representative of the applicant duly authorized to make such application and to assume on behalf of the applicant the obligations imposed by law, applicable regulations, and any additional terms and conditions of the assistance award. The Administrator may require any applicant eligible for assistance under this subpart to submit a preliminary proposal for review and approval prior to the acceptance of an application.

(b) *Cooperative arrangements.* (1) When specified in program announcements, eligible parties may enter into cooperative arrangements with other eligible parties, including those in another State, and submit joint applications for assistance.

(2) A joint application made by two or more applicants for assistance may have separate budgets corresponding to the programs, services and activities performed by each of the joint applicants or may have a combined budget. If joint applications present separate budgets, the Administrator may make separate awards, or may award a single assistance award authorizing separate amounts for each of the joint applicants.

(c) *Evaluation of applications submitted under part C of the Act.* All applications filed in accordance with § 34.1 of this subpart for assistance with part C—National Programs funds shall be evaluated by the Administrator through OJJDP and other DOJ personnel (internal review) and by such experts or consultants required for this purpose that the Administrator determines are specially qualified in the particular part C program area covered by the announced program (peer review). Supplementary application review procedures, in addition to internal review and peer review, may be used for each competitive part C program announcement. The program announcement shall clearly state the application review procedures (peer review and other) to be used for each competitive part C program announcement.

(d) *Applicant's performance on prior award.* When the applicant has previously received an award from OJJDP or another Federal agency, the applicant's noncompliance with requirements applicable to such prior award as reflected in past written evaluation reports and memoranda on performance, and the completeness of required submissions, may be considered by the Administrator. In any case where the Administrator proposes to deny assistance based upon the applicant's noncompliance with requirements applicable to a prior award, the Administrator shall do so only after affording the applicant reasonable notice and an opportunity to rebut the proposed basis for denial of assistance.

(e) *Applicant's fiscal integrity.* Applicants must meet OJP standard of fiscal integrity (see OJP M 7100.1C, par. 24 and OJP HB 4500.2B, par. 48 a and b).

(f) *Disposition of applications.* On the basis of competition and applicable review procedures completed pursuant to this regulation, the Administrator will either:

(1) Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions as the Administrator deems necessary or desirable for the completion of the approved project;

(2) Determine that the application is of acceptable quality for funding, in that it meets minimum criteria, but that the application must be disapproved for funding because it did not rank sufficiently high in relation to other applications approved for funding to qualify for an award based on the level of funding allocated to the program; or

(3) Reject the application for failure to meet the applicable selection criteria at a sufficiently high level to justify an award of funds, or for other reason which the Administrator deems compelling, as provided in the documentation of the funding decision.

(g) *Notification of disposition.* The Administrator will notify the applicant in writing of the disposition of the application. A signed Grant/Cooperative Agreement form will be issued to notify the applicant of an approved project application.

(h) *Effective date of approved grant.* Federal financial assistance is normally available only with respect to obligations incurred subsequent to the effective date of an approved assistance project. The effective date of the project will be set forth in the Grant/Cooperative Agreement form. Recipients may be reimbursed for costs resulting from obligations incurred before the

effective date of the assistance award, if such costs are authorized by the Administrator in the notification of assistance award or subsequently in writing, and otherwise would be allowable as costs of the assistance award under applicable guidelines, regulations, and award terms and conditions.

Subpart B—Peer Review

§ 34.100 Purpose and applicability.

(a) This subpart of the regulation implements section 262(d)(2) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This provision requires that projects funded as new or continuation programs selected for categorical assistance awards under part C—National Programs shall be reviewed before selection and thereafter as appropriate through a formal peer review process. Such process must utilize experts (other than officials and employees of the Department of Justice) in fields related to the technical and/or subject matter of the proposed program.

(b) This subpart of the regulation applies to all applications for grants, cooperative agreements, and other assistance awards selected by the Administrator, OJJDP, for funding under part C—National Programs that are being considered for competitive and noncompetitive (including continuation) awards to begin new project periods, except as provided in the exceptions to applicability set forth below.

§ 34.101 Exceptions to applicability.

The assistance and procurement contract situations specified in § 34.2 (c), (d), (e), (f), and (g) of subpart A of this part are considered by OJJDP to be outside the scope of the section 262(d) peer review requirement as set forth in this subpart.

§ 34.102 Peer review procedures.

The OJJDP peer review process is contained in an OJJDP "Peer Review Guideline," developed in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. In addition to specifying substantive and procedural matters related to the peer review process, the "Guideline" addresses such issues as standards of conduct, conflict of interest, compensation of peer reviewers, etc. The "Guideline" describes a process that evolves in accordance with experience and opportunities to effect improvements. The peer review process for all part C—National Programs assistance awards subject to this regulation will be conducted in a manner consistent with this subpart as implemented in the "Peer Review Guideline".

§ 34.103 Definition.

Peer review means the technical and programmatic evaluation by a group of experts (other than officers and employees of the Department of Justice) qualified by training and experience to give expert advice, based on selection criteria established under subpart A of this part, in a program announcement, or as established by the Administrator, on the technical and programmatic merit of assistance.

§ 34.104 Use of peer review.

(a) *Peer review for competitive and noncompetitive applications.* (1) For competitive applications, each program announcement will indicate the program specific peer review procedures and selection criteria to be followed in peer review for that program. In the case of competitive programs for which a large number of applications is expected, preapplications (concept papers) may be required. Preapplications will be reviewed by qualified OJJDP staff to eliminate those pre-applications which fail to meet minimum program requirements, as specified in a program announcement, or clearly lack sufficient merit to qualify as potential candidates for funding consideration. The Administrator may subject both pre-applications and formal applications to the peer review process.

(2) For noncompetitive applications, the general selection criteria set forth under subpart A of this part may be supplemented by program specific selection criteria for the particular part C program. Applicants for noncompetitive continuation awards will be fully informed of any additional specific criteria in writing.

(b) When formal applications are required in response to a program announcement, an initial review will be conducted by qualified OJJDP staff, in order to eliminate from peer review consideration applications which do not meet minimum program requirements. Such requirements will be specified in the program announcement. Applications determined to be qualified and eligible for further consideration will then be considered under the peer review process.

(c) Ratings will be in the form of numerical scores assigned by individual peer reviewers as illustrated in the OJJDP "Peer Review Guideline." The results of peer review under a competitive program will be a relative aggregate ranking of applications in the form of "Summary Ratings." The results of peer review for a noncompetitive new or continuation project will be in the form of numerical scores based on criteria established by the Administrator.

(d) Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator's consideration of competitive, noncompetitive, applications and selection of applications for funding.

(e) Peer review recommendations are advisory only and are binding on the Administrator only as provided by section 262(d)(B)(i) for noncompetitive assistance awards to programs determined through peer review not to be of such outstanding merit that an award without competition is justified. In such case, the determination of whether to issue a competitive program announcement will be subject to the exercise of the Administrator's discretion.

§ 34.105 Peer review methods.

(a) For both competitive and noncompetitive applications, peer review will normally consist of written comments provided in response to the general selection criteria established under subpart A of this part and any program specific selection criteria identified in the program announcement or otherwise established by the Administrator, together with the assignment of numerical values. Peer review may be conducted at meetings with peer reviewers held under OJJDP oversight, through mail reviews, or a combination of both. When advisable, site visits may also be employed. The method of peer review anticipated for each announced competitive program, including the evaluation criteria to be used by peer reviewers, will be specified in each program announcement.

(b) When peer review is conducted through meetings, peer review panelists will be gathered together for instruction by OJJDP, including review of the OJJDP "Peer Review Guideline". OJJDP will oversee the conduct of individual and group review sessions, as appropriate. When time or other factors preclude the convening of a peer review panel, mail reviews will be used. For competitive programs, mail reviews will be used only where the Administrator makes a written determination of necessity.

§ 34.106 Number of peer reviewers.

The number of peer reviewers will vary by program (as affected by the volume of applications anticipated or

received). OJJDP will select a minimum of three peer reviewers (qualified individuals who are not officers or employees of the Department of Justice) for each program or project review in order to ensure a diversity of backgrounds and perspectives. In no case will fewer than three reviews be made of each individual application.

§ 34.107 Use of Department of Justice staff.

OJJDP will use qualified OJJDP and other DOJ staff as internal reviewers. Internal reviewers determine applicant compliance with basic program and statutory requirements, review the results of peer review, and provide overall program evaluation and recommendations to the Administrator.

§ 34.108 Selection of reviewers.

The Program Manager, through the Director of the OJJDP program division with responsibility for a particular program or project will propose a selection of peer reviewers from an extensive and varied pool of juvenile justice and delinquency prevention experts for approval by the Administrator. The selection process for peer reviewers is detailed in the OJJDP "Peer Review Guideline".

§ 34.109 Qualifications of peer reviewers.

The general reviewer qualification criteria to be used in the selection of peer reviewers are:

(a) Generalized knowledge of juvenile justice or related fields; and

(b) Specialized knowledge in areas or disciplines addressed by the applications to be reviewed under a particular program.

(c) Must not have a conflict of interest (see OJP M7100.1C, par. 94).

Additional details concerning peer reviewer qualifications are provided in the OJJDP "Peer Review Guideline".

§ 34.110 Management of peer reviews.

A technical support contractor may assist in managing the peer review process.

§ 34.111 Compensation.

All peer reviewers will be eligible to be paid according to applicable regulations and policies concerning consulting fees and reimbursement for expenses. Detailed information is provided in the OJJDP "Peer Review Guideline".

Subpart C—Emergency Expedited Review—[Reserved]

Dated: August 29, 1990.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 90-22632 Filed 9-24-90; 8:45 am]

BILLING CODE 4410-18-M

federal register

Tuesday,
September 25, 1990

Part IV

Department of Education

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Year 1991; Notice

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

RIN 1029-AB30

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend its bonding regulations to require a written affirmation of the completion of each phase of land reclamation when bond release for that phrase is being sought. The regulations are being amended to provide assurance that all applicable reclamation activities have been accomplished in accordance with the regulatory program and the individual's approved permit.

DATES: *Written comments*: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on November 24, 1990.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee on November 19, 1990. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on October 31, 1990. Individuals wishing to attened but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments*: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315A-L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Mr. John P. Mosesso, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343-1460 (commercial and FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period or delivered to addresses other than those listed above (see "**DATES**") may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "**DATES**" 1and "**ADDRESSES**"). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Mosesso (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time October 31, 1990. If no one has contacted Mr. Mosesso to express an interest in participating in a hearing in a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Adminstrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and assure an accurate record, OSM requests that persons who testify at the hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

Current OSM regulations at 30 CFR 800.40 require that a permittee, when applying for a release of all or part of a performance bond, describe in a newpaper advertisement, the nature, extent and results of the reclamation work for which he is requesting bond release. In this requirement, it is implicit that all reclamation requirements of the regulatory program and the individual mining permit have been met. However, OSM believes that this procedure can be improved and better reclamation can be assured with an explicit statement regarding reclamation that has been completed.

III. Discussion of Proposed Rule

Both the Act (30 U.S.C. 1269) and the permanent program regulations (30 CFR 800.40), require that all reclamation requirements be completed before a permanent program bond can be fully released. However, neither the Act nor the regulations require an explicit written statment by the permittee that all reclamation requirements specified in his permit have been completed. This rule would require such a statement as part of the bond release application. The notarized statement would increase the importance of the bond release request and would document the reclamation evolution of a site. It would be especially useful in cases where the release involved only a phase or increment of an operation. This certification would become part of the permit file maintained by the regulatory authority and would thereby help dispel issues regarding previously completed and released reclamation. Further, it would be of great value to individuals charged with processing bond release applications. Most importantly, the certification would serve as a written record that the permittee has examined the requirements of his permit, investigated the nature and extent of reclamation, and certifies as true, that all applicable reclamation

responsibilities have been completed. Such a statement would, at the final bond release stage, provide additional evidence of the fact that the operation is completed, has met all reclamation requirements and the site is no longer a "surface coal mining and reclamation operation", and that the reclaimed land was properly transferred from SMCRA control to land owner control without condition. Upon termination of jurisdiction under 30 CFR 70.11(d), this certification rule would assure that a misrepresentation of a material fact did not occur by the permittee.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

The proposed rules apply through cross-referencing in those States with Federal Programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal Programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947 respectively. The proposed rules also apply through cross-referencing to Indian Lands under Federal programs for Indian lands as provided in 30 CFR parts 750.

Federal Paperwork Reduction Act

The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB. Public reporting burden for this information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1029-0043, Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact (FONZI) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this rule is John P. Mosesso, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343-1480 (commercial and FTS).

List of Subjects in 30 CFR Part 800

Insurance, Reporting and record keeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR part 800 as set forth below:

Dated: August 16, 1990.

James M. Hughes,

Deputy Assistant Secretary for Land and Minerals Management.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. The authority citation for part 800 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

2. Section 800.40 is amended by adding paragraph (a)(3) to read as follows:

§ 800.40 Requirement to release performance bonds.

(a) *Bond release application.*

* * * * *

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

* * * * *

[FR Doc. 90-22664 Filed 9-24-90; 8:45 am]
BILLING CODE 4310-05-M

federal register

Tuesday,
September 25, 1990

Part IV

Department of Education

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Year 1991; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Year 1991

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities.

SUMMARY: The Secretary proposes funding priorities for fiscal year 1991 for the following:

Research in Education of the Handicapped Program, 84.023

Small Grants Program
Initial Career Awards
Improving Learning Through Home/School Collaboration
Improving the Retention of Special Education Teachers
Examining High School Curricula and the Demands on Personnel Educating Students with Disabilities

Handicapped Special Studies Program, 84.159

State Agency/Federal Evaluation Studies Projects
State Agency/Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness

Technology, Educational Media and Materials for the Handicapped Program, 84.180

Educational Implications of Using Assistive Technology
Center to Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children with Disabilities
Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities

These three programs are administered by the Office of Special Education Programs. To ensure wide and effective use of program funds, the Secretary proposes to select from among these program priorities in order to fund the areas of greatest need for fiscal year 1991. A separate competition will be established for each priority that is selected.

The Secretary has determined that it is more appropriate to use the term "children with disabilities" in place of "handicapped children." The term "children with disabilities" is commonly accepted. The Secretary anticipates that this term will replace the term "handicapped children" when the Education of the Handicapped Act (EHA) is reauthorized this year. The term "children with disabilities" is to be read as having the same meaning as "handicapped children" which is defined in section 602 of the EHA.

DATES: Comments must be received on or before October 25, 1990, for the Technology, Educational Media, and Materials for the Handicapped Program; November 24, 1990, for the Research in Education of the Handicapped Program; and December 26, 1990, for the Handicapped Special Studies Program.

ADDRESSES: Comments should be addressed to: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW (Switzer Building, Room 3095—M/S 2313-2640), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell. Telephone: (202) 732-1099.

SUPPLEMENTARY INFORMATION: This notice represents a consolidated notice of fiscal year (FY) 1991 proposed priorities for certain discretionary grant programs administered by the Office of Special Education Programs. The legislation authorizing these programs is currently being revised by Congress. These revisions may take effect for FY 1991 and may require changes in these priorities. Further, no funds have yet been appropriated for FY 1991. Publication of these priorities does not preclude the Secretary from changing these priorities, or publishing additional priorities, nor is there any limitation for the Secretary to fund only these priorities.

Title of Program: Research in Education of the Handicapped Program.

CFDA No: 84.023.

Purpose

The Research in Education of the Handicapped program, authorized by part E of the Education of the Handicapped Act (20 U.S.C. 1441-1444), supports research and related activities, surveys, and demonstration projects relating to the educational and early intervention needs of children with disabilities. Under this program, the Secretary makes awards for research and related activities to assist special education personnel, related services personnel, early intervention personnel, and other appropriate persons, including parents, in improving the special education and related services and early intervention services for infants, toddlers, children, and youth with disabilities; to conduct research, surveys, or demonstrations relating to the provision of services to infants, toddlers, children, and youth with disabilities; and research and related activities, surveys, or demonstrations related to physical education or recreation for children with disabilities.

Proposed Priorities

The Secretary proposes to establish the following priorities for the Research in Education of the Handicapped program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Small Grants Program (CFDA 84.023A)

This priority provides support for a broad range of research and related projects that can be completed within a 12-18 month time period, and that are budgeted at $75,000 or less for the entire project period. The projects supported by this priority must focus on early intervention services for infants and toddlers and special education for children and youth with disabilities, consistent with the purpose of the program as stated in 34 CFR 324.1. The purpose of this priority is not to fund product development but, rather, to advance knowledge and practice. This priority is for pilot studies, projects that employ new methodologies, descriptive studies, advances in assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases. These projects must demonstrate the potential contribution and benefits to be derived from the research or related activities.

Pilot studies are initial inquiries designed to develop and determine the feasibility of sampling, measurement, data collection or analysis procedures. These pilot studies must be conducted in a manner that actually results in initial findings as well as provides evidence of feasibility of procedures.

Advances in assessment refer to studies designed to identify new constructs, improved scaling, new approaches, improved criteria for scoring, and improved methods of the administration of assessments.

Given the diversity of research and related activities that could be supported under this priority, projects must be rigorously designed. Projects that increase the access and use of a research knowledge base must demonstrate effective design principles for providing access, formatting

information, and providing knowledge support that utilizes a professional knowledge base for improving programs and practice. Evaluation activities must consider design effectiveness, implementation requirements, and advance understanding of administrative and teacher needs. A follow-up evaluation to their dissemination or utilization activity is required.

Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers and that can be submitted to ERIC by the U.S. Department of Education. As appropriate, projects must include activities to prepare findings in formats useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 2: Initial Career Awards (CFDA 84.023N)

This priority supports awards to eligible applicants for the support of individuals who have completed a doctoral program and graduated no earlier than the 1986–87 academic year. This priority supports projects to conduct research and related activities focusing on early intervention services for infants and toddlers, and special education for children and youth with disabilities consistent with the purpose of the program as stated in 34 CFR 324.1. This support is intended to allow individuals in the initial phases of their careers to initiate and develop promising lines of research that will improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. A line of research refers to a programmatic strand of research emanating either from theory or a conceptual framework. The line of research would be evidenced by a series of related questions which establish parameters for designing future studies extending beyond the support of this award. However, the projects supported under this priority are not intended to comprise an entire line of inquiry. Rather, they are expected to initiate a new line or advance an existing one.

The project must demonstrate promise that the potential contribution and benefits of the line of inquiry will substantially improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. The project must include sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to the conduct of the proposed research. These experts do not have to be at the same institution or agency as the applicant. The nature of this interaction must be of sufficient frequency and duration for the researcher to develop the capacity to effectively pursue the research into mid-career activities. However, the experts involvement must not usurp the project leadership role of the initial career researcher. An applicant may apply for up to three years of funding. At least 50 percent of the researcher's time must be devoted exclusively to the project.

Project procedures, findings, and conclusions must be prepared in a manner which is informative for other interested researchers, and which can be submitted to ERIC by the U.S. Department of Education. As appropriate, projects must include activities to prepare findings in formats useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 3: Improving Learning Through Home/School Collaboration (CFDA 84.023L)

The purpose of this priority is to support studies which focus on home and school collaboration related to children with disabilities dispositions, motivation, and learning; and to develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative designs for grading, promotion, and homework for children with disabilities. The topic focuses on two dimensions of educational reform which may differentially affect children with disabilities—homework and performance assessment.

Issue

Special education has a long history of recognizing the importance of the parent role and involvement in their child's development and learning. The school excellence and teacher effectiveness reforms have increasingly focused attention on the reality that schools alone can not provide the educational experiences, support, and motivation critical to student learning. Parents place value on learning and education and they provide recognition, motivation and support for their child's development. Parents set expectations for their child's engagement in school, level of effort, and performance.

The education summit involving our Nation's Governors and the President of the United States focused attention on the critical need for home and school collaboration. In contrast to other public trusts in government and professional services, education requires unique and complex partnerships. Community, business, family, and school must collaborate to create attitudes, resources, and opportunities that develop and achieve educational excellence for all children. Parents are the earliest, and can be the most consistent, and proximal influence in establishing and supporting lifelong learning.

Learning does not begin when children enter school and stop when children exit our formal educational system. Nevertheless, schools provide the predominant setting for formal learning and thus, significantly affect children's disposition towards learning, their motivation, achievement, and success. Evidence of this is illustrated by protections assuring parental involvement or consent related to assessment, development of individual educational programs, and educational placement. The importance of parental influence on the psychosocial development of children's dispositions and motivation to learn has been an underlying premise of adult literacy programs. Parent education level has consistently been associated with children's dispositions towards school, learning, and aspirations. Schools have increasingly relied on parents to assist in improving school attendance, student discipline, and student performance.

An essential component of the educational reform movement is the focus on increased performance expectations and accountability. These initiatives have emphasized greater accountability related to grades, report cards, and performance assessment of students and teachers. In addition, excellence initiatives have often been accompanied by increases in the amount and nature of homework assignments. Each of these educational actions represent a potentially significant event affecting the nature and climate of the learning environment at home and in school. The intent of increasing homework was to expand learning time and opportunities, and student accountability was designed to adjust the balance of teacher and student attention towards performance results.

Little is known as to how these reforms have affected children with disabilities, their families, or the home

and school learning climate. It is not known whether performance assessment has resulted in teachers providing students increased successful learning experiences, teaching to the test, or greater negative feedback to the student. Further, it is unknown whether increased performance assessment has resulted in more frequent and focused home/school communication and cooperation or parent anxiety, frustration, and tensions with either their child or teachers. It is unknown whether performance assessment has contributed to a positive climate for learning, or an environment where performance is valued more than learning. The relationship of such assessment to course grades and failure is unknown. Similarly, little is known about the impact of increased and sometimes graded homework and school projects. Have these reforms provided increased time for practice, and expanded opportunities for applications of learning? Have these reforms resulted in a strategy for increasing the amount and rate of subject matter covered in class by relying on the home for guided and self-directed practice? Has the increased reliance on homework created a bridge between home and school or resulted in increased parent/child friction and need for tutorial services? Finally, the impact of these educational reform initiatives on special education teachers assigned to resource or self-contained classrooms, and their instruction and assignment practices is unknown.

Purpose

The purpose of this priority is to support studies which focus on home and school collaboration related to children with disabilities dispositions, motivation and learning; and to develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative designs for grading, promotion, and homework for children with disabilities. The topic focuses on two dimensions of educational reform which may differentially affect children with disabilities—homework and student performance assessment (e.g. standardized tests, competency tests etc.). Studies must consider current policy and practices related to grading student assignments, performance assessments, report cards, grade promotion, and their relationship to home and school collaboration. In addition, studies supported by this priority must consider practices related to assigning homework, its completion, and feedback about homework. Projects funded by this priority must determine the extent to which these prominent dimensions of educational reform are achieving their desired effects, and identify unintended side effects for children with disabilities and their families. In particular, these projects must determine whether these elements of educational reform place greater demands on home and the school relationship and whether schools have devised additional or different methods of home and school collaboration to meet these demands. These projects must develop guidance suitable for use by school administrators, teachers, and parents related to the considerations, and alternative designs for grading, promotion, and homework for children with disabilities.

Activities

Sampling—Each project must include school age children having cognitive, physical, emotional, and sensory disabilities representing the full range of severity in their educational disabilities and educational placements. Projects must include a representative sample of children without disabilities for contrast purposes. Projects must select children, families, and schools in a manner reflecting considerations of: Disability; severity of disability; age level and type of school; parent education; family income; ethnic, cultural, and linguistic differences; and geography. School building and teacher participation must be obtained, as well as parent and student consent to participate.

Measurement—Projects must select or develop measurement approaches and instrumentation to consider the premises, context, understanding, meaning, emotions, and interactions among schools, parents, and children with disabilities related to homework and performance assessment. Measurement of homework, school and teacher assigned projects must include, but not be limited by, dimensions such as: Purpose of assignment; nature and extent of formative feedback to be provided by teachers and parents; peer assistance or collaboration; and teacher, parent, and student emotional response to, and understanding of, assignment and product expectation.

Measurement of performance assessment related to grading assignments, class tests, report card grading, and achievement tests (i.e., standardized, curriculum based, or competency) must, at a minimum, consider such dimensions as: Purpose; scale meaning; expectations of student, parent, and teacher for assessment of performance levels; student time and reactions to studying for tests; family tensions and involvement in preparations for the tests; and premises, understanding, and meaning attributed to grading policy and practices by teachers, parents, and students.

Measurement approaches and instrumentation must be piloted for content, understanding, and administrative feasibility with teachers, parents, and children with disabilities. In addition, each respondent group should be interviewed to determine if there was information which should be collected which is not in the pilot instrument.

Project design—The projects must include ongoing input from teachers, parents and, where appropriate, children with disabilities. Their input must be sought in relationship to a project's conceptual framework, hypotheses, variable, and instrument selection or development. Further, this participation must be evidenced in their involvement in interpreting results. Projects must consider the hidden instruction provided by peers and family outside of school. Educational reforms increasingly recognize the essential role of the home as the prime social context for reinforcing and supporting student learning. These projects must identify critical features for achieving effective home/school collaboration in order to fulfill these expectations. Projects supported under this priority must develop the knowledge necessary, as well as the issues to be addressed, if homework assignments and performance assessment are to be positive contributors to students with disabilities' learning.

Collaboration—Projects supported under this priority must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than that achieved by any single project. Projects must collaborate to determine a common core of descriptive marker variables (e.g. grade level, age). In addition, the feasibility of determining a common core of constructs and instrumentation must be explored. The intention of this collaboration is not to compare or aggregate data across projects. The purpose of this collaboration is to strengthen the confidence in the strength and generalizability of hypothesized relationships where possible; establish robustness of relationships; identify critical features for achieving effective home/school collaboration related to homework and performance assessment; and determine critical policy and practice issues requiring attention.

Before the end of the project, the Department will determine whether or

not to fund an optional six-month period. The purpose of the optional period would be to permit project personnel supported under this competition to collaboratively document their findings, and the implications those findings have for advancing knowledge and improving practice and programs. This period will also be used to disseminate findings through methods that capitalize on the existence of professional, advocacy and parent networks and communication systems for the exchange of project information. As appropriate, this period could be used to modify findings based on input and feedback from researchers and representatives of target audiences.

Dissemination—Project procedures, findings, and conclusions must be prepared in a manner which is informative for other interested researchers, and which can be submitted to ERIC by the U.S. Department of Education. Projects must also prepare findings in a manner useful to school administrators, teachers and parents, and if appropriate, students, related to improving current policies and practices associated with homework and performance assessment. Project findings must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 4: Improving the Retention of Special Education Teachers (CFDA 84.023Q)

The purpose of this priority is to describe and understand the broad range of forces, including factors related to personnel preparation, which are contributing to the attrition rate of special education teachers in urban schools, and to develop a strategic action plan for implementation by participating urban schools.

Issue

The need for qualified special education personnel is significant and continues to increase. Critical special education teacher shortages are exacerbated by high rates of teacher attrition which are reported to be as great as 30 percent in some areas. Simultaneously, enrollments in personnel preparation programs are declining and the number of graduates from these programs has declined by 35 percent over the past decade. The decline in recruitment, growth in reported personnel shortages, projections for teacher retirements, expansion of services, and increases in numbers of children requiring special education make retention of the current work force critical. Retention problems are most acute in major urban areas where special education teacher shortages are considered to be the most severe.

Although these shortages signal an impending crisis in the provision of educational services to children with disabilities, they underrepresent the true magnitude of the problem. A host of State certification and waiver policies reduce the apparent special education teacher shortage by allowing personnel with various types of emergency or restricted certification to fill special education positions. By definition these personnel are not fully qualified special educators as they do not meet State standards for teaching in special education. The extent of such certification practices is not currently known, but it is estimated to be as high as 30 percent.

Concerns about both the quality and the diminishing supply of special education teachers have led to the rapid development of alternative programs for preparing special education teachers. Unlike emergency certification policies, these alternative programs involve sequences of professional preparation training experiences designed to prepare highly qualified personnel to meet State certification requirements. Program designs reflect different notions of what characterizes highly qualified instructional personnel and vary greatly in terms of the nature and amount of academic and fieldwork experiences required. The range of programs includes those that limit professional studies and stress the essential content knowledge to be derived from academic majors as well as programs that include traditional professional studies content and standards but employ alternative designs or target candidates who differ from those who have traditionally entered the field.

These programs provide broad parameters for characterizing different training/certification patterns or entry paths through which personnel first enter employment as special education teachers in urban schools. These paths include, but are not limited to: (1) Traditional preservice education leading to standard State certification, (2) emergency certification or waivers for individuals who have not completed and may have little exposure to a structured preparation program, (3) alternatively designed preparation programs stressing traditional content and standards, and (4) alternative certification based on standards that deviate from traditional State and professional standards and limit professional studies. The stratification of specific entry paths is further complicated by variations in State policies regarding prerequisite preparation and experience in general education teaching or in specific categorical areas of special education.

Increasing numbers of personnel are entering special education teaching through alternative paths. Urban IHEs with teacher preparation programs indicate that enrollments in traditional preservice special education teacher training programs is plummeting while enrollments of special education teachers holding limited or emergency certification is escalating. Depending upon the nature of State requirements, an undetermined number of personnel may continue to renew emergency certification or earn permanent certification, while never participating in a preparation program with a prescribed curriculum sequence, and possibly never participating in a supervised practicum with a master teacher and faculty supervisor. An implicit assumption underlying personnel preparation programs is that the nature and extent of special education teacher preparation interacts with the other factors that influence teaching effectiveness and teacher retention. Yet the relationship of teacher preparation, teaching effectiveness, and teacher retention has not been determined.

Issues of recruitment and information about supply and demand have been receiving increased attention, but little attention has been focused on the quality of the supply of special education teachers or on reasons for special education teacher attrition. We do not know whether we are losing qualified personnel who meet State certification standards, or unqualified instructional personnel. We do not know the differential rates of attrition associated with such factors as work conditions, nature of undergraduate and preservice teacher education, teaching assignment, case load or class size, and geographic location. While anecdotal and single case studies provide insights into issues related to burnout, second careers, and changing assignments to general education, inadequate information exists for designing efforts to reverse the trend.

Purpose

The purpose of this priority is to describe and understand the broad range of forces, including factors related to personnel preparation, which are contributing to the attrition rate of special education teachers in urban schools, and to develop a strategic action plan for implementation by the participating urban schools. Under this

priority urban schools are defined as any local political jurisdiction (city) with a population of 300,000 or more people and a school enrollment of 25,000 or more. A major intent of this priority is to identify from the perspective of special education teachers the reasons for their decisions to continue or terminate their careers as teachers of handicapped children. The projects to be supported must be designed to secure information representative of teachers sampled in a specified urban area or areas and consider, but not be limited to, variables such as: School demographics, types of credentials, nature and extent of preservice and inservice preparation, type of teaching assignment. These studies must focus on who is leaving and why they are leaving as well as who is remaining and why they are remaining in the special education teaching force in urban schools.

Activities

Conceptual framework. The projects must articulate a conceptual framework for describing and understanding the complex of variables that are associated with teacher retention in urban areas. This framework must be based on a review of the relevant literature. Information and hypotheses as to the reasons for teacher attrition must be considered. This activity must include the identification and definition of salient marker variables and descriptions of their relationships to other variables. The framework must consider the many categories of variables that help to describe and may influence teacher retention including demographic, organizational, and professional and personal characteristics. The conceptual framework must be continually refined as other activities are implemented and completed, and various stakeholders have the opportunity to review and respond to the results. Variable selection for the projects must be consistent with this conceptual framework.

Sampling. Projects must sample teachers on the basis of number of years of experience and certification/training path. The projects must develop a scheme for classifying the various routes that teachers use for training and certification that must then be used as a stratifying variable in the sample selection. The projects must ensure that the sample includes personnel who teach students with the full range of disabilities and levels of severity. Sample selection must consider ethnic and cultural issues. The projects must obtain agreement to participate from the teachers selected. Sample size must be sufficient to yield adequate levels of precision for each of the alternative entry paths representative of the range of preparation and certification patterns that characterize the existing special education teaching force in urban schools.

Measurement. The projects must develop a practical method of measuring teacher retention. Measurement must consider teachers' demographic characteristics, professional expectations, salary and other incentives received, training, and other variables that the literature suggests as significant in teacher retention. Measures of working conditions must also be developed that include the nature of assignment, class size, decision making opportunities, planning time, and other important variables. All measurement techniques and instruments must be piloted before their full scale use.

Project design. The projects must include ongoing input from teachers (including those who are currently practicing as well as those who have left teaching), school administrators, and faculty from IHEs. Their input must be sought in relationship to the conceptual framework, hypotheses, and variable and instrument selection or development. Furthermore, this participation must be evidenced in their involvement in interpreting results. It is anticipated, that during the first six months projects will finalize the conceptual framework, project design, instrumentation, and sampling plan. By September 1991, the projects must be prepared to finalize the sample, obtain teacher consent for participation, and begin data collection. In September of 1992 and 1993, projects must determine teacher attrition over the preceeding year.

Strategic planning. Each project supported under this priority must develop a strategic action plan, based on the projects findings and their interpretations, for implementation by the participating urban schools and other stakeholders (e.g. interested parties) to support and retain qualified special education teachers. This activity must provide examples of principles and designs for implementing teacher retention initiatives. Projects must involve the multiple stakeholders concerned with this issue in a strategic planning process. Projects must be characterized by the participation of district administrators and teacher educators as well as representatives of State educational agencies, and the collective bargaining unit. That involvement must provide for minority participation and address multicultural issues related to teacher preparation and retention.

Collaboration. Projects supported under this priority must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than possible for any single project. Projects must jointly determine at the beginning a common core of marker variables and explore the feasibility of determining a common core of constructs and instrumentation. The intention of this collaboration is not to compare or aggregate data across projects. The purpose of this collaboration is to, where possible, substantiate hypothesized relationships; establish robustness of relationships; identify critical features for improving teacher retention; and determine critical policy and practice issues requiring address.

Before the end of the project, the Department will determine whether or not to fund an additional six-month period. The purpose of the additional period would be to permit project personnel supported under this competition to collaboratively document their findings, and the implications those findings have for advancing knowledge and improving practice and programs.

Dissemination. Projects must prepare findings in a manner useful to school administrators, teachers, teacher educators, and State and Federal administrators and policymakers. Projects must capitalize on the existence of the National Clearinghouse on Careers and Employment in Special Education, professional, advocacy and parent networks and communication systems for the exchange of project information. The projects must produce and disseminate materials addressing at least the following areas:

1. Initial data collection and analyses; describe the demographics of the current special education teacher workforce; analyze the various entry patterns, or paths, by which personnel become employed as special education teachers in the urban schools; and analyze retention attrition rates according to the reason for staying and leaving.

2. Analyze and describe the relationship of special education teacher retention and attrition, and alternative entry paths, demographic variables, and organizational variables.

3. A strategic and operational plan detailing the goals, objectives, opportunities and actions that the school district and other stakeholders will design and implement to support and retain special education teachers.

4. Describe the relationship of alternative entry paths to special education teachers' retention and career advancement.

5. For each of the designated alternative entry paths describe the types of support and the opportunities needed for teachers to (a) obtain satisfactory performance evaluations, and (b) earn appropriate State certification as a special education teacher.

Phasing

Year 1: The first six months of the project will focus on developing and piloting project methodology and measurement, and developing cooperation among projects. It is expected that key personnel from the successful projects will meet twice at a central location during the first year to facilitate these cooperative efforts. Projects must schedule activities to permit productive use of the information generated and exchanged at these meetings. Initial study of the teacher workforce will occur in the second half of the first year.

Years 2–3: The primary activities during this period will be further study of the teacher workforce, analysis, and completion of project findings for dissemination. Strategic planning activities are expected during year 3.

Priority 5: Examining High School Curricula and the Demands on Personnel Educating Students With Disabilities (CFDA 84.023U)

The purpose of projects supported under this priority is to study the curricula provided in high schools for students with disabilities as a foundation upon which to consider needed school, and teacher education reforms.

Issue

The restructuring of American high schools occurring as a result of educational reform initiatives continues to be premised on a basic concept of faculty subject matter specializations (i.e. English, mathematics, science). While curricular reform, teacher standards, and course requirements have received significant attention they have all been designed consistent with the concept of faculty specializations. This is evidenced in the departmental and program organizational structures of high schools.

Reform initiatives for addressing the diversity of ability, skills, interests, linguistic, and cultural differences of a student body are generally occuring independent of subject matter considerations. While curricula and teacher reforms have focused on content and teacher preparation they have not examined the implications for aligning specialized programs or services (i.e. vocational education, special education) with subject matter requirements.

Restructuring of the American high school consistent with encouraging school based management practices must address the needs of children with disabilities. Curricula, teacher reforms, accountability, and school restructuring initiatives must be designed to effectively provide an appropriate education for all children with disabilities. Achieving this objective is a complex, multi-dimensional challenge. The magnitude and depth of educational reform requires sustained and planned initiatives.

A starting point for designing and developing needed improvements or changes requires a representative mapping of the range of current curricula practices. While a wide array of snapshots have provided a collage depicting course offerings, student access and participation, graduation requirements, and outcomes, insufficient detail exists to substantiate or provide direction for reforms. In determining the need for reforms and designing improvement and change in secondary education for students with disabilities it is essential to examine the nature of student and program outcomes related to subject matter (e.g., history, science, math), instructional (e.g. bilingual, remedial) and program (e.g., vocational, special education) specializations.

Purpose

The purpose of projects supported under this priority is to map the curricula provided in secondary high schools for students with disabilities as a foundation upon which to consider needed school and teacher education reforms. Curriculum outcomes are considered the primary building blocks for designing appropriate educational programs for children with disabilities. The mapping of curricula in relationship to desired student and program outcomes will provide direction for developing programs which effectively integrate the expertise of regular, vocational, and special education personnel. In addition, curricula descriptions and analysis of their requirements for teacher expertise provide a useful template for State agency review of certification requirements for secondary credentials and for institutions of higher education in designing personnel preparation programs.

Projects supported under this priority may focus the study of educational programs on any meaningful classification of student or program characteristics. Those classifications might consider the students' disability, severity of disability, student or program outcomes, intensity of services required, or program type (e.g., college preparation, vocational). The projects must be directed toward improving the effectiveness of high school programs and curricula by achieving better outcomes for students with disabilities. The projects must examine educational programs, curricula and desired outcomes, and determine the requirements and demands they place on special education personnel expertise.

Activities

Conceptual framework and approach. Projects supported under this priority must develop and refine a conceptual framework and approach which will focus and provide direction for the required analytic and other activities. The conceptualization must consider the multiple dimensions used in constructing secondary curricula, as well as those used by personnel preparation program accreditation and teacher credentialing bodies. The conceptual framework must be developed with input from administrators, regular, vocational, special education, and related service personnel, and other relevant parties.

Sampling. The unit of analysis to be studied is the educational programs of students with disabilities enrolled in high school programs. The target population to be sampled must be justified and defined relevant to the project's selection of a classification scheme. The selection of a sample should recognize and address potential threats to the external validity of the study resulting from such factors as: Idiosynchratic building characteristics, non-representativeness of the educational programs sampled, and other relevant variables. The project must select a representative array of curricula scope and sequence, course syllabi, and experiences which fulfill a student's entire secondary school program requirements for graduation or program completion. The educational programs sampled should be targeted to allow generalizations to the knowledge, processes, skills, and attitudes teachers and other school personnel are expected to impart to a specified population of students with disabilities.

Project analysis. The projects supported under this priority must analyze the curriculum scope and sequence, course syllabi, basic skills,

processes and strategies which comprise the content of regular, vocational, and special education courses and training opportunities for students with disabilities. Projects must examine the appropriateness of the educational program objectives and designs that can be identified through these curricular analyses. The projects must obtain access to existing documentation describing teacher and administrator professional preparation archived with professional and State accrediting bodies. Projects must conduct rigorous and thorough analyses to map the content comprising the educational programs being provided students with disabilities. The projects must draw implications for effectively integrating the specialized expertise of regular, special, and vocational education personnel in the delivery of educational programs for high school students with disabilities. Additionally, projects must analyze findings and derive implications for considering professional preparation programs, and for State and professional accreditation of teacher education programs.

Dissemination. The projects supported under this priority must be conducted in a manner that will facilitate the utility and use of project findings. Projects must work with existing networks, develop networks or collaborate with professional associations in conducting and affecting the use of project activities and results. The projects supported under this priority must develop strategies for communication among themselves that will facilitate in year 3 their collaborative effort to order and map their collective findings. This collaborative initiative must be designed to enhance the collective impact of the individual projects in focusing attention and stimulating reforms to improve secondary educational programs and school related outcomes for children with disabilities.

Phasing

The projects supported under this priority have two phases. The first phase encompasses years 1 and 2, and the second phase year 3 activities. Phase 1 must involve the refinement of the conceptual framework and approach, selection of sample, development and piloting of measurement and documentation procedures, data collection and analysis of educational program curricula, State and professional accreditation standards, and teacher certification requirements.

In the second phase each project must focus on its individual dissemination strategies. In order to fulfill this objective projects will need to collaboratively order and map their collective findings in a format able to be exchanged with relevant professional associations and other national organizations relevant to improving secondary education programs and curricula for students with disabilities.

Program authority: 20 U.S.C. 1441–1444.

Title of program: Handicapped Special Studies Program.

CFDA No.: 84.159.

Purpose

To support studies to evaluate the impact of the Education of the Handicapped Act (EHA), including efforts to provide a free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

Proposed Priorities

Under section 618(c), the Secretary is expressly required to submit to the appropriate committees of each House of the Congress and publish in the **Federal Register** for review and comment proposed annual priorities for evaluations conducted under section 618. The Secretary proposes priorities under the Handicapped Special Studies Program, CFDA No. 84.159. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: State Agency/Federal Evaluation Studies Projects (CFDA No. 84.159A)

This priority supports cooperative agreements for evaluation studies for up to 24 months to be conducted by State agencies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

Within this proposed priority, the Secretary particularly invites studies which after the award will: (1) Document State and local progress and identify barriers in the provision of services under Part H of the Education of the Handicapped Act to infants and toddlers with disabilities, and in the delivery of special education and related services to preschoolers; (2) assess educational and post-school outcomes of students with disabilities; (3) assess State and local educational reform policies and practices, and their impact on inclusionary activities; (4) determine the reasons for within State variations in graduation and drop-out rates, identification and placements of children with mental retardation, and use of segregated settings; (5) assess the impact and effectiveness of special education and related services utilizing States' extant data bases; and (6) investigate the effects of different certification options (i.e., provisional, emergency, waiver, internship) on the attrition rate of special education teachers.

However, in accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), (3), (4), (5), and (6) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

Priority 2: State Agency/Federal Evaluation Studies Projects Feasibility Studies of Impact and Effectiveness (CFDA No. 84.159F)

The purpose of this priority is to support cooperative agreements for feasibility studies, up to 18 months, to be conducted by State agencies to address the impact and effectiveness of activities assisted under the Education of the Handicapped Act. This priority is for topics having significant potential but which require preliminary study to determine feasibility related to designs, measurement, and analysis. While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, pilot tests of data collection instruments and procedures are required.

Within this proposed priority, the Secretary particularly invites studies which after the award will: (1) Document State and local progress and identify barriers in the provision of services, under part H of EHA, to infants and toddlers with disabilities, and in the delivery of special education and related services to preschoolers; (2) assess educational and post-school outcomes of students with disabilities; (3) assess State and local educational reform policies and practices and their impact on inclusionary activities; (4) determine the reasons for within State variations in graduation and drop-out rates, identification and placements of children with mental retardation, and use of segregated settings; (5) assess the impact and effectiveness of special

education and related services utilizing States' extant data bases; and (6) investigate the effects of different certification options (i.e., provisional, emergency, waiver, internship) on the attrition rate of special education teachers.

However, in accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), (3), (4), (5), and (6) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

Program authority: 20 U.S.C. 1418.

Title of program: Technology, Educational Media, and Materials for the Handicapped Program.

CFDA No: 84.180.

Purpose

The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities. In creating part G, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Proposed priorities

The Secretary proposes to establish the following funding priorities for the Technology, Educational Media, and Materials for the Handicapped Program, CFDA No. 84.180. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Educational Implications of Using Assistive Technology (CFDA 84.180R)

This priority supports studies that describe and explain how assistive technologies are used to achieve educational goals for students with disabilities. These goals are allowing greater access to learning environments and enhancing the range and effectiveness of learning experiences.

Issue

During the past few years, technology advances have increased the potential to integrate children with disabilities in educational and other domains of daily life, and to improve their educational experiences. Technological advances have enabled many children with disabilities to communicate more effectively, to control their environments, and to achieve greater mobility. A great deal of effort, research knowledge, and technical expertise continue to go into developing new technologies and technology applications to improve the lives of children with disabilities. Yet, as with all technological advances, their existence does not ensure that students will reap optimal benefits from new technologies. Many challenges face children with disabilities, their parents, teachers, and related services personnel in using technology effectively to achieve educational goals. Technology assistance has been growing, but there is a lack of information on how technology has been integrated into the full range of school-related activities, what issues have arisen with regard to its use, and the effects of using assistive technology on a broad range of outcomes.

Research Focus

This priority supports studies that describe and explain how assistive technologies are used to achieve educational goals for students with disabilities. These goals are allowing greater access to learning environments and enhancing the range and effectiveness of learning experiences. The studies supported by this priority must document the experiences of children who are using assistive technology in educational settings. In addition to documenting the benefits of using assistive technologies, studies must document intended and unintended implications or challenges that are encountered in the daily management of the technologies and their effects on students. In considering the experiences of children, these studies must document critical components of effective technology use. Some examples of such components are: (1) The abilities and preparation of teachers, both special education and regular teachers, and other personnel, to operate and maintain the assistive technologies and the procedures that are available when the equipment breaks down; (2) the methods that teachers and other school personnel use to manage the greater diversity of students in their classrooms that results from the integration of students who use assistive technologies (these methods could include approaches to classroom organization and grouping of students when classes include students who are aided by assistive technologies); (3) the way in which assistive technologies fit with the primary activities of instruction, such as teaching content, skills, cognitive strategies (this could include an examination of media and materials and their compatibility with assistive technologies, as well as the implications of using assistive technologies for the activities of professional personnel who must convey knowledge and skills to students); and (4) the implications for effective home-school collaboration, as well as for communication among all of the service providers and agencies that must address the needs of students who use assistive technologies.

Studies must not only describe how technologies are used by individual students, their parents and service providers, but must also document the outcomes of technology use in school and related settings. Assistive technology has the potential to expand opportunities for learning, productivity, social interactions, and personal fulfillment of students with disabilities. The studies supported by this priority must carefully examine a range of outcomes of using assistive technologies, including the broad educational experiences of the student, including academic performance as well as social and emotional outcomes. Studies must describe relationships such as those between students with disabilities and other students, their family members, teachers, or other service providers. Significant social and individual outcomes must be measured. For example self-concept and self-efficacy, and control over the environment are among important outcomes to consider. This priority is concerned with the implications of the use of technology on all aspects of the child and his/her environment—integration in least restrictive settings; organization of the classroom; instruction; curriculum; teacher preparation; peer interaction; home-school collaboration; communication among all service providers; school achievement; attitudes of teachers, parents and nondisabled students.

Project research goals. The following research goals are central to these

studies and must be addressed in the studies, although projects will differ in their relative emphasis on these goals or others that researchers will wish to focus on: (1) Describe how assistive technologies are used in educational and related settings, the challenges and implications of these technologies related to teaching content, skills and strategies, and how these technologies affect the educational experiences of children with disabilities; (2) analyze the benefits of using technologies and the difficulties encountered in using them and any negative effects; and (3) determine the effects of using assistive technologies on a broad range of outcomes. In determining these effects, projects may need to develop or adapt appropriate outcome measures. Project designs and methodologies will differ depending on the relative emphasis given to these or other research goals, the needs of students who are being studied, and the technologies that they are using.

In all cases, where appropriate, projects must include input from teachers, related service professionals, parents, and children with disabilities. Their input must be sought in developing the project's conceptual framework and/or hypotheses, design, methodology, and choice of instruments, protocols or other forms of data collection.

Sample and methods. Each study must select a number of students for purposes of observation with differing functional and technology needs. To the extent possible, projects must select students who differ by age. Optimally, the students in the sample will attend a range of educational settings and placements so that comparisons can be made among them. Students must be observed in their usual educational settings during a large portion of the school year. Students must also be observed as they participate in extracurricular activities, as well as in home and community settings.

Each study may employ a range of methodologies and measures. Qualitative, case study, or observational approaches are an essential component of each project. For example, projects must involve tracking children through their day and over time during the school year to document their experiences using assistive technologies. In keeping with their research objectives, projects must select or develop measurement instruments or other methodological approaches that will adequately describe the experiences of children with disabilities, their family members, and service providers in using technologies. Where appropriate, and depending on the projects' conceptual framework, projects must consider and analyze relationships among variables of interest to the researchers.

Rigorous qualitative methodologies are acceptable, but journalistic or anecdotal descriptions are insufficient. Studies that develop new instruments or outcome measures, or adapt existing ones to this study, must pilot them for traditional psychometric properties as well as content, understanding and administrative feasibility with service providers, parents and children.

Collaboration among projects. Projects supported under this priority must collaborate with one another in order to achieve a collective and cumulative advancement in knowledge. Projects must collaborate to identify a core of research questions, variables, and approaches. While aggregation of data across projects is not anticipated, projects are expected to share initial hypotheses, compare approaches to measurement, explore the feasibility of using similar measures, where appropriate, identify critical features of effective uses of assistive technology, and identify critical issues of policy and practice.

Before the end of the project period, the Department will determine whether or not to fund an optional six months. The purpose of the optional period is to permit project personnel supported under this competition to collaboratively document their joint findings and implications for advancing knowledge and improving practice and programs.

Products and dissemination. Projects must produce: (1) descriptions of the benefits and possible unintended effects and challenges of using assistive technologies to enhance the educational experiences of children with disabilities; (2) analyses of the range of implementation issues and barriers, and suggested actions for improving the daily management and use of the technologies; and (3) guidance for teachers, students, parents, and administrators related to achieving effective use of assistive technologies by and for children with disabilities. Projects which developed new outcome measures must find appropriate methods of informing the research community about them. Projects must analyze and disseminate findings in a manner useful to State and local administrators, teachers, and service providers, parents, and students where appropriate. In addition, findings must be in a form to be disseminated to individuals who are in key positions to make decisions about the uses of technology for the education of students with disabilities. Projects must disseminate their results to relevant national centers, appropriate professional and advocacy organizations, and recipients of grants under the Technology Related Assistance Act (Pub. L. 200-407).

Priority 2: Center To Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children With Disabilities (CFDA 84.180N)

This priority supports one cooperative agreement to establish a center that will examine and promote the effective use of technology, media, and materials in providing special education, related services, and early intervention to meet the unique needs of children with disabilities. The center is intended to promote effective educational experiences and inclusion in a full range of educational experiences so that children with disabilities can achieve enhanced learning, productivity, self-fulfillment, and social relationships with others. The center's activities and products will identify critical issues and effective practices, and will advance the professional development of special education, related services, early intervention, and regular education personnel so that they can effectively use technology, media, and materials to achieve better results for children with disabilities.

Issue

Effective use of technology, media, and materials is critical to support two aspects of the Education of the Handicapped Act (EHA). First, the EHA defines the term "special education" to mean "specially designed instruction * * * to meet the unique needs of a handicapped child." Other components of the EHA express the intent of Congress to support programs that address the unique instructional and related needs of children with disabilities.

Second, EHA provides that "to the extent appropriate, handicapped children * * * are educated with children who are not handicapped, and that * * * removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

While much progress has occurred during the past 14 years in implementing the procedural features of the EHA, there is a growing awareness of the

need to examine and improve the craft and outcomes of special education. The ability of special education and related services personnel to provide specially designed instruction as well as to provide the supplementary aids and services necessary to maintain children in regular education settings can depend heavily on the effective use of technology, media, and materials. Special education and related services personnel must be knowledgeable about existing products and how to use them in order to provide effective educational experiences for children with disabilities. These experiences are the foundation for enabling and empowering children with disabilities to achieve better results.

Teachers and students spend more than 80 percent of their class time engaged with, or in discussion related to, textbooks, media, and materials. Technology also is assuming a critical role in the education of many children with disabilities. Yet, many products that are used or could be used in educational settings are not designed to fit the needs of students with disabilities. Teachers and other professionals need the skill and expertise to be able to align technology, media, and materials with curriculum and instructional approaches to effectively meet the unique learning needs of children with disabilities, to design effective educational experiences for them, and to afford them maximum access to and inclusion in a full range of educational experiences.

Part G of EHA authorizes grants and contracts to advance the availability, quality, and use of technology, media, and materials in the education of children with disabilities. The Division of Innovation and Development (DID) in the Office of Special Education Programs (OSEP) has funded many projects for this purpose. The effective use of technology, media, and materials by special education and related services personnel continues to require significant attention. When used well, technology, media, and materials can assist teachers and related services personnel to provide specially designed instruction, and to enhance access to the full range of educational activities, thus enabling professionals to achieve better results for children with disabilities.

Activities

The purpose of this priority is to fund a cooperative agreement to support a center to advance the use of technology, media, and materials by special education, related services, and early intervention personnel. The center must address these goals by:

(1) Developing a strategic framework and approach for activities that provide a foundation for aligning the use of technology, media, and materials with: (a) The needs of children with disabilities and their families; (b) the educational activities, curriculum, and instruction that are provided to children with disabilities; and (c) procedures used to provide special education, related services, and early intervention services, and promote access and inclusion in educational activities;

(2) Conducting analyses and syntheses of research and practices which document current practices and identify the knowledge, skills, competencies, and working conditions necessary to effectively use technology, media, and materials in delivering specially designed instruction and promoting maximum access and inclusion of children with disabilities;

(3) Providing networks and exchanges, and convening meetings and focus groups to review and advance special education, related service, and early intervention practice through effective use of technology, media, and materials; and

(4) Developing and disseminating materials which provide guidance to those responsible for designing and delivering professional development activities, in preservice and inservice training and in technical assistance, to foster effective use of technology, media, and materials.

Developing strategic framework and approach for activities. The activities of the center must reflect a strategic framework that provides a foundation for aligning the use of technology, media, and materials with: (1) The needs of children with disabilities and their families; (2) the educational activities, curriculum, and instruction that are provided to children with disabilities; and (3) procedures used to provide special education, related services and early intervention services and promote access and inclusion in educational activities. This framework must be grounded in an analysis of desired outcomes for children with disabilities and the ways in which the effective use of technology, media, and materials could enhance these outcomes. Examples of desired outcomes for children with disabilities are: Improved learning, greater long-term productivity, more and better social relationships with others, and greater self-fulfillment and self-determination. The center's framework and approach should examine current and potential uses of technology, media, and materials to achieve these outcomes; areas where technology, media, and materials could be used more effectively to achieve these outcomes; barriers to the effective use of technology, media, and materials; and knowledge skills, competencies and decision rules that special education and related services personnel need to select, adapt, align and use technology, media and materials; and identify and promote uses of technology, media, and materials that achieve desired outcomes for children with disabilities.

For each outcome, strategic goals and objectives must be identified. Potential activities which contribute to attaining goals and objectives also must be identified and criteria established for setting priorities among center activities. Annually, the objectives and proposed activities will be reviewed, and where required, modified or new initiatives proposed. The goals and objectives must be updated each year and must be the basis for delineating various center activities of research, development, meetings, and dissemination.

Conducting research analyses and syntheses. The center must conduct or commission special studies to contribute to advancing the professional knowledge base for the effective use of technology, media, and materials. Where appropriate, these studies must be related to the goals and objectives of the strategic framework and annual revisions. These studies may use both qualitative and quantitative techniques, and must incorporate both the review and synthesis of extant information as well as the design and implementation of center-initiated studies. Topics for studies might include, but need not be limited to: Documenting effective uses of technology, media, and materials by special education and related services personnel; synthesizing research findings about effective uses of technology, media, and materials; describing ways in which special education and related service professionals can achieve better alignment of technology, media, and materials with curriculum and instruction; and describing how technology, media, and materials can be used to achieve access and inclusion for children with disabilities. The center's studies, secondary analyses, or reviews must provide focus, parameters, and content direction for center materials that will provide guidance for the design and delivery of training and technical assistance activities, which will foster the development of special education, related service, and early intervention personnel. Thus, findings from studies conducted by the center must be interpreted and translated into

principles, facts, and pragmatic approaches for advancing the effectiveness of knowledge and skills imparted to special education, early intervention, and related services personnel.

Developing and supporting networks. The primary target audiences for center products and dissemination activities must be the trainers, State and local administrators, technology coordinators, media specialists, curriculum coordinators, and other relevant parties responsible for preparing and assisting special education, early intervention, and related services personnel to use technology, media, and materials. The center must establish and maintain contacts with institutions of higher education, other organizations including recipients of grants under the Technology Related Assistance Act (Pub. L. 100-407), associations, agencies, and individuals who are involved in advancing the professional development of special education, related services, and early intervention personnel; and who can: (1) Participate in center efforts to identify and define effective practices; and (2) use and benefit from the information developed and disseminated by the center.

Fostering exchanges and convening meetings. The center must provide mechanisms for the timely exchange of ideas, information, and materials with trainers, administrators, technology, media, and curriculum coordinators, and other relevant parties involved in improving the professional capacities of special education, related services, and early intervention personnel to use technology, media, and materials. These mechanisms must include: (a) Planning and convening annual meetings to permit members of different target audience groups to interact, learn, and exchange information; and (b) designing and convening special focus groups, periodically throughout the project, to define and examine particular topics and issues. In addition, the center will maintain the ongoing exchange of information with the Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities (*see:* Priority 3, CFDA 84.180M).

Dissemination. The center must prepare 3-5 dissemination activities per year for specified target audiences. These activities must reflect the information developed from research, evaluation, and synthesis activities of the center as well as the results and deliberations of meetings, and exchanges. The center may also commission papers on selected topics or issues that will provide particular assistance to advance the use and implementation of center findings by members of networks that the center supports. The center must establish effective procedures for engaging specified audiences in the exchange, dissemination and use of center materials. Dissemination planning, and involvement of target groups, should be initiated early in the development of materials to enhance their exchange and use.

Time Frame

The Secretary will approve a cooperative agreement with a project period of 36 months subject to the requirements of 34 CFR 75.253(a) for continuation awards with an option for an additional two year continuation. Activities in the first year must include: Staffing; refinement of the conceptual framework and approach; specification and implementation of initial research, synthesis, and development activities; production of reports; establishment of networks and exchanges; and convening of the first annual meetings and focus groups.

At the outset of each subsequent year, the conceptual framework must be reviewed, topics and issues must be revised, and associated activities must be defined and implemented. Networks and exchanges must be continued, the annual meetings and any focus groups must be convened, and special studies must be implemented and reported.

In determining whether to continue the center for the two option years, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the center's performance to date and the added contribution that would accrue from the extension.

Priority 3: Center To Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children With Disabilities (CFDA 84.180M)

This priority supports one cooperative agreement to establish a center that will examine and promote the quality of technology, media, and materials in providing special education, related services, and early intervention to meet the unique needs of children with disabilities. The center's focus on the quality of technology, media, and materials is intended to promote effective educational experiences and inclusion in a full range of educational experiences so that children with disabilities can achieve enhanced learning, productivity, self-fulfillment, and social relationships with others. The center's activities and products will advance the knowledge of developers, producers, publishers, and distributors of technology hardware and software, media, and materials so that they can act to improve the quality of their developments and products to achieve better results for children with disabilities.

Issue

High quality technology, media, and materials are critical to support two aspects of the Education of the Handicapped Act (EHA). First, the EHA defines the term "special education" to mean "specially designed instruction * * * to meet the unique needs of a handicapped child." Other components of the EHA express the intent of Congress to support programs that address the unique instructional and related needs of children with disabilities.

Second, EHA provides that "to the extent appropriate, handicapped children * * * are educated with children who are not handicapped, and that * * * removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

The ability of special education and related services personnel to provide specially designed instruction as well as to provide the supplementary aids and services necessary to maintain children in regular education settings can depend heavily on the quality of technology, media, and materials that are available. Access to educational environments may depend on assistive technology, appropriate instructional technology, media, and materials that are adaptable to a wide diversity of learners. Specially-designed instruction also depends on the availability of a wide variety of high-quality technology, media, and materials that allow teachers and related services personnel to design effective educational experiences for children with disabilities. These experiences are the foundation for enabling and empowering children with disabilities to achieve better results.

Teachers and students spend more than 80 percent of their class time engaged with, or in discussion related to, textbooks, media, and materials. Technology also is assuming a critical role in the education of many children with disabilities. Yet, many products

that are used or could be used in educational settings are not designed to fit the needs of students with disabilities, or to enable special education and related services personnel to design effective educational experiences for them. Improving the quality of technology, media, and materials requires knowledge of learner characteristics, expected outcomes, effective practices of teachers and related services personnel, and characteristics of the activities and settings in which technology, media, and materials are used. This knowledge is available from both researchers and practitioners. It would enable technology (hardware and software), media, and materials developers, producers, and distributors/publishers to design and produce better products in order to meet the needs of children and enhance the outcomes of their educational experiences.

Part G of EHA authorizes grants and contracts to advance the availability, quality, and use of technology, media, and materials in the education of children with disabilities. The Division of Innovation and Development (DID) in the Office of Special Education Programs (OSEP) has funded many projects for this purpose. The quality of products to be used to provide special education and related services, as well as to achieve more effective access to and inclusion in a full range of educational activities continues to require significant attention. New products, or adaptations of existing products, must be designed to include features which will permit children with disabilities to effectively participate in the range of activities that they encounter in regular and special education settings. Technology, media, and materials must also be aligned with curriculum and instructional approaches in the classroom, must exist in great variety and be of high quality to facilitate the uniquely tailored, specially designed instruction that is a cornerstone of special education. Well-designed technology, media, and materials can greatly influence and support the decisions of teachers and related services personnel in providing specially designed instruction, in enhancing access and inclusion to the maximum extent appropriate for each child with a disability, and in achieving better results for children with disabilities.

Activities

The purpose of this priority is to fund one cooperative agreement to support a center to advance the quality of technology, media, and materials used by students with disabilities and special education, related services, and early intervention personnel. The center must address these goals by:

(1) Developing a strategic framework and approach for activities that provide a foundation for aligning the design of technology, media, and materials with: (a) The needs of children with disabilities and their families; (b) the educational activities, curriculum and instruction that are provided to children with disabilities; and (3) the procedures used in providing special education, related services, and early intervention services, and promoting access and inclusion for children with disabilities;

(2) Conducting analyses and syntheses of the quality of technology (hardware and software), media, and materials, as well as of research and practices related to serving children with disabilities that have implications for enhancing the quality of technology, media, and materials;

(3) Providing networks and exchanges, and convening meetings and focus groups to review and exchange information about design features and educational approaches that have proven to be effective with children who are disabled and the implications of these for enhancing the quality of technology, media, and materials; and

(4) Developing and disseminating materials which provide guidance to technology (hardware and software), media, and materials developers, producers, and distributors/publishers to facilitate the design of better products that permit children who are disabled access to educational settings and instruction, and that facilitate the provision of specially designed instruction.

Developing strategic framework and approach for activities. The activities of the center must reflect a strategic framework that provides a foundation for aligning the design of technology, media, and materials with: (1) The needs of children with disabilities and their families; (2) the educational activities, curriculum and instruction that are provided to children with disabilities; and (3) the procedures used in providing special education, related services, and early intervention services, and promoting access and inclusion for children with disabilities. This framework must be grounded in an analysis of desired outcomes for children with disabilities and the ways in which high-quality technology, media, and materials could enhance these outcomes. Examples of desired outcomes for children with disabilities are: Improved learning, greater long-term productivity, more and better social relationships with others, and greater self-fulfillment and self-determination. The center's framework and approach should examine the availability and quality of technology, media, and materials that could achieve these outcomes; areas where technology, media, and materials could be designed to better achieve these outcomes; barriers to the availability and quality of technology, media, and materials, e.g., market size; and the knowledge that developers and publishers need to enhance the quality of their products; and identify and promote technology, media, and materials that encompass design features and educational principles that achieve desired outcomes for children with disabilities.

For each outcome, strategic goals and objectives must be identified. Potential activities which contribute to attaining goals and objectives must be identified and criteria established for setting priorities among center activities. Annually, the objectives and proposed activities will be reviewed, and where required, modified or new initiatives proposed. The goals and objectives must be updated each year and must be the basis for delineating various center activities of research, development, meetings, and dissemination.

Conducting research analyses and syntheses. The center must conduct or commission special studies to contribute to advancing the knowledge base for better product development. Where appropriate, these studies must be related to the goals and objectives of the strategic framework and annual revisions. These studies may use both qualitative and quantitative techniques, and must incorporate both the review and synthesis of extant information as well as the design and implementation of center-initiated studies. Topics for studies would include, but need not be limited to, documenting the relevant characteristics of children with disabilities; the activities of special education teachers and related services personnel; design features and educational principles of technology, media, and materials that are effective for children with disabilities; and the availability and quality of technology, media, and materials with features that would be needed by children with disabilities, their families, teachers, and related services personnel. The center's studies, secondary analyses, or reviews must provide focus, parameters, and content direction for center materials, which will provide guidance for the design and development of improved

technology, media, and materials by developers, publishers and distributors. Thus, findings from studies conducted by the center must be interpreted and translated into principles, facts, and pragmatic approaches for advancing the availability and quality of technology, media, and materials.

Developing and supporting networks. The primary target audiences for center products and dissemination activities must be technology (hardware and software), media, and materials developers, producers, and distributors/publishers and other relevant parties responsible for developing quality technology, media, and materials. The center must establish and maintain contacts with commercial and not-for-profit publishers and distributors, developers, and producers who can use and benefit from the information developed and disseminated by the center. As appropriate, the center will include in its networks researchers, practitioners, individuals with disabilities and their families. Individuals from these groups can help to identify and clarify the needs of children with disabilities, their teachers and related service providers.

Fostering exchanges and convening meetings. The center must provide mechanisms for the timely exchange of ideas, information, and materials with target audiences of the center involved in improving the quality of technology, media, and materials. These mechanisms must include: (a) Planning and convening annual meetings to permit members of different target audience groups to interact, learn, and exchange information; and (b) designing and convening special focus groups, periodically throughout the project, to actively define and examine particular topics and issues and the implications for the design of technology, media, and materials. In addition, the center will maintain the ongoing exchange of information with the Center to Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children with Disabilities (*see*: Priority 2, CFDA 84.180N).

Dissemination. The center must prepare for 3–5 information dissemination activities per year for specified target audiences. The activities must reflect the information developed from research, evaluation, and synthesis activities of the center as well as the results and deliberations of meetings and exchanges. The center may also commission papers on selected topics or issues that will provide particular assistance to advance the use and implementation of center findings by members of networks that the center supports. The center must establish effective procedures for engaging specified audiences in the exchange, dissemination and use of center materials. Dissemination planning, and involvement of target groups, should be initiated early in the development of materials to enhance their exchange and use.

Time Frame

The Secretary will approve a cooperative agreement with a project period of 36 months subject to the requirements of 34 CFR 75.253(a) for continuation awards with an option for an additional two year continuation. Activities in the first year must include: staffing; refinement of the conceptual framework and approach; specification and implementation of initial research, synthesis, and development activities; production of reports; establishment of networks and exchanges; and convening of the first annual meetings and focus groups.

At the outset of each subsequent year, the strategic framework must be reviewed, topics and issues must be revised, and associated activities must be defined and implemented. Networks and exchanges must be continued, the annual meetings and any focus groups must be convened, and special studies must be implemented.

In determining whether to continue the center for the two option years, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the center's performance to date and the added contribution that would accrue from the extension.

Program authority: 20 U.S.C. 1461.

Intergovernmental Review

The Technology, Educational Media, and Materials Program for the Handicapped is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The Research in Education of the Handicapped Program, and the Handicapped Special Studies Program are not subject to the Executive Order. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Dated: August 1, 1990.

(Catalog of Federal Domestic Assistance Numbers: 84.023, Research in Education of the Handicapped; 84.159, Handicapped Special Studies Program; and 84.180, Technology, Educational Media and Materials for the Handicapped Program)

Lauro F. Cavazos,

Secretary of Education.

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