11-26-90
Vol. 55 No. 227
Pages 49019-49244

federal register

Monday
November 26. 1990

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-107-AD; Amdt. 39-6816]

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 and 767 series airplanes, which requires additional fire resistant cargo compartment liner panels to be installed on airplanes that do not have complete cargo compartment floors. This amendment is prompted by an investigation into the service history of cargo compartment fires and full-scale fire testing, which revealed that, without such additional panels, fire could migrate up behind the cargo liner and cause major structural damage.

EFFECTIVE DATE: January 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 and 767 series airplanes, which requires additional fire resistant cargo compartment liner panels to be installed on airplanes that do not have complete cargo compartment floors, was published in the **Federal Register** on July 6, 1990 (55 FR 27828).

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

One commenter expressed no objection to the proposed rule.

Several commenters expressed the opinion that the proposed rule is unnecessary because new titanium shields installed to protect the drain mast heater, and the existing insulation blanket seal provide an adequate level of safety. The existing insulation blankets in some frame bays are installed on top of aluminum intercostals. The commenters stated that the only source of ignition in the lower lobe cargo compartment is the drain mast heater, and that the proposed design change reduces the possibility that it could start a fire. The commenters indicated that the existing insulation blanket seal or the insulation blanket seal on top of aluminum intercostals, located at the intersection of the sloping sidewall and the vertical sidewall, provides an adequate fire stop. The FAA does not concur. While the installation of the titanium shields do protect the drain mast heater on new production airplanes and may reduce the possibility of a fire igniting from that source, this installation has not been accomplished on in-service airplanes. Further, the drain mast is not the only source of ignition. The source of ignition of the in-flight fire, referenced in the NPRM, has not been conclusively determined to be the drain mast; it could have been the gray water drain line heater tape. There are other potential sources of fire, such as, if a fire starts on a pallet and part of the burning cargo falls off the pallet into the bilge. Another potential source of fire is debris that collects in the bilge; this debris could range from material falling off the cargo to lubricating oil or grease from the cargo handling system. The FAA conducted full-scale fire testing at the FAA Technical Center of several cargo compartment liners. This testing included insulation blankets and aluminum liners. The testing demonstrated that these installations do not provide an adequate level of safety. Additionally, the frames that have aluminum intercostals comprise only one-third of the affected bays and some of the intercostals are not complete.

Several commenters were concerned that the proposed compliance time is too short and requested additional time. Their rationale for extending the compliance time is the lack of an approved design and service information from the airplane manufacturer. These commenters implied that a possible design would require modification of primary structure that the airlines would not be able to structurally substantiate without assistance from the airplane manufacturer. The FAA concurs in part with the commenters' requests. The FAA will work closely with the manufacturer to ensure that generic service information is provided in a timely fashion. The FAA does not consider that delaying this action for any lengthy amount of time while awaiting the release of the service information is warranted, since sufficient technology currently exists to devise and install the required liners. However, the FAA has reevaluated the material availability and time necessary to accomplish the required installation, and has determined that the compliance time may be extended from the proposed 24 months to 30 months without adversely affecting safety. Further, paragraph B. of the final rule provides for the use of alternate means of compliance or adjustment of the compliance time if substantiating data is provided to the FAA.

One commenter expressed concern that the cost analysis for the proposal was too low. The commenter stated that there are 76 frame bays on the Model 767 and 84 frame bays on the Model 747 within the affected cargo compartments, and that the required actions would entail 1 manhour per frame bay to accomplish. Based on this analysis, the commenter stated that the number of manhours required per airplane would be between 76 and 84, rather than 50, as was indicated in the notice. The commenter also stated that the additional cost impact of increased fuel burn, due to the additional weight of the airplane, should be considered. The FAA concurs in part. After re-evaluation of the time necessary to accomplish the required installation, the FAA has determined that the number of required manhours should be increased somewhat. The cost impact analysis paragraph, below, has been revised to indicate that approximately 100

manhours per airplane would be required. The economic analysis of AD rulemaking actions, however, is limited only to the cost of actions actually required by the rule; in this case, those actions entail the direct costs for labor and parts.

The airplane manufacturer suggested that the fire stop be installed at the intersection of the sloping sidewall and the vertical sidewall, rather than at the bottom of the sloping sidewall. Although such a design may be acceptable, the FAA cannot concur with this suggestion at this time. Under the provisions of paragraph B. of the final rule, the FAA will review a design, when it is submitted, to determine if the fire stop at this location provides an adequate level of safety.

One commenter expressed the opinion that the proposed rule overlooked the real problem of debris collecting in the bilge, and suggested that the rule be revised to require debris removal periodically as a possible solution. The FAA does not concur. The FAA does not consider that this is a practical alternative to the problem, since such an inspection would be required before the first flight of the day and would not be limited to debris. It would necessarily include an inspection for installation blankets that have become contaminated and an inspection for proper retention of insulation blankets. Contaminated blankets or dislodged blankets would be required to be repaired or replaced prior to further flight.

One commenter requested that the rule be revised to permit the continued use of aluminum liners, if such liners were previously installed prior to the effective date of the rule. The FAA does not concur. Installation of aluminum as the fire stop material could effectively tie all of the frames together and may change the load carrying capability of the airplane. Moreover, the full-scale fire testing conducted by the FAA demonstrated that aluminum does not provide an adequate level of safety.

One commenter requested a definition of a "complete cargo floor," as used in the applicability statement of the proposed rule. The FAA considers that, for a Model 767 airplane, a cargo compartment that is equipped with the airplane manufacturer's standard option for carriage of bulk cargo is considered to have a "complete cargo floor." No such design is available for the Model 747 airplane.

One commenter expressed the opinion that when the cargo compartment is fully loaded with cargo pallets/containers, the cargo makes a complete floor and therefore the fire stop is unnecessary. The FAA does not concur. The cargo pallets/containers are restrained by locks that are installed on the floor. In order to lock the pallets/containers in place, there is a gap between each pallet/container; this gap would permit debris to fall into the bilge. Also, there are gaps on the outboard side of the cargo.

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

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

There are approximately 1,300 Model 747 and Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 300 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Material cost per airplanes is approximately $1,500. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,650,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 and 767 series airplanes, equipped with Class "C" lower lobe cargo compartment that do not have complete cargo compartment floors, certificated in any category. Compliance is required within 30 months after the effective date of this AD, unless previously accomplished; except that, for airplanes that are subject to the requirements of Federal Aviation Regulation (FAR) 121.314, the modifications required by this AD shall not be accomplished prior to the accomplishment of the modifications required by FAR 121.314.

To prevent a cargo compartment fire from migrating up behind the cargo liner, accomplish the following:

A. Install a fire stop near the bottom of the sloping sidewall cargo compartment liner, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. Fire stop material must meet the requirements of FAR part 25, appendix F, part III.

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

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

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

Issued in Renton, Washington, on November 15, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27674 Filed 11–21–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90-NM-253-AD; Amdt. 39-6818]

Airworthiness Directives; Cessna Aircraft Company Model 650 Series Airplanes, Equipped With Honeywell SPZ-8000 Digital Automatic Flight Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 650 series airplanes, which requires replacement of the crimp-style coax connectors on the distance measurement equipment (DME) antenna cables with threaded connectors; and verification of proper DME antenna bonding to the airplane structure, and repair, if necessary. This amendment is prompted by a report of complete loss of all three Attitude Heading Reference Systems (AHRS), and the loss of air data information on the pilot's side. This condition, if not corrected, could result in loss of the pilot's primary flight instrument displays.

EFFECTIVE DATE: December 11, 1990.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Central Region, 1801 Airport Road, room 100, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Timberlake, Systems and Equipment Branch, ACE-130W; telephone (316) 946-4419. Mailing Address: FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209.

SUPPLEMENTARY INFORMATION: There has been a recent report of a Cessna Model 650 (Citation III) series airplane, equipped with the Honeywell SPZ-8000 Digital Automatic Flight Control System, that lost all attitude and heading information. In addition, the pilot's side airspeed, altitude, and vertical speed instruments became very erratic and unreliable. The attitude and heading information was provided by a triple Attitude Heading Reference System (AHRS), and the air data information was provided by the No. 1 Digital Air Data Computer (DADC). Both the AHRS and No. 1 DADC are located in the left side of the nose avionics compartment. The cable from the No. 1 Distance Measuring Equipment (DME) transmitter to the DME antenna is also routed through the left side nose avionics compartment. Investigation revealed that a crimped connector on the antenna cable was loose and it allowed radio frequency (RF) energy to leak into the compartment, resulting in the previously described malfunctions. This condition, if not corrected, could result in loss of the pilots' primary flight instrument displays.

The FAA has reviewed and approved Cessna Citation Alert Service Bulletin A650-34-68, dated November 2, 1990, which describes procedures for replacement of the crimp style coax connectors on the DME antenna cables with threaded connectors; and verification of proper DME antenna bonding to the airplane skin, and repair, if necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires replacement of the crimp style coax connectors on the DME antenna cables with threaded connectors; and verification of proper DME antenna bonding to the airplane skin, and repair, if necessary; in accordance with the service bulletin previously described.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Applies to Model 650 Series airplanes; Serial Nos. 650-0094 through -0096, -0098, -0136 through -0139, -0149, -0161, -0167, -0170, -0172 -0173, -0176, through -0182, -0184 through -0189, and -0192; equipped with Honeywell SPZ-8000 Digital Automatic Flight Control System; certificated in any category. Compliance is required within 25 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent complete loss of the pilots' primary flight instrument displays, accomplish the following:

A. Replace the distance measuring equipment (DME) antenna cable connectors in accordance with Steps 1 through 3 of the Accomplishment Instructions of Cessna Citation Alert Service Bulletin A650-34-68, dated November 2, 1990.

B. Accomplish either subparagraph B.1. or B.2., below:

1. Check the electrical bonding of the DME antennas to airplane structure in accordance with Step 4 of the Accomplishment Instructions of Cessna Citation Alert Service Bulletin A650-34-68, dated November 2, 1990.

a. If the resistance is greater than 0.010 Ohms, prior to further flight, rework the antennas installation in accordance with Step 4 of the service bulletin.

b. If the resistance is equal to or less than 0.010 Ohms, restore the system for use in accordance with Steps 5 through 7 of the Accomplishment Instructions of the service bulletin.

2. Rework the antenna installation in accordance with Step 4 of Cessna Citation Alert Service Bulletin A650-34-68, dated November 2, 1990; and restore the system for use in accordance with Steps 5 through 7 of the Accomplishment Instructions of the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office (ACO), ACE-130W, FAA, Central Region.

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas.

This amendment becomes effective December 11, 1990.

Issued in Renton, Washington, on November 15, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27675 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-71-AD; Amdt. 39-6817]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Model DC-9-80 series airplanes and Model MD-88 airplanes, which requires a one-time visual or ultrasonic inspection of the engine forward mount cone bolts for the correct part number, and replacement, if necessary; and a revision to the maintenance program which provides for a visual or ultrasonic inspection for and replacement of incorrect bolts at each engine change. This amendment is prompted by reports of the installation of incorrect engine forward mount cone bolts. This condition, if not corrected, could result in failure of the cone bolt, which could cause the engine to depart the aircraft during a hard landing, in the event of a sudden engine seizure, or during flight when high velocity vertical gust is encountered.

EFFECTIVE DATE: January 2, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, 90846, Attention: Business Unit Manager of Publications, C2-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, ANM-120L, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5325.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas DC-9-80 series and MD-88 airplanes, which requires a one-time visual inspection of the engine forward mount cone bolts for the correct part number, and replacement, if necessary; and a revision to the maintenance program which provides for a visual inspection for and replacement of incorrect bolts at each engine change, was published in the Federal Register on June 13, 1990 (55 FR 23947).

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

Several commenters remarked that visual inspection of the engine forward mount cone bolts, in some cases, was virtually impossible due to insufficient etching. These commenters requested that the proposed rule be revised to provide for another means for inspecting the bolt, specifically an ultrasonic inspection procedure. The FAA agrees. The FAA has approved an ultrasonic inspection method described in the McDonnell Douglas MD-80 Alert Service Bulletin A71-49, Revision 2, dated November 4, 1990, and has included this method as an alternative inspection procedure in paragraph A. of the final rule.

Two operators requested that the proposed compliance time of 30 days be extended so that the cone bolt inspection could be incorporated at scheduled engine removals. These commenters suggested that such an extension is justified due to the reliability of in-service cone bolts to date and the low probability that a discrepant bolt is installed. The FAA disagrees. Due to severe consequences of the bolt failure, the FAA has determined that the 30-day compliance time is appropriate.

One operator questioned the 0.8 manhour per airplane estimate to accomplish the visual inspection and stated that the visual inspection takes 2 to 4 manhours per airplane. This commenter provided no further details, however. The FAA disagrees. The inspection time estimate of 0.8 manhour is correct for the visual or ultrasonic inspection only; it does not include the time spent on preparation for the inspection.

One commenter requested that the proposed rule be revised to allow for verification of the bolt by either the Barry Part Number K2219-9SA3, or by the McDonnell Douglas Specification Number 7938004-503. The commenter indicated that this may reduce the burden on the operators and eliminate the need for an ultrasonic inspection. The FAA concurs and has revised the final rule to include the alternate McDonnell Douglas part-numbered cone bolt.

The compliance time has been changed to give credit to those operators that had previously complied with MD-80 Alert Service Bulletin A71-49, dated December 21, 1989, which identified the incorrect part numbered cone bolts that were installed on MD-80 airplane engine forward mounts.

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

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

There are approximately 831 Model DC-9-81, -82, -83, and -87 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 397 airplanes of U.S. registry will be affected by this AD. It will take approximately 0.8 manhours per airplane to accomplish the visual or the ultrasonic inspection. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,704.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to Models DC-9–81, –82, –83 and –87 (MD–81, –82, –83, and –87) series airplanes, and Model MD–88 series airplanes, certificated in any category. Compliance required as indicated, unless accomplished since December 21, 1989.

To prevent the engine from departing the aircraft during a hard landing, in the event of a sudden engine seizure, or during flight when high velocity vertical gust is encountered, accomplish the following:

A. Within 30 days after the effective date of this AD, accomplish the following:

1. Perform one of the following inspections:

a. Perform a one-time visual inspection of both the left and right engine forward mount cone bolts for the correct part number, in accordance with McDonnell Douglas MD–80 Alert Service Bulletin A71–49, Revision 2, dated November 4, 1990 (from hereon referred to as the Service Bulletin). If the part number of the cone bolt is other than "Barry" part number K2219–9SA3 or McDonnell Douglas part number 7938004–503, prior to further flight, remove and replace the bolt with a "Barry" part number K2219–9SA3 or McDonnell Douglas part number 7938004–503 cone bolt; or

b. Perform a one-time ultrasonic inspection of both the left and right engine forward mount cone bolts in accordance with the Service Bulletin. If the part shows an indication of shear section cut-out, remove and replace the bolt with a "Barry" part number K2219–95A3 or McDonnell Douglas part number 7938004–503 cone bolt.

2. Incorporate a revision into the FAA-approved maintenance inspection program which provides for a visual or ultrasonic inspection of the engine forward mount cone bolts for "Barry" part number K2219–9SA3, or McDonnell Douglas part number 7938004–503, at each engine change and, if incorrect bolts are found, replace with "Barry" part number K2219–9SA3 or Mcdonnell Douglas part number 7938004–503 bolts before each engine installation.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1–HCW (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective January 2, 1991.

Issued in Renton, Washington, on November 15, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27676 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 26391; Amdt. No. 360]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: December 13, 1990.

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

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

commerce, I find that notice and public procedure before adopting these amendments are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making these amendments effective in less than 30 days.

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

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on November 15, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

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

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

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

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 360 EFFECTIVE DATE, DECEMBER 13, 1990

§95.6013 VOR FEDERAL AIRWAY 13
IS AMENDED TO READ IN PART

FROM	TO	MEA
LUFKIN, TX VORTAC	CARTH, TX FIX	*3800
*2400 - MOCA		
SIREN, WI VOR/DME	*BARUM, MN FIX	3000
*4000 - MRA		
BARUM, MN FIX	DULUTH, MN VORTAC	3000

§95.6025 VOR FEDERAL AIRWAY 25
IS AMENDED TO READ IN PART

FROM	TO	MEA
KLAMATH FALLS, OR VORTAC	SPRAG, OR FIX	14000
SPRAG, OR FIX	OCTAD, OR FIX	*14000
*9300 - MOCA		
OCTAD, OR FIX	REDMOND, OR VORTAC	
	S BND	14000
	N BND	7000

§95.6071 VOR FEDERAL AIRWAY 71
IS AMENDED TO READ IN PART

FROM	TO	MEA
OLLAS, AR FIX	HARRISON, AR VOR/DME	*4500
*3700 - MOCA		

§95.6113 VOR FEDERAL AIRWAY 113
IS AMENDED TO READ IN PART

FROM	TO	MEA
BOISE, ID VORTAC	PLUTO, ID FIX	
	SW BND	9700
	NE BND	13000
PLUTO, ID FIX	SALMON, ID VOR/DME	*13000
*12300 - MOCA		

§95.6128 VOR FEDERAL AIRWAY 128
IS AMENDED TO DELETE

FROM	TO	MEA
DUBUQUE, IA VORTAC	JANESVILLE, WI VORTAC	3000

§95.6158 VOR FEDERAL AIRWAY 158
IS AMENDED BY ADDING

FROM	TO	MEA
POLO, IL VORTAC	SHOOF, IL FIX	2700

§95.6161 VOR FEDERAL AIRWAY 161
IS AMENDED TO READ IN PART

FROM	TO	MEA
GRAND RAPIDS, MN VOR/DME	SQEAK, MN FIX	*5000
*3100 - MOCA		
SQEAK, MN FIX	*BEBEL, MN FIX	**5000
*4000 - MRA		
**3100 - MOCA		

§95.6231 VOR FEDERAL AIRWAY 231
IS AMENDED TO READ IN PART

FROM	TO	MEA
CHARL, MT FIX	SKOTT, MT FIX	*16000
*9500 - MOCA		

§95.6246 VOR FEDERAL AIRWAY 246
IS AMENDED BY ADDING

FROM	TO	MEA
JANESVILLE, WI VORTAC	DUBUQUE, IA VORTAC	3000

§95.6257 VOR FEDERAL AIRWAY 257
IS AMENDED TO READ IN PART

FROM	TO	MEA
VERNE, UT FIX	STACO, UT FIX	12300
STACO, UT FIX	MOINT, UT FIX	*11000
*9100 - MOCA		
MOINT, UT FIX	MALAD CITY, ID VOR/DME	*11000
*9900 - MOCA		

§95.6278 VOR FEDERAL AIRWAY 278
IS AMENDED TO READ IN PART

FROM	TO	MEA
HAMPT, AR FIX	MONTICELLO, AR VORTAC	*2500
*1600 - MOCA		

§95.6280 VOR FEDERAL AIRWAY 280
IS AMENDED TO READ IN PART

FROM	TO	MEA
WIPET, KS FIX	HUTCHINSON, KS VORTAC	*3300
*3000 - MOCA		

§95.6298 VOR FEDERAL AIRWAY 298
IS AMENDED TO READ IN PART

FROM	TO	MEA
DONNELLY, ID VORTAC	*DUBOIS, ID VORTAC	**16000
*9800 - MCA DUBOIS VORTAC, W BND		
**13600 - MOCA		
QUIRT, WY FIX	DUNOIR, WY VOR/DME	*12000
*10800 - MOCA		

§95.6420 VOR FEDERAL AIRWAY 420
IS AMENDED TO DELETE

FROM	TO	MEA
BRADFORD, IL VORTAC	MALTA, IL FIX	*3500
*2500 - MOCA		
MALTA, IL FIX	ELGIN, IL FIX	2700

FROM	TO	MEA
§95.6452 VOR FEDERAL AIRWAY 452 IS AMENDED TO READ IN PART		
CHEEZ, OR FIX	MIXUP, OR FIX	#*11000
*9700 - MOCA		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		
MIXUP, OR FIX	KLAMATH FALLS, OR VORTAC	
	SE BND	9000
	NW BND	11000
§95.6505 VOR FEDERAL AIRWAY 505 IS AMENDED TO READ IN PART		
SIREN, WI VOR/DME	*BARUM, MN FIX	3000
*4000 - MRA		
BARUM, MN FIX	DULUTH, MN VORTAC	3000
HIBBING, MN VOR/DME	SQEAK, MN FIX	*5000
*3100 - MOCA		
SQEAK, MN FIX	*BEBEL, MN FIX	**5000
*4000 - MRA		
**3100 - MOCA		
BEBEL, MN FIX	INTERNATIONAL FALLS, MN VORTAC	3000

FROM	TO	MEA
§95.6520 VOR FEDERAL AIRWAY 520 IS AMENDED TO READ IN PART		
*BATTLE GROUND, WA VORTAC	THE DALLES, OR VORTAC	7000
*4700 - MCA BATTLE GROUND VORTAC, E BND		
PASCO, WA VOR/DME	*WALLA WALLA, WA VOR/DME	3200
*5500 - MCA WALLA WALLA VOR/DME, NE BND		
WALLA WALLA, WA VOR/DME	CLOVA, WA FIX	8000
CLOVA, WA FIX	LEWISTON, ID VOR/DME	
	NE BND	5500
	SW BND	8000
§95.6527 VOR FEDERAL AIRWAY 527 IS AMENDED TO READ IN PART		
GAMPS, AR FIX	BILIE, MO FIX	3300
§95.6548 VOR FEDERAL AIRWAY 548 IS AMENDED TO READ IN PART		
SEALY, TX FIX	PRARI, TX FIX	3500

FROM	TO	MEA	MAA
§95.7213 JET ROUTE NO. 213			
	IS AMENDED TO DELETE		
BECKLEY, WV VORTAC	LOUISVILLE, KY VORTAC	18000	45000
§95.7522 JET ROUTE NO. 522			
	IS AMENDED TO READ IN PART		
U.S. CANADIAN BORDER	HANKK, NY FIX	#19000	45000
#FOR THAT AIRSPACE OVER U S. TERRITORY.			
HANKK, NY FIX	HANCOCK, NY VORTAC	18000	45000
§95.7526 JET ROUTE NO. 526			
	IS ADDED TO READ		
BECKLEY, WV VORTAC	LOUISVILLE, KY VORTAC	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-15			
IS AMENDED BY ADDING			
HOBBY, TX VOR/DME	NAVASOTA, TX VORTAC	38	HOBBY
V-25			
IS AMENDED TO READ IN PART			
KLAMATH FALLS, OR VORTAC	REDMOND, OR VORTAC	23	KLAMATH FALLS
V-71			
IS AMENDED BY ADDING			
OLLAS, AR FIX #COP MEASURED FROM HOT VOR/DME.	HARRISON, AR VOR/DME	#47	OLLAS
V-298			
IS AMENDED BY ADDING			
DONNELLY, ID VORTAC	DUBOIS, ID VORTAC	109	DONNELLY
V-452			
IS AMENDED BY ADDING			
EUGENE, OR VORTAC	KLAMATH FALLS, OR VORTAC	69	EUGENE

[FR Doc. 90-27677 Filed 11-23-90; 8:45 am]
BILLING CODE 4910-13-C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 171

Commission Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration and Membership Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: The Commodity Futures Trading Commission is correcting an error in the rules relating to Commission review of National Futures Association decisions in disciplinary, membership denial, registration and membership responsibility actions which appeared in the **Federal Register** on October 9, 1990 (55 FR 41061).

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-9880.

PART 3—[AMENDED]

In document 90-23750 on page 41067 in the issue of Tuesday, October 9, 1990, in the third column, amendatory instruction paragraph 1 which reads:

"1. 17 CFR part 3 subpart E (§ 3.75) and subpart F (§§ 3.80 to 3.91 inclusive) are removed."

is corrected to read:

"1. 17 CFR part 3 subpart F (§§ 3.80 to 3.91 inclusive) is removed."

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-27639 Filed 11-23-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8319]

RIN 1545-AK94

Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations; temporary regulations; removal of temporary regulations.

SUMMARY: This document contains final § 1.337(d)-1 and temporary § 1.337(d)-2T. These regulations implement aspects of the repeal of the *General Utilities* doctrine by limiting losses of consolidated groups with respect to the stock of subsidiaries for certain transitional periods. This document also withdraws temporary § 1.1502-20T. New proposed § 1.1502-20 appears in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 26, 1990 except § 1.337(d)-1 which is effective November 19, 1990. Section 1.337(d)-1 generally applies to dispositions after January 6, 1987, and before the effective date of § 1.337(d)-2T, of stock of a subsidiary that became a member of an affiliated group after January 6, 1987. Section 1.337(d)-2T generally applies to dispositions and deconsolidations of stock of a subsidiary occurring after November 18, 1990, and before the effective date of § 1.1502-20.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings, 202-566-2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collection of information contained in final § 1.337(d)-1 has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under the previous control number 1545-1160. The estimated annual burden per respondent to comply with § 1.337(d)-1 is 2 hours.

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

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

Temporary § 1.337(d)-2T is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been submitted to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Notice of OMB action will be published in a subsequent issue of the **Federal Register**.

The estimated average annual burden per respondent is 2 hours. This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual repondents may require greater or less time, depending on their particular circumstances.

For further information concerning these collections of information, and where to submit comments on these collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

B. Introduction

T.D. 8294, filed with the Federal Register on March, 1990 and published in the **Federal Register** on March 14, 1990, added temporary §§ 1.1502-20T and 1.337(d)-1T to part 1 of title 26 of the Code of Federal Regulations.

Section 1.1502-20T added to the consolidated return regulations a general rule that disallowed all consolidated group losses on the disposition of a subsidiary's stock (the "loss disallowance rule"). The regulations also provided a number of related rules, including a basis reduction rule applicable on deconsolidation of a subsidiary's stock and an anti-stuffing rule applicable to transfers of property between members in connection with the disposition or deconsolidation of a subsidiary's stock. Also provided was a rule that permitted reattribution of a subsidiary's losses to the common parent to the extent loss would otherwise be disallowed to the consolidated group on the disposition of a subsidiary's stock. The rules added by § 1.1502-20T generally applied to any disposition or deconsolidation of a subsidiary's stock on or after March 9, 1990.

Section 1.337(d)-1T added a transitional rule that generally limited loss on the disposition of a subsidiary's stock after January 6, 1987, if the subsidiary became a member of the group after that date (a "transitional subsidiary") and the disposition was not subject to § 1.1502-20T. Unlike § 1.1502-20T, these regulations permitted the loss

to the extent the group established that the loss was not attributable to the recognition of "built-in gain" on the disposition of assets owned by the subsidiary (or any lower tier subsidiary). Moreover, although § 1.1502-20T reduced the basis of subsidiary stock on its deconsolidation, § 1.337(d)-1T continued to treat the stock as subject to loss disallowance on later disposition.

Sections 1.1502-20T and 1.337(d)-1T implemented Notice 87-14, 1987-1 C.B. 445, in which the Internal Revenue Service announced its intention to publish regulations that would prevent utilization of §§ 1.1502-32 and 1.1502-33(c) (the "investment adjustment rules") to circumvent the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986. The loss disallowance rule of § 1.1502-20T addressed another problem relating to the investment adjustment rules by preventing a subsidiary's losses from being duplicated as investment losses of the parent when the parent disposes of the subsidiary's stock.

Also filed with the Federal Register on March 9, 1990 and published on March 14, 1990, was a notice of proposed rulemaking (CO-78-87) that incorporated by cross reference the text of §§ 1.1502-20T and 1.337(d)-1T. Many written comments were received, and a public hearing was held on June 26, 1990.

After full consideration of the written comments and the testimony at the public hearing, the following actions are being taken:

1. Proposed § 1.337(d)-1 is amended and promulgated as a final regulation by this document as § 1.337(d)-1, replacing temporary § 1.337(d)-1T.

2. New § 1.337(d)-2T is promulgated by this document as a temporary regulation. Commentators characterized § 1.1502-20T as far broader than required by Notice 87-14 and requested that taxpayers retain the ability to dispose of subsidiary stock under the more limited approach of § 1.337(d)-1T until the rules of § 1.1502-20T are revised. Section 1.337(d)-2T continues the principles of § 1.337(d)-1 by adding another transitional rule applicable to all subsidiary stock (not just stock of transitional subsidiaries and transitional parents). The new rule allows groups to establish that loss is not attributable to the recognition of built-in gain, but only if the group's entire equity interest in the subsidiary is disposed of in one or more transactions to unrelated persons before the effective date of new § 1.1502-20. Section 1.337(d)-2T also provides basis reduction rules for subsidiary stock that is deconsolidated and anti-stuffing rules. The text of § 1.337(d)-2T set forth in this document also serves as the text of proposed § 1.337(d)-2, cross-referenced in a notice of proposed rulemaking (CO-93-90), published in the Proposed Rules section of this issue of the **Federal Register.**

3. Section 1.1502-20T is withdrawn by this document.

4. The notice of proposed rulemaking (CO-93-90) published in the Proposed Rules section of this issue of the **Federal Register** withdraws proposed § 1.1502-20 as added by (CO-78-87) and adds new proposed § 1.1502-20. For a discussion of new proposed § 1.1502-20, see the preamble in the notice of proposed rulemaking.

5. A Revenue Procedure will be issued as a consequence of these rules setting forth procedures under which the Internal Revenue Service will grant permission for all of the members of a group to discontinue filing consolidated returns. Conditions will be included to restrict reconsolidation of any member (or successor) for at least 5 years.

C. Amendments to Proposed § 1.337(d)-1

Proposed § 1.337(d)-1 is amended and adopted as a final regulation. For a description of the original provisions of proposed § 1.337(d)-1, see T.D. 8294, published on March 14, 1990. Following is a description of the principal amendments.

1. Coordination with loss deferral rules

Sections 1.337(d)-1(a)(3) and 1.337(d)-1(b)(3) provide that, if a loss is deferred, any disallowance of the loss is also deferred until the loss is taken into account under the consolidated return regulations. The loss disallowance rule takes precedence over other loss disallowance and deferral rules of the Code and regulations, however, and these other rules apply only to the extent that loss is not disallowed under § 1.337(d)-1.

2. Stacking Rules

Section 1.337(d)-1(a)(1) disallows loss recognized by a member of a consolidated group on the disposition of stock of a transitional subsidiary. However, § 1.337(d)-1(a)(2) provides an exception under which loss is not disallowed to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset after January 6, 1987. The burden is on taxpayers to establish that loss is not attributable to built-in gain.

Example (3) in proposed § 1.337(d)-1(a)(5) treated any loss on the sale of stock as first attributable to recognized built-in gain. Example (3) is clarified and a new Example (4) is added to clarify that, for purposes of determining whether stock loss is attributable to built-in gain, recognized built-in gain may be offset by recognized built-in loss. If built-in gains and losses are both reflected in the basis of purchased subsidiary stock (or, in the case of subsidiary stock acquired in a carryover basis transaction, neither is reflected in the basis of subsidiary stock), the netting is appropriate. The built-in gain does not create or enhance stock loss when offset by built-in loss.

3. Statements

The requirement that a separate statement be filed with respect to deduction of loss on the disposition of stock of transitional subsidiaries is extended to the deduction of transitional subsidiaries is extended to the deduction of loss on the disposition of stock of transitional parents.

4. Other Clarifying Changes

Section 1.337(d)-1 is revised to clarify several provisions. The revisions include—(a) simplifying the definition of built-in gain, (b) correcting technical defects in the definition of transitional parent and in the successor rule, and (c) additional examples to illustrate such rules as the application of the section to subsidiary stock no longer held by a member and to post-acquisition appreciation. In addition, because § 1.1502-20T has been replaced by a proposed regulation, several rules and examples previously incorporated by cross reference have been restated in full.

D. Transitional Issues

Proposed § 1.337(d)-1 applied to all the stock of a subsidiary that became a member of a group after January 6, 1987, regardless of whether the stock of the subsidiary was acquired by purchase. Commentators have argued that § 1.337(d)-1 should apply only to subsidiary stock that was acquired by purchase after January 6, 1987. They contend that Notice 87-14 did not provide adequate notice that § 1.337(d)-1 would reach all cases in which stock losses with respect to transitional subsidiaries are attributable to the recognition of built-in gain. Commentators also contend that, although a particular target within a group may be subject to § 1.337(d)-1, no notice was given that § 1.337(d)-1 would continue to apply if the target is transferred by merger or otherwise to other members who were members before January 7, 1987.

Notice 87-14 states that "in cases where a target's stock is sold, the

regulations will prevent recognition of losses that are attributable to the subsidiary's recognition of built-in gains. The regulations will be effective with respect to stock in a target that was acquired after January 6, 1987." The notice did not define the terms "target" or "acquired," or make clear whether it was the stock or the target that had to be acquired after January 6, 1987.

Notice 87-14 provides a general statement of the policy concerns of the Service by stating simply that regulations would "affect the adjustment to stock basis in certain cases where one or more members have acquired stock of a target with a built-in gain asset. * * * In general, the adjustment to stock basis [would] not reflect built-in gains that are recognized by target on sales of, or by reason of distributions of, its assets." Because the notice stated simply that these concerns would be addressed with respect to acquisition after January 6, 1987, taxpayers should reasonably have expected that the policies expressed in the Notice would be implemented so as to treat taxpayers presenting similar policy concerns similarly, despite different forms of acquisition or location within a group. Section 1.337(d)-1 prohibits the deduction of loss only in limited circumstances. A taxpayer must have acquired a subsidiary's stock after January 6, 1987, and thereafter disposed of a built-in gain asset. Applying this rule to a target acquired after January 6, 1987, regardless of whether its stock was acquired by purchase, is consistent with both the language and the policy of Notice 87-14.

E. Explanation of New Temporary § 1.337(d)-2T

In response to comments that a transitional period should have been provided before § 1.1502-20T became effective, the effective date of new § 1.1502-20 has been deferred. New § 1.337(d)-2T provides a transitional rule, carrying forward the rules of § 1.337(d)-1, that allows loss to the extent the group establishes that the loss is not attributable to the recognition of built-in gain. For this purpose, gain recognized by a consolidated group (or a prior consolidated group) on the disposition of an asset is built-in gain to the extent the asset has an excess of value over basis attributable to a separate return year (as defined in § 1.1502-1(e)) with respect to the consolidated group (or prior consolidated group).

Unlike § 1.337(d)-1, §1.337(d)-2T is a prospective rule which taxpayers may take into account when planning transactions. Accordingly, § 1.337(d)-2T contains a deconsolidation rule and an anti-stuffing rule similar to those contained in new § 1.1502-20, in order to limit circumvention of the basic loss limitation rule. The deconsolidation and anti-stuffing rules are explained in the preamble to new § 1.1502-20, published to the Proposed Rules section of this issue of the **Federal Register**.

Section 1.337(d)-2T generally applies with respect to dispositions and deconsolidations after November 18, 1990. The rule permitting a group to establish that loss is not attributable to recognition of built-in gain applies, however, only if the group's entire equity interest in a subsidiary is disposed of in one or more transactions to unrelated persons before the application of new § 1.1502-20. Thus, it does not apply (and the loss disallowance rule of § 1.337(d)-2T(a) does apply) if only a portion of the stock held by the group is disposed of, or if the stock is sold to a related party. (See new § 1.1502-20(h), set forth in the Proposed Rules section of this issue of the **Federal Register**, which permits taxpayers to elect to apply the rules of new § 1.1502-20 instead of § 1.337(d)-2T.) The ability to establish that loss is not attributable to built-in gain is limited under § 1.337(d)-2T in order to avoid the need for continued application of these rules to deconsolidated subsidiaries for a substantial period. Like new § 1.1502-20, § 1.337(d)-2T applies to all subsidiary stock, whether or not the subsidiary is a transitional subsidiary or transitional parent, and even if the disposition of the built-in gain asset occurred before January 7, 1987.

F. Section 1.1502-20T

Section 1.1502-20T is removed by this document and a new proposed § 1.1502-20 appears in the Proposed Rules section of this issue of the **Federal Register**. An explanation of the withdrawal of § 1.1502-20T and of the new provisions is set forth in the preamble to new proposed § 1.1502-20.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. The rules will primarily affect affiliated groups of corporations filing (or required to file) consolidated returns, which tend to be larger businesses. It will not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The project attorney is Mark S. Jennings of the Office of Assistant Chief Counsel (Corporate); Internal Revenue Service. Various other personnel of the Internal Revenue Service and the Treasury Department also participated in the development of these regulations.

List of Subjects

26 CFR 1.301-1 through 1.383-3

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

26 CFR 1.501-1 through 1.1564-1

Income taxes, Controlled group of corporations, Consolidated returns.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR chapter I is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805; * * * § 1.337(d)-1 also issued under 26 U.S.C. 337(d); * * * § 1.337(d)-2T also issued under 26 U.S.C. 337(d); * * * § 1.1502-1 also issued under 26 U.S.C. 1502.

Par. 2. The authority citation for part 1 continues to include the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.469-1T also issued under 26 U.S.C. 469(1).

Par. 3. The authority citation for part 1 is further amended by removing the citations for §§ 1.337(d)-1T, and 1.1502-20T.

§ 1.337 [Removed]

Par. 3A. Section 1.337(d)-1T is removed.

Par. 4. New § 1.337(d)-1 is added to read as follows:

§ 1.337(d)-1 Transitional loss limitation rule.

(a) *Loss limitation rule for transitional subsidiary*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a

consolidated group with respect to the disposition of stock of a transitional subsidiary.

(2) *Allowable loss*—(i) *In general.* Paragraph (a)(1) of this section does not apply to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain by any transitional subsidiary on the disposition of an asset (including stock and securities) after January 6, 1987.

(ii) *Statement of allowable loss.* Paragraph (a)(2)(i) of this section applies only if a separate statement entitled "Allowable Loss Under § 1.337(d)–1(a)" is filed with the taxpayer's return for the year of the stock disposition. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991.

(iii) *Contents of statement.* The statement required under paragraph (a)(2)(ii) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the transitional subsidiary.

(B) The basis of the stock of the transitional subsidiary immediately before the disposition.

(C) The amount realized on the disposition.

(D) The amount of the deduction not disallowed under paragraph (a)(1) of this section by reason of this paragraph (a)(2).

(E) The amount of loss disallowed under paragraph (a)(1) of this section.

(3) *Coordination with loss deferral rules*—(i) *Single entity treatment of deferred intercompany loss.* If loss with respect to the disposition of a transitional subsidiary's stock is deferred, paragraph (a)(1) of this section does not apply until the loss is taken into account. For this purpose, the amount of the loss deferred and when the loss is taken into account are determined under §§ 1.1501–13, 1.1502–13T, 1.1502–14, and 1.1502–14T, without the application of any other provision of the Code or regulations, such as section 267(f), that provides for disallowance or deferral of the loss.

(ii) *Other loss deferral rules.* If paragraph (a)(1) of this section applies to a loss subject to deferral or disallowance under any other provision of the Code or the regulations, the other provision applies to the loss only to the extent it is not disallowed under paragraph (a)(1).

(4) *Definitions.* For purposes of this section—

(i) The definitions in § 1.1502–1 apply.

(ii) *Transitional subsidiary* means any corporation that became a subsidiary of the group (whether or not the group was a consolidated group) after January 6, 1987. Notwithstanding the preceding sentence, a subsidiary is not a transitional subsidiary if the subsidiary (and each predecessor) was a member of the group at all times after the subsidiary's (and each predecessor's) organization.

(iii) *Built-in gain* of a transitional subsidiary means gain attributable, directly or indirectly, in whole or in part, to any excess of value over basis, determined immediately before the transitional subsidiary became a subsidiary, with respect to any asset owned directly or indirectly by the transitional subsidiary at that time.

(iv) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(v) *Value* means fair market value.

(5) *Examples.* For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. "Investment adjustment system" means the rules of §§ 1.1502–32 and 1.1502–33(c). The principles of this paragraph (a) are illustrated by the following examples:

Example (1). Loss attributable to recognized built-in gain. (i) P buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has an asset with a value of $100 and basis of $0. T sells the asset in 1989 and recognizes $100 of built-in gain on the sale (*i.e.*, the asset's value exceeded its basis by $100 at the time T became a member of the P group). Under the investment adjustment system, P's basis in the T stock increases to $200. P sells all the stock of T on December 31, 1989, and recognizes a loss of $100. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $100 loss.

(ii) Assume that, after T sells its asset but before P sells the T stock, T issues additional stock to unrelated persons and ceases to be a member of the P group. P then sells all its stock of T in 1997. Although T ceases to be a subsidiary within the meaning of § 1.1502–1, T continues to be a transitional subsidiary within the meaning of this section. Consequently, under paragraph (a)(1) of this section, no deduction is allowed to P for its $100 loss.

Example (2). Loss attributable to post-acquisition loss. P buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has $50 cash and an asset with $50 of built-in gain. During 1988, T retains the asset but loses $40 of the cash. The P group is unable to use the loss, and the loss becomes a net operating loss carryover attributable to T. Under the investment adjustment system, P's basis in the stock of T remains $100. P sells all the stock of T on December 31, 1988, for $60 and recognizes a $40 loss. Under paragraph (a)(2)(i) of this section, P establishes that it did not dispose of the built-in gain asset. None of P's loss is disallowed under paragraph (a)(1) if P satisfies the requirements of paragraph (a)(2)(ii) of this section.

Example (3). Stacking rules—postacquisition loss offsets postacquisition gain. (i) P. buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis and value of $50, and asset 2 has a basis of $0 and a value of $50. During 1989, asset 1 declines in value to $0, and T sells asset 2 for $50, and reinvests the proceeds in asset 3. The value of asset 3 appreciates to $90. Under the investment adjustment system, P's basis in the stock of T increases from $100 to $150 as a result of the gain recognized on the sale of asset 2 but is unaffected by the unrealized post-acquisition decline in the value of asset 1. On December 31, 1989, P sells all the stock of T for $90 and recognizes a $60 loss.

(ii) Although T incurred a $50 post-acquisition loss of built-in gain because of the decline in the value of asset 1, T also recognized $50 of built-in gain. Under paragraph (a)(2) of this section, any loss on the sale of stock is treated first as attributable to recognized built-in gain. Thus, for purposes of determining under paragraph (a)(2) of this section whether P's $60 loss on the disposition of the T stock is attributable to the recognition of built-in gain on the disposition of an asset, T's unrealized post-acquisition gain of $40 offsets $40 of the $50 of unrealized post-acquisition loss. Therefore, $50 of the $60 loss is attributable to the recognition of built-in gain on the disposition of an asset and is disallowed under paragraph (a)(1) of this section.

Example (4). Stacking rules—built-in loss offsets built-in gain. (i) P buys all the stock of T for $50 on February 1, 1987, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. During 1989, T sells asset 1 for $0 and asset 2 for $50, and reinvests the $50 proceeds in asset 3. The value of asset 3 declines to $40. Under the investment adjustment system, P's basis in the stock of T remains $50 as a result of the offsetting gain and loss recognized on the sale of assets 1 and 2 and is unaffected by the unrealized post-acquisition decline in the value of asset 3. On December 31, 1989, P sells all the stock of T for $40 and recognizes a $10 loss.

(ii) Although T recognized a $50 built-in gain on the sale of asset 2, T also recognized

a $50 built-in loss on the sale of asset 1. For purposes of determining under paragraph (a)(2) of this section whether P's $10 loss on the disposition of the T stock is attributable to the recognition of built-in gain on the disposition of an asset, T's recognized built-in gain is offset by its recognized built-in loss. Thus none of P's $10 loss is attributable to the recognition of built-in gain on the disposition of an asset.

(iii) The result would be the same if, instead of a $50 built-in loss in asset 2, T has a $50 net operating loss carryover when P buys the T stock, and the net operating loss carryover is used to offset the built-in gain.

Example (5). Outside basis partially corresponds to inside basis. (i) Individual A owns all the stock of T, for which A has a basis of $60. On February 1, 1987, T owns 1 asset with a basis of $0 and a value of $100, P acquires all the stock of T from A in an exchange to which section 351(a) applies, and T becomes a member of the P group. P has a carryover basis of $60 in the T stock. During 1988, T sells the asset and recognizes $100 of gain. Under the investment adjustment system, P's basis in the T stock increases from $60 to $160. T reinvests the $100 proceeds in another asset, which declines in value to $90. On January 1, 1989, P sells all the stock of T for $90 and recognizes a loss of $70.

(ii) Although P's basis in the T stock was increased by $100 as a result of the recognition of built-in gain on the disposition of T's asset, only $60 of the $70 loss on the sale of the stock is attributable under paragraph (a)(2) of this section to the recognition of built-in gain from the disposition of the asset. (Had T's asset not declined in value to $90, the T stock would have been sold for $100, and a $60 loss would have been attributable to the recognition of the built-in gain.) Therefore, $60 of the $70 loss is disallowed under paragraph (a)(2), and $10 is not disallowed if P satisfies the requirements of paragraph (a)(2). If P had sold the stock of T for $95 because T's other assets had unrealized appreciation of $5, $60 of the $65 loss would still be attributable to T's recognition of built-in gain on the disposition of assets.

Example (6). Creeping acquisition. P owns 60 percent of the stock of S on January 6, 1987. On February 1, 1987, P buys an additional 20 percent of the stock of S, and S becomes a member of the P group. P sells all the S stock on March 1, 1989 and recognizes a loss of $100. All 80 percent of the stock of S owned by P is subject to the rules of this section and, under paragraph (a) (1) and (2) of this section, P is not allowed to deduct the $100 loss, except to the extent P establishes the loss is not attributable to the recognition by S of built-in gain on the disposition of assets.

Example (7). Effect of post-acquisition appreciation. P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. T reinvests the proceeds of the sale in an asset that appreciates in value to $180. Five years after the sale, P sells all the stock of T for $180 and recognizes a $20 loss. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $20 loss.

Example (8). Deferred loss and recognized gain. (i) P, the common parent of a group, owns 50 shares of the stock of T with an aggregate basis of $10, and S, a wholly owned subsidiary of P, recently purchased the remaining 50 shares of T stock in which it has an aggregate basis of $50. T has an asset with a basis of $40 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $10 to $40, and S's basis in the T stock increases from $50 to $80. S sells its block of T stock to P for $50 in a deferred intercompany transaction, and S liquidates 2 years later. P subsequently sells all the stock of T for $100 to X, a member of the same controlled group (as defined in section 267(f)) as P but not a member of the P consolidated group.

(ii) Under paragraph (a)(3)(i) of this section, the application of paragraph (a)(1) of this section to S's $30 loss is deferred, because S's loss is deferred under § 1.1502-13(c) (determined without the application of any other provision of the Code or regulations that provides for disallowance or deferral of the loss).

(iii) S's deferred $30 loss is inherited by P under § 1.1502-13(c)(6) following the liquidation of S. When the T stock is sold to X (a member of the same controlled group but not a member of the P consolidated group), the inherited deferred $30 loss is taken into account under § 1.1502-13(f) and paragraph (a)(3) of this section. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $30 loss.

(b) *Indirect disposition of transitional subsidiary*—(1) *Loss limitation rule for transitional parent.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a transitional parent.

(2) *Allowable loss*—(i) *In general.* Paragraph (b)(1) of this section does not apply to the extent the taxpayer establishes that the loss exceeds the amount that would be disallowed under paragraph (a) of this section if each highest tier transitional subsidiary's stock in which the transitional parent has a direct or indirect interest had been sold immediately before the disposition of the transitional parent's stock. In applying the preceding sentence, appropriate adjustments shall be made to take into account circumstances where less than all the stock of a transitional parent owned by members of a consolidated group is disposed of in the same transaction, or the stock of a transitional subsidiary or a transitional parent is directly owned by more than 1 member.

(ii) *Statement of allowable loss.* Paragraph (b)(2)(i) of this section applies only if a separate statement entitled "Allowable Loss Under Section 1.337(d)-1(b)" is filed with the taxpayer's return for the year of the stock disposition. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991.

(iii) *Contents of statement.* The statement required under paragraph (b)(2)(ii) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the transitional parent.

(B) The basis of the stock of the transitional parent immediately before the disposition.

(C) The amount realized on the disposition.

(D) The amount of the deduction not disallowed under paragraph (b)(1) of this section by reason of this paragraph (b)(2).

(E) The amount of loss disallowed under paragraph (b)(1) of this section.

(3) *Coordination with loss deferral rules*—(i) *Single entity treatment of deferred intercompany loss.* If loss with respect to the disposition of a transitional parent's stock is deferred, paragraph (b)(1) of this section does not apply until the loss is taken into account. For this purpose, the amount of the loss deferred and when the loss is taken into account are determined under §§ 1.1502-13, 1.1502-13T, 1.1502-14, and 1.1502-14T, without the application of any other provision of the Code or regulations, such as section 267 (f), that provides for disallowance or deferral of the loss.

(ii) *Other loss deferral rules.* If paragraph (b)(1) of this section applies to a loss subject to deferral or disallowance under any other provision of the Code or the regulations, the other provision applies to the loss only to the extent it is not disallowed under paragraph (b)(1).

(4) *Definitions.* For purposes of this section—

(i) *Transitional parent* means any subsidiary, other than a transitional subsidiary, that owned at any time after January 6, 1987, a direct or indirect interest in the stock of a corporation that is a transitional subsidiary.

(ii) *Highest tier transitional subsidiary* means the transitional subsidiary (or subsidiaries) in which the transitional parent has a direct or indirect interest and that is the highest

transitional subsidiary (or subsidiaries) in a chain of members.

(5) *Examples.* The principles of this paragraph (b) are illustrated by the following examples:

Example (1). Ownership of chain of transitional subsidiaries. (i) P forms S with $200 on January 1, 1985, and S becomes a member of the P group. On February 1, 1987, S buys all the stock of T, and T buys all the stock of T1, and both T and T1 become members of the P group. On January 1, 1988, P sells all the stock of S and recognizes a $90 loss on the sale.

(ii) Under paragraph (a)(4)(ii) of this section, both T and T1 are transitional subsidiaries, because they became members of the P group after January 6, 1987. Under paragraph (b)(4)(i) of this section, S is a transitional parent, because it owns a direct interest in stock of transitional subsidiaries and is not itself a transitional subsidiary.

(iii) Under paragraph (b) (1) and (2) of this section, because S is a transitional parent, no deduction is allowed to P for its $90 loss except to the extent the loss exceeds the amount of S's loss that would have been disallowed if S had sold all the stock of T, S's highest tier transitional subsidiary, immediately before P's sale of all the S stock. Assume all the T stock would have been sold for a $90 loss and that all the loss would be attributable to the recognition of built-in gain from the disposition of assets. Because in that case $90 of loss would be disallowed, all of P's loss on the sale of the S stock is disallowed under paragraph (b).

Example (2). Ownership of brother-sister transitional subsidiaries. (i) P forms S with $200 on January 1, 1985, and S becomes a member of the P group. On February 1, 1987, S buys all the stock of both T and T1, and T and T1 become members of the P group. On January 1, 1988, P sells all the stock of S and recognizes a $90 loss on the sale.

(ii) Under paragraph (b) (1) and (2) of this section, no deduction is allowed to P for its $90 loss except to the extent P establishes that the loss exceeds the amount of S's stock losses that would be disallowed if S sold all the stock of T and T1, S's highest tier transitional subsidiaries, immediately before P's sale of all the S stock. Assume that all the T stock would have been sold for a $50 loss, all the T1 stock of a $40 loss, and that the entire amount of each loss would be attributable to the recognition of built-in gain on the disposition of assets. Because $90 of loss would be disallowed with respect to the sale of S's T and T1 stock, P's $90 loss on the sale of all the S stock is disallowed under paragraph (b).

(c) *Successors*—(1) *General rule.* This section applies, to the extent necessary to effectuate the purposes of this section, to—

(i) Any property owned by a member or former member, the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis in a subsidiary's stock, and

(ii) Any property owned by any other person whose basis in the property is determined, directly or indirectly, in whole or in part, by reference to a member's (or former member's) basis in a subsidiary's stock.

(2) *Examples.* The principles of this paragraph (c) are illustrated by the following examples:

Example (1). Merger into grandfathered subsidiary. P, the common parent of a group, owns all the stock of T, a transitional subsidiary. On January 1, 1989, T merges into S, a wholly owned subsidiary of P that is not a transitional subsidiary. Under paragraph (c)(1) of this section, all the stock of S is treated as stock of a transitional subsidiary. As a result, no deduction is allowed for any loss recognized by P on the disposition of any S stock, except to the extent the P group establishes under paragraph (a)(2) that the loss is not attributable to the recognition of built-in gain on the disposition of assets of T.

Example (2). Nonrecognition exchange of transitional stock. (i) P, the common parent of a group, owns all the stock of T, a transitional subsidiary. On January 1, 1989, P transfers the stock of T to X, a corporation that is not a member of the P group, in exchange for 20 percent of its stock in a transaction to which section 351(a) applies. T and X file separate returns.

(ii) Under paragraph (c)(1) of this section, all the stock of X owned by P is treated as stock of a transitional subsidiary because P's basis for the X stock is determined by reference to its basis for the T stock. As a result, no deduction is allowed to P for any loss recognized on the disposition of the X stock, except to the extent permitted under paragraph (a) of this section.

(iii) Under paragraph (c)(1), X is treated as a member subject to paragraph (a) of this section with respect to the T stock because X's basis for the stock is determined by reference to P's basis for the stock. Moreover, all of the T stock owned by X continues to be stock of a transitional subsidiary. As a result, no deduction is allowed to X for any loss recognized on the disposition of any T stock, except to the extent permitted under paragraph (a) of this section.

(d) *Investment adjustments and earnings and profits*—(1) *In general.* For purposes of determining investment adjustments under § 1.1502–32 and earnings and profits under § 1.1502–33 (c) with respect to a member of a consolidated group that owns stock in a subsidiary, any deduction that is disallowed under this section is treated as a loss absorbed by the member in the tax year in which the disallowance occurs.

(2) *Example.* (i) In 1986, P forms S with a contribution of $100, and S becomes a member of the P group. On February 1, 1987, S buys all the stock of T for $100. T has an asset with a basis of $0 and a value of $100. In 1988, T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to adjustment system, S's basis in the T stock increases to $200, P's basis in the S stock increases to $200, and P's earnings and profits and S's earnings and profits increase by $100. In 1989, S sells all of the T stock for $100, and S's recognized loss of $100 is disallowed under paragraph (a)(1) of this section.

(ii) Under paragraph (d)(1) of this section, S's earnings and profits for 1989 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1). As a result, P's basis in the S stock is reduced from $200 to $100 under the investment adjustment system. P's earnings and profits for 1989 are correspondingly reduced by $100.

(e) *Effective dates*—(1) *General rule.* This section is effective November 19, 1990, and applies with respect to dispositions after January 6, 1987. After November 18, 1990, however, this section applies only if the stock was deconsolidated (as that term is defined in § 1.337(d)–2T(b)(2)) before November 19, 1990, and only to the extent the disposition is not subject to § 1.337(d)–2T.

(2) *Binding contract rule.* For purposes of this paragraph (e), if a corporation became a subsidiary pursuant to a binding written contract entered into before January 6, 1987, and in continuous effect until the corporation became a subsidiary, or a disposition was pursuant to a binding written contract entered into before March 9, 1990, and in continuous effect until the disposition, the date the contract became binding shall be treated as the date the corporation became a subsidiary or as the date of disposition.

Par. 5. New § 1.337(d)–2T is added to read as follows:

§ 1.337(d)–2T Loss limitation window period (temporary).

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

(2) *Definitions.* For purposes of this section—

(i) The definitions in § 1.1502–1 apply.

(ii) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(3) *Coordination with loss deferral rules*—(i) *Single entity treatment of deferred intercompany loss.* If loss with respect to the disposition of a subsidiary's stock is deferred, paragraph (a)(1) of this section does not apply until the loss is taken into account. For this purpose, the amount of the loss deferred and when the loss is taken into account are determined under §§ 1.1502–13, 1.1502–13T, 1.1502–14, and 1.1502–14T, without the application of any other provision of the Code or regulations, such as section 267(f), that provides for disallowance or deferral of the loss.

(ii) *Other loss deferral rules.* If paragraph (a)(1) of this section applies

to a loss subject to deferral or disallowance under any other provision of the Code or the regulations, the other provision applies to the loss only to the extent it is not disallowed under paragraph (a)(1).

(b) *Basis reduction on deconsolidation*—(1) *General rule.* If the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section applies and, to the extent necessary to effectuate the purposes of this section, this paragraph (b) applies following the application of paragraph (a).

(2) *Deconsolidation.* "Deconsolidation" means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value.* "Value" means fair market value.

(4) *Loss within 2 years after basis reduction*—(i) *In general.* If the basis of a share of stock is reduced under this paragraph (b) and a direct or indirect disposition of the stock occurs within 2 years after the date of the basis reduction, a separate statement entitled "Statement Pursuant to § 1.337(d)-2T(b)(4)" must be filed with the taxpayer's return for the year of disposition. If the taxpayer fails to file the statement as required, no deduction is allowed for any loss recognized on the disposition. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991. A disposition after the 2-year period described in this paragraph (b)(4) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(ii) *Contents of statement.* The statement required under paragraph (b)(4)(i) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the subsidiary.

(B) The amount of prior basis reduction with respect to the stock of the subsidiary under paragraph (b)(1) of this section.

(C) The basis of the stock of the subsidiary immediately before the disposition.

(D) The amount realized on the disposition.

(E) The amount of the deduction not disallowed under paragraph (b)(4)(i) of this section.

(F) The amount of loss disallowed under paragraph (b)(4)(i) of this section.

(c) *Allowable loss*—(1) *Application.* This paragraph (c) applies with respect to stock of a subsidiary only if—

(i) The consolidated group disposes (in one or more transactions), before the effective date of § 1.1502-20, of its entire equity interest in the subsidiary to persons not related to any member of the consolidated group within the meaning of sections 267(b) and 707(b)(1) (substituting "10 percent" for "50 percent" each place that it appears), and

(ii) A separate statement entitled "Allowed Loss Under § 1.337(d)-2T (c)" is filed in accordance with paragraph (c)(3) of this section.

(2) *General rule.* Loss is not disallowed under paragraph (a)(1) of this section and basis is not reduced under paragraph (b)(1) of this section to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities). Loss or basis may be attributable to the recognition of built-in gain on the disposition of an asset by a prior consolidated group. For purposes of this section, gain recognized by the consolidated group (or prior consolidated group) on the disposition of an asset is built-in gain to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis attributable to a separate return year (as defined in § 1.1502-1(e)) with respect to the consolidated group (or prior consolidated group).

(3) *Contents of statement and time of filing.* The statement required under paragraph (c)(1)(ii) of this section must be filed with the taxpayer's return for the year of the disposition or deconsolidation, and must contain—

(i) The name and employer identification number (E.I.N.) of the subsidiary.

(ii) The basis of the stock of the subsidiary immediately before the disposition or deconsolidation.

(iii) The amount realized on the disposition and the amount of fair market value on the deconsolidation.

(iv) The amount of the deduction not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(v) The amount of loss disallowed under paragraph (a)(1) of this section and the amount of basis reduced under paragraph (b)(1) of this section. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or deconsolidation or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991.

(4) *Examples.* For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. "Investment adjustment system" means the rules of §§ 1.1502-32 and 1.1502-33(c). The principles of paragraphs (a), (b), and (c) of this section, such as the attribution of recognized gain to built-in gain, are illustrated by the examples in § 1.337(d)-1(a)(5) and by the examples in this paragraph (c)(4). For an example that treats a disposition after the 2-year period as being within the period, see paragraph (e)(3) of this section.

Example (1). Simultaneous application of loss disallowance rule and basis reduction rule to stock of the same subsidiary. (i) P buys all the stock of T for $100 in 1985, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100 and recognizes built-in gain (*i.e.*, gain that is attributable to a separate return year with respect to the group recognizing the gain). Under the investment adjustment system, P's basis in the T stock increases to $200. Five years later, P sells 60 shares of T stock for $60 and recognizes a $60 loss on the sale.

(ii) P's $60 loss on the sale of T stock is disallowed under paragraph (a)(1) of this section.

(iii) P's sale of 60 shares of T stock causes a deconsolidation of the remaining 40 shares held by P. Under paragraph (b)(1) of this section, P must reduce the basis of the 40 shares of T stock it continues to own from $80 to $40, the value of the shares immediately before the deconsolidation. Although P's disposition of the 60 shares also causes a deconsolidation of these shares, paragraph (b)(1) of this section provides that, if both paragraph (a) and paragraph (b) of

this section apply to a share in the same transaction, paragraph (a) applies first and paragraph (b) applies only to the extent necessary to effectuate the purposes of this section. Under paragraph (a)(1), P's $60 losses on the sale of the 60 shares is disallowed. Under the facts of this example, it is not necessary to also apply paragraph (b) of this section to the 60 shares in order to effectuate the purpose of this section.

Example (2). Deconsolidation of subsidiary stock on contribution to a partnership. (i) P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. Five years later, P transfers all the stock of T to partnership M in exchange for a partnership interest in M, in a transaction to which section 721 applies.

(ii) At the time of the exchange, P's basis in the T stock is $200 and the T stock's value is $100. Under paragraph (b)(1) of this section, the transfer to M causes a deconsolidation of the T stock, and P must reduce its basis in the T stock, immediately before the transfer to M, from $200 to the stock's $100 value at that time. As a result, P has a basis of $100 in its interest in M, and M has a basis of $100 in the stock of T.

Example (3). Simultaneous application of loss disallowance rule and basis reduction rule to stock of different subsidiaries. (i) P owns all the stock of S, which in turn owns all the stock of S1, and S and S1 are members of the P group. P's basis in the S stock is $100 and S's basis in the S1 stock is $100. S1 buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, S1's basis in the T stock, S's basis in the S1 stock, and P's basis in the S stock each increase from $100 to $200. S then sells all the S1 stock for $100 and recognizes a loss of $100.

(ii) Under paragraph (a)(1) of this section, S's $100 loss on the sale of the S1 stock is disallowed.

(iii) If S1 and T are not members of a consolidated group immediately after the sale of the stock of S1, the T stock is deconsolidated, and under paragraph (b)(1) of this section, S1 must reduce the basis of the T stock to $100, its value immediately before the sale.

(iv) If S1 and T are members of a consolidated group immediately after the sale of the S1 stock, the T stock is not deconsolidated, and no reduction is required under paragraph (b)(1). However, if the new group sells the T stock and recognizes a $100 loss, the loss is disallowed, because under paragraph (c)(2) of this section the loss is attributable to T's recognition of built-in gain (*i.e.*, gain attributable to a separate return year with respect to the group recognizing the gain).

Example (4). Loss offsetting built-in gain in a prior group. (i) P buys all the stock of T for $50 in Year 1, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. T sells asset 2 during Year 3 for $50, and recognizes a $50 gain. Under the investment adjustment system, P's basis in the T stock increases to $100 as a result of the recognition of gain. In Year 5, all of the stock of P is acquired by the P1 group, and the former members of the P group become members of the P1 group. T then sells asset 1 for $0, and recognizes a $50 loss. Under the investment adjustment system, P's basis in the T stock decreases to $50 as a result of the loss. T's assets decline in value from $50 to $40. P then sells all the stock of T for $40 and recognizes a $10 loss.

(ii) P's cost basis on acquisition of the T stock reflects both T's unrecognized gain and unrecognized loss. The gain T recognizes on the disposition of asset 2 is attributable to the recognition of built-in gain with respect to both the P and the P1 groups for purposes of paragraph (c)(2) of this section. As with the recognized built-in gain, the built-in loss that was recognized in the P1 group before P's disposition of the T stock was attributable to a separate return year with respect to the P and P1 groups. T's recognition of the built-in loss while a member of the P1 group offset the effect of the recognition of the built-in gain on T's stock basis, even though the gain was recognized in the P group. Thus, under paragraph (c)(2), P's $10 loss on the sale of the T stock is not attributable to the recognition of built-in gain, and the loss is therefore not disallowed under paragraph (c)(2).

(iii) The result would be the same if when P buys the T stock, T has a $50 net operating loss carryover instead of a $50 built-in loss in asset 2, and the net operating loss carryover is used to offset the built-in gain.

(d) *Successors*—(1) *General rule.* This section applies, to the extent necessary to effectuate the purposes of this section, to any property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of a subsidiary's stock.

(2) *Example.* The principles of this paragraph (d) are illustrated by Example 1 in § 1.337(d)-1(c).

(e) *Anti-stuffing rule*—(1) *Application.* This paragraph (e) applies if—

(i) A transfer of any asset (including stock and securities) after March 8, 1990 is followed within 2 years by a direct or indirect disposition or a deconsolidation of stock, and

(ii) The transfer is with a view to avoiding, directly or indirectly, in whole or in part—

(A) The disallowance of loss on the disposition or the basis reduction on the deconsolidation of stock of a subsidiary, or

(B) The recognition of the unrealized gain on the transferred asset.

A disposition after the 2-year period described in this paragraph (e)(1) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(2) *Basis reduction.* If this paragraph (e) applies, the basis of the stock is reduced, immediately before the disposition or deconsolidation, to cause recognition of gain in an amount equal to the loss disallowance or basis reduction, or the gain recognition, otherwise avoided by reason of the transfer.

(3) *Examples.* The principles of this paragraph (e) are illustrated by the following examples:

Example (1). Basic stuffing case. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. In Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. In Year 6, P sells all the stock of T for $200.

(ii) Under paragraph (e)(2) of this section, P must reduce the basis in its T stock by $100 immediately before the sale. This basis reduction causes a $100 gain to be recognized on the sale.

(iii) The $100 basis reduction also would be required if the T stock is deconsolidated in Year 6 instead of being sold. P must reduce the basis in its T stock by $100 immediately before the deconsolidation.

(iv) The $100 basis reduction also would be required if the P stock were acquired at the beginning of Year 6 by the M group, even though the asset transfer took place outside the M group. Paragraph (e)(1) requires only that the transferor have the view at the time of the transfer.

Example (2). Stacking rules. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. Thereafter, the value of the contributed asset declines to $10. In Year 6, P sells all the T stock for $110.

(ii) Because the transferred asset declined in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (e)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $10 gain to be recognized on the sale.

(iii) Assume, instead, that the transferred asset does not decline in value and that T reinvests the $100 in proceeds from the asset sale in another asset that appreciates in value to $190. In Year 6, P sells T for $290. Because the new asset appreciated in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to

the extent of $10. Under paragraph (e)(2) of this section, P must reduce the basis in its T stock immedately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $10, causing a $100 gain to be recognized on the sale.

Example (3). Contribution of built-in loss asset. (i) In Year 1, P forms S with a contribution of $100 in exchange for all of S's stock, and S becomes a member of the P group. S buys an asset for $100, and the asset appreciates in value to $200. P then buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100, and under the investment adjustment system P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers the T stock to S in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. The transfer causes P's basis in the S stock to increase from $100 to $300 and the value of S to increase from $200 to $300. In Year 6, P sells the S stock for $300.

(ii) Under paragraph (e)(2) of this section, P must reduce the basis in its S stock immediately before the sale to cause recognition of gain in an amount equal to the gain recognition otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $100 gain to be recognized on the sale.

Example (4). Absence of view. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has 2 assets, asset 1 with a basis of $50 and value of $100, and asset 2 with a basis of $50 and value of $0. T sells asset 1 for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $150. In Year 5, T transfers asset 2 to P in a transaction to which § 1.1502-14(a) applies, with a view to having the group retain the loss inherent in the asset. This transfer reduces P's basis in the T stock from $150 to $100. In Year 6, P sells all the stock of T for $100.

(ii) The transfer from T to P achieves a result that could have been obtained by other methods that would not have been prevented by this section. The transfer therefore is not with the view described in paragraph (e)(1) of this section, P is not required to reduce the basis of its T stock under paragraph (e)(2) of this section. P is in substantially the same position holding asset 2 as it would be if T sold the asset and the resulting loss was available to the P group through T.

Example (5). Extending the time period for dispositions. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. At the beginning of Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. Within 2 years, P agrees to sell all the stock of T for $200 at the end of Year 7.

(ii) Under paragraph (e)(1) of this section, P's disposition of the T stock at the end of Year 7 is treated as occurring within the 2-year period following P's transfer of the asset to T, because the disposition is pursuant to an agreement reached within 2 years after the transfer. Accordingly, under paragraph (e)(2) of this section, P must reduce the basis in its T stock by $100 immediately before the sale. This result is reached whether or not the agreement is in writing. P's disposition would also have been treated as occurring within the 2-year period if the disposition were pursuant to an option issued within the period.

(f) *Investment adjustments and earnings and profits*—(1) *Effect on investment adjustments and earnings and profits*—(i) *General rule.* For purposes of determining investment adjustments under § 1.1502-32 and earnings and profits under § 1.1502-33(c) with respect to a member of a consolidated group that owns stock in a subsidiary, any deduction that is disallowed, or any amount by which basis is reduced, under this section is treated as a loss absorbed by the member in the tax year in which the disallowance or basis reduction occurs.

(ii) *Example.* (A) In Year 1, P forms S with a contribution of $100, and S becomes a member of the P group. S buys all the stock of T for $100. T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to $200, and P's basis in the S stock increases to $200. In Year 6, S sells all the stock of T for $100, and S's recognized loss of $100 is disallowed under paragraph (a)(1) of this section.

(B) Under paragraph (f)(1) of this section, the earnings and profits of S for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1). P's basis in the S stock is reduced from $200 to $100 under the investment adjustment system. Correspondingly, P's earnings and profits for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1) of this section.

(2) *Coordination rules*—(i) *Order of adjustments.* Deconsolidation of a share is treated as a disposition of the share of purposes of determining when investment adjustments are made to the share.

(ii) *No tiering up of certain adjustments.* If the basis of stock of a subsidiary owned by a member (the "owning member") is reduced under this section on the deconsolidation of the stock, no corresponding adjustment is made under § 1.1502-32 to the basis of the stock of the owning member (or any higher tier member) if a disposition or deconsolidation occurs in the same transaction with respect to all the stock of the owning member. In the case of a disposition or deconsolidation in the same transaction of less than all the stock of the owning member, appropriate adjustments shall be made under § 1.1502-32 with respect to the stock of the owning member (or any higher tier member).

(iii) *Example.* (A) P, the common parent of a group, owns all the stock of S, S owns all the stock of S1, and S1 owns all the stock of S2. P's basis in the S stock is $100, S's basis in the S1 stock is $100, and S1's basis in the S2 stock is $100. In Year 1, S2 buys T for $100. T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, the basis of each subsidiary's stock increases from $100 to $200. In Year 6, S sells all the stock of S1 for $100 to A, an individual, and recognizes a loss of $100. S1, S2, and T are not members of a consolidated group immediately after the sale because the new S1 group does not file a consolidated return for its first taxable year.

(B) Under paragraph (a)(1) of this section, no deduction is allowed to S for its loss on the sale of the S1 stock. Under paragraph (f)(1) of this section, S's earnings and profits for Year 6 are reduced by the $100 loss that is disallowed. Correspondingly, under the investment adjustment system, S's reduction in earnings and profits causes a reduction in P's basis in the S stock, and a reduction in P's earnings and profits for Year 6.

(C) Under paragraph (b)(1) of this section, because the stock T and S2 is deconsolidated, S2 must reduce the basis of the T stock from $200 to $100 (its value immediately before the deconsolidation), and S1 must reduce the basis of the S2 stock from $200 to $100 (its value immediately before the deconsolidation). Under paragraph (f)(1), S2's earnings and profits for Year 6 are reduced by the $100 reduction to the basis of the T stock, and S1's earnings and profits are reduced by the $100 reduction to the basis of the S2 stock. Under paragraph (f)(2)(ii) of this section, because the stock of S2 is deconsolidated in the same transaction, the basis reduction to the T stock does not cause any corresponding investment adjustment to the stock of S2, or to the stock of any higher tier subsidiary. Similarly, because the stock of S1 is disposed of in the same transaction, the reduction to the basis of the S2 stock does not cause an investment adjustment to the stock of S1, or the stock of any higher tier subsidiary.

(iv) *Basis reduction treated as investment adjustment.* For purposes of the consolidated return regulations, the amount of any basis reduction to stock under this section is generally treated as a net negative adjustment under § 1.1502-32(e) (in addition to the adjustment otherwise required under § 1.1502-32(e)) with respect to the stock. The amount of the basis reduction is not treated as a net negative adjustment for purposes of § 1.1502-32T (a), however.

(g) *Effective dates*—(1) *General rule.* This section is effective December 26, 1990. Except as otherwise provided in

this paragraph (g), this section applies with respect to dispositions and deconsolidations after November 18, 1990, but only to the extent the disposition or deconsolidation is not subject to § 1.1502-20. For this purpose, dispositions deferred under § § 1.1502-13, 1.1502-13T, 1.1502-14, and 1.1502-14T are deemed to occur at the time the deferred gain or loss is taken into account unless the stock was deconsolidated before November 19, 1990. If stock of a subsidiary became worthless during a taxable year including November 19, 1990, the disposition with respect to the stock is treated as occurring on the date the stock became worthless.

(2) *Binding contract rule.* For purposes of this paragraph (g), if a disposition or deconsolidation is pursuant to a binding written contract entered into before March 9, 1990, and in continuous effect until the disposition or deconsolidation, the date the contract became binding is treated as the date of the disposition or deconsolidation.

Par. 6. New temporary § 1.267(f)-3T is added to read as follows:

§ 1.267(f)-3T Disposition or deconsolidation of subsidiary stock (temporary).

For purposes of applying section 267(f)(2) to the sale or exchange of the stock of one member of a consolidated group by another member, see §§ 1.337(d)-1(a) and 1.337(d)-2T(a). For purposes of this section, the definitions in § 1.1502-1 apply.

Par. 7. Paragraph (h)(2) of § 1.469-1T is revised to read as follows:

§ 1.469-1T General rules (temporary).

* * * * *

(h) * * *

(2) *Definitions.* For purposes of this paragraph (h)—

(i) The terms "group," "consolidated group," "member," "subsidiary," and "consolidated return year" have the meanings set forth in § 1.1502-1; and

(ii) The term "consolidated taxable income" has the meaning set forth in § 1.1502-11.

* * * * *

Par. 8. The text of § 1.1502-1T is redesignated as § 1.1502-1(h) and the section heading is removed.

Par. 9. Paragraph (r) of § 1.1502-12 is revised to read as follows:

§ 1.1502-12 Separate taxable income.

* * * * *

(r) For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1 and 1.337(d)-2T.

* * * * *

Par 9A. Section 1.1502-20T is removed.

Par. 10. The last sentence of § 1.1502-32(a) is revised to read as follows:

§ 1.1502-32 Investment adjustment.

* * * * *

(a) * * * For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1 and 1.337(d)-2T.

* * * * *

Par. 11. The last sentence of § 1.1502-33(c)(6) is revised to read as follows:

§ 1.1502-33 Earnings and profits.

* * * * *

(c) * * *

(6) * * * For rules relating to the effect on earnings and profits of loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1 and 1.337(d)-2T.

* * * * *

§ 1.1502-79 [Amended]

Par. 12. Section 1.1502-79 is amended by removing paragraph (a)(1)(iii).

PART 602—[AMENDED]

Par. 13. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 14. Section 602.101(c) is amended by inserting in the appropriate place in the table "Section 1.337(d)-1 * * * 1545-1160".

Need for Temporary Regulations

Because of the need to prevent circumvention of the repeal of the *General Utilities* doctrine, it is impracticable and contrary to the public interest to issue temporary regulation § 1.337(d)-2T with notice and public procedure under section 553(b) of title 5 of the United States Code, or subject to the effective date limitation of section 553(d) of title 5.

Dated: November 8, 1990.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-27571 Filed 11-19-90; 3:43 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD-05-90-81]

COTP Hampton Roads, Regulation 90-RFR-81; Safety Zone Regulations: North Carolina Pamlico Sound, Oregon Inlet, and Vicinity

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone from North Point to South Point extending 100 yards on both sides of the collapsed section of the Herbert C. Bonner Bridge at Oregon Inlet, North Carolina. This zone is needed to ensure the safety of mariners in the vicinity of Oregon Inlet, North Carolina from the hazards resulting from the collapse of the Herbert C. Bonner Bridge. The Captain of the Port, Hampton Roads, VA will enforce a safety zone extending northwestwardly from position 35-46.28N latitude, 75-32.22W longitude to a point at 35-46.35N latitude, 75-32.37W longitude, thence easterly to a point at 35-46.48N latitude, 75-32.28W longitude, and thence southeasterly to position 35-46.38N latitude, 75-32.09W longitude. Vessels or individuals will not be permitted to enter the safety zone, except as permitted by the Captain of the Port or his designated representative.

EFFECTIVE DATE: This regulation is effective at 9 p.m., October 27, 1990 and terminates on June 27, 1991 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LTJG W.J.P. Westphal II, Project Officer, USCG Marine Safety Officer, Hampton Roads, Norfolk Federal Building, 200 Granby Street, Norfolk, Virginia 23510. TEL: (804) 441-3294. (FTS) 827-3294. LTJG Westphal may be reached 7:30 a.m. until 4 p.m., Monday through Friday, except during Federal Holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to ensure the safety of mariners operating in the vicinity of Oregon Inlet.

Drafting Information

The drafter of this regulation is LTJG W.J.P. Westphal II Project Officer for the Captain of the Port, Hampton Roads.

Discussion of Regulation

A safety zone is being established 100 yards on both sides of the collapsed section of the Herbert C. Bonner Bridge extending from North Point to South Point of Oregon Inlet, North Carolina from 9 p.m., October 27, 1990 until repairs to the Herbert C. Bonner Bridge are completed. This zone is needed to ensure the safety of persons and vessels from the hazards resulting from the collapse of the Herbert C. Bonner Bridge. This safety zone will encompass the waters of Oregon Inlet within 100 yards on both sides of the Herbert C. Bonner Bridge, Oregon Inlet, North Carolina. The safety zone will extend northwestwardly from position 35–46.28N latitude, 75–32.22W longitude to a point at 35–46.35N latitude, 75–32.37W longitude, thence easterly to a point at 35–46.48N latitude, 75–32.28W longitude, and thence southeasterly to position 35–46.38N latitude, 75–32.09W longitude. The safety zone will be enforced from 9 p.m., October 27, 1990 until the completion of repair operations, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia. Coast Guard vessels will enforce the safety zone at all times while the zone is in effect. Commercial and recreational vessels will not be permitted to enter the safety zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the following, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.01–30, 165.5, 165.20 and 165.23.

2. In part 165, a new § 165.T0581 is added, to read as follows:

§ 165.T0581 Safety Zone: Herbert C. Bonner Bridge, Oregon Inlet, North Carolina.

(a) *Location.* The following area is a safety zone: The waters of Oregon Inlet within 100 yards on both sides of the Herbert C. Bonner Bridge, Oregon Inlet, North Carolina, encompassed by a line drawn northwestwardly from position 35–46.28N latitude, 75–32.22W longitude to a point at 35–46.35N latitude, 75–32.37W longitude, thence easterly to a point at 35–46.48N latitude, 75–32.38W longitude, and thence southeasterly to position 35–46.38N latitude, 75–32.09W longitude.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Norfolk, VA.

(1) The Captain of the Port, Hampton Roads and the Duty Officer at Marine Safety Office, Norfolk, Virginia can be contacted at telephone (804) 441–3307.

(2) The senior boarding officer on each vessel enforcing the safety zone can be contracted on VHF–FM channel 13 and 16.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia.

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

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

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

(d) *Effective date.* This regulation is effective from 9 p.m., on October 27, 1990 and terminates on June 27, 1991 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

Dated: November 9, 1990.

G. J. E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 90–27630 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD-05-90-82]

COTP Hampton Roads, Regulation 90-RFR-82; Safety Zone Regulations: Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone 1.5 nautical miles north of Rudee Inlet, Virginia approximately 500 yards east of Virginia Beach, Virginia. This zone is needed to ensure the safety of mariners in the vicinity of Virginia Beach, Virginia, from the hazards present during salvage operations of a crashed U.S. Navy A–6E aircraft. The Captain of the Port, Hampton Roads, VA will enforce a safety zone consisting of a circle having a radius of 500 yards with the center at position 36–51.14N latitude, 75–58.21W longitude. Vessels or individuals will not be permitted to enter the safety zone, except as permitted by the Captain of the Port or his designated representative.

EFFECTIVE DATE: This regulation is effective at 12:40 p.m., November 7, 1990 and terminates on December 7, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LTJG W.J.P. Westphal II, Project Officer, USCG Marine Safety Office, Hampton Roads, Norfolk Federal Building, 200 Granby Street, Norfolk, Virginia 23510. TEL: (804) 441–3294. (FTS) 827–3294. LTJG Westphal may be reached 7:30 a.m. until 4 p.m., Monday through Friday, except during Federal Holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to ensure the safety of mariners operating in the vicinity of Virginia Beach, Virginia.

Drafting Information

The drafter of this regulation is LTJG W.J.P. Westphal II, Project Officer for the Captain of the Port, Hampton Roads.

Discussion of Regulation

A safety zone is being established approximately 500 yards east of Virginia Beach, Virginia consisting of a circle having a radius of 500 yards with the center at position 36–51.14N latitude, 75–58.21W longitude from 12:40 p.m., November 7, 1990 until aircraft salvage operations are completed. This zone is needed to ensure the safety of persons and vessels in the vicinity of Virginia Beach, Virginia, from the hazards present during salvage operations of a crashed U.S. Navy A–6E aircraft. This safety zone will encompass the waters of the Atlantic Ocean approximately 500

yards east of Virginia Beach, Virginia, 1.5 nautical miles north of Rudee Inlet, Virginia. The safety zone will consist of a circle having a radius of 500 yards with the center at position 36–51.14N latitude, 75–58.21W longitude. The safety zone will be enforced from 12:40 p.m., November 7, 1990 until the completion of aircraft salvage operations, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia. Coast Guard vessels will enforce the safety zone at all times while the zone is in effect. Commercial and recreational vessels will not be permitted to enter the safety zone.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the following, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.01–30, 165.5, 165.20, and 165.23.

2. In part 165, a new § 165.T0582 is added, to read as follows:

§ 165.T0582 Safety Zone: Atlantic Ocean, Virginia Beach, Virginia.

(a) *Location.* The following area is a safety zone: The waters of the Atlantic Ocean approximately 500 yards east of Virginia Beach, Virginia, 1.5 nautical miles north of Rudee Inlet, Virginia. The safety zone will consist of a circle having a radius of 500 yards with the center at position 36–51.14N latitude, 75–58.21W longitude.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Norfolk, VA.

(1) The Captain of the Port, Hampton Roads and the Duty Officer at Marine Safety Office, Norfolk, Virginia can be contacted at telephone (804) 441–3307.

(2) The senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channel 13 and 16.

(c) *Regulation.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia.

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

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

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

(d) *Effective date.* This regulation is effective from 12:40 p.m., on November 7, 1990 and terminates on December 7, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

Dated: November 9, 1990.

G.J.E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 90–27629 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 901080–0285]

Patent Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Interim rule.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 imposes a 69% surcharge on fees charged under 35 U.S.C. 41 (a) and (b). The surcharge took effect on November 5, 1990. By this notice, the Patent and Trademark Office (Office) is informing the public of the patent fees affected and the new amounts including the surcharge.

EFFECTIVE DATE: As required by the Omnibus Budget Reconciliation Act, the fees in this interim rule are effective November 5, 1990. Consideration will be given to comments received on or before January 25, 1991.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, suite 904, Building 2, Crystal Park. Written comments will be available for public inspection in suite 904 of Building 2, Crystal Park, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557–1610 or by mail to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office is required by the Omnibus Budget Reconciliation Act of 1990 to apply a 69% surcharge to patent fees charged under 35 U.S.C. 41 (a) and (b). By this Act, the 69% surcharge is rounded by standard arithmetic rules. The Office has applied standard arithmetic rules so that the amounts rounded would be *de minimis* and convenient to the user. For entities other than small entities, amounts of $100 or more were rounded to the nearest $10. Amounts between $10 and $99 were rounded to the nearest even number so that the comparable small entity fee would be a whole number. For small entities, the Office then reduced the fee by 50% as required by 35 U.S.C. 41(h).

Any fee under 35 U.S.C. 41 (a) and (b) which is paid on or after November 5, 1990, is subject to the surcharge. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing under 37 CFR 1.8 or a proper Certificate of Express mail under 37 CFR 1.10 will be considered to be the date of receipt in the Office.

Since, by law, this surcharge became effective on November 5, 1990, and the law provided no discretion to the Office, this rule is effective as of that date.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* There are no information collection requirements related to patent fee rules.

The Office has determined that this notice has no Federalism implications affecting relations between the National Government and the States as outlined in Executive Order 12612.

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million because the additional revenue that the surcharge collects will be offset by a reduction in the Office's appropriation from the general revenues of the United States. While there will be an increase in patent fees, they are

required by law, and the Office is without discretion to reduce them.

The Office has determined that good cause exists for dispensing with the requirements under 5 U.S.C. 553 of notice and comment and delayed effective date. These procedures are impracticable because the Omnibus Budget Reconciliation Act of 1990 imposed a surcharge on fees set under 35 U.S.C. 41 (a) and (b) effective November 5, 1990. Therefore, this rule is being issued as an interim final rule effective November 5, 1990. Comments received by January 25, 1991, will be considered in drafting the final rule.

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553(b)(B) or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared for purposes of the Regulatory Flexibility Act.

Lists of Subjects in 37 CFR Part 1

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

For the reasons set out in the preamble, 37 CFR is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

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

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

2. Section 1.16 is amended by revising the section heading and paragraphs (a)–(d) and (f)–(j) and adding the authority citation to read as follows.

§ 1.16 National application filing fees and surcharge.

(a) Basic fee for filing each application for an original patent, except design or plant cases:
By a small entity (§ 1.9(f)) $315.00
By other than a small entity 630.00

(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:
By a small entity (§ 1.9(f)) 30.00
By other than a small entity 60.00

(c) In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
By a small entity (§ 1.9(f)) 10.00
By other than a small entity 20.00

(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application:
By a small entity (§ 1.9(f)) 100.00
By other than a small entity 200.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

* * * * *

(f) For filing each design application:
By a small entity (§ 1.9(f)) 125.00
By other than a small entity 250.00

(g) Basic fee for filing each plant application:
By a small entity (§ 1.9(f)) 210.00
By other than a small entity 420.00

(h) Basic fee for filing each reissue application:
By a small entity (§ 1.9(f)) 315.00
By other than a small entity 630.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:
By a small entity (§ 1.9(f)) 30.00
By other than a small entity 60.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes):
By a small entity (§ 1.9(f)) 10.00
By other than a small entity 20.00

(Note: See § 1.445 for international application filing and processing fees.)

(Omnibus Budget Reconciliation Act of 1990, sec. 10101; 35 U.S.C. 6, 41)

3. Section 1.17 is amended by revising the section heading, paragraphs (a)–(g), (l), and (m), and the authority citation to read as follows:

§ 1.17 Patent application processing fees and surcharge.

(a) Extension fee for response within first month pursuant to § 1.136(a):
By a small entity (§ 1.9(f)) $50.00
By other than a small entity 100.00

(b) Extension fee for response within second month pursuant to § 1.136(a):
By a small entity (§ 1.9(f)) 150.00
By other than a small entity 300.00

(c) Extension fee for response within third month pursuant to § 1.136(a):
By a small entity (§ 1.9(f)) 365.00
By other than a small entity 730.00

(d) Extension fee for response within fourth month pursuant to § 1.136(a):
By a small entity (§ 1.9(f)) 575.00
By other than a small entity 1,150.00

(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:
By a small entity (§ 1.9(f)) 120.00
By other than a small entity 240.00

(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:
By a small entity (§ 1.9(f)) 120.00
By other than a small entity 240.00

(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:
By a small entity (§ 1.9(f)) 100.00
By other than a small entity 200.00

* * * * *

(l) For filing a petition
(1) For the revival of an unavoidably abandoned application under 35 U.S.C. sections 133 or 371, or
(2) For delayed payment of the issue fee under 35 U.S.C. § 151:
By a small entity (§ 1.9(f)) 50.00
By other than a small entity 100.00

(m) For filing a petition
(1) For revival of an unintentionally abandoned application, or
(2) For the unintentionally delayed payment of the fee for issuing a patent:
By a small entity (§ 1.9(f)) 525.00
By other than a small entity 1,050.00

(Omnibus Budget Reconciliation Act of 1990, sec. 10101; Pub. L. 97–247; 15 U.S.C. 1113, 1123; 35 U.S.C. 6, 41, 181–188; Export Administration Act of 1979, as amended; Arms Export Control Act, as amended; Atomic Energy Act of 1954, as amended; Nuclear Non-Proliferation Act of 1978, and the delegations in the regulations under these acts to the Commissioner by regulations (15 CFR 370.10(j); 22 CFR 125.04, and 10 CFR 810.7))

4. Section 1.18 is revised to read as follows:

§ 1.18 Patent issue fees and surcharge.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity (§ 1.9(f)) $525.00
By other than a small entity 1,050.00

(b) Issue fee for issuing a design patent:
By a small entity (§ 1.9(f)) 185.00
By other than a small entity 370.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f)) 260.00
By other than a small entity 520.00

(Omnibus Budget Reconciliation Act of 1990, sec. 10101; 35 U.S.C. 6, 41)

5. Section 1.20 is amended by revising the section heading, paragraphs (d) and (h)–(j), and the authority citation to read as follows:

§ 1.20 Post issuance fees and surcharge.

* * * * *

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.9(f)) $50.00
By other than a small entity 100.00

* * * * *

(h) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.9(f)) 415.00
By other than a small entity 830.00

(i) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.9(f)) 835.00
By other than a small entity 1,670.00

(j) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.9(f)) 1,250.00
By other than a small entity 2,500.00

(Omnibus Budget Reconciliation Act of 1990, sec. 10101; 35 U.S.C. 6, 41; 15 U.S.C. 1113, 1123)

Dated: November 20, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90-27655 Filed 11-23-90; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202-233-3042).

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Order of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loans programs—housing and community development, Manufactured homes, Veterans.

Approved: November 16, 1990.

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

PART 36—[AMENDED]

38 CFR part 36, Loan Guaranty, is amended as follows:

§ 36.4212 [Amended]

1. In § 36.4212 remove the date "February 23, 1990", wherever it appears, and add, in its place, the date "November 19, 1990".

2. In § 36.4212(a)(1), remove the number "12½" and add, in its place, the number "12"; in (a)(2) and (a)(3) remove the number "12", wherever it appears, and add, in its place, the number "11½".

§ 36.4311 [Amended]

3. In § 36.4311 remove the date "February 23, 1990", wherever it appears, and add, in its place, the date "November 19, 1990".

4. In § 36.4311, in paragraph (a) remove the number "10", wherever it appears, and add, in its place, the number "9½"; in paragraph (b) remove the number "10¼", wherever it appears, and add, in its place, the number "9¾"; in paragraph (c) remove the number "11½" and add, in its place, the number "11".

§ 36.4503 [Amended]

5. In § 36.4503(a) remove the numbers "10" and "11½", and add in their place the numbers "9½" and "11".

[FR Doc. 90-27584 Filed 11-23-90; 8:45 am]

BILLING CODE 8320-01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62035I; FRL-3766-3]

Polychlorinated Biphenyls in Electrical Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice amends EPA's regulations under section 6(e) of the Toxic Substances Control Act (TSCA) concerning enhanced electrical protection requirements for low voltage radial transformers containing polychlorinated biphenyls (PCBs) and extends the deadline for compliance for these types of transformers. It provides that partial deenergization, i.e., deenergizing only the faulted phase(s) in a low voltage radial transformer, may, in some circumstances, be equivalent to total deenergization of such transformers in the event of a high current fault. This rule states that partial deenergization will be equivalent to total deenergization only if the transformer configuration and associated safety factors demonstrate that partial deenergization is consistent with EPA's goals of avoiding fault related failures, tank rupture, and fires in PCB Transformers. Owners and operators of low voltage radial transformers in or near commercial buildings who wish to utilize partial deenergization will be required to install this type of electrical protection using good engineering practices. This rule does not alter any other current enhanced electrical protection requirements.

DATES: This amendment shall be in effect February 25, 1991. In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight on December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB-44, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)-554-1404, TDD: (202)-554-0557.

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued a final rule in the **Federal Register** of July 17, 1985 (50 FR 29170), which amended the August 25, 1982 PCB Electrical Use Rule (47 FR 37342). The July 17, 1985 rule (hereafter the PCB Transformer Fires Rule) placed additional conditions and restrictions on the use of PCB Transformers, particularly PCB Transformers located in or near commercial buildings.

The preamble to the 1985 PCB Fires Rule (50 FR 29177) discusses in general terms the relationship between electrical failures in transformers and the type of transformer used. The first type of transformer includes all arrangements in which the PCB Transformer can be energized only from the primary winding. These transformers are termed radial PCB Transformers. The second type includes those arrangements in which the PCB Transformer can be energized from either the primary winding or the secondary winding. These transformers are termed network PCB Transformers.

This preamble language defines the PCB Transformer based upon the system or circuit that the Transformer is in as opposed to the type of equipment itself. Thus, the Transformer is said to be in a radial system or a network system. The preamble goes on to state that unlike radial transformers, network transformers are equipped with network protectors, which are circuit breakers located on the secondary side of network transformers. This language characterizes the transformer as either network or radial on the basis of the equipment itself rather than the system or circuit in which the equipment is located.

For purposes of compliance with PCB regulations under the Toxic Substances Control Act (40 CFR part 761), PCB Transformers are distinguished in terms of the voltage level on the secondary side of the transformer. High voltage PCB Transformers are those transformers with secondary voltages equal to or greater than 480 volts, including 480/277 volt systems. Low voltage PCB Transformers are those transformers with secondary voltages less than 480 volts, including 280/120 and 208/120 volt systems. The voltage level of PCB Transformers is one factor directly related to the safety of the transformer and the probability of tank rupture or fire.

After promulgation of the PCB Transformer Fires Rule, and in response to a petition for judicial review under section 19 of the Toxic Substances Control Act (TSCA), EPA agreed to issue a clarification notice and to propose amendments to portions of the PCB Transformer Fires Rule. A Notice of Interpretation was published in the **Federal Register** of December 31, 1986 (51 FR 47241), that clarified several provisions of EPA's regulations governing the use of electrical transformers containing PCBs. Further, on August 21, 1987 (52 FR 31738), EPA issued proposed amendments to the PCB Transformer Fires Rule which, among other changes, prohibited the use of low voltage network transformers in sidewalk vaults which were not equipped with enhanced electrical protection by October 1, 1993.

Following publication of the proposed rule amendment, EPA received comments from the Utility Solid Waste Activities Group (USWAG) and from the Unison Corporation (Unison) regarding enhanced electrical protection requirements for PCB Transformers. These comments stated that the complete deenergization of a three-phase PCB Transformer with a high current fault is unnecessary to prevent

PCB Transformer fault related failures, tank rupture, and/or fires. The information received by EPA indicated that such a transformer could remain safely energized if only the faulted phase of the transformer were isolated and deenergized. This partial deenergization could be achieved with the use of current-limiting fuses or other equivalent technology.

On July 19, 1988 (53 FR 27322), EPA issued the final amendment to the PCB Transformer Fires Rule. At that time, EPA did not have enough information to determine whether or not partial deenergization would be sufficient to meet EPA's goals. As a result, the final rule amendment did not modify the enhanced electrical protection requirements to state that deenergization of the faulted phase is equivalent (in terms of protection against rupture) to total deenergization of the transformer. Instead, the preamble to the final rule amendment solicited public comments in the form of supplementary information to allow EPA to resolve the issue, and stated that EPA would subsequently publish an interpretative notice. EPA has received correspondence from Unison and gathered additional information regarding electrical protection devices, such as current-limiting fuses and circuit breakers, and their function in electrical distribution systems. EPA believes that these comments and this information, as well as supporting statements in the rulemaking record, warrant amending the rule to allow deenergization of the transformer's faulted phase under certain circumstances. EPA is issuing this amendment as a final rule due to the fact that it effects a change in the requirements of § 761.30(a)(1)(iv) following the solicitation of public comments. This rule applies only to low voltage radial transformers. EPA has not received information sufficient to allow the partial deenergization of the faulted phase of low voltage network transformers.

II. Findings

Upon reviewing the rulemaking record for the PCB Transformer Fires Rule, the amendment to that rule, the Regulatory Impact Analysis of the PCB Fires Rule (dated June 19, 1985), and supplemental information listed in Unit III of this document, EPA has become convinced by its own analysis and the new information received that partial deenergization, i.e., deenergization of only the faulted phase(s), is an acceptable form of enhanced electrical protection for the class of low voltage radial three-phase transformers, for purposes of compliance with 40 CFR 761.30(a)(1)(iv), provided certain conditions are met. Specifically, if partial deenergization is selected, the current-limiting fuses or other enhanced electrical protection selected must be able to clear the fault before the magnitude and duration of the overcurrent exceed the short-time loading limits (withstand capacity) of the transformer.

To assure that the enhanced electrical protection equipment selected is capable of meeting this standard, the owner/operator of the commercial building which a PCB Transformer is "in or near" must have the protective device (e.g., circuit breaker or current-limiting fuse), installed in accordance with good engineering practices.

The owner/operator must use a current-limiting fuse or equivalent technology that is capable of clearing all overcurrent faults which may occur prior to exceeding the short-time loading limits (withstand capacity) of the transformer. In considering the type of fuse to be installed, the owner/operator must consider the following: (1) The short-time loading limit recommended by the transformer manufacturer or, if no such recommended limit is available, the recognized guidelines for the maximum permissible transformer through-fault-current duration limits as reported in the Institute of Electrical and Electronics Engineers, Inc. (IEEE) publication ANSI/IEEE C57.109–1985, IEEE Guide for Transformer Through-Fault-Current Duration, and (2) such factors which have or will affect the condition and performance of the individual transformer, such as the age, physical environment, degree of preventative maintenance performed, other electrical protection equipment present, and associated safety factors. EPA believes that these conditions must be considered to assure the proper operation of the protective device to avoid tank rupture or fire in the PCB Transformer. Documentation (i.e., electrical drawings) shall be kept capable of demonstrating that the current-limiting fuse or other equivalent technology was installed in accordance with good engineering practices. In addition, a regular maintenance schedule must be established for the transformer, if one does not already exist.

Current-limiting fuses are the usual form of protective device selected to achieve partial deenergization of a faulted phase of a low voltage radial PCB Transformer. This type of fuse is typically equipped with a silver element which is designed to melt quickly under overcurrent conditions. Upon melting, the fuse creates an arc in the circuit which creates considerable heat. The heat is usually absorbed by sand in the fuse cartridge. This absorption, in conjunction with the melting of the fuse element, creates high resistance in the circuit which gives the fuse its current-limiting action.

After October 1, 1990, high voltage radial transformers must be equipped with enhanced electrical protection which can completely deenergize the transformer to comply with requirements for low current protection (40 CFR 761.30(a)(1)(v)). Since complete deenergization must be provided for under the low current provision, circuit breakers or equivalent electrical protection must be used. Current-limiting fuses are not capable of providing low current protection due to the nature of their design. Therefore, low voltage network transformers and high voltage radial transformers are required to be equipped with electrical protection sufficient to completely deenergize the transformer (within several hundredths of a second in the case of high voltage radial PCB Transformers and within tenths of a second in the case of low voltage network transformers) before transformer rupture occurs. Current-limiting fuses by themselves are not sufficient for this purpose.

III. Official Rulemaking Record

EPA has established a public record for this rulemaking (docket control number OPTS–62035I). A public version of this record containing nonconfidential materials is available in the TSCA Public Docket Office for reviewing and copying from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office in located in Rm. NE–G004, 401 M St., SW., Washington, DC. The following documents for this final rule are in the public record:

A. Previous Rulemaking Record

1. Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers" Final Rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170). Docket number OPTS–62035D.

2. Official rulemaking record from "Notice of Interpretation of Transformer Fires Regulations", published in the **Federal Register** of December 31, 1986 (51 FR 47241). Docket number 62035E.

3. Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers" Final Rule, published in the **Federal Register** of July 19, 1988 (53

FR 27322). Docket number OPTS-62035F-G.

B. Support Documents

1. IEEE, ANSI/IEEE C37.108-1989, IEEE Guide for the Protection of Network Transformers, Institute of Electrical and Electronic Engineers, New York, December 18, 1989.

2. IEEE, ANSI/IEEE C57.109-1985, Guide for Transformer Through-Fault-Current Duration, Institute of Electrical and Electronic Engineers, New York, December 2, 1985.

3. IEEE, ANSI/IEEE C57.12.00-1987, General Requirements for Liquid-Immersed Distribution, Power and Regulating Transformers, Institute of Electrical and Electronic Engineers, New York, April 1, 1988.

4. Dr. Steven C. Vick, Transformer Life Expectancy, Union Carbide Corporation, New York, 1987.

5. Letters received from:

a. D.F. Tulloh, UNISON Transformer Services Inc., Union Carbide Corp., dated March 24, 1988, to L.V. Moos, EED, OPTS, USEPA.

b. Timothy S. Hardy, Kirkland & Ellis, Counsel for Unison Transformer Services, Inc., dated October 27, 1988, to D.M. Keehner, EED, OPTS, USEPA.

6. Telephone communication between H. Carl Manger of Baltimore Gas and Electric and Paul Borst, EED, OPTS, USEPA, on October 27, 1989, on the safety factors associated with enhanced electrical protection for PCB Transformers.

IV. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this amendment to the PCB rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order and therefore not subject to the requirement that a regulatory impact analysis be prepared.

The rule provides for a less costly compliance option for certain PCB Transformers so those PCBs in electrical transformers which would otherwise be prohibited by section 6(e) of TSCA may continue to be used. This rule avoids the severe disruption of electric service to the public and industry that would occur if the use of this equipment were immediately prohibited. It also avoids the economic impact that would result from a requirement to replace the equipment as soon as possible. This rule was submitted to OMB as required by Executive Order 12291. There were no comments from OMB on this rule.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

In general, this rule reduces the burden on small businesses that would otherwise be encountered if an immediate ban on PCB-containing transformers were to take effect. If an immediate ban on the use of PCBs in transformers were imposed, large costs would be incurred by all producers and users of electricity, including small businesses.

EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

There are no recordkeeping or reporting requirements in this final rule.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 16, 1990.

William K. Reilly,

Administrator.

Therefore 40 CFR part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611; subpart G also issued under 15 U.S.C. 2614 and 2616.

2. In § 761.30 by revising the introductory text of paragraph (a)(1)(iv), (a)(1)(iv)(A), and by adding paragraph (a)(1)(iv)(E) to read as follows:

§ 761.30 Authorizations.

* * * * *

(a) * * *

(1) * * *

(iv) As of October 1, 1990, all higher secondary voltage radial PCB Transformers, in use in or near commercial buildings, and lower secondary voltage network PCB Transformers not located in sidewalk vaults in or near commercial buildings (network transformers with secondary voltages below 480 volts) that have not been removed from service as provided in paragraph (a)(1)(iv)(B) of this section, must be equipped with electrical protection to avoid transformer ruptures caused by high current faults. As of February 25, 1991, all lower secondary voltage radial PCB Transformers, in use in or near commercial buildings, must be equipped with electrical protection to avoid transformer ruptures caused by high current faults.

(A) Current-limiting fuses or other equivalent technology must be used to detect sustained high current faults and provide for the complete deenerigzation of the transformer (within several hundredths of a second in the case of higher secondary voltage radial PCB Transformers and within tenths of a second in the case of lower secondary voltage network PCB Transformers), before transformer rupture occurs. Lower secondary voltage radial PCB Transformers must be equipped with electrical protection as provided in paragraph (a)(1)(iv)(E) of this section. The installation, setting, and maintenance of current-limiting fuses or other equivalent technology to avoid PCB Transformer ruptures from sustained high current faults must be completed in accordance with good engineering practices.

* * * * *

(E) As of February 25, 1991, all lower secondary voltage radial PCB Transformers must be equipped with electrical protection, such as current-limiting fuses or other equivalent technology, to detect sustained high current faults and provide for the complete deenergization of the transformer or complete deenergization of the faulted phase of the transformer within several hundredths of a second. The installation, setting, and maintenance of current-limiting fuses or other equivalent technology to avoid PCB Transformer ruptures from sustained high current faults must be completed in accordance with good engineering practices.

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[FR Doc. 90-27685 Filed 11-23-90; 8:45 a.m.]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-316; RM-6709]

Radio Broadcasting Services; Morristown, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Four Seasons Communications, Inc., the Commission allots Channel 275A to Morristown, New York, as the community's first local FM service. Channel 275A can be allotted to Morristown in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44-35-18 and West Longitude 75-39-00. Canadian concurrence has been received since Morristown is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective January 4, 1991; the window period for filing applications will open on January 7, 1991, and close on February 6, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-316, adopted November 5, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New York is amended by adding Morristown, Channel 275A.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27645 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-86; RM-7155]

Radio Broadcasting Services; Portage, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240A to Portage, Wisconsin, in response to a petition filed by WIBU, Inc. There is a site restriction 13.9 kilometers (8.6 miles) northwest. The coordinates for Channel 240A are 43-38-15 and 89-34-25. See 55 FR 9150, March 12, 1990.

DATES: Effective January 4, 1991; the window period for filing applications for Channel 240A at Portage, Wisconsin, will open on January 7, 1991, and close on February 6, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-86, adopted November 5, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin by adding Channel 240A at Portage.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27644 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; The Plant "Spigelia gentianoides" (Gentian Pinkroot) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Spigelia gentianoides* (gentian pinkroot), a plant belonging to the logania family, to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Three populations of this plant are currently known from Jackson and Calhoun Counties in northwestern Florida. Historically, it was found in adjacent counties. Proximity to recreational activities threatens one population and habitat alteration by forestry practices threatens the others. This final rule implements the protection and recovery provisions afforded by the Act for gentian pinkroot.

EFFECTIVE DATE: December 26, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Spigelia gentianoides (gentian pinkroot) is a perennial herb belonging to the plant family Loganiaceae (logania or strychnine family). Dr. Alvan Wentworth Chapman of Apalachicola, Florida discovered the plant in May 1837 during a trip to perform an amputation. He distributed herbarium specimens of the plant under the name *Spigelia floridana*, but later settled on *Spigelia gentianoides*, the name that Alphonse de Candolle (1845) published for Chapman. The holotype specimen (which passed from Chapman to Asa Gray to Edmond Boissier to de Candolle) is in the herbarium at Geneva, Switzerland (K. Wurdack, Beltsville, MD, *in litt.* 1988).

Spigelia gentianoides has a single, erect, sharply ridged stem 10-30 centimeters (4-12 inches) tall. The leaves are opposite and sessile, largest at the top of the stem, 3-5 centimeters (1-2 inches) long. Flowers are borne in a short, few-flowered, terminal, spikelike raceme. The flowers, mounted on very short stalks, point upward. Sepals are 4-6 millimeters long. The corolla is 2.5-3.0 centimeters long, consisting of a narrow tube about 1 centimeter long, broadening to a wider tube with five lobes, each 5-6 millimeters long. The corolla is pale pink, slightly darker at the margins of the lobes. The stamens stay inserted within the flower (Kral

1983). The corolla lobes tend to stay nearly closed, with five slits opening between the lobes. Rogers (1988b) suspected that "a moth effects pollination when it inserts its proboscis into the slits probing for nectar." He has since observed flowers that were completely open (George Rogers, Missouri Botanical Garden, pers. comm. 1989). The flower resembles those of gentians, which is the reason for the plant's name. Flowering is in May and June.

The closest relative of *Spigelia gentianoides* is pinkroot, *Spigelia marilandica*, a widespread species that grows in clumps rather than as single stems and has brilliant red flowers (Kral 1983). In the nineteenth century, pinkroot was a popular folk cure for intestinal worms in the southern states, although it has been blamed for killing patients (Rogers 1986, p. 161). *Spigelia gentianoides* has not been tested for potential drug uses.

Wurdack has seen nine of Chapman's collections of *Spigelia gentianoides*. The type collection is from the west side of the Apalachicola River, probably in Jackson County. One specimen is labelled "Mariana. Common." (Jackson County). Another is labelled "Quincy. 1836, not seen since.", but the date is incorrect, so the locality is unreliable. Ferdinand Rugel collected the plant near Mount Vernon (now Chattahoochee, Gadsden County) in 1843 (K. Wurdack, *in litt.* 1988).

Kral (1983) stated that *Spigelia gentianoides* had been observed only twice since Chapman, in Jackson County. He was apparently unaware of three specimens at the University of Florida, verified by Rogers (pers. comm. 1989), two from Chipley, Washington County (collected by C.E. Pleas, 1940 and 1941), and one from 8 miles north of Wewahitchka, Calhoun County (collected by E.S. Ford, 1954). Harry Ahles and David Boufford found one locality in Jackson County in 1973 (Wunderlin et al. 1980). A specimen from Gulf Hammock (Levy County), labelled by its collectors as *Spigelia gentianoides*, has been determined to be *S. loganioides* (R. Wunderlin, University of South Florida, pers. comm. 1988). Godfrey (1979) included Liberty County, Florida in the distribution of this plant.

Recently, Gary Knight, Robert Kral, Angus Gholson, Jr., Wilson Baker, and Kenneth Wurdack relocated one population and found two more (Rogers 1988a, 1988b; Gholson, pers. comm. 1989). Rogers, Robert Bowden (Director of Horticulture, Missouri Botanical Garden) and others revisited the populations in 1989. One population, in Jackson County, had about 30 plants in 1988, one fifth as many as it had 12 years earlier. The second, near the Jackson-Bay County line, has no more than 10 plants (Rogers, pers. comm. 1988). The third population, somewhat larger than the others, is in Calhoun County south of Blountstown, in a pineland with wiregrass, somewhat drier than flatwoods. The site's trees were cut in 1988 and the landowner planted pines in 1989. The plants had sturdy stems and flowered in 1989, while plants at a shaded site appeared spindly, indicating that this species may actually prefer sun (Rogers, pers. comm. 1989; Bowden, *in litt.* 1990).

The two sites where Kral (1983) found *Spigelia gentianoides* were in light to heavy shade of oak-pine woods containing mixed loblolly and longleaf pines, water oaks, laurel oaks, and southern red oaks, blackgum, and an understory that included flowering dogwood and blueberries. Neither site showed any sign of having been cultivated, and Kral could not find the plant in clearcut areas adjacent to the populations. Angus Gholson now suspects that one currently known site may have been cultivated. Thorough searches would probably find additional populations of *Spigelia gentianoides* in the five counties with records of the species, but the paucity of specimens collected since 1937 and the few sites found recently by experienced field botanists strongly indicate that the plant was never widespread and that it is extremely rare today.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report to be endangered species pursuant to section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382). *Spigelia gentianoides* was included in the Smithsonian Report: the July 1, 1975 notice; the June 16, 1976 proposal; and the 1979 withdrawal.

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Spigelia gentianoides* as a category 1 candidate (a taxon for which data in the Service's possession indicates listing is warranted). A supplement to the notice of review published on November 18, 1983 (48 FR 53640) changed *Spigelia gentianoides* to a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate). No one had seen this species in the field since 1973, and confirmation was needed that it was extant. An updated notice of review published September 27, 1985 (50 FR 39526) retained *Spigelia gentianoides* as a category 2 candidate. In 1985, Gary Knight (then a graduate student at Forida State Univ.) discovered a population of the plant. Subsequent field work by several botanists confirms that the plant persists in the wild (Rogers 1988a, 1988b; Rogers *in litt.* 1988; A. Gholson, Chattahoochee, FL, pers. comm. 1989). A proposal to list *Spigelia gentianoides* as an endangered species was published in the **Federal Register** on March 14, 1990 (55 FR 9472).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Spigelia gentianoides* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1988, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the proposal constituted the final petition finding required for *Spigelia gentianoides*.

Summary of Comments and Recommendations

In the March 14 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in *The News Herald*, Panama City, April 5; the *Calhoun County Record*, Blountstown, April 5; and *The Monitor*, Marianna (April 20). Five comments were received. The Florida Department of Agriculture's Division of Plant Industry

and Division of Forestry supported the proposal, as did two botanists. The Army Corps of Engineers, Mobile District, acknowledged the need to conserve the plant on its land.

The Florida Farm Bureau Federation opposed listing the plant for the reasons listed below, with the Service's response to each.

Issue 1. Spigelia gentianoides is not threatened by habitat destruction or modification. The proposal assumed a great deal about the habitat requirements of this species; it may seem rare because no one was looking for it, and it appears to be thriving in a pine plantation in the normal course of growth, harvest, and replanting.

Service response: More data on the distribution and habitat preferences of this plant would have been very desirable, but the available information is sufficient to demonstrate the present-day rarity of this plant. The number of specimens collected by Chapman, and his notation that it was "common" contrasts sharply to the plant's present status. Searches by current-day botanists of many sites, including some areas in southeastern Alabama (Robert Kral, Vanderbilt Univ., pers. comm. 1989), have revealed only three sites occupied by the plant. The available information on *Spigelia gentianoides* as explained in the "Background" section is obviously incomplete, but listing is warranted without delay based on the plant's rarity, combined with reasonable concern that the largest known population of the plant could be adversely affected by cutting the native stand of pines and replanting. This site has apparently not previously been managed by produce wood products.

Issue 2. The plant is not threatened by overutilization, disease or predation, or inadequate existing regulatory mechanisms. Existing protection of *Spigelia gentianoides* under Florida law is effective as shown by the willingness of the landowner, when personally contacted, to go to additional expense to hand plant pine seedlings.

Service response: State listing alone, combined with landowner cooperation, might encourage habitat conservation on private land as effectively as Federal listing, but Federal listing provides additional protection to the population on Federal property and the Endangered Species Act's trade restrictions are warranted in view of the plant's rarity and interest in the genus *Spigelia* for pharmaceuticals.

Issue 3. Listing of this species could result in land use restrictions (particularly herbicide use restrictions) being imposed on landowners that have habitat within their property boundaries and possibly on landowners who do not have the species on their property. Designation of critical habitat to identify only the known population sites was suggested to avoid such overregulation.

Service response: Environmental Protection Agency (EPA) pesticide registrations, including formulations and use patterns, are reviewed by the Service as part of the formal consultation requirements imposed on Federal agencies by section 7 of the Act. If, as part of that process, the Service determines that a particular use or formulation of a pesticide is likely to jeopardize the continued existence of a threatened or endangered species or adversely modify its critical habitat, then the Service must work with the EPA to devise reasonable and prudent alternatives to preclude jeopardy or adverse modification of the critical habitat. In past consultations with the EPA on the registration of pesticides, reasonable and prudent alternatives have generally involved prohibitions or restrictions on use patterns, formulation, method or time of year of application at the sites of known populations of listed species.

Critical Habitat is defined by section 3 of the Act as "the areas on which are found those physical or biological features essential to the conservation of the species and which may require special management consideration or protection." However, it does not follow that restrictions on pesticide use would necessarily be limited to designated critical habitat, since activities that adversely modify critical habitat are prohibited by section 7, even if they actually take place outside the critical habitat. With or without designated critical habitat, reasonable and prudent alternatives are devised to assure that the areas where a given pesticide is restricted are only large enough to protect listed species. The Service notes that the only known pesticide use that might pose a threat to *Spigelia gentianoides* would be from herbicide use to release young pines from competition by herbs and grasses. This potential threat can be handled through direct contact with the landowner.

Designation of critical habitat restricted to known sites for *Spigelia gentianoides* could seriously threaten the species by publicizing their locations, and is thus not prudent.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Spigelia gentianoides* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spigelia gentianoides* (Chapm. ex A. DC.) (gentian pinkroot) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The currently known populations of *Spigelia gentianoides* occur in mixed upland pine-oak forest, and in an upland pineland where the species is part of a fire-maintained understory dominated by wiregrass (*Aristida stricta* and other grasses). Kral's (1983) appraisal that "certainly the *Spigelia* would not survive mechanical site preparation * * * involved with pine monoculture" was based on his inability to find *Spigelia* in clearcut areas adjacent to a population on an area with no history of cultivation. Kral's views may need modification because the largest known *Spigelia gentianoides* population appears to be surviving cutting and planting, perhaps because the landowner was aware of the presence of the rare plant, had the cutting done with relatively little site disturbance, and had planting done by hand (Gholson, pers. comm. 1989). Gholson suspects that the site of one population may have been cultivated at one time, although the site is adjacent to land that would never have been cultivated. *Spigelia gentianoides* was probably extirpated from some areas by cultivation in the nineteenth and early twentieth centuries; conversion of much of the upland forest land in these countries to pulpwood plantations possibly extirpated other populations.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Other species of the genus have been in demand for their medicinal and/or poisonous properties. "Collecting for medicines has reduced *Spigelia* populations substantially, particularly the striking *S. marilandica*, or pinkroot" (Rogers 1988a). Collecting by botanists or those interested in medicinal plants could easily destroy the very small known populations (Robert Kral, Vanderbilt University, pers. comm. 1989).

C. Disease or predation. None apparent.

D. The inadequacy of existing regulatory mechanisms. Spigelia

gentianoides is listed as endangered by the Preservation of Native Flora of Florida Act (Section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will add Federal penalties to violations of Florida law, will add additional sanctions against taking of plants from Federal land, and will offer additional protection against taking through sections 7 and 9, and through recovery planning.

E. Other natural or manmade factors affecting its continued existence. The one population on publicly owned land is easily accessible and is vulnerable to inadvertent or deliberate damage by human activities. Another population declined from about 150 plants to 30 in 12 years for unknown reasons (Rogers 1988a, 1988b). The rarity of *Spigelia gentianoides,* its limited geographic range, and extensive alteration of its habitat exacerbate the risks posed by the preceding factors, making it likely that the species could become extinct throughout its entire range in the absence of adequate conservation efforts.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Spigelia gentianoides* in determining to make this rule final. Based on this evaluation, the preferred action is to list *Spigelia gentianoides* as endangered. Its limited geographic range, alteration of its known and potential habitat, the small sizes of the three known populations, and the possibility that the largest known population will be adversely affected by forestry practices indicate that the species is in danger of extinction throughout its range, and therefore fits the Act's definition of endangered.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Spigelia gentianoides* at this time. Federal agencies, particularly the agency that owns the site of one population, as well as the two private landowners, can be alerted to the presence of this species without the publication of critical habitat descriptions and maps. Because of the small sizes of the known populations and the potential for collectors to exterminate this plant, publication of critical habitat maps would increase the threat from taking or vandalism.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Environmental Protection Agency (EPA) is establishing a national system to prevent the use of herbicides (including herbicides used in forestry) from jeopardizing endangered and threatened species; the State of Florida's Department of Agriculture and Consumer Services is establishing its own system of herbicide regulation in cooperation with the EPA. If herbicide restrictions are adopted to protect gentian pinkroot, they may affect private landowners in this area. The population of gentian pinkroot on land owned by the U.S. Army Corps of Engineers and managed by the Florida Department of Natural Resources requires attention from those agencies to ensure that management and use of the site does not jeopardize the continued existence of the species. These agencies are aware of the plant's presence.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer to sell it in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments to the Act (Pub. L. 100–478) prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in knowing violation any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. The Service anticipates few requests for permits because there is currently no commercial trade in *Spigelia gentianoides.* Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service. 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104 or FTS 921–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Rogers, G.K. 1986. The genera of Loganiaceae in the Southeastern United States. Jour. Arnold Arboretum 67:143–185.

Rogers, G.K. 1988a. *Spigelia gentianoides*—a species on the brink of extinction. Plant Conservation 3(3):1,8.

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Wunderlin, R.P., D. Richardson, and B. Hansen. 1980. Status report on *Spigelia gentianoides*. Unpublished report submitted to U.S. Fish and Wildlife Service, Jacksonville, Florida. 13 pp.

Author

The primary author of this final rule is David Martin (see "**ADDRESSES**" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Loganiaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*		*	
Loganiaceae—Logania family:						
Spigelia gentianoides	Gentian pinkroot	U.S.A. (FL)	E	406	NA	NA
*	*	*	*		*	

Dated: November 8, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-27631 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 900946-0246]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule changing current regulations promulgated under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). This action requires a vessel operator to notify NMFS when intending to fish in the Exclusive Economic Zone (EEZ) within a 50 nautical mile study zone around the Northwestern Hawaiian Islands (NWHI), so an observer may be placed aboard the vessel. The purpose of these regulations is to gather information on possible interactions of the bottomfish fleet with the endangered Hawaiian monk seal (*Monachus schauinslandi*) and threatened or endangered turtles.

EFFECTIVE DATE: The emergency rule is effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991.

ADDRESSES: Copies of the environmental assessment may be obtained from, and comments should be addressed to, E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731-7415.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514-6660, or Alvin Katekaru, Pacific Area Office, Honolulu, Hawaii (808) 955-8831.

SUPPLEMENTARY INFORMATION: Prior to implementation of the FMP, NMFS issued a biological opinion pursuant to section 7(b) of the Endangered Species Act (ESA) concerning the potential impacts on threatened and endangered species associated with the bottomfish fishery. The opinion states that the proposed FMP would not likely jeopardize any threatened or endangered species, and it made conservation recommendations to provide NMFS with documentation of marine mammal and sea turtle interactions with the fishery. Criteria also were established for reinitiating consultation under the ESA.

The main concern with regard to the bottomfish fishery has been entanglement of monk seals and turtles with fishing gear; therefore, the FMP prohibits the use of gill nets and trawl nets in the NWHI. Reports have been received of monk seals taking bait from fishing hooks, although specific information does not exist.

Critical habitat was implemented in 1986 for monk seals in the NWHI out to 10 fathoms (18.3 m) (51 FR 16047, April 30, 1986), and the area was extended to 20 fathoms (36.6 m) in 1988 (53 FR 18988, May 26, 1988). The intent was to protect the areas used for foraging, breeding, pupping, and haul-out sites.

Reports were received in April, 1990 that monk seals have been hooked by longline fishermen in the NWHI. The NMFS Honolulu Laboratory sent a field party to French Frigate Shoals in May to conduct a survey of the monk seals and turtles on the beaches for evidence of interaction with the longline fishery. The nine dead monk seals found were well within the range of animals normally reported each year; however, injuries were observed on several animals ranging from gaping wounds to abrasions that could not be attributed to shark attack or to male monk seal harassment.

NMFS Special Agents have interviewed captains and crews of 28 vessels returning from the NWHI. Insufficient information was received for agents to take enforcement action;

however, there is a consistency in reports that has raised enough concern to initiate an effort to obtain definitive information on possible impacts from the fishery.

At a meeting on June 20, 1990, the Western Pacific Fishery Management Council (Council) heard reports from its Pelagic Plan Monitoring Team and its Scientific and Statistical Committee on the dramatic increase in the longline fishery and the possible effects this increase might have on the harvest of pelagic resources. The Council also heard progress reports on the investigations into interactions between the longline and bottomfish fisheries and protected species, primarily the Hawaiian monk seal.

The Council voted to take the following emergency actions: (1) Implement a permit and logbook reporting system for the longline fishery, and (2) implement an observer program to place observers on longline and bottomfish vessels operating in a 50 nautical mile study zone around certain islands in the NWHI. Permit requirements are already in effect for the bottomfish fishery.

The Honolulu Laboratory's annual scientific field party went to the NWHI on June 8, where it is surveying monk seal populations throughout the islands. This survey and the information gathered by observers are expected to provide the data needed to determine whether additional management measures are required to protect endangered species in the area.

The Council intends to develop an amendment to the FMP that will make permanent the observer requirement for bottomfish vessels. Implementation of the amendment depends on the information obtained in the study zone.

Permit requirements for owners of vessels being used to fish for bottomfish in the Ho'omalu Zone and the Mau Zone are clarified to indicate that the permits are area specific and that a vessel owner cannot hold a permit for each zone at the same time.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation, and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council. He also has determined that continuing the regulations now in force may result in unintended harm to endangered species in the NWHI.

NOAA prepared an environmental assessment for this rule and concluded that this emergency action will not have a significant impact on the quality of the human environment. You may obtain a copy of the environmental assessment (*see* **ADDRESSES**).

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment, or to delay for 30 days the effective date of these emergency regulations under the provisions of section 553 (b) and (d) of the Administrative Procedure Act. The rule is intended to be in place as soon as possible so that information on endangered species can be collected.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of OMB with an explanation of why it is not possible to follow the regular procedures of that Order.

The Assistant Administrator has requested concurrence by the State of Hawaii and the territories of Guam and American Samoa that this rule does not directly affect the coastal zone of their respective state or territory.

This rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. A request for approval to collect this information has been approved by OMB, OMB Control Number 0648-0214.

This action would require a vessel operator to notify NMFS when intending to fish in the EEZ within a 50 nautical mile study zone around the NWHI. Public reporting burden for this collection is estimated to average 2 minutes per response including gathering the data needed and completing and reviewing the collection of information. Send comments on the reporting burden estimate or any other aspect of the collection-of-information, including suggestions for reducing the burden, to OMB (*see* **ADDRESSES**).

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule does not contain policies with known federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 683

Fisheries.

Dated: November 30, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 683 is amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

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

2. In § 683.2, the following definition is added in alphabetical order, effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 683.2 Definitions.

* * * * *

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

3. In § 683.6, new paragraphs (i), (j), and (k) are added to be effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 683.6 Prohibitions.

* * * * *

(i) Fail to notify the Regional Director of intent to fish within 50 nautical miles off certain Northwestern Hawaiian Islands as required under § 683.29.

(j) Refuse to carry an observer when requested to do so by the Regional Director or any employee of NMFS designated by the Regional Director to make such a request as required under § 683.29.

(k) Forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass (including sexual harassment) an observer by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the

legality of a particular action will be made from the facts on a case-by-case basis.

4. In subpart B, § 683.21, existing paragraph (a)(4) is suspended effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, and a new paragraph (a)(5) is added effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 683.21 Permit requirements for the Northwestern Hawaiian Islands.

(a) * * *

(5) No vessel may be covered by a permit to harvest bottomfish in the Ho'omalu Zone and the Mau Zone at the same time.

* * * * *

5. In subpart B, a new § 683.29 is added to be effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 683.29 Observers.

(a) The operator of a fishing vessel subject to this part shall inform the Regional Director at least 72 hours (not including weekends and holidays) before leaving port of his or her intent to fish within 50 nautical miles of French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands and Kure Island of the NWHI. The operator shall provide this notice by contacting NMFS, Pacific Area Office, telephone (808) 955–8831, 2570 Dole Street, Honolulu, Hawaii. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) All fishing vessels subject to this part must carry an observer when directed to do so by the Regional Director or a designee of the Regional Director.

(c) NMFS will advise the vessel operator of any observer requirement within 72 hours of receipt of the notice, and if an observer is required, will establish with the operator the time and place of embarkation of the observer.

(d) All observers must be provided with sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bank. Meal and other galley privileges must be the same for the observer as for other crew members.

(e) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established and approved by NMFS prior to the vessel's departure from port.

[FR Doc. 90–27701 Filed 11–23–90; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 227
Monday, November 26, 1990

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 90-197]

Importation of Apples, Peaches, and Citrus from Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations by adding Empalme and Guaymas to the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches and tangerines may be imported without treatment for these pests. We believe that these municipalities are free from certain injurious insect pests known to attack apples, grapefruit, oranges, peaches and tangerines, and that are known to occur in Mexico. This action would allow the importation of this fruit into the United States from Empalme and Guaymas, in accordance with the regulations.

DATES: Consideration will be given only to comments received on or before January 25, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-197. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

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

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States. Paragraphs (e) and (f) of § 319.56-2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects. Paragraph (h) of § 319.56-2 lists certain municipalities in Sonora, Mexico, that meet the criteria with regard to five listed insect pests: *Ceratitis capitata*, *Anastrepha ludens*, *A. serpentina*, *A. obliqua*, and *A. fraterculus*. Apples, grapefruit, oranges, peaches, and tangerines from municipalities listed in paragraph (h) may be imported into the United States without treatment for the five listed insect pests.

Prior to the effective date of this document, Empalme and Guaymas were not included in the list of municipalities in paragraph (h) of § 319.56-2. Empalme and Guaymas were removed from the list after the Animal and Plant Health Inspection Service (APHIS) confirmed the existence of infestations of the Mexican fruit fly, *Anastrepha ludens* (Loew). Guaymas was removed from the list in an interim rule effective July 20, 1988, and published in the **Federal Register** on July 26, 1988 (53 FR 27955-27956, Docket Number 88-102). Empalme was removed from the list in an interim rule effective March 24, 1989, and published in the **Federal Register** on March 29, 1989 (54 FR 12872-12873, Docket Number 89-028).

We are proposing to add Empalme and Guaymas to the list of municipalities in Sonora, Mexico, determined to be free from the five listed fruit flies and from which apples, grapefruit, oranges, peaches and tangerines may be imported into the United States without treatment of these pests. We believe that Empalme and Guaymas meet all the criteria contained in § 319.56-2(e)(4) and (f). Specifically, we have determined that:

(1) Within the past 12 months, the Mexican Ministry of Agriculture and Water Resources has performed trapping surveys that show Empalme and Guaymas to be free of the five listed fruit flies—including the Mexican fruit fly—and that the methods employed in these surveys met the requirements approved by the Administrator as adequate to detect these infestations.

(2) The Mexican government has adopted and is enforcing requirements to prevent the introduction, into Empalme and Guaymas, of injurious insects known to attack fruits and vegetables, and these requirements have been deemed by the Administrator to be at least equivalent to those requirements imposed under chapter III, title 7 of the Code of Federal Regulations to prevent the introduction of injurious insects into the United States and the interstate spread of injurious insects, and

(3) The Mexican Ministry of Agriculture and Water Resource has submitted to the Administrator written detailed procedures for the conduct of surveys and the enforcement of requirements under paragraph (f) of § 319.56-2 to prevent the introduction of injurious insects into Empalme and Guaymas.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action would allow the importation of apples, grapefruit, oranges, peaches, and tangerines from Empalme and Guaymas into the United

States, without treatment for the five listed fruit flies. This could increase imports of these articles into the United States, since import costs will be lowered through the elimination of treatment costs. The small entities that could be affected by this action include fumigators at the Mexican border, importers of apples, grapefruit, oranges, peaches, and tangerines, and domestic growers, distributors, and retailers of these fruits.

The economic impact on these entities should be insignificant, since the amount of fruit imported into the United States from these municipalities is expected to be extremely small.

No fruit was imported into the United States from Guaymas before July 1988 (the effective date of the prohibitions on the importation of fruit from that municipality), and we are aware of no planned fruit shipments from that municipality.

Oranges and grapefruit appear to be the only fruit likely to be imported into the United States from Empalme. Oranges and grapefruit were the only fruit imported from Empalme in 1988, the last full calendar year before we placed prohibitions on the importation of fruit from Empalme (the prohibitions became effective in March 1989). During 1988, the amount of oranges and grapefruit imported into the United States from Empalme amounted to less than 1 percent of the total United States production of these fruits, and less than 1 percent of total United States imports of these fruits. Empalme is not a major production area for citrus. We therefore believe that orange and grapefruit imports into the United States from Empalme will resume at 1988 levels.

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

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. 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).

§ 319.56-2 [Amended]

2. In § 319.56–2, paragraph (h) is amended by adding "Empalme; Guaymas;" immediately after "Carbo;".

Done in Washington, DC, this 20 day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–27699 Filed 11–23–90; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 354

9 CFR Part 97

[Docket No. 90-198]

Fee Increase for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that establish charges for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture, at laboratories, border ports, seaports, and airports. The regulations would be amended by: (1) Increasing the hourly rate charged a person, firm or corporation having ownership, custody, or control of plants, plant products, animals and animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an APHIS employee on a Sunday or holiday or at any other time outside the employee's regular tour of duty; and (2) increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service. This action is necessary in order to reflect salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), as implemented by Executive Orders of the President, and to reflect allowable costs associated with the implementation of the Debt Collection Act of 1982.

DATES: Consideration will be given only to comments received on or before December 11, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–198. Comments may be inspected at room 1141 of the 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: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7764, or Louise Rakestraw Lothery, Director, Resource Management Support Staff, VS, APHIS, USDA, room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III (referred to below as the "regulations"), require inspection, laboratory testing, certification, or quarantine of certain animals, animal byproducts, plants, plant products, or other commodities or articles intended for importation into, or exportation from, the United States. When these services must be provided by an APHIS employee on a Sunday or holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97 and 7 CFR part 354.

Each year the fees for these services provided by APHIS employees are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing these services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services; anticipated costs associated with changes in operations of the program; and increases in those costs due to an increase in salaries of Federal

employees allocated by Congress under the Federal Pay Comparability Act of 1970 and other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services, to be incurred as a result of a January 1991 pay for Federal employees, increased costs of the retirement system in 1991, and increased health insurance and travel costs, APHIS proposes to increase the fees in relation to such services.

With certain exceptions explained below, the rates would be increased by $3.52 per hour for services performed outside the regular tour of duty on a Sunday and by $2.76 per hour for services performed outside the regular tour of duty on a holiday or any other period. The new rates would be $43.68 and $33.96, respectively.

The hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service would be increased as follows: For services performed outside of the regularly established hours of service on a Sunday, the rate would be increased by $2.92 per hour, to $35.52. For services performed outside of the regularly established hours of service on a holiday or any other period, the rate would be increased by $2.28 per hour, to $27.16.

Owners and operators of aircraft will continue to be provided inspection services without reimbursement during regularly established hours of service on a Sunday or holiday. Further, no change is proposed in the $25.00 limit for all private aircraft or private vessel inspection services performed on a Sunday, holiday, or at any time after 5 p.m. or before 8 a.m. on a weekday by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture.

Public Comment Period

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. This is a full cost recovery program. To allow for orderly implementation and maximum recovery of costs, the final rule based on this proposal needs to become effective the beginning of the first full Federal pay period of the 1991 calendar year. A shorten comment period is necessary to allow for orderly implementation and maximum recovery of costs.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on information compiled by the Department, we estimate that for calendar year 1990 APHIS will have provided an average of 13,065 hours per week of services for which charges are assessed. These services were requested by thousands of entities. We do not expect that the number of hours of service for which charges will be imposed will increase significantly in 1991.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 7 CFR part 354 and 9 CFR part 97 would be amended as follows:

Title 7—[Amended]

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for 7 CFR part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

§ 354.1 [Amended]

2. In paragraph (a)(1) introductory text of § 354.1, "$40.16" would be removed and "$43.68" added in its place, and "$31.20" would be removed and "$33.96" added in its place.

§ 354.1 [Amended]

3. In paragraph (a)(1)(iii) of § 354.1, "$32.60" would be removed and "$35.52" added in its place, and "$24.88" would be removed and "$27.16" added in its place.

Title 9—[Amended]

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

4. The authority citation for 9 CFR part 97 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(d).

§ 97.1 [Amended]

5. In paragraph (a) introductory text of § 97.1, "$40.16" would be removed and "$43.68" added in its place, and "$31.20" would be removed and "$33.96" added in its place.

§ 97.1 [Amended]

6. In paragraph (a)(3) of § 97.1, "$32.60" would be removed and "$35.52" added in its place, and "$24.88" would be removed and "$27.16" added in its place.

Done in Washington, DC, this 20 day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-27698 Filed 11-23-90; 8:45 am]
BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Part 1427

Standards for Approval of Warehouses for Cotton or Cotton Linters

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR 1421.1081 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Cotton or Cotton Linters. The proposed rule would delete the exception to the bond, financial, warehouse receipt and bale tag requirements granted to warehouses operated by the State of South Carolina Department of Agriculture and approved under the Cotton Storage Agreement. Changes in the State of South Carolina warehouse law enacted during the past year necessitate that CCC amend the Standards for Approval of Warehouses for Cotton or Cotton Linters. State-licensed warehouses in South Carolina are now required to meet the conditions for approval contained in the Standards to obtain a Cotton Storage Agreement.

DATES: Comments must be received on or before January 25, 1991, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to send written comments to Jerry Goodall, Director, Storage Contract Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447-4018.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since implementation of the provisions of this proposed rule 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 governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act is not applicable to this proposed rule. In addition, CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, section 5 of the CCC Charter Act (15 U.S.C. 714c) provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Cotton or Cotton Linters that must be met by warehousemen before CCC will enter into storage agreements with them for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the State of South Carolina warehouse law enacted during the past year necessitate that CCC amend the Standards for Approval of Warehouses for Cotton or Cotton Linters.

Presently, under CFR 1427.1085(c), a warehouse operated by the State of South Carolina Department of Agriculture is granted an exception to the bond requirements contained in the Standards and may at the discretion of the Kansas City Commodity Office be granted additional exceptions to the financial, warehouse receipt and bale requirements.

State-licensed warehouses in South Carolina are now required to meet the conditions for approval contained in the Standards to obtain a Cotton Storage Agreement. The State of South Carolina has amended the warehouse laws of the State. The effect of these amendments is that the State of South Carolina will no longer operate cotton warehouses in the State Warehouse System. The South Carolina Department of Agriculture will now license the operators of those warehouses. Because the warehouses will no longer be operated by the State, the exception contained in the Standards for Approval of Warehouses for Cotton or Cotton Linters pertaining to those warehouses operated by the State is now obsolete.

Therefore, we propose to remove the exception granted to warehouses operated by the State of South Carolina from the Standards for Approval of Warehouses for Cotton or Cotton Linters.

List of Subjects in 7 CFR Part 1427

Agriculture, Cotton, Loan program, Seed cotton, Surety bonds, Warehouses.

Proposed Rule

PART 1427—[AMENDED]

Accordingly, it is proposed that 7 CFR part 1427 be amended as follows:

1. The authority citation for part 1427 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425).

2. Paragraph (c) of § 1427.1085 is removed.

Signed at Washington, DC on November 19, 1990.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-27641 Filed 11-23-90; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R-0711]

Revised Appraisal Standards for Federally Related Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the Board promulgated amendments to its Regulations H (12 CFR part 208) and Y (12 CFR part 225) to implement provisions regarding real estate appraisal standards. The Board's rules currently require State certified and licensed appraisers to be utilized in conducting appraisals in real estate-related financial transactions having a transaction value of more than $100,000. The Board now seeks comment on whether that $100,000 level should be changed. In addition, the Board proposes to add to the section-by-section analysis in section C of the Supplementary Information to the rule a statement which clarifies the Board's intentions regarding the qualifications of State licensed appraisers.

DATES: Comments must be submitted on or before Friday, January 25, 1991.

ADDRESSES: Comments, which should refer to Docket No. R-0711, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122, Eccles Building, between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452-2618), Stanley B. Rediger, Senior Financial Analyst (202/452-2629), or Virginia M. Gibbs, Senior Financial Analyst (202/452-2521), Division of Banking Supervision and Regulation; or Michael J. O'Rourke, Senior Attorney (202/452-3288) or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On June 28, 1990 (55 FR 27,762 (July 5, 1990)), the Board adopted its rule regarding appraisal standards for federally related transactions as directed by Title XI of FIRREA. At the time the Board adopted the rule, staff of the banking agencies had agreed that real estate-related financial transactions valued at more than $100,000 would require the services of a licensed or certified appraiser. The banking agencies felt that a $100,000 level would comport with the letter and spirit of Title XI, while at the same time responding to concerns about increased costs and burdens imposed on small financial institutions and consumers seeking small real estate loans. This consensus was reached after careful consideration of all comments received in response to the Board's proposed rule and after extensive discussions among representatives from the federal financial institutions regulatory agencies. However, since the Board published its rule, concerns have been raised about whether $100,000 is an appropriate level.

In light of these concerns, the other banking agencies have reconsidered their positions. The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have reached a consensus with the Office of Thrift Supervision and the National Credit Union Administration that favors a threshold level of $50,000 above which real estate-related financial transactions would require the services of a licensed or certified appraiser. The federal financial institutions regulatory agencies other than the Board have incorporated this $50,000 level into their appraisal regulations.

The Board now seeks comment on whether it should conform the threshold level established in its regulation to the level adopted by the other agencies.[1] In addition to the general question regarding the propriety of changing this threshold level to $50,000, the Board also specifically requests comment on: (1) The incremental increase in the cost of obtaining appraisals for transactions having a transaction value between $50,000 and $100,000 if the proposal is adopted; (2) the availability of licensed or certified appraisers to perform appraisals for such transactions; and (3) the history of losses resulting from inadequate appraisals rendered in connection with transactions having a transaction value of between $50,000 and $100,000.

Concern also was expressed by some commenters to the Board's rule regarding the ability of State licensed appraisals to perform appraisers of non-residential properties and complex residential properties rendered in connection with federally related transactions having a transaction value of $250,000 or less. In adopting its rule, the Board stressed that an appraiser must be competent to perform the appraisal in question, regardless of the individual's title or designation. Since the Board adopted its rule, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council has issued a statement [2] informing the States that the qualification criteria for the "Residential Real Property Appraiser" classification developed by the Appraisal Qualifications Board of the Appraisal Foundation reflect meaningful standards for licensed appraisers. These criteria include, among others, experience and education standards determined by the Appraisal Qualifications Board as suitable for the performance of competent appraisals. The Board concurs with the Appraisal Subcommittee that such criteria reflect meaningful standards for licensed appraisers.

In establishing a "safe harbor" for States in adopting meaningful licensing standards consistent with Title XI, the Appraisal Subcommittee did not preclude the States from adopting other licensing criteria, so long as such criteria are consistent with Title XI. Indeed, as the Appraisal Subcommittee itself has noted on a number of occasions, Title XI has left the development of licensing criteria to the States, subject only to oversight by the Subcommittee for consistency with Title XI in federally related transactions. In that regard, the Board notes that States could adopt licensing criteria other than that specifically suggested by the Appraisal Subcommittee, and that adoption of such criteria would not necessarily be inconsistent with the Subcommittee's published advisories, the Board's regulation, or Title XI.

The Board also is cognizant of the impending statutory deadline imposed on the States by Title XI for the establishment and operation of State appraisal regulatory programs. The Board recognizes that there may be initial start-up problems and certain inefficiencies in the *de novo* establishment of such programs, particularly with regard to the timing of and procedures involved in both processing and qualifying appraisers for licenses. In that light, the Board believes

[1] If the proposal is adopted, appropriate changes also will be made to the rule's Preamble to reflect the lower threshold amount.

[2] *See* Appraisal Subcommittee Advisory 90-1 (Press Release dated August 9, 1990).

the possibility exists that States, on occasion, may feel it necessary to provide transitional arrangements of a short-term nature with respect to their licensing criteria, particularly in order to ensure the availability of appraisers to conduct federally related transactions as of the statutory deadline imposed in Title XI. The Board believes that limited, short-term transitional arrangements (such as with regard to the education and experience criteria) would not necessarily be inconsistent with the provisions of this regulation and the spirit of Title XI.

The Board again stresses that a title or designation alone does not ensure that an appraiser is competent to perform a given appraisal. Any determination of competency must be based on the appraiser's experience and training as they relate to a particular appraisal assignment.

In light of the above, the Board proposes to replace the language appearing in the preamble to the Board's rule,[3] regarding the appropriate minimum standards for State licensed appraisers conducting appraisals in connection with federally related transactions, with the following:

—" 'State licensed appraiser.' Each State may elect to adopt licensing criteria that are less rigorous than certification criteria. However, licensing criteria must be adequate to protect federal financial and public policy interests. For example, simply 'grandfathering' all existing appraisers generally would not be acceptable. Rather, the States and territories are to design criteria that will ensure that licensed appraisers will have the experience and training sufficient to perform appraisals that comply with this regulation.

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council has issued a statement [4] informing the States that the qualification criteria for the 'Residential Real Property Appraiser' classification developed by the Appraisal Qualifications Board of the Appraisal Foundation reflect meaningful standards for licensed appraisers. These criteria include, among others, experience and education standards determined by the Appraisal Qualifications Board as suitable for the performance of competent appraisals. The Board concurs with the Appraisal Subcommittee that such criteria reflect meaningful standards for licensed appraisers.

In establishing a 'safe harbor' for States in adopting meaningful licensing standards consistent with Title XI, the Appraisal Subcommittee did not preclude the States from adopting other licensing criteria, so long as such criteria are consistent with Title XI. Indeed, as the Appraisal Subcommittee itself has noted on a number of occasions, Title XI has left the development of licensing criteria to the States, subject only to oversight by the Subcommittee for consistency with Title XI in federally related transactions. In that regard, the Board notes that States could adopt licensing criteria other than those specifically suggested by the Appraisal Subcommittee, and that adoption of such criteria would not necessarily be inconsistent with the Appraisal Subcommittee's published advisories, the Board's regulation, or Title XI of FIRREA.

The Board also is cognizant of the statutory deadline imposed on the States by Title XI for the establishment and operation of State appraisal regulatory programs. The Board recognizes that there may be initial start-up problems and certain inefficiencies in the *de novo* establishment of such programs, particularly with regard to the timing of and procedures involved in both processing and qualifying appraisers for their licenses. In that light, the Board believes the possibility exists that States, on occasion, may feel it necessary to provide transitional arrangements of a short-term nature with respect to their licensing criteria, particularly in order to ensure the availability of appraisers to conduct federally related transactions as of the statutory deadline imposed in Title XI. The Board believes that limited, short-term transitional arrangements (such as with regard to the education and experience criteria) would not necessarily be inconsistent with the provisions of this regulation and the spirit of Title XI.

Additional assurance that licensed appraisers will have the qualifications necessary to perform the appraisals authorized under this rule is provided by the requirement that all appraisers comply with the USPAP Competency Provision. Under the Competency Provision, an appraiser must notify the client if the appraiser discovers that an assignment raises problems that are beyond his or her knowledge or experience. Moreover, the appraiser must take the necessary steps to have the assignment completed competently through personal study, affiliation with an appraiser that possesses the necessary knowledge and experience, or retention of the services of an individual with the required knowledge and experience."

Regulatory Flexibility Act Analysis

Title XI of FIRREA requires the Board to establish standards for performing appraisals in connection with "federally related transactions," which are defined to include those real estate related transactions that, among other things, require the services of an appraiser. In considering whether to change the existing level above which the services of an appraiser would be required, the Board has taken into account the legislative history of Title XI, which encourages federal financial institutions regulatory agencies to adopt identical or substantially similar regulations.

The Board anticipates that the proposed regulatory change would increase the cost of federally related transactions having a transaction value between $50,000 and $100,000. These costs will either have to be absorbed by the regulated institutions or be passed on to their customers. The Board specifically seeks comment on the incremental increase in the cost of obtaining appraisals for transactions that would be affected by this proposal.

Paperwork Reduction Analysis

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35; 5 CFR 1320.14), the proposed revisions to Regulations H and Y that relate to recordkeeping requirements have been promulgated under authority delegated to the Board by the Office of Management and Budget.

These proposed amendments would affect bank holding companies, state member banks ("SMBs"), and nonbank subsidiaries of bank holding companies ("BHC subs") that will engage in federally related transactions having a transaction value between $50,000 and $100,000. In developing these proposed amendments, the Board has consulted with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Resolution Trust Corporation. The Legislative history of Title XI encourages those institutions to adopt substantially similar regulations.

The Federal Reserve System estimates that 1,183 institutions would be affected by these recordkeeping requirements if the proposal were adopted. Each

[3] The language to be replaced currently appears in the section-by-section analysis of the Preamble at Part C of the Supplementary Information.

[4] *See* Appraisal Subcommittee Advisory 90-1 (Press Release dated August 9, 1990).

federally related transaction would be expected to require, on average, 15 minutes for review and recordkeeping. The Board now estimates that the total reporting burden for complying with the regulation as proposed to be revised is 54,716 burden hours. This reflects an increase in burden hours of 22,791, as calculated below. The total reporting burden, even if the proposal is adopted, would remain less than one percent of the total annual System reporting burden.

	Number of respondents	X	Annual frequency	X	Estimated average number of hours per response	=	Estimated total annual burden hours
Current:							
SMBs	1,073		86		.25		23,070
BHC subs	110		322		.25		8,855
Total	1,183						31,925
Proposed:							
SMBs	1,073		148		.25		39,701
BHC subs	110		546		.25		15,015
Total	1,183						54,716
Net Change:							
SMBs			+62				+16,631
BHC subs			+224				+6,160
Total							+22,791

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in its document, the Board proposes to amend 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.63, paragraph (a)(1) is revised to read as follows:

§ 225.63 Appraisals not required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction value is $50,000 or less;

* * * * *

Board of Governors of the Federal Reserve System, November 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–27636 Filed 11–23–90; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Requirements for Insurance and Eligible Obligations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulation would require that any credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF) apply for and receive permission from the NCUA Board before either purchasing or acquiring loans or other investment assets or assuming or receiving an assignment of any deposits, shares or liabilities of any credit union not insured by the NCUSIF, of any other depository institution, of any successor in interest to either such institution, or of any NCUSIF-insured credit union not in liquidation. Federal credit union purchases of real estate loans and student loans to facilitate packaging of a pool for the secondary market are not subject to the approval process. The regulation on purchase of eligible obligations would be amended to refer to the new approval process.

DATES: Comments must be received on or before January 25, 1991.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Associate General Counsel, Office of General Counsel, or Martin E. Conrey, Staff Attorney, Office of General Counsel, at the above address or telephone: (202)682–9630.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA has become aware of several actual and several attempted transactions involving the purchase or acquisition of loans and other investment assets and the assumption or acquisition of deposits and liabilities of various depository institutions by NCUSIF-insured credit unions. As some of these transactions involve assets and liabilities of failed institutions, the NCUA is concerned that NCUSIF-insured credit unions act prudently and in a safe and sound manner. NCUA is cognizant of the fact that many institutions fail because of weaknesses in their loan and investment portfolios or a reliance on noncore deposits. In order to ensure protection of the NCUSIF through safe and sound practices, some method of review and approval by the NCUA of such transactions before their consummation is being considered. For example, the NCUA might review any such dealings for thorough due diligence investigation, fair negotiation (absence of conflicts of interest and evidence of arm's length dealing), proper contract subject matter, reasonable pricing (to protect against waste of corporate assets), and adequate and prudent documentation and closing methods of the transaction

by the purchasing or assuming NCUSIF-insured credit union before consummation. Furthermore, the NCUA might review such a transaction for any potential effects upon the credit union's membership, liquidity, profitability, management and support capabilities, quality controls, concentrations of credit, diversity of portfolio investments, risk weighted assets, and capital ratio.

Concern that some regulatory controls might be appropriate began in response to increased NCUSIF-insured credit union interest in purchasing assets and assuming liabilities of liquidating credit unions and other depository institutions. On four occasions since 1988, one private credit union share insurance corporation assisted in the transfer of assets from liquidating state-chartered credit unions that it insures to federally insured state-chartered credit unions (FISCUs), without seeking NCUA review or approval. FISCUs derive such authority from their state enabling acts; the FCU Act does not confer such authority on FISCUs. It is the opinion of that share insurance corporation that NCUA approval for these transfers is not required. Furthermore, while not directly transferring member accounts from liquidating credit unions to FISCUs, the private insurer is transferring such accounts to other institutions at the member's direction instead of providing a direct cash payout of such accounts. In this method there may lie a potential ability to subvert the FCU Act by indirectly transferring member accounts to NCUSIF-insured credit unions without seeking NCUA review and approval for direct member account assumptions.

NCUA has also noticed an increased interest on the part of NCUSIF-insured credit unions to purchase loans or other assets or assume deposits or liabilities from non-NCUSIF-insured credit unions, other depository institutions, and their successors in interest, especially the Federal Deposit Insurance Corporation ("FDIC") and the Resolution Trust Corporation ("RTC"). One federal credit union ("FCU") expressed interest in making a purchase and assumption bid for certain assets and liabilities of a failed savings and loan association before being notified by the RTC that it was not an eligible bidder. It is NCUA's understanding that RTC's opinion in this matter was limited to assumptions of deposits insured by the FDIC to non-FDIC-insured depository institutions. NCUA has been notified by the RTC that no objection would be raised by the sale of assets of a failed FDIC-insured institution to an NCUSIF-insured credit union.

B. Discussion and Authority

The proposed regulation (revised § 741.4) would require that an NCUSIC-insured credit union apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or other investment assets or assuming or receiving an assignment of any deposits, shares or liabilities of any credit union not insured by NCUA or of any other depository institution, of any successor in interest to such institutions, or of any NCUSIF-insured credit union not in liquidation. The "successors in interest" provision is designed to cover transactions with receivers and conservators of failed financial institutions, notably the RTC, FDIC and state financial institution regulators. The requirement for approval of assignment of deposits, shares and liabilities is intended to prevent assignments by the credit union members themselves. The NCUA solicits comments on whether "investment assets" in the proposed § 741.4 should be defined, and if so, how it should be defined. NCUA's intent, by using the term "investment assets," is to strike a balance between sufficiently reviewing the purchase of assets that present risk to the NCUSIF and reviewing purchases of a routine nature (*e.g.*, purchases of fixed assets) that might administratively burden the NCUA, or be adequately handled under other provisions of the FCU Act or NCUA Rules and Regulations.

The NCUA also proposes to except out from coverage of the proposed regulation transactions involving student loans and real estate secured loans by a FCU pursuant to § 701.23(b) of the NCUA Rules and Regulations. Initial review indicates that these transactions are routine, such assets are subject to industry standards protecting safety and soundness and, often, the window of opportunity to consummate such transactions is limited and FCUs would be hampered competitively by agency review. The NCUA solicits comments on whether this exception should also be extended to FISCUs, and, if so, how it should apply. Any information regarding specific powers of FISCUs that FCUs do not have, that might be affected by the proposed regulation, is also solicited. The NCUA also solicits comments on other methods of tailoring the proposed regulation to achieve its purposes without overly burdening the credit union industry. In addition, NCUA solicits comments on whether the rule should be extended to cover purchases from entities other than credit unions or depository institutions.

In order to avoid a renumbering of the sections in part 741 of the NCUA Rules and Regulations, it is proposed that existing § 741.3, Minimum Loan Policy Requirements, and § 741.4, Appraisal Requirements, be combined into a new § 741.3, Minimum Loan Policy and Appraisal Requirements. The substantive wording of §§ 741.3 and 741.4 is unchanged in the proposed rule, and the NCUA intends no change in the meaning of these sections by this combination. The new requirements regarding purchases of assets and assumptions of liabilities appear as proposed § 741.4.

Generally, other than the purchase of investment securities and deposits permissible under the FCU Act, "eligible obligations," and the purchase of assets and assumption of liabilities of other credit unions, FCUs have no investment authority to purchase assets of failed thrifts, banks and credit unions. See sections 107 (7), (8), (13), (14), and (15) of the FCU Act (12 U.S.C. 1757 (7), (8), (13), (14), and (15)). NCUA Rules and Regulations interpret "eligible obligations" to include member loans from any source, loans of a liquidating credit union, "student loans, from any source" and "real estate-secured loans, from any source" (if the student and real estate loans are to be packaged for sale on the secondary market). 12 CFR 701.23(b)(1)(i-iv). If a purchase of assets from a failed thrift, bank or credit union meets these criteria on an "eligible obligation," and other criteria set forth in § 701.23, an FCU would be able to purchase the asset. NCUA is proposed that § 701.23(b)(2) be supplemented to include a cross-reference to the approval process in revised § 741.4. As stated previously, the NCUA proposed to exclude these student loans and real estate secured loans from the coverage of the regulation and solicits comments on whether this exclusion should be extended to FISCUs.

Furthermore, except with the prior written approval of the Board, an NCUSIF-insured credit union (FCU or FISCU) is not permitted to:

(A) Merge or consolidate with any noninsured credit union or institution;

(B) Assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;

(C) Transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or

(D) Convert into a noninsured credit union or institution. 12 U.S.C. 1785(b)(1)(A–D).

Thus, section 205 of the FCU Act generally requires NCUA Board approval of transactions to be covered by the proposed rule, which clarifies the

position of the NCUA and provides an administrative framework to implement the statute. The proposed rule also precludes any potential misinterpretations of the FCU Act by other parties, such as the private share insurer mentioned earlier. The proposed rule also covers transactions with NCUSIF-insured credit unions not in liquidation. This provision implements section 205(b)(2) of the FCU Act (12 U.S.C. 1785(b)(2)) and makes the rule more comprehensive. NCUA has the general authority to prescribe rules and regulations necessary or appropriate to carry out its insurance responsibilities. 12 U.S.C. 1789(a)(11). Authority of the NCUA to regulate in this area further derives from section 206 of the FCU Act. 12 U.S.C. 1786. That section provides a mechanism for the NCUA to initiate administrative actions to assure safety and soundness in both FCU and FISCU operations. All proposed changes apply equally to FCUs and FISCUs, primarily to provide protection to the NCUSIF and to avoid discriminatory activity against FISCUs in violation of the nondiscrimination provision of the FCU Act. 12 U.S.C. 1790.

As a final note, by this proposed regulation, NCUA does not intend to change the field of membership requirements.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed rule is grounded in NCUA concerns about the safety and soundness of the transactions and their potential effects on NCUSIF-insured credit unions and the NCUSIF. Based on information received by the NCUA, few credit unions of any size will be affected by the proposed rule. In the most active state NCUA has knowledge of, only four transactions that would be covered by the proposed rule have occurred in two years. Various Regional Offices of the NCUA have reported interest, but no activity, on the part of NCUSIF-insured credit unions for transactions that would be subject to the proposed rule. The RTC has informed the NCUA that it is unaware of any transactions involving NCUSIF-insured credit unions. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act requirements do not apply to information collection requests submitted to nine or fewer persons. Although proposed § 741.4 does require an application to the Board, the information we have at present indicates that very few applications will be received by the Board. NCUA, at this time, expects no more than nine applications per year. Therefore, the Board has determined that the requirements of the Paperwork Reduction Act do not apply to the proposed rule. NCUA does solicit comment on estimates by NCUSIF-insured credit unions on the number of applications they might expect to file in a year. This information will aid the NCUA in determining whether a Paperwork Reduction Act analysis is necessary.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policymaking discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope." The authority of the NCUA to regulate NCUSIF-insured credit unions under the above referenced sections of the Federal Credit Union Act is clear. Furthermore, the problems of failing financial institutions and the protection of NCUSIF-insured institutions and the NCUSIF itself are concerns of national scope. Very few sections of the country have been left untouched in the last few years by failing financial institutions and resultant problems. In order to enable the NCUA and NCUSIF to have an operable mechanism in place to ensure the safety and soundness of transactions between NCUSIF-insured credit unions and failed and healthy non-NCUSIF-insured financial institutions and their successors in interest, and NCUSIF-insured credit unions not in liquidation, this regulation is proposed. The NCUA Board, pursuant to Executive Order 12612, has determined that this rule may have an occasional direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed rule may supersede provisions of state law, regulation or approvals. Since the proposed rule might lead to conflicts between the NCAA and state financial institution regulators on occasion, comments are requested on means and methods to eliminate, or at least limit, potential conflicts in this area. Commenters may wish to provide recommendations on the potential use of delegated authority, cooperative decisionmaking responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Executive Order. NCUA also desires comment from the state financial institution regulators in developing the proposed rule.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, and Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 15, 1990.

Becky Baker,

Secretary to the Board.

For the reasons set forth in the preamble, 12 CFR parts 701 and 741 are amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and Pub. L. 101-73. Sec. 701.6 is also authorized by 31 U.S.C. 3717. Sec. 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601-3610.

2. In § 701.23, paragraph (b)(2) is revised to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations

* * * * *

(b) * * *

(2) A Federal credit union may make purchases in accordance with this paragraph (b), provided:

(i) The board of directors or investment committee approves the purchase;

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchasers office; and

(iii) For purchases under paragraphs (b)(1) (i) and (ii) of this section, any advance written approval required by § 741.4 of this chapter is obtained before consummation of such purchase.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Sec. 741.11 is also authorized by 31 U.S.C. 3717.

2. Section 741.3 is revised to read as follows:

§ 741.3 Minimum loan policy and appraisal requirements.

Any credit union which is insured pursuant to title II of the Act must:

(a) Adhere to the requirements stated in § 701.21(h) of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) Adhere to the requirements stated in part 722 of this chapter concerning appraisals.

3. Section 741.4 is revised to read as follows:

§ 741.4 Purchase of assets and assumption of liabilities.

Any credit union insured pursuant to title II of the Act must apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or other investment assets or assuming or receiving an assignment of deposits, shares or liabilities from:

(a) Any credit union that is not insured pursuant to title II of the Act,

(b) Any depository institution other than a credit union,

(c) Any successor in interest to any institution identified in paragraph (a) or (b) of this section, or

(d) Any credit union insured pursuant to title II of the Act that is not in liquidation.

Approval is not required for purchases of student loans or real estate secured loans by a federal credit union pursuant to § 701.23(b)(1) (iii) or (iv) of this chapter.

[FR Doc. 90-27692 Filed 11-23-90; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-223-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require the installation of a new magnetic standby compass liner to prevent flight deck personnel from coming into contact with exposed wiring. This proposal is prompted by one report of a pilot receiving an electrical shock while attempting to turn on the magnetic standby compass light. This condition, if not corrected, could result in a high voltage electrical shock hazard to flight deck personnel.

DATES: Comments must be received no later than January 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-223-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Reigon, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2797. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the subtance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledged receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-223-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

This notice proposed to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require the installation of a new magnetic standby compass liner to prevent flight deck personnel from coming into contact with exposed wiring. This proposal is promoted by one report of a pilot receiving an electrical shock while attempting to turn on the standby magnetic compass light. The overhead P5 panel is located just aft of the magnetic standby compass and magnetic standby compass light switch, and without the new liner installed, the opening to the panel is large enough to allow a person's hand to pass through and contact exposed wiring. The exposed wires are connected to the two engine start switches and the engine ignition switch. These three switches are located approximatley one half to one inch aft of the forward edge of the P5 panel and are connected directly to 115VAC power sources. Therefore, the probability of coming into contact with the exposed wiring should a person's hand move in the aft direction after engaging the light switch is quite high. This condition, if not corrected, could result in a high voltage electrical shock hazard to flight deck personnel.

The FAA has reviewed and approved Boeing Service Bulletin 737-25-1266, dated July 26, 1990, which describes the installation of a new magnetic standby compass liner.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require the installation of a new magnetic standby compass liner in accordance with the service bulletin previously described.

There are approximately 74 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximatley one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of the necessary parts is estimated to be $74 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,420.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amedment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Service Bulletin 737-25-1266, dated July 26, 1990, certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To prevent a high voltage electrical shock hazard to flight deck personnel, accomplish the following:

A. Install a new magnetic standby compass liner in accordance with Boeing Service Bulletin 737-25-1266, dated July 26, 1990.

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

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

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

All persons affected by this directive who have not already received the appropirate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Seattle, Washington, on November 13, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27665 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-245-AD]

Airworthiness Directives; Boeing Model 737-300, 737-400, and 737-500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Boeing Model 737-300, 737-400, and 737-500 series airplanes, which would require modification of the engine fire extinguishing wiring and plumbing to preclude improper connection during maintenance. This condition, if not corrected, could result in severe damage to an airplane in the event of an engine fire. This action would also allow for termination of the inspections and functional tests of the engine fire extinguishing system following system maintenance, required by an existing AD. This proposal is prompted by development by the manufacturer of modifications that, when accomplished, would prevent crossed wiring and plumbing in the engine fire extinguishing system.

DATES: Comments must be received no later than January 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-245-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-245-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On May 1, 1989, the FAA issued AD 89-03-51, Amendment 39-6213 (54 FR 20118, May 10, 1989), to require inspections and/or functional checks for improperly installed wiring and plumbing in the engine and cargo compartment fire protection systems on various Boeing airplane models. The checks and inspections are also required to be performed following any maintenance action which could cause mis-wiring or mis-plumbing. That action was prompted by numerous reports of improperly installed plumbing or wiring on several different Boeing airplane models. (The Model 737 engine fire extinguishing system was included in the applicability of AD 89-03-51). This condition, if not corrected, could have resulted in severe damage to an airplane in the event of an engine or cargo compartment fire. In the preamble to the existing AD, the FAA advised that the procedures required by the AD are considered interim action until final action is developed and incorporated.

Since the issuance of AD 89-03-51, the FAA has determined that the crossed wiring and plumbing connections were caused by the close physical location of similar connections. Review of the Model 737-300, -400, and -500 engine fire extinguishing system designs indicates that the potential exists for such cross connection of plumbing and wiring to occur during maintenance.

The FAA has reviewed and approved Boeing Service Bulletin 737-26-1067, dated June 28, 1990, which describes modifications of the engine fire extinguishing system wiring and plumbing. These modifications require physical isolation of hardware to ensure that plumbing and wiring connections will be reinstalled correctly after system maintenance.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the engine fire extinguishing system plumbing and wiring in accordance with the service bulletin previously described. This modification would constitute terminating action for the repetitive inspections required by AD 89-03-51.

Note: AD 89-03-51 is currently applicable to Boeing Models 737, 747, 757, and 767 series airplanes, and requires repetitive inspections and/or functional checks of each model for improperly installed wiring and plumbing in the engine and cargo compartment fire protection systems. As modifications are designed which constitute terminating action for the required inspections, the FAA intends to issue separate rulemaking, such as this action, to mandate each airplane model's terminating action. Once all affected models have been addressed, the FAA will consider rescinding or superseding AD 89-03-51.

There are approximately 889 Model 737-300, 737-400 and 737-500 series airplanes of the affected design in the worldwide fleet. It is estimated that 400 airplanes of U.S. registry would be affected by this AD, that it would take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated to cost $3,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,872,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to all Model 737-300, 737-400, and 737-500 series airplanes, certificated in any category. Compliance required within the next 36 months after the effective date of this AD, unless previously accomplished.

To preclude cross connection of engine fire extinguishing wiring and plumbing during maintenance, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 737-26-1067, dated June 28, 1990: Modify the engine fire extinguishing system wiring and plumbing in accordance with the service bulletin. Accomplishment of this modification constitutes terminating action for the repetitive inspections and functional tests required by Airworthiness Directive 89-03-51, Amendment 39-6213, on Boeing Model 737-300, 737-400, and 737-500 airplanes following maintenance on the engine fire extinguishing wiring and plumbing.

B. For airplanes line position 1890 and subsequent on which PRR 34774 or an equivalent modification was incorporated during production: The repetitive inspections and functional tests required by Airworthiness Directive 89-03-51, Amendment 39-6213, are terminated.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27672 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-36-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require a modification to the center hydraulic system to prevent the loss of fluid from all hydraulic systems as a result of structural failure. This proposal is prompted by review and analysis of the Model 757 flight control system functional redundancy as it relates to the ability of the airplane to continue safe flight and landing after structural failure. This condition, if not corrected, could result in loss of controllability of the airplane if, following a single event of structural failure, damage occurs to all three hydraulic systems.

DATES: Comments must be received no later than January 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-36-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G. M. Dail, Seattle, Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2799. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-36-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Based on a review of the Model 757 flight control system's functional redundancy, the FAA has determined that certain structural damage to the vertical and/or horizontal stabilizers of the airplane could result in loss of fluid from all three hydraulic systems. This would result in the loss of all functions of the hydraulic systems and the reduction of airplane controllability. There have been no reports of a single event which has resulted in the loss of all hydraulic systems on the Model 757 airplane; however, this has occurred on other airplane models. The likelihood of such an event is considered remote; however, since the possibility exists, the FAA has determined that the addition of hydraulic devices in the center system to prevent the total loss of fluid in that system is necessary to provide sufficient flight control to allow continued safe flight and landing of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-29A0030, Revision 1, dated August 3, 1989, which describes procedures for installation of hydraulic devices in the center hydraulic system to prevent total loss of fluid from that system.

Since this condition is likely to develop on airplanes of this type design, an AD is proposed that would require the addition of specific devices in accordance with the service bulletin previously described, to prevent the loss of fluid in the unlikely event of structural failure or other damage.

There are approximately 199 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 100 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would cost $7,599 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $807,900.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 757 airplanes, line numbers 001 through 199, on which Production Revision Release (PRR) 53736 has not been incorporated, certificated in any category. Compliance required within the next 3,600 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent loss of fluid in the center hydraulic system, accomplish the following:

A. Modify the center hydraulic system in accordance with the instructions contained in Boeing Alert Service Bulletin 757-29A0030, Revision 1, dated August 3, 1989.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 13, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27664 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-37-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require a modification to the left hydraulic system to prevent the loss of fluid from the left hydraulic system as a result of structural damage to the horizontal or vertical stabilizers. This proposal is prompted by review and analysis of the Model 767 flight control system functional redundancy as it relates to the ability of the airplane to continue safe flight and landing after structural damage to the empennage or stabilizers. This condition, if not corrected, could result in loss of controllability of the airplane if, following a single event of structural failure, damage occurs to all three hydraulic systems.

DATES: Comments must be received no later than January 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-36-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G.M. Dail, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2799. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-37-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Based on a review of the Model 767 flight control system functional redundancy, the FAA has determined that certain structural damage to the vertical and/or horizontal stabilizers of the airplanes could result in loss of fluid from all three hydraulic systems. This would result in the loss of airplane controllability. There have been no reports of a single event which has resulted in the loss of all hydraulic systems on the Model 767 airplane; however, this has occurred on other airplane models. The likelihood of such an event is considered remote; however, since the possibility exists, the FAA has determined that the addition of hydraulic devices in the left system to prevent the total loss of fluid in that system is necessary to provide sufficient flight control to allow continued safe flight and landing of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-29A0038, Revision 1, dated August 3, 1989, which describes procedures for installation of hydraulic devices in the left hydraulic system to prevent total loss of fluid from that system.

Since this condition is likely to develop on airplanes of this type design, an AD is proposed which would require the addition of specific hydraulic devices, in accordance with the service bulletin previously described, to prevent this loss of fluid in the event of structural failure or other damage to the empennage of the airplane and its components.

There are approximately 255 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 114 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would cost approximately $7,442 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $939,588.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 767 series airplanes, line numbers 001 through 255, on which Production Revision Release (PRR) 11546–2 has not been incorporated, certificated in any category. Compliance required within the next 3,600 hours time in-service after the effective date of this AD, unless previously accomplished.

To prevent loss of fluid in the left hydraulic system, accomplish the following:

A. Modify the left hydraulic system in accordance with the instructions contained in Boeing Alert Service Bulletin 767–29A0038, Revision 1, dated August 3, 1989.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 13, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27666 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–243–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–series airplanes, which would require replacement of the outboard and inboard, right and left wing flight spoiler spigot fittings. This proposal is prompted by reports of recent incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal. This conditions, if not corrected, could result in degradation of the roll control during flight maneuvers. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than by repetitive inspections.

DATES: Comments must be received no later than January 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–243–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE–172; telephone (516) 791–6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received..

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: >>Comments to Docket Number 90–NM–243–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became

obvious that, because of the increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America are committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF), with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The working group assigned to review the de Havilland Model DHC-7 series airplanes made a recommendation to replace the outboard and inboard wing flight spoilers. The manufacturer was made aware of the problem when a wing outboard spoiler bellcrank spigot fitting failed in service. Failure of the fitting could result in improper deployment of the fight spoiler and degradation of roll control during flight maneuvers. Completing these modifications will reduce the possibility for major structural failure of the wing spoiler spigot fittings.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin Nos. 7-27-25, Revision B, and 7-27-26, Revision B, both dated January 28, 1983, which describe procedures for replacing the outboard and inboard wing flight spoiler spigot fittings (Modification Nos. 7/1927, 7/1928, 7/1951, and 7/1952). Transport Canada has classified these service bulletins as mandatory and has issued Airworthiness Directive CF-91-10 addressing this subject.

Since fatigue cracking and corrosion are likely to exist or develop on other airplanes of the same type design registered in the United States, and AD is proposed which would require modification of the wing spoiler spigot fittings in accordance with the service bulletins previously described.

The proposed compliance time for accomplishing the structural modifications is based on the recommendation of the de Havilland Model DHC-7 working group from the Airworthiness Assurance Task Force. Its recommendation is based on a review of fatigue inspections, the ability of the manufacturer to provide parts, and the time necessary to incorporate the modifications.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of the outboard and inboard wing flight spoiler spigot fittings, in accordance with the service bulletins previously described.

It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $84,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing of Canada, Ltd., De Havilland Division: Applies to de Havilland Model DHC-7 series airplanes, Serial Numbers 3 through 36, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible malfunction of the wing flight spoilers, accomplish the following:

A. Within 180 days after the effective date of this AD, replace the outboard (Modification Nos. 7/1927 and 7/1951) and inboard (Modification Nos. 7/1928 and 7/1952), right and left wing flight spoilers spigot fittings, in accordance with the Accomplishment Instructions in de Havilland Service Bulletins 7-27-25, Revision B, and 7-27-26, Revision B, both dated January 28, 1983.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York ACO, ANE-170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO, ANE-170.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1YK, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office.

181 South Franklin Avenue, Valley Stream, New York.

Issued in Renton, Washington, on November 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27670 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-241-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require visual inspections to detect overheat damage in the electrical cable ring tongue terminal tags, and replacement of terminal tags, if necessary. This proposal is prompted by a report of incorrectly crimped connections during production. This condition, if not corrected, could result in the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power.

DATES: Comments must be received no later than January 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-241-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-9100. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-241-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. There has been a report of overheat damage to a ring tongue terminal connected to the No. 1 Inverter on an in-service airplane. Further investigation revealed that a crimping tool used during assembly may have produced out-of-tolerance crimps, resulting in improper attachment of the terminal tags to the wires. This condition, if not corrected, could result in the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power.

British Aerospace has issued Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990, which describes procedures for visual inspections to detect overheat damage in the electrical cable ring tongue terminal tags, and replacement of terminal tags, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require visual inspections to detect heat damage in the electrical cable ring torque terminal tags, and replacement of terminal tags, if necessary, in accordance with the service bulletin previously described.

It is estimated that one airplane of U.S. registry would be affected by this AD, that it would take approximately 44 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,760.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

British Aerospace: Applies to Model ATP series airplanes; Serial Numbers 2001 through 2020, inclusive; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power, accomplish the following:

A. With 90 days after the effective date of this AD, inspect the electrical cable ring tougue terminal tags listed in Tables 1 to 21 of British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990, for security and discoloration, in accordance with the service bulletin.

Note: The service bulletin and this AD refer to "ring tongue terminal tags." That terminology is used to describe crimp-on wire terminals that have a loop on one end to fit over a terminal stud.

B. If any terminal tags show signs of being insecurely crimped or are discolored, replace them prior to further flight, in accordance with British Aeospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990.

C. Within 2,500 hours time-in-service following the inspection required by paragraph A. of this AD, perform a one-time repeat visual inspection on all listed terminal tags that have not been replaced or recrimped, in accordance with British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990.

1. If any terminal tags show signs of being insecurely crimped or are found discolored, replace them prior to further flight, in accordance with the service bulletin.

2. For those terminal tags which do not show signs of being insecurely crimped or discolored, no further action is required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27663 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-173-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which would have required repetitive visual inspections to detect cracks in the engine jet-pipe assembly, and repair or replacement with a serviceable unit, if necessary. This action would revise the proposal to cite the latest revision to the service bulletin as the appropriate service information, and would require the eventual replacement of the aft jet pipes with improved parts.

DATES: Comments must be received no later than December 26, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-173-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-173-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations, which would have required repetitive visual inspections to detect cracks in the engine jet-pipe assembly, and repair or replacement with a serviceable unit, if necessary, on all British Aerospace Model ATP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 20, 1990 (55 FR 38697). That action was prompted by reports of cracks in the engine jet pipes on in-service airplanes. This condition, if not corrected, could result in loss of required engine power and/or overheating of structural components.

One commenter supported the rule, but noted inconsistencies between the proposed rule and the service bulletin. Specifically, the commenter noted that, according to the service bulletin, these airplanes should be allowed to continue to fly with cracks up to 1.75 inches in the aft jet pipe assembly, in which case repetitive inspections would be conducted every 30 hours time-in-service (if cracks measure less than 1 inch) or daily (if cracks measure between 1 inch and 1.75 inches). The FAA does not concur. The FAA has determined that airworthiness cannot be

ensured if airplanes are permitted further flight with cracks. Cracks in the engine jet pipes could result in catastrophic consequences such as (1) overheat of surrounding primary structures and the subsequent creation of potential hazards, or (2) an adverse effect on the engine or engine performance. Therefore, the proposed rule continues to require repair of all jet pipe cracks prior to further flight.

Since the issuance of the Notice, British Aerospace has also issued Revision 3 to Service Bulletin ATP 78-1, dated August 1, 1990, which adds a repetitive inspection interval for post-modification 3510A airplanes. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory.

Additionally, British Aerospace has issued Service Bulletin ATP-78-2 (Modification 3510A), dated April 10, 1990, which describes procedures for the installation of improved aft jet pipes. The improved pipes eliminate the stress concentrations which have led to the subject cracking in some areas of the aft pipe. The United Kingdom CAA has not classified this service bulletin as mandatory.

The FAA has determined that installation of the improved aft jet pipes, as described in Service Bulletin ATP-78-2, coupled with repetitive inspections for cracking, will better ensure safety. Accordingly, the FAA has revised the proposal to require this eventual installation on all airplanes, and follow-on repetitive inspections thereafter at intervals of 1,500 hours time-in-service.

The FAA has also revised the proposal to specify the latest revision (Revision 3) to Service Bulletin ATP 78-1 as the appropriate source of service information for the inspections and certain repair procedures.

Since these changes expand the scope of the proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 15 airplanes of U.S. registry would be affected by the AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to the operator at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

British Aerospace: Applies to all Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the engine jet pipes, accomplish the following:

A. For airplanes in Pre-Modification 35140A configuration: Prior to the accumulation of 500 hours time-in-service since new, or within 50 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 250 hours time-in-service, perform a detailed visual inspection of the engine jet pipe on the right and left engine, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-78-1, Revision 3, dated August 1, 1990.

B. For airplanes in Post-Modification 35140A configuration: Prior to the accumulation of 3,000 hours time-in-service since new, or within 50 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,500 hours time-in-service, perform a detailed visual inspection of the engine jet pipe on the right and left engine, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-78-1, Revision 3, dated August 1, 1990.

C. If cracks are found in the *aft jet pipe assembly*, prior to further flight:

1. Replace the assembly with a serviceable unit; or

2. If cracks measuring less than 1.75 inches are found at the ends of the spacer channels, repair in accordance with British Aerospace Service Bulletin ATP-78-1, Revision 3, dated August 1, 1990; or

3. If cracks are found at any other location, repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate. Following repair or replacement, the inspections specified in paragraphs A. and B. of this AD are still required.

D. If cracks are found in the *forward jet pipe assembly*, prior to further flight, replace the assembly with a serviceable unit, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Following repair, the inspections specified in paragraph A. and B. of this AD are still required.

E. Within 12 months after the effective date of this AD, replace aft jet pipe Part No. JD 780J0009-000 with an improved aft jet pipe having Part No. JD780J0009-002 or -004, in accordance with British Aerospace Service Bulletin ATP-78-2, dated April 10, 1990.

1. Following replacement, perform repetitive detailed visual inspections at intervals not to exceed 1,500 hours time-in-service, in accordance with the service bulletin.

2. If cracks are found, prior to further flight replace the aft jet pipe with a serviceable part in accordance with the service bulletin, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the

manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

Issued in Renton, Washington, on November 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27668 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-233-AD]

Airworthiness Directives; Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, which would require incorporation of certain structural modifications. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These conditions, if not corrected, could result in degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Comments must be received no later than January 14, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-233-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-233-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious that, because of the increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America are committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The working group assigned to review the Fokker Model F-28 series airplanes made a number of recommendations which are contained in Fokker Report No. SE-243, Issue No. 1, dated June 1, 1990. Included in this report is the recommendation to make mandatory certain inspections, structural modifications, and structural life limits. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has issued an Airworthiness Directive (AD) BLA No. 90-063, which duplicated Part II of the Fokker Report SE-243, Issue No. 1, as part of the AD.

The Fokker Report No. SE-243 references 20 service bulletins that specify inspections, structural modifications, and structural life limits applicable to the Fokker Model F-28 series airplanes by serial number. The modifications are applicable to the fuselage, wings, flaps, elevator, horizontal stabilizer, rudder, passenger/crew door, and the main landing gear. Accomplishment of these modifications will reduce the possibility for major structural failures.

This airplane model was manufactured in the Netherlands and is type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since fatigue cracking and corrosion is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is

proposed which would require modifications in accordance with the report previously described.

The proposed compliance time for implementation of the mandatory structural modifications is upon reaching a certain "incorporation threshold" specified in Part II of Fokker Report No. SE-243. The proposed compliance times for accomplishing the structural modifications are based on the recommendation of the F-28 airworthiness Assurance Task Force. Their recommendations were based on a review of fatigue and stress corrosion inspections, the ability of the manufacturer to provide parts, and the time necessary to incorporate the modifications.

This is considered to be interim action. The manufacturer is currently developing additional modifications. The F-28 Aging Aircraft Program will be finalized in the winter of 1990, and may result in the implementation of a "Corrosion Prevention Program" into the maintenance schedule. Once these items are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

It is estimated that 48 airplanes of U.S. registry would be affected by this AD, that it would take approximately 471 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $16,541 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,698,288.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Fokker: Applies to Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, as listed in Part II of Fokker Report No. SE-243, Issue No. 1, dated June 1, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the airplane, accomplish the following:

A. Accomplish the structural modifications according to the service bulletins and the "incorporation threshold" listed in Part II of Fokker Report No. SE-243, Issue No. 1, dated June 1, 1990 as follows:

1. For airplanes that have accumulated time-in-service exceeding the specified "incorporation threshold" as of the effective date of this AD, the structural modifications must be accomplished by the following dates:

a. July 1, 1996, for those service bulletins to which [Note 1] applies.

b. July 1, 1993, for those service bulletins to which [Note 2] applies.

c. July 1, 1993, or 14 years after the airplane's manufacturing date, which ever occurs later, for service bulletins to which [Note 4] applies.

2. For airplanes that have accumulated time-in-service less than the specified "incorporation threshold" as of the effective date of this AD, the structural modifications must be accomplished before the applicable "incorporation threshold" or by the following dates, whichever occurs later:

a. July 1, 1996, for service bulletins to which [Note 1] applies.

b. July 1, 1993, for service bulletins to which [Note 2] applies.

c. July 1, 1993, or 14 years after the airplane's manufacturing date, whichever comes later, for service bulletins to which [Note 4] applies.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 9, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27667 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASO-23]

Proposed Establishment of Transition Area, Zephyrhills, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Zephyrhills, FL, Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve Runway 04 at the Zephyrhills Municipal Airport predicated on the Zephyrhills nondirectional radio beacon (NDB). This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. The additional controlled airspace would provide airspace protection for instrument flight rules (IFR) aeronautical operations. If approved, the operating status of the airport will change from visual flight rules (VFR) to IFR concurrent with publication of the SIAP.

DATES: Comments must be received on or before: January 7, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, manager, System Management Branch, Docket No. 90-ASO-23, P.O. Box 20636, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652,

3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considered an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Zephyrhills, FL, transition area. This action would lower the base of controlled airspace from 1200 to 700 feet above the surface in vicinity to Zephyrhills Municipal Airport. The transition area would provide additional airspace protection for IFR aircraft executing an NDB standard instrument approach procedure planned for Runway 04. If approved, the operating status of the airport would change from VFR to IFR concurrent with publication of the instrument approach procedure. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Zephyrhills, FL [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Zephyrhills Municipal Airport (Lat. 28°13'35"N., Long. 82°09'30"W.); within three miles each side of the 235° bearing from the Zephyrhills NDB (Lat. 28°13'24"N., Long. 82°09'42"W.), extending from the 6.5-mile radius area to 8.5 miles southwest of the NDB.

Issued in East Point, Georgia, on November 14, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-27669 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASW-43]

Proposed Revision of Transition Area: Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Farmington, NM. The development of larger holding patterns at arrival feeder fixes to accommodate larger and faster aircraft types at the Farmington Four Corners Regional Airport has made this proposal necessary. In addition, this proposal would include minor revisions to the coordinates used to describe the airport and revise the airport name to the Farmington Four Corners Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft holding at the arrival feeder fixes and revise the coordinates used to describe the airport location.

DATES: Comments must be received on or before December 31, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 90-ASW-43, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management

Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASW-43." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Farmington, NM. The holding patterns at the arrival feeder fixes to the Farmington Four Corners Regional Airport have been expanded to accommodate larger and faster aircraft, which has made this action necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft holding at the arrival feeder fixes. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Farmington, NM (Revised)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Farmington Four Corners Regional Airport (latitude 36°44'31"N., longitude 108°13'45"W.) within 3.5 miles each side of the Farmington VORTAC 086° radial extending from the 11-mile radius area to 12 miles east of the VORTAC and within 4.5 miles each side of the Farmington VORTAC 265° radial extending from the 11-mile radius area to 23 miles west of the VORTAC; and, that airspace extending upward from 1,200 feet above the surface bounded by a line extending from latitude 37°04'00"N., longitude 108°58'00"W.; to latitude 37°04'00"N., longitude 108°28'00"W.; thence clockwise within a 30-mile radius of the Farmington VORTAC to latitude 37°00'00"N., longitude 107°39'30"W.; to latitude 37°00'00"N., longitude 107°11'30"W.; thence clockwise within a 53-mile radius of the Farmington VORTAC to point of beginning; excluding that airspace within the Durango, CO, transition area, that airspace within and underlying the Crownpoint, NM, transition area, and that airspace within the State of Arizona.

Issued in Fort Worth, TX on November 7, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-27871 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-93-90]

RIN 1545-AP20

Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed §§ 1.337(d)-2 and 1.1502-20. These regulations implement aspects of the repeal of the *General Utilities* doctrine by limiting losses of consolidated groups with respect to the stock of subsidiaries. Proposed § 1.1502-20 also eliminates the duplication of loss with respect to consolidated groups. Final § 1.337(d)-1 and temporary § 1.337(d)-2T appear in the Rules and Regulations section of this issue of the **Federal Register.**

DATES: These regulations are proposed to be effective December 26, 1990. Section 1.337(d)-2 is proposed to generally apply to dispositions and deconsolidations of a subsidiary's stock after November 18, 1990 and before the effective date of § 1.1502-20. Section 1.1502-20 is proposed to generally apply to dispositions and deconsolidations of a subsidiary's stock after January 31, 1991.

Written comments must be delivered by January 15, 1991.

A public hearing on these proposed regulations will be held Friday, January 25, 1991, beginning at 10 a.m. See the notice of public hearing on these proposed regulations elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments to: Internal Revenue Service, Attention: CC:CORP:T:R (CC:CO-93-90), room 4429, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings, 202-566-2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in this regulation is in §§ 1.337(d)-2(b)(4), 1.337(d)-2(c)(1), 1.1502-20(b)(4), 1.1502-20(c)(3), 1.1502-20(g)(5), and 1.1502-20(h)(2). This information is required by the International Revenue Service to comply with sections 337(d) and 1502 and the regulations thereunder. This information will be used to determine that the proper amount of tax was reported by the taxpayer and whether, and to what extent, the taxpayer's return should be audited. The likely respondents are affiliated groups of corporations filing (or required to file) consolidated returns.

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

Estimated total annual reporting burden: 6000 hours. The estimated average annual reporting burden per respondent is 2 hours.

Estimated number of respondents: 3000.

Estimated annual frequency of responses: 1.

B. Introduction

T.D. 8294, filed with the Federal Register on March 9, 1990 and published in the **Federal Register** on March 14, 1990, added temporary §§ 1.1502-20T and 1.337(d)-1T to part 1 of title 26 of the Code of Federal Regulations.

Section 1.1502-20T added to the consolidated return regulations a general rule that disallowed all consolidated group losses on the disposition of a subsidiary's stock (the "loss disallowance rule"). The regulations also provided a number of related rules, including a basis reduction rule applicable on deconsolidation of a subsidiary's stock and an anti-stuffing rule applicable to transfers of property between members in connection with the disposition or deconsolidation of a subsidiary's stock. Also provided was a rule that permitted reattribution of a subsidiary's losses to the common parent to the extent loss would otherwise be disallowed to the consolidated group on the disposition of a subsidiary's stock. The rules added by § 1.1502-20T generally applied to any disposition or deconsolidation of a subsidiary's stock on or after March 9, 1990.

Section 1.337(d)-1T added a transitional rule that generally limited loss on the disposition of a subsidiary's stock after January 6, 1987, if the subsidiary became a member of the group after that date (a "transitional subsidiary") and the disposition was not subject to § 1.1502-20T. Unlike § 1.1502-20T, these regulations permitted the loss to the extent the group established that the loss was not attributable to the recognition of "built-in gain" on the disposition of assets owned by the subsidiary (or any lower tier subsidiary). Moreover, although § 1.1502-20T reduced the basis of subsidiary stock on its deconsolidation, § 1.337(d)-1T continued to treat the stock as subject to loss disallowance on later disposition.

Sections 1.1502-20T and 1.337(d)-1T implemented Notice 87-14, 1987-1 C.B. 445, in which the Internal Revenue Service announced its intention to publish regulations that would prevent utilization of §§ 1.1502-32 and 1.1502-33(c) (the "investment adjustment rules") to circumvent the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986. The loss disallowance rule of § 1.1502-20T addressed another problem relating to the investment adjustment rules by preventing a subsidiary's losses from being duplicated as investment losses of the parent when the parent disposes of the subsidiary's stock.

Also filed with the Federal Register on March 9, 1990 and published on March 14, 1990, was a notice of proposed rulemaking (CO-78-87) that incorporated by cross reference the text of §§ 1.1502-20T and 1.337(d)-1T. Many written comments were received, and a public hearing was held on June 26, 1990.

After full consideration of the written comments and the testimony at the public hearing, the following actions are being taken:

1. Proposed § 1.337(d)-1 is amended and promulgated as a final regulation, replacing temporary § 1.337(d)-1T. See T.D. 8319, published in the Rules and Regulations section of this issue of the **Federal Register**, adding § 1.337(d)-1.

2. New § 1.337(d)-2T is promulgated as a temporary regulation. See T.D. 8319. Commentators characterized § 1.1502-20T as far broader than required by Notice 87-14 and requested that taxpayers retain the ability to dispose of subsidiary stock under the more limited approach of § 1.337(d)-1T until the rules of § 1.1502-20T are revised. Section 1.337(d)-2T continues the principles of § 1.337(d)-1 by adding another transitional rule applicable to all subsidiary stock (not just stock of transitional subsidiaries and transitional parents). The new rule allows groups to establish that loss is not attributable to the recognition of built-in gain, but only if the group's entire equity interest in the subsidiary is disposed of in one or more transactions to unrelated persons before the effective date of new § 1.1502-20. Section 1.337(d)-2T also provides basis reduction rules for subsidiary stock that is deconsolidated and anti-stuffing rules. The text of § 1.337(d)-2T set forth in T.D. 8319 also serves as the text of proposed § 1.337(d)-2, cross referenced in this document.

3. Section 1.1502-20T is withdrawn by T.D. 8319.

4. This document withdraws proposed § 1.1502-20 as added by (CO-78-87) and adds new proposed § 1.1502-20.

5. A Revenue Procedure will be issued as a consequence of these rules setting forth procedures under which the Internal Revenue Service will grant permission for all of the members of a group to discontinue filing consolidated returns. Conditions will be included to restrict reconsolidation of any member (or successor) for at least 5 years.

C. Revision of Loss Disallowance Rule

The preamble to §§ 1.337(d)-1T and 1.1502-20T, published on March 14, 1990, sets forth the rationale for adopting the loss disallowance rule. The rule was adopted in response to the direction in section 337(d) that regulations be

prescribed to ensure that the purposes of the repeal of the *General Utilities* doctrine "may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations * * *)."

That preamble describes the various approaches considered and the reasons for rejecting approaches other than the loss disallowance rule. The preamble identified the principal purpose of the repeal of the *General Utilities* doctrine as being to require payment of a corporate-level tax in a transaction that results in stepping up the basis of corporate assets. The preamble notes that the most accurate method of achieving this goal would have been to require appraisals of assets (including assets of any lower tier subsidiary) at the time a subsidiary's stock is acquired, in order to determine the amount of built-in gain and loss attributable to each asset and liability, and to eliminate positive investment adjustments attributable to recognized built-in gain. This method, referred to as "tracing," was rejected because of the compliance and administrative burdens it would impose on taxpayers and the Internal Revenue Service and because it would rely heavily on appraisals. Other approaches were also rejected because they entailed either tracing or permitting the basis of corporate assets to be stepped up without payment of corporate-level tax.

By disallowing the stock loss, the loss disallowance rule also prevented the duplication of losses. Loss duplication occurs when the stock loss is also reflected in the basis of the subsidiary's assets or its loss carryovers.

After consideration of taxpayer comments, the Treasury Department and the Internal Revenue Service continue to believe that the loss disallowance rule is an appropriate means of implementing *General Utilities* repeal by preventing the elimination of corporate-level tax; that alternative methods of implementing *General Utilities* repeal are not acceptable, either because of the compliance and administrative burdens they would impose on taxpayers and the Internal Revenue Service or because they would not effectively prevent elimination of corporate-level tax; and that eliminating duplication of loss is an appropriate exercise of consolidated return regulation authority.

The Treasury Department and the Internal Revenue Service have determined, however, that the loss disallowance rule can be modified, consistent with implementation of *General Utilities* repeal, to permit loss to a limited extent. The modifications to the rule are intended to distinguish loss of unrealized build-in gain from both loss attributable to recognized built-in gain and loss duplication. In order to avoid tracing, the modified rule necessarily operates by the use of presumptions. Consistent with the single entity principles reflected in the investment adjustment rules and other consolidated return regulations, the effect of the presumptions in the modified rule will generally be to phase in the loss disallowance rule based on the benefits of consolidation enjoyed by the group and the subsidiary. Thus, the modified rule provides a transition from separate return to consolidated status, phasing in loss disallowance as the group and the subsidiary operate in consolidated form and it becomes more appropriate to view the group's investment in the subsidiary as an investment in its assets and operations rather than in its stock.

D. Principal Comments on Original Proposed § 1.1502–20

Many comments on original § 1502–20 suggested alternative approaches to the loss disallowance rule.

1. Economic Loss

Virtually all commentators criticized § 1.1502–20 for disallowing loss on the sale of subsidiary stock when the loss results from the subsidiary's decline in value rather than from investment adjustments attributable to recognition of built-in gain. The commentary centered on Example (6) in the preamble, which provided the following illustration:

Corporation S has one asset with a basis of $0 and a value of $100. Corporation P buys all the stock of S for $100 and P and S elect to file consolidated returns. S's asset declines in value and is sold for $0. Because S's sale of its asset results in no gain or loss, P's basis in S remains $100. P then sells S for $0 and recognizes a loss of $100. The loss is disallowed by the loss disallowance rule.

The preamble states that, while it may be argued that loss should be allowed under these facts, an exception would require appraisals of assets (including assets of any lower tier subsidiary) and tracing of built-in gains and losses, thus imposing the very compliance and administrative burdens on taxpayers and the Internal Revenue Service that the loss disallowance rule was designed to avoid. The commentators maintained that disallowance of loss in this situation is unwarranted because the parent corporation has realized an economic loss, no self-help is available to recoginize the loss, and the parent corporation has derived no benefit—through investment adjustments or otherwise—from filing consolidated returns with the subsidiary.

a. Tracing

To allow the deduction of economic loss, many commentators proposed abandoning the loss disallowance rule in favor of some form of tracing. Most of the commentators recognized that pure tracing would introduce many complexities and therefore suggested various ameliorative presumptions and limitations. However, these commentators generally would permit taxpayers to avoid use of presumptions and limitations that produce a detrimental result of electing back into tracing.

The Treasury Department and the Internal Revenue Service have re-examined the feasibility of tracing and confirmed their earlier determinations that a tracing system would be too burdensome for taxpayers and the Internal Revenue Service. The following are among the problems that would be presented by a tracing system:

(1) At the time a subsidiary was acquired, the assets of the subsidiary (and any lower tier subsidiary) would have to be valued on an asset-by-asset basis in order to prevent the netting of built-in gain and built-in loss and to trace economic loss with respect to each asset.

(2) To properly administer the system, it would be necessary to assign an earnings and profits basis of each asset based on its value at the time of acquisition and to adjust that basis (with corresponding adjustments to stock basis) to reflect earnings and profits depreciation and amortization. This would require establishing an additional set of earnings and profits books.

(3) If an acquired subsidiary owned the stock of any lower tier subsidiary, duplicate earnings and profits records would have to be maintained for each lower tier subsidiary's assets—one based on the value of the assets at the time of the acquisition and one based on the basis of the lower tier subsidiary's stock at the time of acquisition. Earnings and profits adjustments based on the value of the assets at the time of the acquisition would be used to determine gain or loss on the sale of the subsidiary stock that was acquired by purchase, and earnings and profits adjustments based on the basis of the lower tier subsidiary's stock at the time of the acquisition would be used to determine gain or loss on the disposition of that stock.

(4) Despite its complexity, a tracing system would not accurately measure

economic loss to the extent a subsidiary's assets declined in value at a faster or slower rate than reflected by the earnings and profits depreciation and amortization. To achieve reasonable accuracy, assets would have to be revalued and assigned a new earnings and profits basis whenever values declined below the initial earnings and profits basis, as adjusted, but this would substantially increase compliance and administrative burdens.

The various presumptions and limitations proposed by commentators to mitigatge these problems are less accurate than tracing and do not significantly ameliorate the compliance and administrative burdens of tracing. If a taxpayer is permitted to elect tracing when advantageous, the taxpayer will have to maintain the necessary books and records to evaluate the tracing alternative. Thus, even taxpayers generally relying on presumptions to determine loss would be subject to the burdens of tracing. Similarly, the Internal Revenue Service would be required to audit valuations and earnings and profits adjustments when tracing is used. Moreover, while an elective tracing system would entail most of the burdens of a pure tracing system, it would invariably operate to the detriment of the government because presumptions would be used only when favorable to taxpayers.

b. Loss Limitation

Many commentators proposed modifying the loss disallowance rule to allow loss based on objective factors reflecting the extent to which the group has benefited from filing consolidated returns with the subsidiary. Although the modifications necessarily increase the compliance and administrative burdens for taxpayers and the Internal Revenue Service, the Treasury Department and the Internal Revenue Service have determined that relief is appropriate to the extent the factors establish that loss cannot be attributable to recognized build-in-gain. Following is a summary of the principal proposals and the extent to which they have been adopted.

Positive Basis Adjustments. A number of commentators proposed that loss be disallowed only to the extent of positive investment adjustments, because loss attributable to recognized built-in gain cannot exceed the amount of positive adjustments. This proposal has been taken into account in modifying the loss disallowance rule. Subject to the loss duplication limitation described below, the modified rule allows loss on the disposition of subsidiary stock to the extent the loss exceeds the sum of:

(1) The aggregate gain attributable to the subsidiary's "extraordinary gain dispositions" after November 18, 1990 for all consolidated return years of the group (and any prior group from which the stock was acquired other than by purchase), and

(2) The aggregate positive investment adjustments and distributions from current earnings and profits (determined without regard to extraordinary gain dispositions) for all consolidated return years of the group (and any other group from which the stock was acquired other than by purchase).

The revised rules take into account extraordinary gain dispositions in addition to positive investment adjustments because not all recognized built-in gain results in positive investment adjustments. For example, a recognized built-in gain may be offset by an equal amount of recognized post-acquisition loss. Although the gain does not increase the basis of the stock, it prevents the post-acquisition loss from reducing the basis of the stock. Consquently, a stock loss exists because of the built-in gain, and it is comparable to stock loss resulting from positive adjustments attributable to built-in gain.

The modified rule permits netting of profits and losses arising in the same taxable year in determining investment adjustments, but does not permit netting of a positive and negative investment adjustment from different taxable years. In addition, losses from extraordinary dispositions may be netted with other sources of income in determining investment adjustments for a taxable year, but may not be taken into account in determining gain from extraordinary gain dispositions. These rules are based on the presumption that the positive adjustments, distributions from current earnings and profits, and gain from extraordinary gain dispositions may be attributable to built-in gain, but losses and deductions may be attributable to post-acquisition loss.

The netting of profits and losses within the same year for determining investment adjustments represents a compromise. Consistent with the desire to limit the compliance and administration burdens associated with tracing (*e.g.*, differentiating built-in deductions and losses from post-acquisition deductions and loss), taxpayers are permitted to offset built-in gain with post-acquisition loss within the same year for purposes of determining positive adjustments.

Dispositions before November 19, 1990 are disregarded in determining gain from extraordinary gain dispositions.

Wasting Assets. A number of commentators proposed that the loss disallowance rule be revised to disregard investment adjustments attributable to the consumption of built-in gain assets through operations ("wasting assets") because such adjustments are outside the scope of preventing circumvention of *General Utilities* repeal. This problem was illustrated by Example (3) in the March 14, 1990 preamble. The revised rules do not adopt this proposal, and all positive investment adjustments are taken into account (whether from dispositions or consumption of wasting assets). Consumption of wasting assets is not outside the scope of *General Utilities* repeal because dispositions and consumption may produce identical investment adjustments, as illustrated by Examples (2) and (3) in that preamble. Failing to take wasting assets into account would treat taxpayers in similar economic circumstances differently.

Rates of Return. Because some of a subsidiary's earnings may be attributable to post-acquisition income rather than built-in gain, other commentators proposed that loss be disallowed only to the extent positive investment adjustments (and distributions from current earnings and profits) exceed a specified rate of return. Commentators argued that an artificial rate of return could be used to identify earnings not properly attributable to built-in gain.

This proposal has not been adopted in the revised rules. A rate of return approach requires selecting an appropriate rate despite the wide variances in rates of return in different industries, and determining the appropriate base against which the rate of return is applied. Appraisals may be required if a subsidiary is acquired in a carryover basis transaction, is a lower tier subsidiary of the acquired subsidiary, or is engaged in more than one industry, and may be required again if there are subsequent corporate contributions or contractions. A variety of special rules also would be required to address the treatment of tax-free business combinations.

Moreover, permitting any rate of return effectively presumes that subsidiaries whose stock has declined in value nevertheless have positive rates of return, and that, contrary to the tax laws generally (such as depreciation and amortization rules), the returns from an investment are first attributable to earnings on, rather than recovery of, the investment.

Caps on Disallowed Loss. A number of commentators also proposed an overall limitation on the disallowance of loss. Many of the commentators proposed an overall limitation based on net built-in gain in the subsidiary's assets at the time its stock is acquired. Net built-in gain would equal the excess of (1) the sum of stock purchase price and liabilities of the subsidiary (and any lower tier subsidiary) over (2) the sum of the aggregate tax basis and loss carryovers of the subsidiary (and any lower tier subsidiary).

This proposal has not been adopted in the revised rules because it would permit groups acquiring subsidiaries with both built-in gains and built-in losses to circumvent *General Utilities* repeal by selectively recognizing gross built-in gain in excess of the net built-in gain. The recognized built-in gain would produce positive investment adjustments without corresponding increases in the subsidiary's value, and would therefore permit the group to offset the gain with loss on disposition of the subsidiary's stock.

Other commentators proposed an overall limitation on the disallowance of loss based on actual gross built-in gain. This proposal was not adopted in the revised rules because it would require each of the subsidiary's assets (including assets of any lower tier subsidiary) to be appraised at the time the subsidiary's stock is acquired. For reasons discussed under "Tracing" above, an appraisal-based system would be too burdensome for both taxpayers and the Internal Revenue Service.

The appraisal problem was avoided in other proposals by limiting loss disallowance based on the maximum potential built-in gain—the aggregate purchase price of the subsidiary's stock plus the aggregate amount of the liabilities of the subsidiary (and any lower tier subsidiary). This approach would generally provide relief only if the subsidiary is owned for a substantial period and would be inconsistent with the general approach of the revised rules, which is to phase out separate return treatment as the group and the subsidiary enjoy the benefits of consolidation.

2. Duplication of Loss

By denying all loss on the disposition of subsidiary stock, the loss disallowance rule eliminates the ability of consolidated groups to duplicate any loss reflected in a subsidiary's assets and loss carryovers. Commentators generally opposed the elimination of loss duplication. They argued that (1) loss duplication is available in the separate return context and should therefore be eliminated only by Congress, (2) loss duplication is beyond the scope of *General Utilities* repeal, and (3) new restrictions on loss duplication are unnecessary because an acquirer's use of the subsidiary's loss may be limited by sections 269, 382, 383(b) and 384, and §§ 1502–21 (c) and 1.1502–22 (c). Commentators who conceded that eliminating loss duplication is within the scope of authority under section 1502 nonetheless argued that it was inappropriate for the Service to eliminate it in connection with *General Utilities* repeal. For the reasons discussed below, the revised rules retain the elimination of loss duplication.

a. Gain and Loss Duplication in Consolidated Returns

In the separate return context, a subsidiary's earnings and profits (or deficits in earnings and profits) do not cause adjustments to its parent's basis in the subsidiary's stock. Consequently, the subsidiary's gains and losses may be recognized a second time (in effect, duplicated) when the parent sells the subsidiary's stock.

By contrast, the consolidated return regulations have, over the years, developed an extensive system of rules for adjusting the basis of subsidiary stock to reflect the subsidiary's earnings and profits. The primary effect of these rules is to reduce duplication of gain and loss.

Reduction of loss duplication in the consolidated return context began with *Charles Ilfeld Co.* versus *Hernandez*, 292 U.S. 62 (1934). In that case, the parent corporation deducted its subsidiaries' losses on the group's consolidated return and claimed a second loss on the dissolution of the subsidiaries. The Supreme Court rejected the parent's claimed loss on its investment in the subsidiaries, stating that it "would be the practical equivalent of double deduction." The principle of the *Ilfeld* decision was incorporated in the consolidated return regulations, but the regulations did not otherwise permit postitive and negative adjustments to the basis of subsidiary stock.

In 1966, the consolidated return regulations were revised to incorporate an extensive system of positive and negative adjustments measured by earnings and profits of the subsidiary. These investment adjustment rules shifted the taxation of investment in a subsidiary significantly toward single entity treatment. A primary objective of the 1966 regulations was to eliminate the duplication of gain and loss at the parent and subsidiary levels. The regulations generally eliminated gain and loss duplication only if a subsidiary's assets are disposed of before its stock.

Changes in the tax law since 1966 have called into question the remaining loss duplication permitted under the current investment adjustment rules. There has been a general statutory shift in favor of single entity treatment of consolidated groups. See, *e.g.*, section 267(f). In addition, section 338 (h)(10) has increased the ability of taxpayers to avoid gain duplication. Recent changes to the consolidated return regulations have consistently reflected this policy shift in favor of single entity treatment.

The repeal of the *General Utilities* doctrine compelled a major change in the investment adjustment rules. New proposed § 1.1502–20 retains the elimination of loss duplication as an appropriate exercise of authority that simplifies the rules necessary for preventing circumvention of *General Utilities* repeal. It is not possible to differentiate between loss attributable to built-in gain and duplicated loss without resorting to tracing.

Commentators arguing for a tracing rule instead of loss disallowance argued that tracing could be used to eliminate investment adjustments attributable to built-in gain that cause loss but not those that reduce gain. This position is based on the proposition that gain duplication is inconsistent with the principles of consolidated returns. Loss duplication is equally inconsistent with these principles.

Although eliminating loss duplication deprives consolidated groups of a benefit they would enjoy had they filed separate returns, filing consolidated returns provides many benefits that are not available to corporations filing separate returns. Corporations electing to file consolidated returns are not entitled to retain all of the benefits of separate returns while availing themselves of the benefits of consolidated returns. Electing corporations, in fact, have historically suffered detriments unrelated to the benefits of consolidation. For example, a subsidiary's losses incurred while a member of a consolidated group cause negative investment adjustments, eliminating loss duplication, even if the loss is used against income arising before the subsidiary became a member. Similarly, dividend distributions cause negative investment adjustments even if the distributions are out of earnings and profits accumulated before the subsidiary became a member.

Eliminating loss duplication is consistent with the historic concerns

under the consolidated return regulations and is an appropriate exercise of authority under section 1502.

b. Overlap of Loss Duplication with Other Loss Restrictions

The Code and regulations provide several limitations on the transfer of tax benefits, including sections 269, 382, 383(b), and 384, and the separate return limitation year rules under the consolidated return regulations. These provisions may limit a transferee's deductions following the disposition of stock at a loss for which the loss disallowance rule denies a deduction. Commentators argued that because of these limitations, the ability to duplicate loss should not be a significant concern. However, these limitations focus on trafficking in tax benefits rather than duplication of loss at the corporate level. The limitations may apply in circumstances where there is no duplication and may not apply where there is duplication. Moreover, even if the limitations apply in a loss duplication case, they may not significantly limit the duplicated loss. Accordingly, these limitations do not solve the problem presented by loss duplication.

3. Scope of General Utilities Repeal

a. Time Limitation for Application of Rules

Commentators argued that loss (or positive investment adjustments) should be limited only for a specified period of time following a corporate acquisition. This argument assumes that Notice 87-14, which was issued soon after the effective date of the repeal of the *General Utilities* doctrine, was directed at so-called son-of-mirror transactions occurring in connection with acquisitions. Time periods suggested by commentators ranged from 2 years (by analogy to section 1059) to 10 years (by analogy to section 1374).

The repeal of the *General Utilities* doctrine applies to all corporations, not just those that have been held for less than a specified period, and is directed at elimination of corporate-level tax, not simply at son-of-mirror transactions. Where, as in section 1374, Congress intended to limit the period in which a corporate-level tax is imposed, it specifically did so by statute. It provided no such statutory limit in section 337(d), which directed the issuance of regulations to prevent circumvention of *General Utilities* repeal in the consolidated return context. It would thus be inconsistent with Congressional intent to limit the time period for disallowance of loss (or positive investment adjustments) on disposition of subsidiary stock.

b. Post-1986 Investment Adjustments

Commentators also argued that pre-1987 basis should be grandfathered because adjustments reflected in that basis are attributable to income and gain recognized before the effective date of *General Utilities* repeal. Under this theory, even though a post-1986 loss attributable to such basis may result in elimination of corporate-level gain, the events that gave rise to the loss occurred before 1987 when such elimination was permissible and should therefore be allowed. The legislative history of the Tax Reform Act of 1986 does not provide any evidence that Congress intended to allow elimination of corporate-level tax attributable to pre-1987 investment adjustments. The focus of the repeal was on preserving the corprorate income tax and the legislation generally applies after December 31, 1986.

It is also questionable whether use of loss attributable to built-in gain was consistent with the corporate tax provisions as they existed prior to *General Utilities* repeal. Positive investment adjustments were generally intended to prevent duplication, not to permit elimination, of corporate-level gain. Since 1969, corporations have been increasingly required to recognize corporate-level gain with respect to non-liquidating distributions of appreciated property to shareholders. Because most dispositions of built-in gain assets that produce investment adjustments are non-liquidating distributions, it has long been questionable whether it was appropriate to permit all adjustments attributable to such dispositions to eliminate corporate-level gain. Accordingly, it would be inconsistent with Congressional intent to grandfather pre-1987 investment adjustments.

E. Explanation of New Proposed § 1.1502-20.

New proposed § 1.1502-20 retains most of the provisions of former proposed § 1.1502-20. Although loss on the sale by a member of stock of a subsidiary is generally disallowed, a new paragraph (c) has been added to permit the member to claim loss in certain circumstances.

1. Loss Disallowance Rule

No deduction is allowed under paragraph (a) for any loss recognized by a member with respect to the disposition of stock of a subsidiary. The rule does not affect the use by the group of "inside" losses of the subsidiary, such as operating losses. Disallowance is deferred with respect to deferred transactions under the consolidated return regulations. The loss disallowance rule takes precedence over other loss disallowance and deferral rules of the Code and regulations, however, and these other rules apply only to the extent loss is not disallowed under the loss disallowance rule. An exception is provided to the loss disallowance rule to the extent gain is taken into account by the group with respect to common stock of the same subsidiary that is sold to the same purchaser pursuant to a single plan.

2. Basis Reduction on Deconsolidation

The basis of a subsidiary's stock is reduced under paragraph (b) to its fair market value immediately before the subsidiary's stock is deconsolidated. Stock that remains outstanding is treated as consolidated when it is no longer owned by a a member of any consolidated group of which the subsidiary is also a member.

The basis reduction rule complements the loss disallowance rule by eliminating loss that is built into the basis of the subsidiary's stock immediately before the stock ceases to be subject to the loss disallowance rule. For example, assume that a group sells 25 percent of a subsidiary's stock to a nonmember, thus disaffiliating the subsidiary. The group has a built-in loss in the subsidiary's stock that it continues to own, but because the stock is no longer subject to the loss disallowance rule, the basis of the stock is reduced to its fair market value to eliminate the loss. Because stock must remain outstanding to be subject to the basis reduction rule, transactions such as section 332 liquidations are not deconsolidation events.

A special rule applies to cases in which the basis of subsidiary stock is reduced, and the group realizes a loss on the disposition of the stock within 2 years after the basis reduction. The taxpayer must attach a statement to the return for the year of the disposition, disclosing information with respect to the disposition and prior basis reduction. If the statement is not attached to the return, no deduction is allowed for any loss claimed on the disposition. Dispositions after the 2-year period that are pursuant to an agreement, option, or other arrangement entered into within the period are treated as though they occurred within the 2-year period for purposes of the information statement requirement.

3. Allowed loss

In order to allow only economic loss, paragraph (c) identifies those factors that contribute to avoidance of corporate-level tax. Loss disallowance and basis reduction do not apply to stock of a subsidiary to the extent the loss or reduction exceeds a share's allocable part of the sum of the following factors:

(i) Earnings and profits, net of directly related expenses, from extraordinary gain dispositions.

(ii) The aggregate amount of positive adjustments for earnings and profits for all consolidated return years to the extent not included in the extraordinary gain disposition factor.

(iii) The amoung of any duplicated loss. These factors are explained more fully below.

a. Extraordinary Gain Dispositions

Extraordinary gain dispositions are dispositions after November 18, 1990, resulting in gain for purposes of computing earnings and profits, of capital assets, property used in a trade or business, and specified bulk asset dispositions. Discharge of indebtedness is also treated as an extraordinary gain disposition.

All applicable dispositions producing gain are presumed to be attributable to built-in gain. Dispositions producing gains are not offset by dispositions producing losses. These rules are necessary to avoid tracing. The amount included under this factor may be derived from tax return entries and associated work papers.

b. Positive Investment Adjustments

All positive adjustments are presumed to be attributable to built-in gain, including built-in gain recognized through the wasting of built-in gain assets. Netting is not permitted between the positive adjustments for years with earnings and the negative adjustments for years with deficits, but is permitted with respect to positive and negative adjustments within the same year.

Because the distribution of current earnings and profits does not eliminate the effect of recognized built-in gain, even though the distribution may eliminate a positive adjustment, such distributions are also included under this factor. Assume, for example, that a subsidiary recognizes $100 of built-in gain. If no distribution is made in the year the gain is recognized, the subsidiary's stock basis increases by $100 without a corresponding increase in value. By contrast, if $100 is distributed, the basis remains unchanged but the subsidiary's value declines by $100.

c. Duplicated loss

Duplicated loss is the excess of (A) the sum of the aggregate asset basis and the aggregate loss carryovers of the subsidiary (and any lower tier subsidiary), over (B) the value of the subsidiary's assets. For this purpose, aggregate asset basis does not include any stock and securities in another subsidiary, and loss carryovers include deferred deductions. The value of the subsidiary's assets is measured by the value of the subsidiary's stock, any liabilities of the subsidiary (and any lower tier subsidiary), and other relevant items. If 80 percent or more of the subsidiary's stock is purchased in a single transaction, the stock's value is no greater than its grossed-up purchase price.

d. Disposition and Adjustments in Prior Consolidated Groups

The extraordinary dispositions and positive investment adjustment factors include amounts attributable to prior consolidated groups, but only if these amounts continue to be reflected in the basis of the subsidiary's stock.

This factor would apply, for example, if a target is acquired from another consolidated group, and the target has a lower tier subsidiary that also becomes a member of the acquiring group, because the basis of the lower tier subsidiary continues to reflect any such amounts from the prior group.

4. Anti-Stuffing Rule

Paragraph (e) provides an anti-stuffing rule, in order to prevent a group from transferring assets after March 8, 1990 so as to avoid the recognition of gain or impact of the loss disallowance rule. The rule applies if the transfer occurs within 2 years of a direct or indirect disposition or deconsolidation of subsidiary stock. The proposed regulations clarify that, if an asset is transferred with the requisite view to avoid the recognition of gain or impact of the loss disallowance rule, it is not necessary for the atransfer to be related to a subsequent disposition or diconsolidation of stock provided the disposition or deconsolidation occurs within the 2-year period.

Increases to the basis of subsidiary stock resulting from the recognition of built-in gain can have the effect of deferring tax on unrealized post-acquisition appreciation of a subsidiary's assets when its stock is sold. A comparable benefit can be achieved without post-acquisition appreciation if, for example, appreciated assets are transferred to the subsidiary or one subsidiary's appreciated stock is transferred to another subsidiary. To prevent this benefit, the rule requires reduction of the basis of the subsidiary's stock to the extent necessary to cause recognition of the amount of gain that would have been recognized if the stuffing transaction had not occurred.

5. Investment Adjustments and Earnings and Profits

The proposed regulations clarify that the earnings and profits of a member are reduced by the amount of a loss recognized on the sale of a subsidiary's stock, even though the loss is disallowed.

The proposed regulations also provide that a member's earnings and profits are reduced by the amount of any basis reduction required on the deconsolidation of a subsidiary's stock. This rule is needed because the basis reduction eliminates a future recognition of the loss (and the associated future reduction in earnings and profits).

Under the investment adjustment system, these reductions in earnings and profits tier up and cause disallowed losses and basis productions on deconsolidation to be reflected as reductions in the basis of higher tier members. Coordination rules are provided to prevent overlapping investment adjustments.

The proposed regulations also make clear that, for purposes of the consolidated return regulations, a basis reduction under this section is generally treated as a negative investment adjustment under § 1.1502–32 (e)(1). Thus, for example, the consolidated return rules applying to investment adjustments generally apply to basis reductions under § 1.1502–20 (b). However, any basis reduction under this section is not treated as a § 1.1502–32 (e)(1) adjustment for purposes of determining the amount of any basis reduction account with respect to the stock under § 1.1502–32T (a).

6. Election to Retain Losses of Subsidiary

A common parent may elect to reattribute to itself a portion of the net operating loss carryovers and net capital loss carryovers attributable to a subsidiary (or to any lower tier subsidiary) that is leaving the group. If the election is made, the reattributed losses are not apportioned to the subsidiary under § 1.1502–79. Instead, they remain part of the loss carryovers of the group. Reattribution is available only to the extent that a member is otherwise subject to loss disallowance with respect to the subsidiary's stock. This reattribution is not permitted with

respect to the basis reduction of stock of a subsidiary that is deconsolidated.

The common parent may elect to retain particular losses of a subsidiary (or any lower tier subsidiary), without regard to their charactor or the year in which they arose and whether or not they arose within the consolidated group. Retained losses may not be carried back to any prior taxable year of the common parent. If a disallowed loss arises from a worthless stock deduction and the subsidiary whose losses are reattributed remains a member of the group, the subsidiary need not join in the common parent's election.

Reattribution is not permitted to the extent that a subsidiary and all higher tier subsidiaries are insolvent within the meaning of section 108(d)(3) at the time of the disposition. To the extent of its insolvency, the subsidiary's losses are not reattributable becuuse they are deemed to be borne by creditors. For purposes of determining insolvency, preferred stock of the subsidiary not owned by members is treated as a liability to the extent of the preferred stock's liquidation preference.

Solely for the purpose of the investment adjustment and earnings and profits rules, a loss that is reattributed to the common parent is treated as absorbed by the subsidiary (or lower tier subsidiary), thereby causing a reduction in the stock basis and earnings and profits of the subsidiary whose losses are reattributed. These adjustments reduce the subsidiary's stock basis and earnings and profits to reflect the loss. The adjustments reduce or eliminate the member's loss on the dispositon of the subsidiary's stock, thus reducing or eliminating the effect of the loss disallowance rule on the disposition.

7. Effective Dates

The loss disallowance and the basis reduction rules generally apply with respect to dispositions and deconsolidations after January 31, 1991. However, taxpayers may irrevocably elect to accelerate the application of these rules, in lieu of § 1.337(d)–2, to all dispositions and deconsolidations after November 18, 1990. Any such election will not accelerate the date that the extraordinary gain disposition rule described in § 1.1502–20(c)(2)(i) applies. applies.

F. Explanation of Transitional Rules

1. General Rules

In response to comments, the effective date of § 1.1502–20 has been deferred and new § 1.337(d)–2 provides a transitional rule carrying forward the rules of § 1.337(d)–1 that allow loss to the extent the group establishes the loss is not attributable to the recognition of built-in gain. For a description of the provisions of § 1.337(d)–1, see T.D. 8294, published on March 14, 1990, and T.D. 8319, published on November 26, 1990.

For purposes of § 1.337(d)–2, gain recognized by a consolidated group (or a prior consolidated group) on the disposition of an asset is built-in gain to the extent the asset has an excess of value over basis attributable to a separate return year (as defined in § 1.1502–1 (e)) with respect to the consolidated group (or prior consolidated group).

Unlike § 1.337(d)–1, § 1.337(d)–2 is a prospective rule which taxpayers may take into account when planning transactions. Accordingly, § 1.337(d)–2 contains a deconsolidation rule and an anti-stuffing rule similar to those contained in proposed § 1.1502–20, in order to limit circumvention of the basic loss limitation rule. The deconsolidation and anti-stuffing rules are described in part E, above.

2. Effective Dates

Section § 1.337(d)–2 generally applies with respect to dispositions and deconsolidations after November 18, 1990. However, a group may establish that loss is not attributable to the recognition of built-in gain only if the group's entire equity interest in a subsidiary is disposed of in one or more transactions to unrelated persons before February 1, 1991 (the effective date of § 1.1502–20). Thus, it does not apply if only a portion of the stock held by the group is disposed of, or if the stock is sold to a related party. The ability to establish that loss is not attributable to built-in gain is limited under § 1.337(d)–2 in order to avoid the need for continued appliction of these rules to deconsolidated subsidiaries for a substantial period.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. The rules will primary affect affiliated groups of corproations filing (or required to file) consolidated returns, which tend to be larger businesses. It will not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

A public hearing will be held on Friday, January 25, 1991, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. For further information, see the notice of public hearing on these proposed regulations in the Proposed Rules section of this issue of the **Federal Register.**

Drafting Information

The project attorney is Mark S. Jennings of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. Various other personnel of the Internal Revenue Service and the Treasury Department also participated in the development of these regulations.

List of Subjects

26 CFR 1.301–1 through 1.383–3

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR chapter I are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805; * * * § 1.337(d)–2 also issued under 26 U.S.C. 337 (d); * * * § 1.1502–20 also issued under 26 U.S.C. 337 (d) and 1502.

Par. 2. The temporary regulation § 1.337(d)–2T, published in the Rules and Regulations section of this issue of the **Federal Register**, is hereby also

proposed as a final regulation under section 337(d) of the Internal Revenue Code of 1986, except that paragraph (c)(1)(i) is revised to read as follows:

§ 1.337(d)-2T Loss limitation window period (temporary).

* * * * *

(c) * * *

(1) * * *

(i) The consolidated group disposes (in one or more transactions), before February 1, 1991, of its entire equity interest in the subsidiary to persons not related to any member of the consolidated group within the meaning of sections 267 (b) and 707 (b)(1) (substituting "10 percent" for "50 percent" each place that it appears), and

* * * * *

Par. 3. The notice of proposed rulemaking published March 14, 1990 (55 FR 9463) by cross reference to T.D. 8294 is withdrawn.

Par. 4. New § 1.1502-20 is added to read as follows:

§ 1.1502-20 Disposition or deconsolidation of subsidiary stock.

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member with respect to the disposition of stock of a subsidiary.

(2) *Disposition.* "Disposition" means any event in which gain or loss is recognized, in whole or in part.

(3) *Single entity treatment of gain and loss*—(i) *Timing.* If loss with respect to the disposition of a subsidiary's stock is deferred, paragraph (a)(1) of this section does not apply until the loss is taken into account. For this purpose, the amount of the loss deferred and when the loss is taken into account are determined under §§ 1.1502-13, 1.1502-13T, 1.1502-14 and 1.1502-14T, without the application of any other provisions of the Code or regulations, such as section 267 (f), that provides for disallowance or deferral of the loss.

(ii) *Netting.* Paragraph (a)(1) of this section does not apply to the extent gain is taken into account by members with respect to common stock of the same subsidiary that is sold to the same purchaser pursuant to a single plan. Gain to which this paragraph (a)(3)(ii) applies is taken into account with respect to shares on which loss is recognized under the plan in proportion to the amount of the loss deduction that would have been disallowed under paragraph (a)(1) with respect to each share if this paragraph did not apply.

(4) *Coordination with loss deferral rules.* If paragraph (a)(1) of this section applies to a loss subject to deferral or disallowance under any other provision of the Code or the regulations, the other provision applies to the loss only to the extent it is not disallowed under paragraph (a)(1).

(5) *Examples.* For purposes of the examples in this section unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. "Investment adjustment system" means the rules of §§ 1.1502-32 and 1.1502-33(c). The principles of this paragraph (a) are illustrated by the following examples:

Example (1). Loss attributable to recognized built-in gain. P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. Five years later, P sells all the stock of T for $100 and recognizes a loss of $100. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $100 loss.

Example (2). Effect of post-acquisition appreciation. P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. T reinvests the proceeds of the sale in an asset that appreciates in value to $180. Five years after the sale, P sells all the stock of T for $180 and recognizes a $20 loss. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $20 loss.

Example (3). Disallowance of duplicated loss. P forms S with a contribution of $100 in exchange for all the shares of S stock, and S becomes a member of the P group. S has an operating loss of $60. The group is unable to use the loss, and the loss becomes a net operating loss carryover attributable to S. Five years later, P sells the stock of S for $40, recognizing a $60 loss. Under paragraph (a)(1) of this section, P's $60 loss on the sale of the S stock is disallowed. (See paragraph (g) of this section for the elective reattribution of S's $60 net operating loss to P in connection with the sale.)

Example (4). Deemed asset sale election. (i) P forms S with a contribution of $100 in exchange for all the S stock, and S becomes a member of the P group. S buys an asset for $100, and the value of the asset declines to $40. P sells all the stock of S to P1 for $40. Under paragraphs (a)(1) of this section, P's $60 loss on the sale of the S stock is disallowed.

(ii) If P and P1 instead elect deemed asset sale treatment under section 338(h)(10), T is treated as selling all of its assets, and no loss is recognized by P on its sale of the T stock. As a result of the recharacterization of the stock sale as an asset sale, the $60 loss in the asset is recognized. Under the section 338(h)(10) regulations, T is treated as liquidating into P following the deemed asset sale, and the $60 loss is inherited by P.

Example (5). Gain and loss recognized with respect to stock sold pursuant to a single plan. P, the common parent of a group, owns 50 shares of the stock of T with an aggregate basis of $50, and S, a wholly owned subsidiary of P, owns the remaining 50 shares of T with an aggregate basis of $100. All of the stock of T has the same terms. P and S sell all the stock of T to the public for $140. P therefore recognizes a gain of $20 and S recognizes a loss of $30. For purposes of paragraph (a)(3)(ii) of this section, the public is considered to be 1 purchaser and the sale of the T stock by P and S is considered to be pursuant to a single plan. Accordingly, the amount of S's $30 loss disallowed under paragraph (a)(1) of this section is limited to $10 ($30 reduced by P's $20 gain on T stock taken into account in a sale to the same purchaser pursuant to a single plan).

Example (6). Deferred loss and recognized gain. (i) P, the common parent of a group, owns 50 shares of the stock of T with an aggregate basis of $10, and S, a wholly owned subsidiary of P, recently purchased the remaining 50 shares of T stock in which it has an aggregate basis of $50. T has an asset with a basis of $40 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $10 to $40, and S's basis in the T stock increases from $50 to $80. S sells its block of T stock to P for $50 in a deferred intercompany transaction, and S liquidates 2 years later. P subsequently sells all the stock of T for $100 to X, a member of the same controlled group (as defined in section 267(f)) as P but not a member of the P consolidated group.

(ii) Under paragraph (a)(3)(i) of this section, the application of paragraph (a)(1) of this section to S's $30 loss is deferred, because S's loss is deferred under § 1.1502-13(c) (determined without the application of any other provision of the Code or regulations that provides for disallowance or deferral of the loss).

(iii) S's deferred $30 loss is inherited by P under § 1.502-13(c)(6) following the liquidation of S. When the T stock is sold to X (a member of the same controlled group but not a member of the P consolidated group), the inherited deferred $30 loss is taken into account under § 1.1502-13(f) and paragraph (a)(3) of this section.

(iv) In the same transaction that S's $30 deferred intercompany loss is taken into account, P recognizes a $10 gain with respect to its block of historic T stock. Under paragraph (a)(3)(ii) of this section, the gain reduces by $10 the application of paragraph (a)(1) of this section to the $30 loss. Consequently, only $20 of the $30 loss is disallowed. The remaining $10 loss to which paragraph (a)(1) does not apply is subject to section 267(f).

(b) *Basis reduction deconsolidation*—(1) *General rule.* If a member's basis in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section

applies and, to the extent necessary to effectuate the purposes of this section, this paragraph (b) applies following the application of paragraph (a).

(2) *Deconsolidation.* "Deconsolidation" means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value.* "Value" means fair market value.

(4) *Loss within 2 years after basis reduction*—(i) *In general.* If the basis of a share of stock is reduced under this paragraph (b) and a direct or indirect disposition of the stock occurs within 2 years after the date of the basis reduction, a separate statement entitled "STATEMENT PURSUANT TO SECTION 1.1502-20(b)(4)" must be filed with the taxpayer's return for the year of disposition. If the taxpayer fails to file the statement as required, no deduction is allowed for any loss recognized on the disposition. A disposition after the 2-year period described in this paragraph (b)(4) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(ii) *Contents of statement.* The separate statement required under paragraph (b)(4)(i) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the subsidiary.

(B) The amount of prior basis reduction with respect to the stock of the subsidiary under paragraph (b)(1) of this section.

(C) The basis of the stock of the subsidiary immediately before the disposition.

(D) The amount realized on the disposition.

(E) The amount of the deduction not disallowed under paragraph (b)(4)(i) of this section.

(F) The amount of loss disallowed under paragraph (b)(4)(i) of this section.

(5) *Examples.* The principles of this paragraph (b) are illustrated by the following examples:

Example (1). Simultaneous application of loss disallowance rule and basis reduction rule to stock of the same subsidiary. (i) P forms S with $100 in exchange for all 100 shares of S stock, and S becomes a member of the P group. The value of S declines from $100 to $50, and P sells 60 shares of S stock for $30. The sale causes a deconsolidation of the remaining 40 shares held by P.

(ii) Under paragraph (b)(1) of this section, P must reduce the basis of the 40 shares of S stock it continues to own from $40 to $20, the value of the shares immediately before the deconsolidation.

(iii) Although P's disposition of the 60 shares also causes a deconsolidation of these shares, paragraph (b)(1) of this section provides that, if both paragraph (a) and paragraph (b) of this section apply to a share in the same transaction, paragraph (a) applies first and paragraph (b) applies only to the extent necessary to effectuate the purposes of this section. Under paragraph (a)(1), P's $30 loss on the sale of the 60 shares is disallowed. Under the facts of this example, it is not necessary to also apply paragraph (b) of this section to the 60 shares in order to effectuate the purposes of this section.

Example (2). Deconsolidation of subsidiary stock on contribution to a partnership. P buys all the stock of T for $100, and T becomes a member of the P group. P later transfers all the stock of T to partnership M in exchange for a partnership interest in M, in a transaction to which section 721 applies. At the time of the exchange, P's basis in the T stock is $100 and the T stock's value is $75. Under paragraph (b)(1) of this section, the transfer to M causes a deconsolidation of the T stock, and P must reduce its basis in the T stock, immediately before the transfer to M, from $100 to the stock's $75 value at that time. As a result, P has a basis of $75 in its interest in M, and M has a basis of $75 in the stock of T.

Example (3). Simultaneous application of loss disallowance rule and basis reduction rule to stock of different subsidiaries. (i) P owns all the stock of S, which in turn owns all the stock of S1, and S and S1 are members of the P group. P's basis in the S stock is $100 and S's basis in the S1 stock is $100. S1 buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, S1's basis in the T stock, S's basis in the S1 stock, and P's basis in the S stock each increase from $100 to $200. S then sells all the S1 stock for $100 and recognizes a loss of $100.

(ii) Under paragraph (a)(1) of this section, S's $100 loss on the sale of the S1 stock is disallowed.

(iii) If S1 and T are not members of a consolidated group immediately after the sale of the stock of S1, the T stock is deconsolidated, and under paragraph (b)(1) of this section, S1 must reduce the basis of the T stock to $100, its value immediately before the sale.

(iv) If S1 and T are members of a consolidated group immediately after the sale of the S1 stock, the T stock is not deconsolidated, and no reduction is required under paragraph (b)(1).

Example (4). Extending the time period for dispositions. (i) In Year 1, P, the common parent of a group, buys all 100 shares of the stock of T for $100. T's only asset has a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. At the beginning of Year 5, P causes T to issue 30 additional shares of stock to the public for $30. This issuance causes a deconsolidation of the T stock owned by P, and paragraph (b)(1) of this section requires P to reduce its basis in the T stock from $200 to $100.

(ii) Within 2 years, P agrees to sell all of its T stock for $90 at the end of Year 7. Under paragraph (b)(1), P's disposition of the T stock at the end of Year 7 is treated as occurring within the 2-year period following the deconsolidation of the T stock, because the disposition is pursuant to an agreement reached within 2 years after the deconsolidation. Accordingly, P's $10 loss may not be deducted unless P files the statement required under paragraph (b)(4) of this section. This result is reached whether or not the agreement is in writing. P's disposition would also have been treated as occurring within the 2-year period if the disposition were pursuant to an option issued within the period.

(c) *Allowable loss*—(1) *General rule.* The amount of loss disallowed under paragraph (a)(1) of this section and the amount of basis reduction under paragraph (b)(1) of this section with respect to a share of stock shall not exceed the sum of the following amounts—

(i) *Extraordinary gain dispositions.* The share's allocable part of any member's earnings and profits, net of directly related expenses, from extraordinary gain dispositions.

(ii) *Positive investment adjustments.* Earnings and profits, other than those included in paragraph (c)(1)(i) of this section, which result in adjustments with respect to the share under § 1.1502-32 (b)(1)(i) and (c)(1).

(iii) *Duplicated loss.* The amount of duplicated loss with respect to the share.

(2) *Operating rules.* For purposes of applying paragraph (c)(1)—

(i) *Extraordinary gain dispositions defined.* An "extraordinary gain disposition" is an actual or deemed disposition after November 18, 1990, resulting (net of directly related expenses) in a gain for purposes of computing earnings and profits, of—

(A) A capital asset as defined in section 1221 (determined without the application of any other provision of the Code or regulations).

(B) Property used in a trade or business as defined in section 1231(b) (determined without the application of any holding period requirement).

(C) An asset described in section 1221 (1), (3), (4), or (5), if substantially all the assets in such category from the same trade or business are disposed of in 1 transaction (or series of related transactions).

(D) Assets disposed of in an applicable asset acquisition under section 1060(c). A discharge of indebtedness is also treated as an extraordinary gain disposition. Federal income taxes are not directly related expenses unless reflected as negative investment adjustments with respect to

the share under § 1.1502–32 and not reimbursed.

(ii) *Investment adjustments.* Earnings and profits are treated as resulting in adjustments with respect to a share if they would have resulted in such adjustments but for distributions with respect to the share. If the adjustments with respect to a share are modified pursuant to § 1.1502–32 (c)(3), the adjustments taken into account under paragraph (c)(1)(ii) of this section shall be appropriately modified.

(iii) *Duplicated loss.* "Duplicated loss" equals the excess (if any) of—

(A) The sum of—

(*1*) The aggregate adjusted basis of the assets of the subsidiary (and any other subsidiary in which the subsidiary owns stock) other than any stock and securities that the subsidiary owns in another subsidiary, and

(*2*) Any losses attributable to the subsidiary (and any lower tier subsidiary) and carried to the subsidiary's first taxable year following the disposition or deconsolidation, and

(*3*) Any deferred deductions (such as deductions deferred under section 469) of the subsidiary (and any lower tier subsidiary), over

(B) The sum of—

(*1*) The value of the subsidiary's stock, and

(*2*) Any liabilities of the subsidiary (and any lower tier subsidiary), and

(*3*) Any other relevant items.

If 80 percent or more in value of the stock of a subsidiary is acquired by purchase (as defined in paragraph (c)(2)(iv)(B) of this section) in a single transaction (or in a series of related transactions during any 12-month period), the value of the subsidiary's stock is no greater than the purchase price of the stock divided by the percentage of the stock (by value) so purchased.

(iv) *Applicable periods*—(A) *Consolidated return years of the group.* Amounts described in paragraph (c)(1) of this section include all consolidated return years of the group and are determined as of the date of the disposition or deconsolidation in accordance with the group's application of the principles of § 1.1502–32.

(B) *Prior consolidated groups.* Amounts described in paragraph (c)(1) (i) and (ii) of this section include any such amounts with respect to the share that are attributable to any separate return year following the most recent purchase of the share or deconsolidation of the share subject to § 1.337(d)–2 (b) or paragraph (b) of this section. Stock is acquired by "purchase" if the transferee is not related to the transferor within the meaning of sections 267(b) and 707(b)(1), substituting "10 percent" for "50 percent" each place that it appears, and the transferee's basis in the stock is determined wholly by reference to the consideration paid for such stock.

(3) *Statement of allowed loss.* Paragraph (c)(1) of this section applies only if the separate statement required under this paragraph (c)(3) is filed with the taxpayer's return for the year of the disposition or deconsolidation. The statement must be entitled "Allowed Loss Under Section 1.1502–20 (c)," and contain—

(i) The name and employer identification number (E.I.N.) of the subsidiary.

(ii) The basis of the stock of the subsidiary immediately before the disposition or deconsolidation.

(iii) The amount realized on the disposition and the amount of fair market value on the deconsolidation.

(iv) The amount of the deduction not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(v) The amount of loss disallowed under paragraph (a)(1) of this section and the amount of basis reduced under paragraph (b)(1) of this section.

(4) *Examples.* For purposes of the examples in this paragraph, unless otherwise stated, the group files the statement required under paragraph (c)(3) of this section. The principles of this paragraph (c) are illustrated by the following examples:

Example (1). Allowed loss attributable to lost built-in gain. (i) Individual A forms T. P buys all the stock of T from A for $100, and T becomes a member of the P group. T has a capital asset with a basis of $0 and a value of $100. The value of the asset declines, and T sells the asset for $40. Under the investment adjustment system, P's basis in the T stock increases to $140. P then sells all the stock of T for $40 and recognizes a loss of $100.

(ii) The amount of the $100 loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. The $40 of T's earnings and profits is from an extraordinary gain disposition, as defined in paragraph (c)(2)(i), and therefore is described in paragraph (c)(1)(i). (No amount is described under paragraph (c)(1)(ii) because T has no earnings and profits resulting in positive investment adjustments with respect to the share when the earnings and profits are determined without regard to extraordinary gain dispositions.) Because this amount is the only amount described in paragraph (c)(1), the amount of P's $100 loss that is disallowed under paragraph (a)(1) is limited to $40.

Example (2). Extraordinary gain dispositions. (i) Individual A forms T. P buys all the stock of T from A for $100 in Year 1, and T becomes a member of the P group. T owns a capital asset, asset 1, with a basis of $0 and a value of $100. T sells asset 1 for $100 in Year 1 and invests the proceeds in a trade or business asset, asset 2. During Year 2, asset 2 produces $30 of gross operating income and $20 of cost recovery deductions. At the end of Year 2, asset 2 has an $80 adjusted basis and T disposes of asset 2 for $85; however, because T incurs $20 of expenses directly related to the sale of asset 2, the disposition produces a $15 loss for computing earnings and profits. Under the investment adjustment system, P's basis in the T stock increases by $95, to $195, because T has $110 of earnings and a $15 loss. P sells the T stock for $95 in Year 5 and recognizes a $100 loss.

(ii) The amount of loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. The $100 of earnings and profits from the disposition of asset 1 is from an extraordinary gain disposition, as defined in paragraph (c)(2)(i), and therefore is described in paragraph (c)(1)(i). This amount is not reduced by the $15 loss on the sale of asset 2 because that sale is not an extraordinary gain disposition when determined net of directly related expenses. (No amount is described under paragraph (c)(1)(ii) because T would have no earnings and profits which result in positive investment adjustments with respect to the share when the earnings and profits are determined without regard to extraordinary gain dispositions.) Because the $100 amount described under paragraph (c)(1)(i) equals P's $100 loss from the disposition of T stock, all of the loss is disallowed.

Example (3). Positive investment adjustments. (i) Individual A forms T. S, a member of the P group, buys all the stock of T from A for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. The asset earns $100 of operating income in Year 1 and declines in value to $0. T invests the operating income in another asset which produces a $25 operating deficit during Year 2. Under the investment adjustment system, S's basis in the T stock increases to $175. S sells all the stock of T for $75 in Year 5 and recognizes a loss of $100.

(ii) The amount of loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. No amount is described under paragraph (c)(1)(i) because T had no extraordinary gain dispositions. The $100 of earnings and profits from operations in Year 1 is earnings and profits which are described in paragraph (c)(1)(ii). This amount is not reduced by the $25 deficit from operations in Year 2. Because the $100 amount described under paragraph (c)(1)(ii) equals S's $100 loss from the disposition of T stock, all of the loss is disallowed.

(iii) The result would have been the same if, prior to the decline in the value of the first asset (the value of the T stock was $200, $100 cash and a $100 asset), S had sold the T stock to P for $200 at no gain or loss, and P then sold the T stock to the unrelated buyer for $75 (after the asset declined in value by $100) and recognized a $100 loss. The stock had $100 of positive investment adjustments during the P group's consolidated return

years, and, as a result, the investment adjustments are considered to be described in paragraph (c)(1)(ii) even if the adjustments are not reflected in the basis of the T stock at the time of the disposition to the unrelated buyer.

Example (4). Treatment of net operating income as attributable to built-in gain. (i) Individual A forms T. P buys all the stock of T from A for $100, and T becomes a member of the P group. T has a capital asset with a basis of $0 and a value of $100. The asset declines in value to $40. The asset earns $100 of operating income unrelated to its $60 decline in value. Under the investment adjustment system, P's basis in the T stock increases to $200. P then sells all the stock of T for $140 (land worth $40 and $100 cash) and recognizes a loss of $60.

(ii) The amount of loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. The $100 adjustment to the basis of the T stock is an amount described in paragraph (c)(1)(ii). Because this amount exceeds the amount of loss otherwise disallowed under paragraph (a)(1), P's entire $60 loss from the disposition of T stock is disallowed.

Example (5). Carryover basis transactions—amounts attributable to separate return years. (i) Individual A forms T. S purchases all the stock of T from A for $100, and T becomes a member of the S group. T has a capital asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to $200. P buys all of the stock of S for $100, and both S and T become members of the P group. S then sells the T stock for $100 and recognizes a loss of $100.

(ii) The amount of loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. Under paragraph (c)(2)(iv)(B) of this section, the $100 adjustment to S's basis in the T stock while a member of the S group is an amount described in paragraph (c)(1)(ii) with respect to the P group. Because this amount equals the loss otherwise disallowed under paragraph (a)(1), S's $100 loss from the disposition of T stock is disallowed.

Example (6). Duplicated loss. (i) Individual A forms T with a contribution of $100 in exchange for all of the T stock. Individual B forms T1 with a contribution of land that has a $90 basis and $100 value. T buys all the stock of T1 from B for $100. P buys all the stock of T from A for $100, and both T and T1 become members of the P group. The value of T1's land declines to $40. P sells all of the T stock for $40 and recognizes a loss of $60.

(ii) The amount of loss disallowed under paragraph (a) (1) may not exceed the amount determined under paragraph (c) (1) of this section. Under paragraph (c)(1)(iii) of this section, the amount of duplicated loss is $50. This is computed under paragraph (c)(2) (iii) as the excess of (A) the $90 aggregate adjusted basis of the assets of T and T1 (other than stock and securities of T1 owned by T), over (B) the $40 fair market value of the T stock (determined under paragraph (c)(2)(iv)). Because this amount is the only amount described in paragraph (c)(1), the amount of P's $60 loss disallowed under paragraph (a)(1) is limited to $50.

(iii) The result would be the same if the value of T1's property did not decline and T1 instead had an operating loss of $60 (attributable to borrowed funds) which the P group was unable to use. In that case, the $50 excess of the sum of (A) the $90 aggregate adjusted basis of the assets of T and T1 (other than stock and securities of members of the P group), plus the $60 net operating loss attributable to T1 and carried to its first taxable year following the disposition, over (B) the sum of the $40 fair market value of the T stock, plus the $60 of T1 liabilities, is an amount described in paragraph (c)(1)(iii). (See paragraph (g) of this section for the elective reattribution of T1's $60 net operating loss to P in connection with the sale.)

(d) *Successors*—(1) *General rule.* This section applies, to the extent necessary to effectuate the purposes of this section, to any property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of a subsidiary's stock.

(2) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

Example (1). Status of successor as member. (i) P, the common parent of a group, buys all the stock of T for $100. T's only asset has a basis of $0 and a value of $100. T sells the asset for $100, and buys another asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200, and the earnings and profits of P increase by $100. P later transfers all the stock of T to an unrelated consolidated group in exchange for 10 pecent of the stock of X, the common parent of that group, in a transaction described in section 368 (a)(1)(B). At the time of the exchange, the value of the X stock recieved by P is $80.

(ii) Under section 358, P has a basis of $200 in the X stock it receives in exchange for T. Under section 362, X has a $200 basis in the T stock.

(iii) Neither paragraph (a)(1) nor (b)(1) of this section applies to the stock of T and P's transfer of the stock to the X group, because no gain or loss is recognized on the transfer, and the transfer is not a deconsolidation of the stock of T under paragraph (b)(2) of this section.

(iv) The X stock owned by P after the reorganization is a successor interest to the T stock because P's basis in the X stock is determined by reference to P's basis in the T stock. The purposes of this section require that, notwithstanding T's status as a member of the X group, the reorganization exchange be treated as a deconsolidation event. Because X is not a member of the P group, a failure to reduce the basis of the X stock owned by P to its fair market value would permit the P group to recognize and deduct the loss attributable to the T stock. The transfer of T stock to X therefore constitutes a deconsolidation of the T stock and P must reduce its basis in the T stock immediately before the transfer from $200 to its $80 value at that time.

Example (2). Continued application after deconsolidation. (i) P, the common parent of a group, buys all the stock of T for $100. T's only asset has a basis of $0 and a value of $100. T sells the asset for $100, and buys another asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. P later transfers all the stock of T to partnership M in exchange for a partnership interest in M, in a transaction to which section 721 applies. The value of the T stock immediately before the transfer to M is $100. Less than 2 years later, P sells its interest in M for $80.

(ii) Under paragraph (b)(1) of this section, because the stock of T is deconsolidated on the transfer to M, immediately before the transfer to M, P reduces its basis in the T stock to the stock's $100 value immediately before the transfer. As a result, P has a basis of $100 in its interest in M, and M has a basis of $100 in the T stock.

(iii) When P sells its interest in M for $80, it recognizes a $20 loss. Because the basis of P's interest in M is determined by reference to P's basis in the T stock, and the reporting requirements could otherwise be circumvented, P's partnership interest in M is a successor interest to the T stock. Under paragraph (b)(4) of this section, P is required to file a statement with its return for the year of its disposition of its interest in M in order to deduct its loss. If P does not file the required statement described in paragraph (b)(4) of this section, P's loss on the disposition of its interest in M is disallowed.

(e) *Anti-stuffing rule*—(1) *Application.* This paragraph (e) if—

(i) A transfer of any asset (including stock and securities) after March 8, 1990 is followed within 2 years by a direct or indirect disposition or a deconsolidation of stock, and

(ii) The transfer is with a view to avoiding, directly or indirectly, in whole or in part—

(A) The disallowance of loss on the disposition or the basis reduction on the deconsolidation of stock of a subsidiary, or

(B) The recognition of the unrealized gain on the transferred asset.

A disposition after the 2-year period described in this paragraph (e)(1) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(2) *Basis reduction.* If this paragraph (e) applies, the basis of the stock is reduced, immediately before the disposition or deconsolidation, to cause recognition of gain in an amount equal to the loss disallowance or basis reduction, or the gain recognition, otherwise avoided by reason of the transfer.

(3) *Examples.* The principles of this paragraph (e) are illustrated by the following examples:

Example (1). Basic stuffing case. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. In Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. In Year 6, P sells all the stock of T for $200.

(ii) Under paragraph (e)(2) of this section, P must reduce the basis in its T stock by $100 immediately before the sale. This basis reduction causes a $100 gain to be recognized on the sale.

(iii) The $100 basis reduction also would be required if the T stock is deconsolidated in Year 6 instead of being sold. P must reduce the basis in its T stock by $100 immediately before the deconsolidation.

(iv) The $100 basis reduction also would be required if the P stock were acquired at the beginning of Year 6 by the M group, even though the asset transfer took place outside the M group. Paragraph (e)(1) requires only that the transferor have the view at the time of the transfer.

Example (2). Stacking rules. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. Thereafter, the value of the contributed asset declines to $10. In Year 6, P sells all the T stock for $110.

(ii) Because the transferred asset declined in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (e)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing of $10 gain to be recognized on the sale.

(iii) Assume, instead, that the transferred asset does not decline in value and that T reinvests the $100 in proceeds from the asset sale in another asset that appreciates in value to $190. In Year 6, P sells T for $290. Because the new asset appreciated in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (e)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $10, causing a $100 gain to be recognized on the sale.

Example (3). Contribution of built-in loss asset. (i) In Year 1, P forms S with a contribution of $100 in exchange for all of S's stock, and S becomes a member of the P group. S buys an asset for $100, and the asset appreciates in value to $200. P then buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100, and under the investment adjustment system P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers the T stock to S in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. The transfer causes P's basis in the S stock to increase from $100 to $300 and the value of S to increase from $200 to $300. In Year 6, P sells the S stock for $300.

(ii) Under paragraph (e)(2) of this section, P must reduce the basis in its S stock immediately before the sale to cause recognition of gain in an amount equal to the gain recognition otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $100 gain to be recognized on the sale.

Example (4). Absence of view. (i) In year 1, P forms S with a contribution of $100, and S becomes a member of the P group. S buys 2 assets, asset 1 with a basis of $50, which appreciates to $100, and asset 2 with a basis of $50 which declines in value to $0. S sells asset 1 for $100. Under the investment adjustment system, P's basis in the S stock increases from $100 to $150. In Year 5, S transfers asset 2 to P in a transaction to which § 1.1502-14(a) applies, with a view to having the group retain the loss inherent in the asset. This transfer reduces P's basis in the S stock from $150 to $100. In Year 6, P sells all the stock of S for $100.

(ii) The transfer from S to P achieves a result that could have been obtained by other methods that would not have been prevented by this section. The transfer therefore is not with the view described in paragraph (e)(1) of this section. P is not required to reduce the basis of its S stock under paragraph (e)(2) of this section. P is in substantially the same position holding asset 2 as it would be if S sold the asset and the resulting loss was available to the P group (either through S or by reattribution under paragraph (g) of this section).

Example (5). Extending the time period for dispositions. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. At the beginning of Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. Within 2 years, P agrees to sell all the stock of T for $200 at the end of Year 7.

(ii) Under paragraph (e)(1) of this section, P's disposition of the T stock at the end of Year 7 is treated as occurring within the 2-year period following P's transfer of the asset to T, because the disposition is pursuant to an agreement reached within 2 years after the transfer. Accordingly, paragraph (e)(2) of this section, P must reduce the basis in its T stock by $100 immediately before the sale. This result is reached whether or not the agreement is in writing. P's disposition would also have been treated as occurring within the 2-year period if the disposition were pursuant to an option issued within the period.

(f) *Investment adjustments and earnings and profits—(1) Effect on investment adjustments and earnings and profits—*(i) *General rule.* For purposes of determining investment adjustments under § 1.1502-32 and earnings and profits under § 1.1502-33(c) with respect to a member that owns stock in a subsidiary, any deduction that is disallowed, or any amount by which basis is reduced, under this section is treated as a loss absorbed by the member in the tax year in which the disallowance or basis reduction occurs.

(ii) *Example.* (A) In Year, P forms S with a contribution of $100, and S becomes a member of the P group. S buys all the stock of T for $100. T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to $200, and P's basis in the S stock increases to $200. In Year 6, S sells all the stock of T for $100, and S's recognized loss of $100 is disallowed under paragraph (a)(1) of this section.

(B) Under paragraph (f)(1) of this section, the earnings and profits of S for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1). P's basis in the S stock is reduced from $200 to $100 under the investment adjustment system. Correspondingly, P's earnings and profits for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1) of this section.

(2) *Coordination rules—*(i) *Order of adjustments.* Deconsolidation of a share is treated as a disposition of the share for purposes of determining when investment adjustments are made to the share.

(ii) *No tiering up of certain adjustments.* If the basis of stock of a subsidiary owned by a member (the "owning member") is reduced under this section on the deconsolidation of the stock, no corresponding adjustment is made under § 1.1502-32 to the basis of the stock of the owning member (or any higher tier member) if a disposition or deconsolidation occurs in the same transaction with resect to all the stock of the owning member. In the case of a disposition or deconsolidation in the same transaction of less than all the stock of the owning member, appropriate adjustments shall be made under § 1.1502-32 with respect to the stock of the owning member (or any higher tier member).

(iii) *Example.* (A) P, the common parent of a group, owns all the stock of S, S owns all the stock of S1, and S1 owns all the stock of S2. P's basis in the S stock is $100, S's basis in the S1 stock is $100, and S1's basis in the S2 stock is $100. In Year 1, S2 buys T for $100.

T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, the basis of each subsidiary's stock increases from $100 to $200. In Year 6, S sells all the stock of S1 for $100 to A, an individual, and recognizes a loss of $100. S1, S2, and T are not members of a consolidated group immediately after the sale because the new S1 group does not file a consolidated return for its first taxable year.

(B) Under paragraph (a)(1) of this section, no deduction is allowed to S for its loss on the sale of the S1 stock. Under paragraph (f)(1) of this section, S's earnings and profits for Year 6 are reduced by the $100 loss that is disallowed. Correspondingly, under the investment adjustment system, S's reduction in earnings and profits causes a reduction in P's basis in the S stock, and a reduction in P's earnings and profits for Year 6.

(B) Under paragraph (b)(1) of this section, because the stock of T and S2 is deconsolidated, S2 must reduce the basis of the T stock from $200 to $100 (its value immediately before the deconsolidation), and S1 must reduce the basis of the S2 stock from $200 to $100 (its value immediately before the deconsolidation). Under paragraph (f)(1), S2's earnings and profits for Year 6 are reduced by the $100 reduction to the basis of the T stock, and S1's earnings and profits are reduced by the $100 reduction to the basis of the S2 stock. Under paragraph (f)(2)(ii) of this section, because the stock of S2 is reconsolidated in the same transaction, the basis reduction to the T stock does not cause any corresponding investment adjustment to the stock of S2, or to the stock of any higher tier subsidiary. Similarly, because the stock of S1 is disposed of in the same transaction, the reduction to the basis of the S2 stock does not cause an investment adjustment to the stock of S1, or the stock of any higher tier subsidiary.

(iv) *Basis reduction treated as investment adjustment.* For purposes of the consolidated return regulations, the amount of any basis reduction to stock under this section is generally treated as a net negative adjustment under § 1.1502-32(e) (in addition to the adjustment otherwise required under § 1.1502-32(e)) with respect to the stock. The amount of the basis reduction is not treated as a net negative adjustment for purposes of § 1.1502-32T(a), however.

(g) *Reattribution of subsidiary's losses to common parent*—(1) *Reattribution rule.* If a member disposes of stock of a subsidiary and the member's loss would be disallowed under paragraph (a)(1) of this section, the common parent may make an irrevocable election to reattribute to itself any portion of the net operating loss carryovers and net capital loss carryovers attributable to the subsidiary (and any lower tier subsidiary) without regard to the order in which they were incurred, provided the amount reattributed does not exceed the amount that would be disallowed if an election under this paragraph (g) were not made. The common parent succeeds to the reattributed losses as if the losses were succeeded to on the day of the disposition in a transaction to which section 381 applies. Any owner shift of the subsidiary (including any deemed owner shift resulting from section 382(g)(4)(D) or 382(1)(3)) in connection with the disposition will not be taken into account under section 382 with respect to the reattributed losses.

(2) *Insolvency limitation.* Losses of a subsidiary may not be reattributed under this paragraph (g) to the extent that the subsidiary and all higher tier subsidiaries are insolvent within the meaning of section 108(d)(3) at the time of the disposition. For purposes of determining insolvency, preferred stock of a subsidiary that is not owned by members is treated as a liability to the extent of the amount of preferred distributions to which the stock would be entitled if the subsidiary were liquidated on the date of the disposition.

(3) *Investment adjustments.* Any losses reattributed under this paragraph (g) are treated for purposes of determining investment adjustments under § 1.1502-32 and earnings and profits under § 1.1502-33(c) as absorbed by the subsidiary (or lower tier subsidiary) immediately before the disposition. The losses, however, are not treated as absorbed for other tax purposes, such as section 172 or section 1212.

(4) *Examples.* The principles of this paragraph (g) are illustrated by the following examples:

Example (1). Basis reattribution case. (i) P, the common parent of a group, forms S with a contribution of $100. S has an operating loss of $60, which produces a deficit in earnings and profits that reduces P's basis in the S stock by $60 under the investment adjustment system. The group is unable to use the loss, and the loss becomes a net operating loss carryover attributable to S. Under the investment adjustment system, P's basis in the S stock is increased by $60, the amount of the unused loss, thus preserving P's $100 basis in the S stock. The remaining assets of S appreciate in value, and P sells all the stock of S for $55. But for an election to reattribute losses under this paragraph (g), P would have a $45 loss on the sale of S that would be disallowed.

(ii) P elects under paragraph (g)(1) of this section to reattribute to itself $45 of S's losses (the maximum amount permitted). As a result, $45 of the $60 net operating loss carryover attributable to S is reattributed to P. This reattributed loss may be included in the net operating loss carryover to subsequent consolidated return years of the P group. The remaining $15 of net operating loss carryover attributable to S is carried over to the first separate return year of S.

(iii) The $45 reattributed loss is treated, solely for purposes of the investment adjustment system, as absorbed by S immediately before the disposition. This reduces P's basis in the S stock to $55 immediately before the disposition. As a result, P does not recognize any gain or loss on the disposition. However, this deemed absorption for purposes of determining investment adjustments does not affect the use of the loss by the P group.

(iv) Assume that $20 of S's losses arose in Year 1 and $40 in Year 2, and that P elects to reattribute all $40 from Year 2 and $5 from Year 1. These losses retain their character as ordinary losses arising in Years 1 and 2. The losses continue to be subject to any limitations originally applicable to S, but P succeeds to them and may absorb the losses independently of S. (For example, P's use of the Year 2 losses does not depend on S's use of the Year 1 losses that were not reattributed to P.)

Example (2). Lower tier subsidiary. (i) P, the common parent of a group, forms S with a contribution of $100. S then forms T with a contribution of $40, and T borrows $60 from an unrelated lender. S has a net operating loss of $30. T has a net operating loss of $55 and is insolvent by $15. The group is unable to use these losses and the losses become net operating loss carryovers attributable to T and S. Under the investment adjustment system, S's basis in the T stock remains $40, and P's basis in the S stock remains $100. P sells all of the S stock for $30 ($100 invested, less S's $30 net operating loss and S's $40 unrealized loss on its investment in T stock). But for an election to reatttribute losses under this paragraph (g), P would have a $70 loss on the sale of the S stock that would be disallowed.

(ii) S's $30 portion of the net operating loss carryover may be reattributed to P under paragraph (g)(1) of this section. Because T is insolvent by $15, paragraph (g)(2) of this section provides that only $40 of its $55 portion of the net operating loss carryover may be reattributed to P under paragraph (g)(1). There is no limitation, however, on which $40 of T's $55 loss may be reattributed.

(iii) P elects under paragraph (g)(1) of this section to reattribute to itself $40 of T's losses (the maximum amount permitted). P does not elect, however, to reattribute to itself any of S's losses. As a result, $40 of the $85 net operating loss carryover is reattributed to P. This reattributed loss may be included in the net operating loss carryover to subsequent consolidated return years of the P group. Of the $45 remaining net operating loss carryover, the $15 attributable to T and $30 attributable to S are carried over to their first separate return years.

(iv) The loss reattributed from T is treated, solely for purposes of the investment adjustment system, as absorbed by T immediately before the disposition. This reduces P's basis in the S stock to $60 immediately before the disposition. As a result, P recognizes only a $30 loss on the disposition of its S stock ($30 sale proceeds and $60 basis). However, this deemed absorption for purposes of determining investment adjustments does not affect the use of the loss by the P group.

Example (3). Separate return limitation year losses. (i) P, the common parent of a group, buys the stock of S for $100. S has a net operating loss carryover of $40 from a separate return limitation year, and assets with a value and basis of $100. The assets of S decline in value by $40, and P sells all the stock of S for $60. But for an election to reattribute losses under this paragraph (g), P would have a $40 loss on the sale of S that would be disallowed.

(ii) S's $40 loss carryover from a separate return limitation year is included in the P group's net operating loss carryovers and may be reattributed to P under paragraph (g)(1) of this section.

(iii) P elects under paragraph (g)(1) of this section to reattribute to itself S's $40 loss (the maximum amount permitted). Following the reattribution, the loss is included in the net operating loss carryover to subsequent consolidated return years of the P group.

(iv) The loss reattributed from S is treated, solely for purposes of the investment adjustment system, as absorbed by S immediately before the disposition. This reduces P's basis in the S stock to $100 immediately before the disposition. As a result, P recognizes no gain or loss on the disposition of its S stock. However, this deemed absorption for purposes of determining investment adjustments does not affect the use of the loss by the P group.

(5) *Time and manner of making the election*—(i) *In general.* The election described in paragraph (g)(1) of this section must be made in a separate statement entitled "This is an Election Under Section 1.1502-20(g)(1) to Reattribute Losses of [insert names and employer identification numbers (E.I.N.) of each subsidiary whose losses are reattributed] to [insert name and employer identification number of common parent]." The statement must include the following information—

(A) For each subsidiary, the amount of each net operating loss and net capital loss, and the year in which each arose, that is reattributed to the common parent, and

(B) If a subsidiary ceases to be a member, the name and employer identification number of the person acquiring the subsidiary's stock.

The statement must be signed by the common parent, and by each subsidiary with respect to which loss is reattributed under this paragraph (g) that does not remain a member of the common parent's group immediately following the disposition. The statement must be filed with the group's income tax return for the tax year of the disposition and, if the subsidiary (or lower tier subsidiary) ceases to be a member, a copy delivered on or before the time that return is required to be filed with the acquirer. If the acquirer is a subsidiary in a consolidated group, the name and employer identification number of the common parent of the group must be included in the statement, and a copy of the statement must also be delivered to the common parent.

(ii) *Filing of subsidiary's copy of statement.* The subsidiary whose losses are reattributed (or the common parent of any consolidated group that acquires the subsidiary or lower tier subsidiary) must attach its copy of the statement described in paragraph (g)(5)(i) of this section to its return for the first year ending after the due date, including extensions, of the return in which the election required by paragraph (g)(5)(i) is to be filed.

(h) *Effective dates*—(1) *General rule.* This section is effective December 26, 1990. Except as otherwise provided in this paragraph (h), this section applies with respect to dispositions and deconsolidations after January 31, 1991. For this purpose, dispositions deferred under §§ 1.1502-13, 1.1502-13T, 1.1502-14, and 1.1502-14T are deemed to occur at the time the deferred gain or loss is taken into account unless the stock was deconsolidated before February 1, 1991. If stock of a subsidiary became worthless during a taxable year including February 1, 1991, the disposition with respect to the stock is treated as occurring on the date the stock became worthless.

(2) *Election to accelerate effective date*—(i) *In general.* A group may make an irrevocable election to apply this section to all its members, in lieu of § 1.337(d)-2, with respect to all dispositions and deconsolidations after November 18, 1990.

(ii) *Time and manner of making the election—in general.* The election described in paragraph (h)(2) of this section must be made in a separate statement entitled "This is an Election Under Section 1.1502-20(h)(2) to Accelerate the Application of § 1.1502-20 to the Consolidated Group of Which [insert name and employer identification number of common parent] is the Common Parent." The statement must be signed by the common parent and filed with the group's income tax return for the tax year of the first disposition or deconsolidation to which the election applies. If the separate statement required under this paragraph (h)(2)(ii) is to be filed with a return the due date (including extensions) of which is before April 16, 1991, the statement may be filed with an amended return for the year of the disposition or deconsolidation. Any other filings required under this § 1.1502-20, such as the statement required under § 1.1502-20(c)(3), which ordinarily cannot be made with an amended return, must be made at such time and in such manner as permitted by the Commissioner.

(3) *Binding contract rule.* For purposes of this paragraph (h), if a disposition or deconsolidation is pursuant to a binding written contract entered into before March 9, 1990, and in continuous effect until the disposition or deconsolidation, the date the contract became binding is treated as the date of the disposition or deconsolidation.

(4) *Cross reference.* For transitional loss limitation rules, see §§ 1.337(d)-1 and 1.337(d)-2.

Par. 5. Section 1.267(f)-3T is redesignated as § 1.267(f)-3, and is revised to read as follows:

§ 1.267(f)-3 Disposition or deconsolidation of subsidiary stock.

For purposes of applying section 267(f)(2) to the sale or exchange of the stock of one member of a consolidated group by another member, see §§ 1.337(d)-1(a), 1.337(d)-2(a), and 1.1502-20(a). For purposes of this section, the definitions in § 1.1502-1 apply.

Par. 6. Paragraph (e)(1) of § 1.337(d)-1 is revised to read as follows:

§ 1.337(d)-1 Transitional loss limitation rule.

* * * * *

(e) *Effective dates*—(1) *General rule.* This section is effective November 19, 1990, and applies with respect to dispositions after January 6, 1987. After November 18, 1990, however, this section applies only if the stock was deconsolidated (as that term is defined in § 1.337(d)-2 (b)(2)) before November 19, 1990, and only to the extent the disposition is not subject to § 1.337(d)-2 or § 1502-20.

* * * * *

Par. 7. Paragraph (r) of § 1.1502-12 is revised to read as follows:

§ 1.1502-12 Separate taxable income.

* * * * *

(r) For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1, 1.337(d)-2 and 1.1502-20.

* * * * *

Par. 8. The last sentence of § 1.1502-32 (a) is revised to read as follows:

§ 1.1502-32 Investment adjustment.

(a) * * * For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1, 1.337(d)-2 and 1.1502-20.

* * * * *

Par. 9. The last sentence of § 1.1502-33 (c)(6) is revised to read as follows:

§ 1.1502-33 Earnings and profits.

* * * * *

(c) * * *

(6) * * * For rules relating to the effect on earnings and profits of loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1. 1.337(d)-2 and 1.1502-20.

* * * * *

Par. 10. Section 1.1502-79 is amended by adding paragraph (a)(1)(iii) to read as follows:

§ 1.1502-79 Separate return years.

(a) * * *

(1) * * *

(iii) For rules permitting the reattribution of losses of a subsidiary to the common parent in the case of loss disallowance or basis reduction on the disposition or deconsolidation of stock of the subsidiary, see §1.1502-20.

* * * * *

Fred T. Golderg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-27572 Filed 11-19-90; 3:43 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[CO-93-90]

RIN 1545-AP20

Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations implementing the repeal on the general utilities doctrine and eliminating duplication of loss with respect to members of affiliated groups filing consolidated returns. The regulations apply to a disposition or deconsolidation of stock of a subsidiary of the group.

DATES: The public hearing will be held on Friday, January 25, 1991, beginning at 10 a.m. Request to speak and outlines of oral comments must be received by Friday, January 11, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO-93-90); room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-343-0232 or 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code of 1986. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, January 11, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register, Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-27570 Filed 11-19-90; 3:43 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 570

RIN 1215-AA09

Subpart E—Occupations Particularly Hazardous for the Employment of Minors Between 16 and 18 Years of Age, or Detrimental to Their Health or Well-Being

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing written comments on proposed changes to three existing Hazardous Occupation Orders (HOs) issued pursuant to section 3(1) of the Fair Labor Standards Act, which prohibit the employment of minors under 18 years of age in occupations declared by the Secretary of Labor to be particularly hazardous for such minors, or detrimental to their health or well-being. The affected HOs are those related to the operation of a motor vehicle (HO 2), the use of power-driven meat processing equipment (HO 10), and the operation of paper-products machines (HO 12). This action is taken in order to provide interested parties with additional time to submit their comments.

DATES: Comments must be received on or before December 24, 1990.

ADDRESSES: Address written comments (preferably in triplicate) to Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who would like notification of receipt of their comments should include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: 202-523-8305 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 23, 1990 (55 FR 42812), the Department of Labor published a notice of proposed rulemaking concerning HOs 2, 10, and 12. Interested parties were requested to submit comments on or before November 23, 1990.

Because of the interest in this matter, the Department believes it is desirable to grant an extension of the comment period for interested parties. Therefore, the comment period for submitting information concerning these HOs is reopened and extended to December 24, 1990.

Signed at Washington, DC, on this 20th day of November 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

[FR Doc. 90-27681 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Medical Documentation

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed rule amends DoD 6010.8-R (32 CFR part 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The proposed rule clarifies and strengthens medical documentation requirements under the CHAMPUS. This will assist in the maintenance of an adequate level of quality care and help ensure that payment is made only for services rendered.

DATES: Written public comments must be received on or before December 26, 1990.

ADDRESSSES: Comments should be sent to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT; David E. Bennett, Office of Program Development, OCHAMPUS, telephone (303) 361-3537.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of title 32 CFR. DoD 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

The need for thorough medical documentation for verification of services has been dramatically demonstrated through the utilization review of services provided to CHAMPUS beneficiaries, particularly within various mental health settings. The lack of pertinent information has often made it impossible to determine the patient's clinical condition, actual treatment rendered, the quality and effectiveness of the care provided, or the identity and qualifications of the staff providing treatment services.

As a result, appropriate medical documentation has become increasingly important to CHAMPUS in the verification of mental health services, since there are few objectives indicators to validate professional opinions about diagnoses, response to treatment, and severity of illness. This has placed more emphasis on the need for complete and timely treatment plans, progress notes, and treatment summaries prepared in accordance with Joint Commission on Accreditation of Healthcare Organizations (JCAHO) Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded.

In the case of inpatient acute medical care, progress notes are usually written on at least a daily basis, with the attending physician documenting all identifiable physician services. However, this is often not the case with mental health care where providers may see patients 4 to 5 times a week and make weekly summary notes in the patients' clinical records. Since progress notes provide a vehicle for ongoing and periodic recording of information about the patient's status, behavior and response to treatment, it is important that each clinical event be documented as soon as possible after its occurrence. This is especially relevant with the multiplicity and overlapping of care inherent in the treatment team approach. Also, the use of a generalized statement, such as "the patient is still depressed about the divorce and does not feel ready to face the outside world" is of little value. The documentation should reveal the issues and pathology addressed in the therapy session, the therapeutic intervention attempted during the session, and the degree of progress toward established treatment goals.

The importance of progress notes is further emphasized in the way CHAMPUS views the reimbursement of inpatient and outpatient psychotherapy sessions. Under current policy, CHAMPUS allows payment for 60 minute psychotherapy sessions consisting of 50 minutes of actual therapy and 10 minutes of recording the session in the patient's chart.

Due to the importance of documentation in assuring quality of care and verification of services, minimal requirements are being proposed, along with specific time frames for their incorporation into the medical records. These medical documentation requirements have been in effect under the Contracted Provider Arrangement (CPA) Norfolk Mental Health Services demonstration project since April 1, 1989, and were published in a **Federal Register** notice (54 FR 13935) on April 6, 1989. The effectiveness of the requirements has been established since that date with minimal administrative burden to providers. These documentation requirements are similar to those currently being used by the CHAMPUS mental health review contractor (CHAMP-MH Approved Mental Health Care) responsible for managing mental health utilization for CHAMPUS beneficiaries nationwide.

Based on existing Regulation interpretation, the medical records for Residential Treatment Centers (RTCs), acute psychiatric hospitals, psychiatric units within acute care institutions, alcohol rehabilitation facilities, partial hospitalization programs, and outpatient psychotherapy must, at a minimum, be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded. The new requirements will complement the JCAHO consolidated standards, ensuring that specific care was actually and appropriately furnished, was medically or psychologically necessary, and will identify the individuals providing the care.

The proposed regulation changes will clarify and strengthen CHAMPUS' requirements for accurate, legible and timely medical documentation of services provided to its beneficiaries. This will require that contemporaneous medical records are maintained in accordance with generally accepted medical practice and that services are actually being rendered. Maintenance of appropriate medical documentation is an essential ingredient in the overall care of the patient assuring medical necessity and appropriateness of care. It serves as a basis for planning a patient's care and for the ongoing evaluation of the patient's condition and treatment. A provider's failure to comply with these new documentation requirements can result in sanctions being imposed by the

Director, OCHAMPUS, or a designee, under § 199.9 of this Regulation.

Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a signficant impact on a substantial number of small entities.

This proposed rule is not a major rule under Order 12291. The changes set forth in this proposed rule are minor revisions to existing regulation. In addition, this proposed rule will have very minor impact and not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This proposed rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR, part 199, is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301, Pub. L. 101–165, sec. 9100.

2. Section 199.2(b) is amended by adding the definition for "Progress notes" in alphabetical order as follows:

§ 199.2 Definitions.

* * * * *

(b) *Specific definitions.*

* * * * *

Progress notes. Progress notes are an essential component of the medical record wherein health care personnel provide written evidence of ordered and supervised diagnostic tests, treatments, medical procedures, therapeutic behavior and outcomes. In the case of mental health, progress notes must include: the date of the therapy session; length of the therapy session; a notation of the patient's signs and symptoms; the issues, pathology and specific behaviors addressed in the therapy session; a statement summarizing the therapeutic interventions attemped during the therapy session; descriptions of the response to treatment, the outcome of the treatment, and the response to significant others; and a statement summarizing the patient's degree of progress toward the treatment goals. Progress notes do not need to repeat all that was said during a therapy session but must document a patient contact and be sufficiently detailed to allow for both peer review and audits to substantiate the quality and quantity of care rendered.

* * * * *

3. Section 199.6 is amended by adding new paragraph (b)(1)(iii), by adding new paragraphs (b)(4)(iv)(D), (b)(4)(vii)(E), (b)(4)(x)(B)(*3*)(*vii*), and (c)(1)(v).

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(1) * * *

(iii) *Medical records.* Institutional providers must provide adequate contemporaneous clinical records to substantiate that specific care was actually furnished, was medically necessary, and appropriate, and to identify the individual(s) who provided the care. The minimum requirements for medical record documentation are requirements set forth by either:

(A) The congnizant state licensing authority;

(B) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or other health care accreditation organizations as may be appropriate;

(C) Standards of practice established by national medical organizations; or

(D) This Regulation.

Note: If more than one of these four standards is applicable, then the strictest standard is mandatory.

* * * * *

(4) * * *

(iv) * * *

(D) At a minimum, medical records will be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The hospital is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(vii) * * *

(E) At a minimum, medical records will be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alocholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The residential treatment center is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(x) * * *

(B) * * *

(*3*) * * *

(*vii*) At a minimum, medical records will be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The alcohol rehabilitation facility is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(c) * * *

(1) * * *

(v) *Medical records*: Individual professional providers must maintain adequate clinical records to substantiate that specific care was actually furnished, was medically necessary, and appropriate, and identify(ies) the individual(s) who provided the care. This applies whether the care is inpatient or outpatient. The minimum requirements for medical record documentation are requirements set forth by either:

(A) The cognizant state licensing authority;

(B) The Joint Commission on Accreditation of Healthcare Organizations, or other health care accreditation organizations as may be appropriate;

(C) Standards of practice established by national medical organizations; or

(D) This Regulation.

Note: If more than one of these four standards is applicable, then the strictest standard is mandatory.

* * * * *

4. Section 199.7 is amended by revising paragraph (a) introductory text, by revising paragraphs (b)(2)(ix) introductory text and (b)(2)(ix)(A), by adding new paragraph (b)(2)(x)(D), by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5), by adding new paragraph (b)(3), by revising newly designated paragraphs (b)(5)(i) introductory text and (b)(5)(ii), by adding new paragraph (b)(5)(iii), by

adding a note immediately following paragraph (c)((1)(iii), by revising paragraph (c)(2)(i)(A), and by adding new paragraph (i)(3).

§199.7 Claims submission, review, and payment.

* * * * *

(a) *General.* The Director, OCHAMPUS, or a designee, is responsible for ensuring that benefits under CHAMPUS are paid only to the extent described in this Regulation. Before benefits can be paid, an appropriate claim must be submitted that includes sufficient information as to beneficiary identification, the medical services and supplies provided, and double coverage information, to permit proper, accurate, and timely adjudication of the claim by the CHAMPUS contractor or OCHAMPUS. Providers must be able to document that the care or service shown on the claim was rendered. This section sets forth minimum medical record requirements for verification of services. Subject to such definitions, conditions, limitations, exclusions, and requirements as may be set forth in this Regulation, the following are the CHAMPUS claim filing requirements:

* * * * *

(b) * * *

(2) * * *

(ix) *Physicians or other authorized individual professional providers.* The claims must give the name of the individual actually rendering the care, along with the individual's professional status (e.g., M.D., Ph.D., R.N., etc.) and provider number, if the individual signing the claim is not the provider who actually rendered the service. The following information must also be included:

(A) Date each service was rendered.

* * * * *

(x) * * *

(D) *Professional services.* The claims must give the name of the individual actually rendering the care, along with the individual's professional status (e.g., M.D., Ph.D., R.N., etc.).

* * * * *

(3) *Medical records/medical documentation.* Medical records are of vital importance in the care and treatment of the patient. Medical records serve as a basis for planning of patient care and for the ongoing evaluation of the patient's treatment and progress. Accurate and timely completion of orders, notes, etc., enable different members of a health care team and subsequent health care providers to have access to relevant data concerning the patient. Appropriate medical records must be maintained in order to accommodate utilization review and to substantiate that billed services were actually rendered.

(i) All care rendered and billed must be appropriately documented in writing. Failure to document the care billed will result in the claim or specific services on the claim being denied CHAMPUS cost-sharing.

(ii) A pattern of failure to adequately document medical care will result in episodes of care being denied CHAMPUS cost-sharing.

(iii) Cursory notes of a generalized nature that do not identify the specific treatment and the patient's response to the treatment are not acceptable.

(iv) The documentation of medical records must be legible and prepared as soon as possible after the care is rendered. Entries should be made when the treatment described is given or the observations to be documented are made. The following are documentation requirements and specific time frames for entry into the medical records:

(A) Admission evaluation within 24 hours of admission.

(B) Completed history and physical examination report within 72 hours of admission.

(C) Nursing notes at the end of each shift.

(D) Daily physician notes.

(E) Requirements specific to mental health services:

(*1*) Individual and family therapy within 24 hours of procedure for acute, detoxification and Residential Treatment Center (RTC) programs and within 48 hours for partial programs.

(*2*) Preliminary treatment plan within 24 hours of admission.

(*3*) Master treatment plan within 72 hours of admission for acute care, 7 days for RTC and full-day partial programs and within 5 days for half-day partial programs.

(*4*) Family assessment within 72 hours of admission for acute care and 7 days for RTC and partial programs.

(*5*) Nursing assessment within 24 hours of admission.

(*6*) Daily physician notes for intensive treatment, detoxification, and rapid stabilization programs; twice per week for acute programs; and once per week for RTC and partial programs.

(*7*) Group therapy once per week.

(*8*) Ancillary services once per week.

(*9*) Daily therapeutic milieu notes which are formally evaluated and incorporated into the treatment plan by a CHAMPUS authorized mental health professional on a weekly basis.

Note: A pattern of failure to meet the above criteria may result in provider sanctions prescribed under § 199.9 of the regulation.

* * * * *

(5) * * *

(i) As a condition precedent to the cost-sharing of benefits under this Regulation or pursuant to a review or audit, whether the review or audit is prospective, concurrent, or retroactive, OCHAMPUS or CHAMPUS contractor may request, and shall be entitled to receive, information from a physician or hospital or other person, institution, or organization (including a local, state, or Federal Government agency) providing services or supplies to the beneficiary for whom claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance testing, monitoring, examination, diagnosis, treatment, or services and supplies furnished to a beneficiary and, as such, shall be necessary for the accurate and efficient administration of CHAMPUS benefits. This may include requests for copies of all medical records or documentation related to the episode of care. In addition, before a determination on a request for preauthorization or claim of benefits is made, a beneficiary, or sponsor, shall provide additional information relevant to the requested determination, when necessary. The recipient of such information shall hold such records confidential except when:

* * * * *

(ii) For the purposes of determining the applicability of and implementing the provisions of §§ 199.8 and 199.9, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS or CHAMPUS fiscal intermediaries, without consent or notice to any beneficiary or sponsor, may release to or obtain from any insurance company or other organization, governmental agency, provider, or person, any information with respect to any beneficiary when such release constitutes a routine use duly published in the **Federal Register** in accordance with the Privacy Act.

(iii) Before a beneficiary's claim of benefits is adjudicated, the beneficiary or the provider(s) must furnish to CHAMPUS that information which is necessary to make the benefit determination. Failure to provide the requested information will result in denial of the claim. A beneficiary, by submitting a CHAMPUS claim(s) (either a participating or nonparticipating claim), is deemed to have given consent to the release of any and all medical records or documentation pertaining to the claims and the episode of care.

(c) * * *
(1) * * *
(iii) * * *

Note: If the care was rendered to a minor and a custodial parent or legal guardian requests information prior to the minor turning 18 years of age, medical records may still be released pursuant to the signature of the parent or guardian, and claims information may still be released to the parent or guardian in response to the request, even though the beneficiary has turned 18 between the time of the request and the response. However, any follow-up request or subsequent request from the parent or guardian, after the beneficiary turns 18 years of age, will necessitate the authorization of the beneficiary (or the beneficiary's legal guardian as appointed by a cognizant court), before records and information can be released to the parent or guardian.

* * * * *

(2) * * *
(i) * * *

(A) Certifies that the specific medical care listed on the claim form was, in fact, rendered to the specific beneficiary for which benefits are being claimed, on the specific date or dates indicated, at the level indicated and by the provider signing the claim unless the claim otherwise indicates another individual provided the care. For example, if the claim is signed by a psychiatrist and the care billed was rendered by a psychologist or licensed social worker, the claim must indicate both the name and profession of the individual who rendered the care.

* * * * *

(i) * * *

(3) *Fraudulent billing.* Claims that are submitted to CHAMPUS that include a billing for services, supplies, or equipment not furnished, or used by, CHAMPUS beneficiaries will be denied in their entirety, regardless of the relative amount of the fraudulent billing compared to the total billings. Claims that have been CHAMPUS cost-shared that are retroactively audited or reviewed and are found to include fraudulent billings may be denied in part or in total based on the discretion of the Director, OCHAMPUS, or a designee.

* * * * *

5. Section 199.10 is amended by adding a note after paragraph (a)(2)(ii)(B).

* * * * *

§ 199.10 Appeal and hearing procedures.

(a) * * *
(2) * * *
(ii) * * *
(B) * * *

Note: The custodial parent or legal guardian (appointed by a cognizant court) of a minor beneficiary may initiate an appeal based on the above presumption. However, should a minor beneficiary turn 18 years of age during the course of an appeal, then any further requests to appeal on behalf of the beneficiary must be from the beneficiary or *pursuant to the written authorization of the* beneficiary appointing a representative. For example, if the beneficiary is 17 years of age and the sponsor (who is a custodial parent) requests a formal review, absent written objection by the minor beneficiary, the sponsor is presumed to be acting on behalf of the minor beneficiary. Following the issuance of the formal review, the sponsor requests a hearing; however if, at the time of the request for a hearing, the beneficiary is 18 years of age or older, the request must either be by the beneficiary or the beneficiary must appoint a representative. The sponsor, in this example, could not pursue the request for hearing without being appointed by the beneficiary as the beneficiary's representative.

* * * * *

Dated: November 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-26939 Filed 11-23-90; 8:45 am]
BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL 3863-1]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal and reproposal.

SUMMARY: EPA is developing regulations under the Clean Water Act to establish effluent limitations guidelines based on the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) and new source performance standards (NSPS) limiting discharges to waters of the United States from facilities in the oil and gas extraction point source category, offshore subcategory. This notice is an initial proposal and reproposal that presents the major regulatory options that the Agency is currently considering for control of drilling fluids, drill cuttings, produced water, deck drainage, produced sand, well treatment/workover fluids and domestic and sanitary wastes. EPA intends to issue a more detailed notice regarding this proposal by February 28, 1991.

DATES: The comment period for this notice will end on December 26, 1990. Commenters may submit comments on this proposal either during the comment period for this notice or during the comment period for the more detailed notice. Commenters also may submit comments on both notices. A 30 day comment period will follow the publication of the more detailed notice referred to above.

FOR FURTHER INFORMATION CONTACT: Further information regarding this notice may be obtained from Marvin Rubin, Chief, Energy Branch, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; (202) 382-7124.

SUPPLEMENTARY INFORMATION:

Legal Authority

The regulations described in this notice are proposed under the authority of sections 301, 304, 306, 307 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended, 33 U.S.C. 1251, et seq.)

Proposal

EPA is developing effluent limitations guidelines and standards under the Clean Water Act for control of drilling fluids, drill cuttings, produced water, deck drainage, produced sand, well treatment/workover fluids and domestic and sanitary wastes based on the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) and new source performance standards (NSPS). The Agency is issuing this notice in response to a Settlement Agreement approved on April 5, 1990 in *NRDC* v. *Reilly*, D.D.C. No. 79-3443 (JHP). Under the terms of that agreement, EPA is to propose or repropose BAT and BCT effluent limitations guidelines and new source performance standards for produced water, drilling fluids and drill cuttings, well treatment fluids and produced sand, as described at 50 FR 34595 (August 26, 1985), by November 16, 1990. EPA is to promulgate final guidelines and standards covering those wastestreams by June 19, 1992. In addition, EPA is to determine by November 16, 1990 whether to propose effluent limitations guidelines and new source performance standards covering domestic and sanitary wastes and, if it determines to do so, to promulgate final guidelines and standards covering those wastestreams by June 30, 1993.

EPA has determined that it is appropriate to propose effluent limitations guidelines and new source performance standards covering

domestic and sanitary wastes and has included such proposals in this notice. The Agency is using its best efforts to comply with the promulgation dates established in the Settlement Agreement and currently expects to meet them.

In 1979, EPA issued effluent limitations guidelines based on the best practicable control technology currently available (BPT) covering the offshore subcategory of the oil and gas extraction point source category. (40 CFR part 435, subpart A.) In addition, EPA has issued a series of general permits that set BAT and BCT limitations applicable to sources in the offshore subcategory on a Best Professional Judgment (BPJ) basis under 402(a)(1) of the Clean Water Act. *See e.g.*, 51 FR 24897 (July 9, 1986) (Gulf of Mexico General Permit); 49 FR 23734 (June 7, 1984), modified 52 FR 36461 (September 29, 1987) (Bering and Beaufort Seas General Permit); 50 FR 23578 (June 4, 1985) (Norton Sound General Permit); 51 FR 35460 (October 3, 1986) (Cook Inlet/Gulf of Alaska General Permit); 53 FR 37846 (September 28, 1988), modified 54 FR 39574 (September 27, 1989) (Beaufort Sea II/ Chuckchi Sea General Permit).

For a general account of prior notices issued in these rulemaking proceedings, a summary of the legal background relevant to this rulemaking and an overview of the industry see 50 FR 34592–5. EPA proposed BAT, BCT and NSPS for the offshore subcategory of the oil and gas extraction point source category in the **Federal Register** on August 26, 1985 (50 FR 34592) and published a development document for the proposal. Subsequently, EPA published a Notice of Data Availability and Request for Comments in the **Federal Register** on October 21, 1988 (53 FR 41356). The October 21, 1988 notice presented additional data related to the development of discharge limitations for drilling fluids and drill cuttings that the Agency received following the 1985 proposal.

Since 1988, the Agency has completed several studies and acquired new information pertaining to drilling fluids and drill cuttings, produced water and other wastestreams associated with offshore oil and gas extraction activities. These latest efforts have been directed toward examination of some of the BAT, BCT and NSPS options proposed in 1985 and also toward proposal of new options or variations of the previously proposed options that EPA has developed as a result of recent data review and analysis. The data gathering conducted since 1985 has focused on four areas: (1) Evaluation of variability in the results of the test method used to measure the toxicity of drilling fluids; (2) the prohibition on diesel oil discharges for drilling fluids and drill cuttings; (3) the characteristics and treatment of produced waters; and (4) the characteristics and treatment of deck drainage, produced sand, well treatment/workover fluids and domestic and sanitary wastes.

The results of these and other studies have led the Agency to develop some regulatory options that are different from those proposed in 1985. The major additional options that EPA has developed, along with previously proposed options that are still being considered, are set forth below by wastestream.

I. Drilling Fluids and Drill Cuttings

Drilling fluids, or muds, are suspensions of solids and dissolved materials in a base of water or oil that are used in rotary drilling operations to lubricate and cool the drill bit, carry cuttings from the hole to the surface and maintain hydrostatic pressure down hole. Drill cuttings are particles cut from the formation in the well bore by the drill bit. See 50 FR 34598–34600. EPA is considering the following options for drilling fluids and cuttings at the BAT, BCT and NSPS levels of control:

5/3 All Structures

This option includes four provisions: a toxicity limitation set at 30,000 ppm in the suspended particulate phase; a prohibition on the discharge of diesel oil; a prohibition on the discharge of "free oil;" and limitations for cadmium and mercury in the stock barite (not in discharged drilling fluids) set at 5 mg/kg and 3 mg/kg, respectively. These discharge limitations would be applicable to all offshore structures regardless of their distance from shore. In the event that the mud system does not meet these discharge limitations, the requirements could be met through recycling/reuse of the mud system on the platform and/or transport to shore for land disposal of the spent mud system and associated cuttings.

1/1 All Structures

This option also includes four provisions. Like the preceding option, it would set a toxicity limitation at 30,000 ppm in the suspended particulate phase, would prohibit the discharge of diesel oil and would include a prohibition on the discharge "free oil." The fourth provision would set limitations for cadmium and mercury in the mud system (either drilling fluid or drill cuttings) at 1 mg/kg each for cadmium and mercury at the point of discharge. These discharge limitations would be applicable to all offshore structures regardless of their distance from shore. In the event that the mud system does not meet these discharge limitations, the requirements could be met through recycling/reuse of the mud system on the platform and/or transport to shore for land disposal of the spent mud system and associated cuttings.

Zero Discharge Within Four Miles; 5/3 Beyond

This option differentiates between those structures located four miles or less from shore and those structures located more than four miles from shore. For structures located four miles or less from shore, there would be a zero discharge requirement for all drilling fluids and drill cuttings, which requirement could be met through recycle/reuse of the mud system on the platform and/or transport to shore for land disposal of the spent mud system and associated cuttings. For offshore structures located more than four miles from shore, there would be a toxicity limitation based on 30,000 ppm in the suspended particulate phase; a prohibition on the discharge of diesel oil; a prohibition on the discharge of "free oil" and a limitation on cadmium and mercury in the stock barite set at 5 mg/kg of cadmium and 3 mg/kg of mercury. These requirements could be met as described above.

Zero Discharge Within Four Miles; 1/1 Beyond

This option also differentiates between those structures located four miles or less from shore and those structures located more than four miles from shore. For structures located four miles or less from shore, there would be a zero discharge requirement that could be met either through recycle/reuse of the mud system and/or through transport to shore of the spent mud system and associated cuttings for land disposal. For structures located more than four miles from shore, there would be a toxicity limitation set at 30,000 ppm in the suspended particulate phase; a prohibition on the discharge of diesel oil; a prohibition on the discharge of "free oil" and a limitation on cadmium and mercury at the point of discharge set at 1 mg/kg of cadmium and 1 mg/kg of mercury that could be met as described above.

Zero Discharge All Structures

The requirements of this option could be met either through the recycle/reuse of drilling fluid from the mud system and/or through transport to shore for land disposal of the spent mud system

and associated cuttings. The zero discharge requirement would apply to all offshore structures regardless of their distance from shore.

The Agency is also considering variations on the options for control of drilling fluids and drill cuttings that would differentiate between structures on the basis of distances from shore other than four miles.

The Agency's preferred option for control of drilling fluids and drill cuttings is "Zero Discharge Within Four Miles; 1/1 Beyond" as described above. In addition, the Agency's preferred option for new wells offshore of Alaska is to require the "1/1 All" conditions described above for all wells (including wells within four miles of shore) because of special climate and safety conditions in Alaska that make the transport of drilling fluids and drill cuttings to shore by barging especially difficult and hazardous.

II. Produced Water

Produced water is water, brought up from the hydrocarbon-bearing strata with petroleum liquids and natural gas, that includes brine trapped with the oil and gas in the formation and water injected into the reservoir to increase productivity. See 50 FR 34598. EPA is considering the following options for produced water at the BAT, BCT and NSPS levels of control:

BPT All Structures

This option would require that all structures (regardless of their location) would be subject to the BPT limitations governing produced water that are currently in place. (40 CFR 435.12(b)).

Filter and Discharge Within Four Miles; BPT Beyond

This option differentiates between those structures that are located four miles or less from shore and those structures that are located more than four miles from shore. The limitations for structures located four miles or less from shore would be based on the use of filtration (granular media or membrane separation) technology as an add-on to the existing BPT technology. Those structures located more than four miles from shore would be subject only to the BPT limitations governing produced water that are currently in place. (40 CFR 435.12(b)).

Filter and Discharge All Structures

Under this option, the limitations for all offshore structures, regardless of their distance from shore, would be based on granular media or membrane separation filtration of the produced water prior to discharge.

Zero Discharge All Structures

This option would require that all structures regardless of their distance from shore meet the zero discharge requirement based on reinjection of produced water.

The Agency is also considering variations on the options for control of produced water that would differentiate between stuctures on the basis of (1) distances from shore other than four miles and (2) water depth rather than distance from shore. See 50 F.R. 34592, ff. (20 meter depth distinction).

The Agency's preferred option for control of produced water is "Filter and Discharge Within Four Miles; BPT Beyond" as described above.

III. Other Wastestreams

EPA is considering setting requirements for other wastestreams as follows:

(A) Deck drainage consists of platform and equipment runoff due to strom events and wastewater from platform and equipment washdown and cleaning. (See 50 FR 34600.) The options being considered for this wastestream would (1) establish requirements equal to the current BPT limits of no discharge of free oil (40 CFR 435.12(b)) where produced water filtration technology has not been installed (e.q., facilities where drilling only is occurring) or (2) would establish requirements equal to any of the options identified above for the produced water wastestream for facilities that have produced water filtration technology installed.

(B) Produced sand consists of particulate material (sand) from the producing formation that comes to the surface along with the crude oil and/or gas and produced water and is separated by the produced water desander (settling/screening device) and treatment system. (See 50 FR 34600.) This wastestream would also include sludges generated by any chemical polymers used in the filtration portion of the produced water treatment system. The two options being considered for this wastestream would (1) establish requirements equal to no discharge of free oil or (2) would require zero discharge.

(C) Well treatment/workover fluids consist of fluids used down hole in drilling operations or during production. These wastes either stay in the hole or come up with drilling fluids and drill cuttings or with produced water. See 50 FR 34600. The three options being considered for these wastes would (1) establish requirements equal to the current BPT limit of no discharge of free oil (40 CFR 435.12(b)); (2) require zero discharge of a 100-barrel buffer on both sides of the well treatment/workover fluids; or (3) would establish requirements equal to any of the options identified above for the produced water wastestream for well treatment and workover fluids generated during production operations.

(D) Domestic and sanitary wastes consist of kitchen, laundry and human wastes. (See 50 FR 34600.) The options being considered for these wastes are (1) maintaining the BPT level of control of "no discharge of floating solids" that is currently applicable to domestic wastes (40 CFR § 435.12(b)) and residual chlorine requirements; or (2) incorporating additional requirements based on current permit conditions that control foam.

The Agency's preferred options for control of these wastestreams are (1) that deck drainage be subject to the same limitations as produced water during production operations and to requirements equal to the current BPT limits where filtration technology for produced water has not been installed; (2) that zero discharge be required for produced sand; (3) that zero discharge be required for well treatment/workover fluids and a 100 barrel buffer on both sides of the well treatment/workover fluids, and for those fluids that can not be segregated from the produced water, the produced water limitations would apply; and (4) that BPT, plus conditions that would control foam, be required for domestic and sanitary wastes.

On or before February 28, 1991, EPA intends to issue another, more detailed notice. That notice will further explain the options that are under consideration and will present technical, economic, environmental and other data relating to those options. That notice also may present further regulatory options. A 30 day public comment period will follow that notice.

Dated: November 16, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90-27594 Filed 11-23-90; 8:45 am]

BILLING CODE 6450-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-568, RM-7476]

Radio Broadcasting Services; Barbourville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Barbourville Community Broadcasting Company proposing the substitution of Channel 241C3 for Channel 241A at Barbourville, Kentucky, and modification of its license for Station WYWY(FM) to specify the higher class channel. Channel 241C3 can be allotted to Barbourville in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) west of the community, in order to avoid a short-spacing to Station WMXK-FM, Channel 240A, Morristown, Tennessee. The coordinates are North Latitude 36-52-32 and West Longitude 83-55-09. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 11, 1991, and reply comments on or before January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John B. Kenkel, Kenkel & Associates, 1220 19th Street, NW., suite 202, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-568, adopted November 5, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments. see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27647 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-569, RM-7510]

Radio Broadcasting Services; Gluckstadt and Collins, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Exchequer Communications, Inc., proposing the substitution of Channel 269C3 for Channel 269A at Gluckstadt, Mississippi, and modification of the license for Station WLIN to specify operation on the higher class channel. The coordinates for Channel 269C3 at Gluckstadt are 32-25-36 and 90-12-19. To accommodate Channel 269C3 at Gluckstadt, it is necessary to substitute Channel 296A for 269A at Collins, Mississippi, which is licensed to Station WKNZ. The coordinates for Channel 296A at Collins, are 31-31-49 and 89-30-29.

DATES: Comments must be filed on or before January 11, 1991, and reply comments on or before January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis J. Kelly, Cordon and Kelly, Second Floor, 1920 N Street, NW., Washington, DC 20036, (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-569, adopted October 31, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission considered or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27646 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-554, RM-7442]

Radio Broadcasting Services; Littlefield, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Stebbins Broadcasting Company ("petitioner"), permittee of Station KXDM, Channel 238A, Littlefield, Texas, requesting the substitution of Channel 238C3 for Channel 238A at Littlefield. The coordinates of Channel 238C3 at Littlefield are 33-56-17 and 102-20-38.

DATES: Comments must be filed on or before January 11, 1991 and reply comments on or before January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Janet L. Stebbins and Dave C. Stebbins, Stebbins Broadcasting Company, Box 192, Littlefield, Texas 79339 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-554 adopted October 31, 1990, and released November 20, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27649 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-555, RM-7453]

Radio Broadcasting Services; Mineral Wells and Winters, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jerry Snyder and Associates, Inc., licensee of Station KYXS(FM), Channel 240A, Mineral Wells, Texas, requesting that the Commission substitute Channel 240C1 for 240A at Mineral Wells and modify its license to specify operation on the higher class channel. Petitioner also requests that the Commission substitute Channel 241A for Channel 240A at Winters, Texas to accommodate its proposal. The coordinates for Channel 240C1 at Mineral Wells are 32-41-06 and 98-09-32. The coordinates for Channel 241A at Winters are 31-57-36 and 99-57-54. Mexican concurrence will be requested for the Winters substitution.

DATES: Comments must be filed on or before January 11, 1991, and reply comments on or before January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert W. Healy, Esq., Reddy, Begley & Martin, 2033 M Street, NW., suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-555, adopted November 1, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27648 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 227
Monday, November 26, 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 COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on December 13, 1990. The meeting will be at 2 p.m. in room 3407 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Committee advises Department of Commerce officials on textile and apparel export issues.

AGENDA:

1. Intellectual Property Rights.
2. Update on the Uruguay Round trade negotiations.
3. Market Data on Asia Rim markets.
4. Report on Office of Textiles and Apparel, Market Expansion Division, FY91 events scheduling.
5. Report on recently concluded event—World Fashion Trade Fair, Osaka, Japan.
6. Other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377–4324).

Dated: November 19, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27615 Filed 11–23–90; 8:45 am]

BILLING CODE 3510–DR–M

Minority Business Development Agency

Business Development Center Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period May 1, 1991 to April 30, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Salt Lake City Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is December 14, 1990. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date *or* (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before December 14, 1990. Anticipated processing time of this award is 120 days.

ADDRESSES: Dallas Regional Office, 1100 Commerce Street, suite 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Yvonne Guevara, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held. Please call Ms. Guevara to be advised of date, time and place.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be

considered for funding until these debts have been paid or arrangements satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Dated: November 19, 1990.

Melda Cabrera,

Regional Director, Dallas Regional Office.

Section B—Project Specifications

(To Be Completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: Salt Lake City (Geographic Area of SMSA) MBDC.
3. Project Identification Number: 08-10-91006-01.

Budget Period Duration

1. Budget Period (Check One): First X, Second ___, Third ___.
2. Start Date: May 1, 1991
3. End Date: April 30, 1992
4. Budget Period Duration (Months): Twelve

Project Cost

1. Required Federal Funding Level: $165,000
2. Minimum Non-Federal Contribution: $29,118
3. Total Project Cost: $194,118

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: $11,148,000
2. Billable SM&TA Minimum Goal Level: $112,000
3. Number of Clients Minimum Goal Level: 112

Other Project Specifications

1. Closing Date for Submission of this Application: December 31, 1990
2. Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: Salt Lake City
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Periods:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 90-27658 Filed 11-23-90; 8:45 am]
BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Intent To Conduct a Public Meeting on the Preparation of a Draft Environmental Impact Statement for the Proposed North Inlet-Winyah Bay National Estuarine Research Reserve, South Carolina

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to conduct public meeting and prepare a Draft Environmental Impact Statement.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of South Carolina and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct a public meeting to present a draft management plan for the proposed North Inlet-Winyah Bay National Estuarine Research Reserve and to discuss significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS). The DEIS and draft management plan address research, monitoring, education and resource protection needs for the reserve.

DISCUSSION: In February 1990, NOAA approved the nomination of North Inlet-Winyah Bay in South Carolina as a proposed research reserve. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance basic scientific understanding of coastal environments and aid in resource management decisionmaking.

The South Carolina Coastal Council (SCCC) and the Belle W. Baruch Institute/University of South Carolina have developed a draft management plan for the proposed reserve system. The draft plan identifies specific needs and priorities related to research, monitoring, education, and resource protection at the approved site. It also contains a five-year administration plan and budget as well as a discussion of volunteer programs, public access, visitor use policies, and facilities development needs. The draft plan will be available for review at the public meeting.

At the public meeting, the SCCC, Belle W. Baruch Institute and NOAA will provide a synopsis of the draft management plan and will solicit comments on significant environmental issues which will be incorporated into a Draft Environmental Impact Statement.

The public meeting will be held at 7 p.m. on Thursday, December 6, 1990, in the Meeting room of the Georgetown Public Library, located at 405 Cleland Street in Georgetown, South Carolina 29440.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of this Draft Environmental Impact Statement are invited to attend. Parties who wish to respond in writing should do so by December 20, 1990.

Comments may be submitted in writing to Ms. Cheryl A. Graham, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235 (telephone 202/673-5122).

(Federal Domestic Assistance Catalog Number 11.420).

(Coastal Zone Management) Estuarine Sanctuaries)

Dated: November 16, 1990.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 90-27585 Filed 11-23-90; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 24, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Clamp, Panel, 5450-00-297-5271.

Services

Commissary Shelf Stocking & Custodial, Fort Carson, Colorado.

Commissary Shelf Stocking, Custodial & Warehousing, Vandenberg Air Force Base, California.

Food Service Attendant, Naval Training Station, Orlando, Florida.

Janitorial/Custodial, Federal Building, 110 Michigan Street, NW., Grand Rpaids, Michigan.

H.G. Fischer,

Associate Director of Facility Operations.

[FR Doc. 90-27703 Filed 11-23-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 24, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 14, 28 and October 5, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 37929, 39685 and 40905) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Curtain Assembly, 2540-00-741-6339.

Services

Janitorial/Custodial.

Navy Commissary Stores

Naval Amphibious Base, Little Creek, Naval Air Station Oceana, Virginia Beach, Virginia.

Norfolk Naval Shipyard, Portsmouth, Virginia.

Supply Room/Motor Vehicle Services, Federal Aviation Administration, Great Lakes Region, Des Plaines, Illinois.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

H.G. Fischer,

Associate Director of Facility Operations.

[FR Doc. 90-27704 Filed 11-26-90; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Extension of Approval of Information Collection Requirements—Sound Levels of Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through December 31, 1993, of information collection requirements in a regulation exempting certain toy caps from a banning rule.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibels (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they hear a specified warning label and if firms intending to distribute such caps: (1) Notify the Commission of their intent to distribute such caps; (2) participate in a program to develop toy caps producing sound levels below 138 dB; and (3) report quarterly to the Commission concerning the status of their programs to develop caps with reduced sound levels.

The Commission requests extension of the information collection requirements in the rule codified at 16 CFR 1500.86(a)(6) through December 31, 1993, to obtain current and periodically updated information from all

manufacturers concerning the status of program to reduce sound levels of toy caps. The Commission will use this information to monitor industry efforts to reduce the sound levels of toy caps, and to ascertain which firms are currently manufacturing or importing toy caps with peak sound levels between 138 and 158 db.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Distribution of toy caps producing peak sound pressure levels greater than 138 decibels but less than 153 decibels; 16 CFR 1500.86(a) (ii) and (iii).

Type of request: Extension of approval.

Frequency of collection: One-time notification before beginning distribution; status report four times each year.

General description of respondents: Manufacturers and importers of toy caps.

Estimated number of respondents: 45.

Estimated average number of hours per respondent: 4 per year.

Estimated number of hours for all respondents: 180 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: November 20, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90-27693 Filed 11-23-90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, part 216, Types of Contracts, and Related Clause at 252.216-7001; OMB Control Number 0704-0259.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 2.5 Hours.

Responses per Respondent: 1.

Number of Respondents: 200.

Annual Burden Hours: 500.

Annual Responses: 200.

Needs and Uses: DoD FAR Supplement, part 216, and related clause at 252.216-7001, require contractors to notify contracting officers of any increase or decrease in the contractors' price for an item. This information is used to evaluate (a) contractors' capability to perform, (b) offers for award purposes, and (c) requests for price adjustments.

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: November 19, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-27604 Filed 11-23-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Desert Shield Technology; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Desert Shield Technology will meet in closed session on 12-13 December 1990 and 10-11 January 1991 at Rosslyn, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will receive classified briefings on Operation Desert Shield which will include: Intelligence situation and threat, operations status, and technology options to improve operational capability.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: November 19, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-27602 Filed 11-23-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on December 11-12, 1990 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 19, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-27603 Filed 11-23-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board, Meeting

November 20, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Modelling and Simulation will meet on 11-12 Dec 90 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC 20330.

The purpose of this meeting will be to review the Task Statement and develop a plan for conducting the study. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 90-27700 Filed 11-23-90; 8:45am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Promulgation of Federal Shares

Sections 7(b)(1) and 7(b)(2) of the Library Services and Construction Act, Public Law 84-597, as amended (20 U.S.C. 351 *et seq.*), require the Secretary of Education to promulgate the Federal share for each State and Territory every second fiscal year beginning with fiscal year 1971. Per capita income data from the Department of Commerce for the years 1987, 1988, and 1989 have been used to establish the Federal shares applicable to titles I and II of the Act. The Federal shares published in the table below are effective for the fiscal year ending September 30, 1992 and September 30, 1993.

(Catalog of Federal Domestic Assistance Program Number 84.034, Public Library Services, and 84.154, Public Library Construction and Technology Enhancement)

Dated: November 19, 1990.

State	Federal share (percent)
Alabama	61.22
Alaska	40.27
Arizona	54.42
Arkansas	63.23
California	42.87
Colorado	49.88
Connecticut	33.00
Delaware	47.36
District of Columbia	34.25
Florida	49.83
Georgia	53.92
Hawaii	48.67
Idaho	61.44
Illinois	46.74
Indiana	55.19
Iowa	55.93
Kansas	52.41
Kentucky	61.14
Louisiana	63.06
Maine	54.29
Maryland	40.56
Massachusetts	37.20
Michigan	50.23
Minnesota	49.68
Mississippi	66.00
Missouri	53.36
Montana	60.35
Nebraska	55.59
Nevada	46.00
New Hamsphire	41.75
New Jersey	33.03
New Mexico	62.23
New York	40.80
North Carolina	56.87
North Dakota	61.09
Ohio	50.23
Oklahoma	59.68
Oregon	55.00
Pennsylvania	51.03
Rhode Island	49.06
South Carolina	61.02
South Dakota	60.98
Tennessee	58.11
Texas	55.39
Utah	62.82
Vermont	53.67
Virginia	46.33
Washington	49.99
West Virginia	64.79
Wisconsin	53.08
Wyoming	58.57
American Samoa	66.00
Guam	66.00
Northern Marianas	66.00
Palau	100.0
Puerto Rico	66.00
Virgin Islands	66.00

[FR Doc. 90-27596 Filed 11-23-90; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education, National Defense and Perkins (National Direct) Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of availability of the 1990-91 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools.

SUMMARY: The Secretary announces that the 1990-91 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools (Directory) is now available at institutions of higher education participating in the Perkins Loan Program, State and Territory Departments of Education and the United States Department of Education. Under the National Defense, National Direct and Perkins Loan programs, a borrower may have a portion of his or her loan cancelled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1990-91 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1990-91 school year to qualify for cancellation benefits.

DATES: The Directory is available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4651, ROB-3), Washington, DC 20202-5453, Telephone (202) 708-6730.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; and (3) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for cancellation under the procedures set forth in 34 CFR 674.53 and 674.54 of the National Defense, National Direct and Perkins Loan Program regulations.

The Secretary has determined that for the 1990-91 academic year, full-time teaching in the schools set forth in the 1990-91 Directory qualifies a borrower for cancellation.

The Secretary is providing the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1990-91 academic year.

The Office of Postsecondary Education retains, on a permanent basis, copies of all past and current Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense, National Direct and Perkins Loan Cancellations)

Dated: November 15, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90-27595 Filed 11-23-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order with Mt. Airy Refining Co., et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Mt. Airy Refining Company (Mt. Airy) and its former shareholders William P. Boswell, W. Luke Boswell, Lindsay B. McLean, David P. Boswell, P. Wilson Boswell II, and Ellen W. Boswell (collectively, Respondents). The agreement proposes to resolve matters relating to Mt. Airy's compliance with the federal petroleum price and allocation regulations for the period January 1, 1977, through January 27, 1981. If this Consent Order is approved, the Respondents shall pay to the DOE the principal sum of $2,000,000, plus interest from the effective date of the Consent Order, over three years. The DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of the response to the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1699.

SUPPLEMENTARY INFORMATION: During the period covered by the proposed Consent Order, January 1, 1977 through January 27, 1981, when petroleum price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287), Mt. Airy was a corporation engaged in, among other things, the refining of crude oil and the sale of refined petroleum products. Accordingly, Mt. Airy was a petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. Subsequent to decontrol, in 1983, Mt. Airy was dissolved and its assets were distributed to its shareholders.

ERA conducted an audit to determine Mt. Airy's compliance with the federal petroleum price and allocation regulations during the period covered by the proposed Consent Order. As a result of this audit, disputes arose between ERA and Mt. Airy concerning Mt. Airy's compliance with applicable federal petroleum price and allocation regulations. The major regulatory area of dispute concerns Mt. Airy's reporting to the Entitlements Program.

On July 25, 1986, ERA issued a Proposed Remedial Order (PRO) which, as amended, alleges that, during the period covered by the proposed Consent Order, Mt. Airy violated 10 CFR 211.66(b) and (h) and 211.67(j) by failing to report 327,603 barrels of price-controlled crude oil received by the firm as "crude oil receipts" (10 CFR 211.62) on its Refiners Monthly Reports. Most of the crude oil volumes at issue in the PRO were acquired around the time Mt. Airy started up its newly built refinery in Mt. Airy, Louisiana in mid-1977. As a result of the erroneous reporting, the PRO alleges that Mt. Airy unlawfully avoided entitlements purchase obligations for the crude oil. In addition to naming Mt. Airy as a respondent to the PRO, the ERA alleges that the former shareholders of Mt. Airy are also jointly and severally liable for the violations under a constructive trust theory to the extent that each received distribution of Mt. Airy's assets upon dissolution of the corporation.

As revised in the course of litigation, the PRO alleges entitlements violations of $2,059,649.94. With interest, the Respondents' maximum potential liability for refunds is approximately $7.6 million.

The validity of the allegations in the PRO is presently the subject of litigation before DOE's Office of Hearings and Appeals (OHA). The Respondents have raised a number of objections to the manner in which ERA applied the entitlements reporting regulations in determining that a violation occurred, as well as other defenses to the charges and to the liability of the individual Respondents for any violation which may be found. The principal matters in dispute are the character of the transaction in which Mt. Airy acquired the unreported crude oil, the accounting method Mt. Airy used to prepare its entitlements reports, and ERA's practices in 1977 with respect to the entitlements treatment of start-up inventories for newly built refineries. By interlocutory orders issued July 25 and 31, 1990, OHA ordered the conduct of discovery by both parties, and granted Mt. Airy an evidentiary hearing concerning ERA's practice in 1977 regarding starting inventory adjustments. *Mt. Airy Refining Co.*, 20 DOE ¶¶ 84,005 and 84,006 (1990).

ERA has preliminarily agreed to the proposed settlement amount after assessing the litigation risks associated with the asserted legal and factual issues underlying the PRO's allegations and the Respondents' defenses, and appropriate settlement compromises related to those issues. In addition, ERA took into account such factors as the number and complexity of the legal and factual issues, the time and expense required to litigate fully every issue in order to obtain any recovery, and the benefit to the public from a significant settlement of the issues which would take years of continued litigation to resolve. Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for the principal sum of $2,000,000 plus interest is an appropriate settlement and in the public interest.

Under the terms of the proposed settlement, the Respondents will pay DOE the principal sum of $2,000,000, plus interest from the effective date of the Consent Order, over a period of three years. An initial payment of $600,000 will be made within thirty (30) days of the effective date of the Consent Order. The remainder would be paid in annual installments, plus interest on the outstanding principal balance, as specified in the proposed Consent Order, the text of which is published herewith.

To distribute the monies received by DOE under the settlement with the Respondents, ERA will petition OHA to implement Special Refund Procedures

under the provisions of subpart V. To ensure that OHA has sufficient information to evaluate refund claims, the proposed Consent Order requires that the Respondents provide customer identification and purchase volume information to OHA upon request.

The Respondents and DOE mutually release each other from the claims arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the rights of any other party to take action against the Respondents, or the Respondents or the DOE to take action against any other party.

If the settlement is not made final by the one hundred fiftieth (150th) day following execution, Mt. Airy may withdraw from the proposed agreement.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Mt. Airy Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a notice in the **Federal Register.**

Issued in Washington, DC, on November 19, 1990.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

Consent Order With Mt. Airy Refining Co.; William P. Boswell; W. Luke Boswell; Linday B. McLean; David P. Boswell; P. Wilson Boswell II; and Ellen W. Boswell.

I. Introduction

101. This Consent Order is entered into between Mt. Airy Refining Company and its former shareholders William P. Boswell; W. Luke Boswell; Lindsay B. McLean; David P. Boswell; P. Wilson Boswell II; and Ellen W. Boswell (collectively "Mt. Airy") and the Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Mt. Airy, as hereinafter defined, relating to Mt. Airy's compliance with the federal petroleum price and allocation regulations (as defined herein) during the period January 1, 1977, through January 27, 1981 ("the period covered by this Consent Order"). (All the matters settled and resolved by this Consent Order are referred to as "the matters covered by this Consent Order.")

II. Jurisdiction and Regulatory Authority

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7151 and 7193; Executive Order 12009, 42 FR 46267 (1977); and Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Economic Regulatory Administration and all agencies succeeding to the DOE's authority to enforce the federal petroleum price and allocation regulations. Reference herein to "Mt. Airy" refers to and includes Mt. Airy Refining Company, a corporation organized under the laws of the state of Ohio in 1977 and dissolved on August 11, 1983, and its former shareholders William P. Boswell; W. Luke Boswell; Lindsay B. McLean; David P. Boswell; P. Wilson Boswell II; and Ellen W. Boswell. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all pricing, allocation, reporting and recordkeeping requirements imposed by or under the Economic Stabilization Act (ESA) of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150, and 10 CFR parts 205, 210, 211, 212 and 213 including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms, and reporting and certification requirements regarding such regulations. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith.

III. Facts and Determinations

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Mt. Airy owned a refinery and engaged in the refining of crude oil and the sale of refined petroleum products. Accordingly, Mt. Airy was a "refiner" as defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of DOE.

302. DOE conducted an audit to determine Mt. Airy's compliance during the period covered by this Consent Order with the federal petroleum price and allocation statutes, regulations and requirements referred to in paragraph 203, *supra.* DOE and Mt. Airy disagree in several respects concerning the proper application of such federal petroleum price and allocation regulations to Mt. Airy's activities during the period covered by this Consent Order. ERA issued a Proposed Remedial Order on July 25, 1986, which Mt. Airy vigorously contested in proceedings before the Office of Hearings and Appeals in Case No. KRO–0320. Mt. Airy and DOE each believe that their respective positions on the matters resolved by this Consent Order are meritorious. Neither DOE nor Mt. Airy disavows any position taken with respect to such matters.

303. Notwithstanding DOE's view as to the proper application of the federal petroleum price and allocation regulations to Mt. Airy's activities during the period covered by this Consent Order, Mt. Airy maintains that it has calculated all costs, determined all prices, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. However, and without admitting any violation whatsoever, in order to avoid the expense of protracted litigation, Mt. Airy has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Mt. Airy for such matters under 10 CFR 205.199I or otherwise, Mt. Airy shall pay to DOE the principal sum

of two million dollars ($2,000,000), plus interest calculated as provided in paragraph 402. Payment shall be in four installments as follows: (a) The principal sum of six hundred thousand dollars ($600,000) on or before thirty (30) days after the effective date of this Consent Order; (b) the principal sum of four hundred sixty-six thousand seven hundred dollars ($466,700), plus interest on the principal outstanding after the preceding payment, on or before December 31, 1991; (c) the principal sum of four hundred sixty-six thousand seven hundred dollars ($466,700), plus interest on the principal outstanding after the preceding payment, on or before December 31, 1992; and (d) the principal sum of four hundred sixty-six thousand six hundred dollars ($466,600), plus interest on the principal outstanding after the preceding payment, on or before December 31, 1993. In the event that any such payment date is not a business day, payment shall be due on the first business day following such date. Mt. Airy has the option to prepay all or any part of the outstanding unpaid balance at any time without penalty. Any payment that is less than the amount determined above, and any prepayment, shall be applied first to pay any interest that has accrued pursuant to paragraph 402, and any remaining portion of the payment shall be applied to reduce the outstanding principal balance.

402. Interest shall be computed from the date this Consent Order becomes effective at the rate of 10% per annum, compounded on the unpaid balance as of each scheduled payment interval.

403. The payments pursuant to paragraph 401 of this Consent Order shall be made by wire transfer in accordance with instructions furnished to Mt. Airy by the Department of Energy in a timely manner. The payments made pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR part 205, subpart V.

404. If any payment provided for above becomes more than thirty days overdue, then the entire principal amount with interest to the date of payment, shall become immediately due and payable at DOE's option. Between the time that any payment or portion thereof is required to be paid under this Consent Order and the time the full payment is completed, interest shall accrue on the overdue amount at the rate of 20% per annum, compounded as of each scheduled payment interval. Such interest shall be paid to DOE with such overdue payment(s). Any late payment that is less than the amount overdue shall be applied first to pay any interest that has accrued to this paragraph, and any remaining portion of the payment shall be applied to reduce the overdue balance.

V. Issues Resolved

501. All pending and potential civil and administrative claims, demands, liabilities, causes of action or other proceedings by DOE aganist Mt. Airy regarding Mt. Airy's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, actions in court or otherwise, are resolved, extinguished and released as to Mt. Airy, including for the purposes these paragraphs 501 through 505 the former officers, directors and employees of the corporation Mt. Airy Refining Co., by this Consent Order.

502. Mt. Airy warrants that there is no litigation pending against the DOE initiated or participated in by Mt. Airy which in any way relates to or arises out of the matters covered by this Consent Order, or related claims arising under the Freedom of Information Act (5 U.S.C. 552). Mt. Airy hereby agrees to release any and all claims, demands, liabilities, or causes of action that Mt. Airy has asserted or might be able to assert against DOE, and any employee of DOE, in any matter related to the matters covered by this Consent Order.

503. (a) Compliance by Mt. Airy with this Consent Order shall be deemed by DOE to constitute full compliance for civil purposes with regard to the matters covered by this Consent Order. Except as explicitly excluded herein, in consideration for performance as required under this Consent Order by Mt. Airy, DOE hereby releases Mt. Airy completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including, without limitation, claims for civil penalties that the DOE has asserted or might otherwise be able to assert against Mt. Airy before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil judicial matter against Mt. Airy or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Mt. Airy or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Mt. Airy has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Mt. Airy in derogation of this Consent Order. However, nothing contained herein shall preclude DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations to appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense: Against any criminal action or against any civil action brought by an instrumentality or agency of the United States other than DOE under (i) Section 210 of the ESA or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Mt. Airy in any private action, including an action for contribution by or against Mt. Airy.

(c) Mt. Airy releases the DOE completely and for all purposes from all administrative and civil judicial claims, or causes of action that Mt. Airy has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Mt. Airy from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Mt. Airy from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

504. Execution of this Consent Order constitutes neither an admission by Mt.

Airy nor a finding by DOE of any violation by Mt. Airy of any statute or of any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE will not seek any such civil penalties. The payment by Mt. Airy pursuant to this Consent Order is not to be considered for any purpose as a penalty, fine, forfeiture, or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, and in addition to the matters excluded herein, DOE reserves the right to initiate an enforcement proceeding, including, without limitation, an action for penalties, for any newly discovered regulatory violations committed by Mt. Airy during the period covered by this Consent Order, but only if Mt. Airy concealed facts relating to such violations. DOE also reserves the right to seek appropriate judicial remedies other than full rescission of this Consent Order, or to rescind this Consent Order, for any misrepresentation of fact material to this Consent Order made by Mt. Airy during the course of the audit, during the litigation relating to Mt. Airy's alleged liability for the violations asserted in OHA Case No. KRO–0320, or during the course of the negotiations that preceded this Consent Order.

VI. Reporting and Recordkeeping Requirements

601. Mt. Airy shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, Mt. Airy shall also maintain any records in its possession for the time period covered by this Consent Order evidencing sales volume data for each product subject to controls and customers' names and addresses, until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401, *supra*, or January 1, 2000, whichever occurs earlier. If requested, Mt. Airy shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under Paragraph 401 of this Consent Order, Mt. Airy is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding compliance by other firms with the federal petroleum price and allocation regulations, Mt. Airy will not be subject hereafter to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Mt. Airy's activities subject to such regulations regarding the matters covered by this Consent Order.

603. This Consent Order is subject to disclosure by the DOE pursuant to the requirements of the Freedom of Information Act, as amended, 5 U.S.C. 552 (FOIA). Mt. Airy waives all claims it may have that some or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, as amended, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

VII. Contractual Undertaking

701. It is the understanding and express intention of Mt. Airy and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Mt. Airy and DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order in response to any litigation challenging the Consent Order's validity in which the DOE is named as a party. Mt. Airy agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Subject to article IX, this Consent Order is a final order of DOE having the same force and effect as a Remedial Order issued pursuant to Section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Mt. Airy hereby waives its right to administrative or judicial appeal from this Order, but Mt. Airy reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Mt. Airy, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150) day following execution by Mt. Airy, Mt. Airy may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Mt. Airy Refining Co., hereby agree to and accept on behalf of Mt. Airy Refining Co. the foregoing Consent Order.

Dated: November 8, 1990.

William P. Boswell,

Title: Director.

I, the undersigned, a duly authorized representative of the Department of Energy, Economic Regulatory Administration, hereby agree to and accept on behalf of said Administration, the foregoing Consent Order.

Dated: November 14, 1990.

M. C. Lorenz,

Title: Chief Counsel, ERA.

Dated: November 8, 1990.

I, William P. Boswell, hereby agree to and accept the foregoing Consent Order.

William P. Boswell

Dated: November 1, 1990.

I, W. Luke Boswell, hereby agree to and accept the foregoing Consent Order.

W. Luke Boswell

Dated: November 2, 1990.

I, Lindsay B. McLean, hereby agree to and accept the foregoing Consent Order.

Lindsay B. McLean

Dated: October 21, 1990.

I, David P. Boswell, hereby agree to and accept the foregoing Consent Order.

David P. Boswell

Dated: November 25, 1990.

I, P. Wilson Boswell II, hereby agree to and accept the foregoing Consent Order.

P. Wilson Boswell

Dated: November 6, 1990.

I, Ellen W. Boswell, hereby agree to and accept the foregoing Consent Order.

Ellen W. Boswell

[FR Doc. 90–27695 Filed 11–23–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP90-854-001, et al.]

National Fuel Gas Supply Corp., et al.; Natural gas certificate filings

November 16, 1990.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corp.

[Docket No. CP90-854-001]

Take notice that on November 6, 1990. National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed amendment to an application pursuant to section 7(c) of the Natrural Gas Act and part 157 of the Regulations under the Natural Gas Act (18 CFR part 157), for a certificate of public convenience and necessity authorizing the construction of approximately 3.24 miles of 24-inch diameter natural gas pipeline connecting National's Line X at Nash Road in Wheatfield, New York, with the proposed pipeline of Empire State Pipeline (Empire) (see Docket Nos. CP90-316-000 an CP90-317-000); and another 2.22 miles of 16-inch diameter natural gas pipeline of Empire on Grand Island, New York under the Niagara River ot Line UM-2 in Tonawanda, New York. National also requests authority to purchase from National Fuel Gas Distribution Corporation (Distribution) its Line UM-2, a 4.4 mile 20-inch pipeline, and associated facilities. National requests authorizatiion for a delivery point to Distribution at the Fire Tower Lane regulatory station which is where Line XM-5-2 and Line UM-2 will interconnect. This station already exists, but will be modified as part of this project.

National also requests authority to provide firm transportation of up 38.8 MMcf-d for three of its congeneration customers, Encogen Four Partners, L.P, Indeck Energy Services of Corinth, Inc. and Indeck Energy Services of Ilion, Inc. for consumption at their respective gas-fire electric cogeneration facilities within the State of New York. The details of National's proposal are more full set forth in the amended application which is on file with the Commission and open to public inspection.

In this amendment application, National is proposing to charge the Co-gen customers as intial rates a reservation charge of $1.8402 per Mcf and a commodity charge of $0.0255 per Mcf, which is equal to the 100% load factor equivalent of the Zone 1 rates approved by the Commission in the Niagara Import Order.

The estimated cost of the proposed facilities will be $5,176,520.00, not including National's cost of purchasing Line UM-2 from Distribution at book value of approximately $840,000.00. National will finance the cost of the proposed construction from funds on hand or to be obtained from its parent company National Fuel Gas Company.

Comment date: Decmeber 7, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corp. Panhandle Eastern Pipe Line Co.

Docket Nos. CP91-396-000, CP91-402-000]

Take notice that the above reference companies (Applicants) filed in respective dockets prior notice requests purstant to sections 157.205 and 284.233 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 31, 1991, in accordance with Standard Paragrah G at the end of the notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day[1] avg, annual	Points of—		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-396-000 11-13-90	Northwest Pipeling Corp	Washington Natural Gas Co.	32,800 25,000 9,040,000	WA	WA	10-19-90 TF-1	ST91-2895-000
CP91-402-000 11-13-90	Panhandle Eastern Pipe Line Co.	Amgas, Inc	30 15 5,475	CO, Il, KS, MI, OK, TX, WY	IL	101-1-90 PT	ST91-1761-000

[1] Quantities are shown in MMBtu unless Otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. Trunkline Gas Co.

[Docket Nos. CP91-403-000,[2] CP91-404-000, CP91-405-000, CP91-406-000]

Take notice that on November 13, 1990, Trunkline Gas Company (Trunkline) P.O. Box 1642, Houston, Texas 7725-1642 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223

[2] These prior notice requests are not consolidated.

of the Commission's Regulations has been provided by Trunkline and is included in the attached appendix.

Trunkline also states that each would provide the service for each shipper under an executed transportation agreement, and that Trunkline would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Shipper name	Peak day[1] avg, annual	Points of Receipt	Points of Delivery	Start update rate schedule	Related[2] dockets
CP91-403-000	Enron Gas Marketing, Inc.	50,000 50,000 18,250,000	IL, TX, LA, TN, Off TX, Off LA	IN	9-20-90 PT	ST91-1755-000
CP91-404-000	Eastex Hydro Carbons, Inc	50,000 50,000 18,250,000	IL, TX, LA, TN, Off TX, Off LA	IN	9-11-90 PT	ST91-1754-000
CP91-405-000	Transco Energy Marketing, Co	30,000 30,000 10,950,000	Off TX, Off LA	Off TX	10-1-90 PT	ST91-2362-000
CP91-406-000	Entrade Corp.	100,000 60,000 21,840,000	IL, TX, LA, TN, Off TX, Off LA	IL	9-21-90 PT	ST91-1757-000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Viking Gas Transmission Company

[Docket Nos. CP91-384-000, CP91-385-000, CP91-386-000]

Take notice that Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP90-273-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, 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 Applicant and is summarized in the attached appendix.

Comment date: December 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number—(date filed)	Shipper name—(Type)	Peak day, average day, annual dt	Receipt points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP91-384-000 (11-9-90)	ANR Gathering Co. (Marketer)	385,000 385,000 140,525,000	Various	Various	10-1-90 Interruptible	ST91-2352 10-31-90
CP91-385-000 (11-9-90)	Proctor & Gamble Paper Products (End-user)	50,350 50,350 18,377,750	Various	Various	10-1-90 Interruptible	ST91-2357 10-31-90
CP91-386-000 (11-9-90)	Wisconsin Public Service Corp. (LDC)	7,880 7,880 2,876,200	TransCanada Emerson, Canada	WI	9-21-90 FT-2	ST91-2350 10-31-90

5. National Fuel Gas Supply Corp.

[Docket No. CP91-415-000]

Take notice that on November 13, 1990, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP91-415-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of compression facilities in Potter County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National requests authorization to construct and operate a new compressor station, to be designated as National's Costello Compressor Station, in Potter County, Pennsylvania. National states that the station will consist of a 1,700 horsepower prefabricated, skid-mounted compressor unit, building, yard piping and related facilities, to be installed at the junction of National's Lines FM-100 and YM-7. National further states that the compressor will create additional suction on Line FM-100, compress gas from 250 psig to 950 psig, and discharge gas into Line YM-7. It is stated that the installation of the new station would enable local gas producers to deliver gas to National at additional points which would flow into Line FM-100. It is also stated that the unit would afford National the opportunity to increase its purchases off of the systems of

Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation at delivery points in the western portion of National's system, and move those volumes to the eastern portion.

National states that the proposed facilities would cost approximately $1,945,520 and would be financed with internally generated funds and/or interim short-term bank loans.

Comment date: December 7, 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 appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27612 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-225-002]

Chicago Energy Exchange of Chicago, Inc.; Filing

November 13, 1990.

Take notice that on October 30, 1990, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange), filed certain information as required by Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding. 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27616 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-401-001-005]

Citizens Power & Light Corp.; Filing

November 13, 1990.

Take notice that on November 1, 1990, Citizens Power & Light Corporation (Citizens) filed certain information as required by Ordering Paragraph (M) of the Commission's August 8, 1989 order in this proceeding. 48 FERC ¶ 61,210 (1989). Copies of Citizens' informational filing are on file with the Commission are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 90-27617 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-24-000]

Colorado Interstate Gas Co.; Tariff Filing

November 16, 1990.

Take note that on November 13, 1990, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets in its Original Volume Nos. 1 and 3:

Original Volume No. 1

Original Sheet No. 45.1

Original Volume No. 3—Base Tariff Sheets

First Revised Sheet No. 97
Original Sheet No. 97A
First Revised Sheet No. 98

Original Volume No. 3—"Alternate" Sheets [1]

First Revised Sheet No. 97B
Original Sheet No. 97C
First Revised Sheet No. 98

CIG states that the purpose of this filing is to establish temporary interruption procedures CIG will follow in the event sales or transportation service interruption results from failure to tender nominated quantities of natural gas by customers of CIG or unauthorized overruns of delivery from CIG's system. In addition, CIG states that the present filing imposes liability on shippers and purchasers who fail to tender nominated transportation volumes or take unauthorized overrun volumes, respectively, and whose actions result in service interruptions.

CIG states that copies of its filing were served on all holders of Volume Nos. 1 and 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.311 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27618 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

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[1] The "Alternate" sheets listed are built upon sheets currently pending Commission approval in Docket Nos. RP90-12-005 and CP89-1554-004. First Revised Sheet No. 98 is required regardless of which set of Volume No. 3 sheets are finally accepted and made effective.

[Docket No. RP91-23-000 and CP89-1740-006]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

November 16, 1990.

Take notice that on November 14, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following:

Primary Proposal

(DS-1 Settlement Approved, Rehearing Granted)

Second Revised Volume No. 1

First Revised Sheet No. 10

Alternate I Proposal

(DS-1 Settlement Approved, Rehearing Denied)

Second Revised Volume No. 1

First Alternate First Revised Sheet No. 10
First Revised Sheet No. 11

Alternate II Proposal

(DS-1 Settlement not Approved, Rehearing Granted)

Second Revised Volume No. 1

Second Alternate First Revised Sheet No. 10

Alternate III Proposal

(DS-1 Settlement not Approved, Rehearing Denied)

Second Revised Volume No. 1

Third Alternate First Revised Sheet No. 10
Alternate First Revised Sheet No. 11

Northwest states that the purpose of this filing is to implement a rate for a Gas Inventory Charge ("GIC") consistent with § 21.2 of the General Terms and Conditions of Northwest's FERC Gas Tariff, Second Revised Volume No. 1.

Northwest states that under any of the four proposals listed above, the GIC rate is 14.82¢ per MMBtu effective for the twelve-month period commencing January 1, 1991 for ODL-1 and DS-1 customers, if applicable. The proposed rate is significantly lower than earlier projections of Northwest's GIC rate because it is based upon a current Weighted Deficiency Recovery Period of three years.

Northwest's Primary Proposal reflects approval of the pending DS-1 Settlement and the granting of Northwest's Request for Rehearing (filed on August 30, 1990 in Docket No. CP86-578 *et al.*). Northwest's Alternate I Proposal reflects approval of the DS-1 Settlement and a denial of (or inaction on) Northwest's Request for Rehearing. Northwest's Alternate II Proposal reflects no approval of (or inaction on) the DS-1 Settlement and the granting of Northwest's Request for Rehearing. Northwest's Alternate II Proposal reflects no approval of (or inaction on) the DS-1 Settlement and a denial (or inaction on) Northwest's Request for Rehearing but is consistent with all Commission orders current as of the date of this filing.

Northwest states that a copy of this filing is being served upon Northwest's affected jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27619 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-580-000]

Public Service Company of Oklahoma; Filing

November 19, 1990.

Take notice that on November 16, 1990, Public Service Company of Oklahoma ("PSO") tendered for filing additional data in support of a proposed decrease in rates to its full-requirements wholesale customers. PSO renewed its request for an effective date of September 1, 1990 and a waiver of the Commission's notice requirements. PSO stated that copies of the filing have been sent to the affected customers and the Oklahoma Corporation Commission.

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, 385.214). All such motions or 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. 90-27613 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-40-002]

Raton Gas Transmission Co.; Compliance Filing

November 16, 1990.

Take notice that on November 7, 1990, Raton Gas Transmission Company (Raton) in compliance with the Commission's Order issued October 12, 1990 in the above referenced docket filed with the Federal Energy Regulatory Commission the following tariff sheets:

Substitute 18th Revised Sheet No. 4
Revised Schedule A-1, Page 2
Revised Schedule B-2, Pages 2 thru 13
Revised Schedule C-1, Pages 1 thru 3
Revised Schedule C-2
Revised Schedule D-2
Revised Schedule G-1

Raton states that revised Tariff Sheet No. 4 provides for an increase in commodity charge of 25.22¢ due to an increase in costs by suppliers Colorado Interstate Gas Co. (CIG) and Mega Natural Gas Co. (Mega) which occurred after the initial filing. Schedule B-2 has been revised to show the projected cost of gas in detail for each month utilizing actual sales volumes and projected unit costs. Raton also states that it has deleted paid Order No. 500 costs from CIG.

Raton further states that it has correctly calculated the surcharge rate based on the balance which Raton's customers owned to Raton as of end of May 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 November 26, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27624 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-115-000, RP90-104-000, and RP90-192-000]

Texas Gas Transmission Corp.; Informal Settlement Conference

November 16, 1990.

Take notice that an informal settlement conference will be convened in these proceedings on December 5, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will continue on December 6, if necessary.

The conference will consider settlement proposals in the captioned consolidated proceedings. In addition, the conference will address a new mechanism for passthrough of take-or-pay buyout and buydown costs proposed by Texas Gas Transmission Corporation pursuant to Commission Order No. 528, 53 FERC ¶ 61,163 (Nov. 1, 1990).

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 208-0248 or Joanne Leveque (202) 208-5705.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27622 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-82-002]

Viking Gas Transmission Co.; Filing

November 16, 1990.

Take notice that on November 14, 1990, Viking Gas Transmission Company (Viking), pursuant to the Commission's October 31, 1990 letter order in the referenced docket, refiled its corrected Schedule C1 in both hard copy and magnetic tape versions, its Schedule C2 to conform the electronic PGA with the hard copy PGA, and its Schedule G1 to assist in the processing of the electronic medium.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected 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 November 26, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27623 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-183-020]

Williams Natural Gas Co., Proposed Changes in FERC Gas Tariff

November 16, 1990.

Take notice that on November 13, 1990, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twenty Third Revised Sheet No. 6
Ninth Revised Sheet No. 6A
Twenty Second Revised Sheet No. 7

WNG states that this filing was made for the purpose of implementing an interim rate reduction prior to the commencement of the 1990-91 heating season. WNG is implementing this reduction in order to give its customers a substantial portion of the benefits of the negotiated Settlement in this proceeding while the Settlement is pending before the Administrative Law Judge and the Commission.

WNG has requested waiver to permit the tendered tariff sheets to be made effective November 1, 1990. WNG states that copies have been served on all parites in Docket Nos. RP89-183. *et al.*

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 November 26, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27620 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-49-002 TM91-1-49-002]

Williston Basin Interstate Pipeline Co.; Change in FERC Gas Tariffs

November 16, 1990.

Take notice that on November 13, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being submitted in compliance with the Commission's October 31, 1990 Order regarding Williston Basin's Purchased Gas Cost Adjustment filing in Docket No. TQ91-1-49-000 and Annual Charge Adjustment filing in Docket No. TM91-1-49-000.

Williston Basin states that copies of the filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any peson 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 November 26, 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.

Linwood A Watson, Jr.,

Action Secretary.

[FR Doc. 90-27621 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Friday, January 4, 1991, 8:30 a.m.–5 p.m., Saturday, January 5, 1991, 8:30 a.m.–3 p.m.

Place: Superconducting Super Collider Laboratory, 2550 Beckleymeade Avenue, Dallas, Texas 75237.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 353–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Friday, January 4, 1991 and Saturday, January 5, 1991

—Discussion of National Science Foundation Elementary Particle Physics Programs
—Discussion of Department of Energy High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Programs
—Presentation and Discussion of SSC Laboratory progress and plans
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 20, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–27696 Filed 11–23–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the proposed procedures to be followed in refunding to adversely affected parties $305,000, plus accrued interest, that Reinauer Petroleum Co. is required to remit to the DOE pursuant to a Consent Order executed on April 26, 1988. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Comments must be filed in duplicate December 26, 1990, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a conspicuous reference to Case Number KEF–0110.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Soong-Chan Rah, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8018 (Tedrow), (202) 586–6602 (Rah).

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Reinauer Petroleum Co. to the DOE to setttle alleged pricing and allocation violations with respect to the firm's sales of motor gasoline. The DOE is currently holding Reinauer's full payment of $305,000 in an interest-bearing escrow account pending distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 19, 1990

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: Reinauer Petroleum Co.

Date of Filing: June 20, 1988

Case Number: KEF–0110

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR part 205, subpart V. On June 20, 1988, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Reinauer Petroleum Co. (Reinauer).

I. Background

Reinauer was a "reseller" of motor gasoline as that term was defined in 10 CFR 212.31, located in Hackensack, New Jersey. A DOE audit of Reinauer's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR part 212, subpart F. Specifically, the audit revealed that between April 1, 1979 and September 30, 1979, Reinauer may have violated the DOE's pricing regulations with respect to its sales of motor gasoline.

In order to resolve its potential civil liabilities arising from the ERA's audit, Reinauer entered into a Consent Order with the DOE on April 26, 1988. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Reinauer does not admit any such violations. Under the terms of the Consent Order, Reinauer was required to deposit $305,000 into an escrow account for ultimate distribution by the DOE. On May 4, 1988, Reinauer made a full payment of $305,000 into the account. This Proposed Decision and Order sets forth the OHA's tentative plan for the distribution of the funds in the Reinauer escrow account. Comments are solicited.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205 subpart V. The subpart V process may be used in situations where the DOE is unable to identify readily those persons who may have been injured by alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

In keeping with the goals of the subpart V regulations, we will attempt to provide refunds to claimants who demonstrate that they were injured by Reinauer's alleged overcharges in its sales of motor gasoline during the April 1, 1979 through September 30, 1979 consent order period. Residual funds in the Reinauer escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Public Law No. 99–509, title III. See 51 FR 43964 (December 5, 1986).

A. Calculation of Refund Amounts

The first step in the refund process is the calcualtion of an applicant's potential refund. In order to determine the potential refunds for these purchasers, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all of Reinauer's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

The volumetric refund presumption is rebuttable. The impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology. Accordingly, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of motor gasoline that it purchased from Reinauer during the period April 1, 1979 through September 30, 1979, multiplied by a volumetric factor of $0.03584 per gallon.[1] In addition, each successful claimant will receive a pro-rata portion of the interest that has accrued on the Reinauer funds since the date of remittance.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985); *see also* 10 CFR 205.286(b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 405 gallons of Reinauer motor gasoline in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether it was injured by its purchases from Reinauer, *ie.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous subpart V proceedings, we propose to adopt certain presumptions concerning injury in this case. An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. *Presumptions Concerning Injury.* The presumptions we plan to adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end users of Reinauer motor gasoline, certain types of regulated firms, and cooperatives were injured by their purchases from Reinauer. In addition, we will presume that resellers and retailers of Reinauer gasoline submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Reinauer motor gasoline and those who sold it on consignment were not injured by their purchases. Each of these presumptions is listed below, along with the rationale underlying its use.

a. End Users

First, in accordance with prior subpart V proceedings, we will presume that end users, *i.e.*, ultimate consumers of Reinauer motor gasoline whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end users need only document their purchase volumes of Reinauer motor gasoline to demonstrate that they were injured by the alleged overcharges.

b. Regulated Firms and Cooperatives

Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms routinely would have passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982); *Office of Special Council*, 9 DOE ¶ 82,545 at 85,244 (1982). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will not be covered by this presumption.

c. Reseller and Retailer Small Claims

Third, we will presume that a reseller or a retailer seeking a refund of $10,000 or less, excluding accrued interest, was injured by Reinauer's pricing practices. In many prior cases we have established a small claims threshold of $5,000. In the present case, however, in order to minimize the burden upon individual applicants and this Office, we have tentatively decided to establish the small claims threshold at $10,000. This determination is based on a number of considerations. In this proceeding, the volumetric factor is significantly higher than the amount in most other

[1] We computed the volumetric factor by dividing the $305,000 received from Reinauer by the total volume of covered products sold by the firm during the consent order period (8,509,229 gallons).

proceedings. As a result, the allocable share of many small retailers and resellers who would typically qualify for a refund at or below the small claims threshold will be well above $5,000. If we were to keep the small claims threshold at $5,000 in this case, it would significantly increase the number of firms, especially very small firms, that would be faced with the burden of making a detailed showing of injury in order to receive their allocable share. It would also very significantly increase the burden on this Office because of the need to analyze many more detailed injury showings and would thus slow down the evaluation of claims. Therefore, in order to minimize those burdens we are proposing a larger small claims threshold of $10,000. See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). Retailer and reseller claimants whose allocable share is $10,000 or less will be presumed injured and therefore need not provide a further demonstration of injury in order to receive their full allocable share. Therefore, a small claimant must only document the volumes of motor gasoline it purchased from Reinauer in order to demonstrate injury. See *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

d. Spot Purchasers

Fourth, resellers and retailers that were spot purchasers of Reinauer motor gasoline, *i.e.*, firms that made only sporadic, discretionary purchases, are presumed not to have been injured, and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore, would not have made a purchase unless it was able to recover the full amount of its purchase price from its customers, including any alleged overcharges included in its costs. See *Vickers* at 85,396–7. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. See *e.g.*, *Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

e. Consignees

Finally, we will presume that consignees of Reinauer motor gasoline were not injured by the firm's alleged pricing violations. *See, e.g.*, *Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Reinauer's pricing practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. *Allocation Claims.* We may also receive claims based upon Reinauer's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. See 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Standard Oil Company (Indiana)*, 10 DOE ¶ 85,048, and *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

3. *Non-Presumption Demonstration of Injury.* A reseller or retailer that claims a refund in excess of $10,000 will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm is required to provide a monthly schedule of its banks of unrecouped increased products costs for each grade of motor gasoline that it purchased from Reinauer. Cost banks should cover the period April 1, 1979 through September 30, 1979. If a firm no longer has records of contemporaneously calculated cost banks for a particular grade of motor gasoline, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers.

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period, April 1, 1979 through September 30, 1979; and

(3) A monthly schedule of the firm's purchase or sales volumes of the products during the period, April 1, 1979 through September 30, 1979.

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Reinauer were higher than average market prices for the same level of distribution. Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Reinauer for each grade of motor gasoline during the period April 1, 1979 through September 30, 1979.

If a reseller or retailer that is eligible for a refund in excess of $10,000 does not submit cost bank and purchase price information described above, it can still apply for a refund of $10,000 plus accrued interest, using the small claims presumption. If, however, a firm provides the above-mentioned data and we subsequently conclude that the firm should receive a refund of less than the $10,000 small claims threshold, the firm cannot opt for a full $10,000 refund.

III. Distribution of Remaining Funds

In the event that money remains after all meritorious refund applications have been processed, the funds in the Reinauer escrow account will be disbursed in accordance with the provisions of the Petroleum Overchage and Distribution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1989).

It is therefore ordered that the refund amount remitted to the Department of Energy by Reinauer Petroleum Co. pursuant to the Consent Order executed on April 26, 1988, will be distributed in accordance with the foregoing Decision.

[FR Doc. 90–27697 Filed 11–23–90; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3864-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forward to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 26, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Secondary Lead Smelters (Subpart L)—Information Requirements. (EPA ICR #1128.03; OMB #2060-0080). This is an extension of the expiration date of a currently approved collection.

Abstract: Owners or operators of secondary lead smelters must notify EPA of construction, reconstructions, modifications, startups, shutdowns, and malfunctions. Owners or operators must keep these records for 2 years. States and/or EPA use the information to determine compliance with the standards, to target inspections, and, when necessary, to use as evidence in court.

Burden Statement: The public reporting burden for this collection of information is estimated to average 43 hours each for the 25 sources required to keep records. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners and operators of secondary lead smelters.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 81 hours.

Frequency of Collection: Once and on occasion.

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: November 19, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-27687 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3864-9]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Section 114 information request.

SUMMARY: By this notice, EPA is requiring that individuals or legal entities that produced, transformed (i.e., used and consumed in the manufacture of another substance), imported or export specified ozone-depleting chemicals in 1989 provide information regarding these activities to EPA by December 17, 1990. The chemicals are: 1,1,1-trichloroethane (methyl chloroform); carbon tetrachloride; and chlorofluorocarbons (CFCs) −13, −111, −112, −211, −212, −213, −214, −215, −216 and −217.

EPA needs this information to promulgate production and consumption restrictions under section 604 of the Clean Air Act Amendments of 1990 (the Amendments), Public Law 101-549. Section 604 calls for phased reductions in both the production and consumption of several sets of chemcals (chlorofluorocarbons, halons, methyl chloroform, carbon tetrachloride and other fully halogenated chlorofluorocarbons) beginning January 1, 1991.

In addition, the Agency needs this information to fulfill the United States' obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer, an international treaty recently amended that requires a complete phase-out of these chemicals listed above. EPA is authorized to obtain this information under section 114 of the Clean Air Act.

FOR FURTHER INFORMATION CONTACT: Daniel Blank, Global Change Division; Office of Atmospheric and Indoor Air Programs (ANR-445); Office of Air and Radiation; 401 M Street SW., Washington, DC 20460, (202) 475-8894.

SUPPLEMENTARY INFORMATION:

I. Background

On September 16, 1987, the United States and 23 other nations signed the Montreal Protocol. The original agreement set forth a timetable for reducing the production and consumption (defined as production plus imports minus exports) of specified ozone-depleting chemicals, including CFC-11, CFC-12, CFC-113, CFC-114, and CFC-115, and Halon-1211, Halon-1301, and Halon-2402.

EPA implemented the original Protocol through regulations allocating production and consumption allowances equal to the total amount of production and consumption the United States was allowed under the Protocol. (*See* final rule promulgated on August 12, 1988 (53 FR 30566) and subsequent minor revisions and amendments promulgated on February 9 (54 FR 6376), April 3 (54 FR 13502), July 5 (54 FR 28062) and July 12 (54 FR 29337) of 1989, and February 13 (55 FR 5007), June 15 (55 FR 24490) and June 22 (55 FR 25812) of 1990.) Companies were allocated allowances according to the amount of controlled substances each company had produced or imported in 1986, the baseline year specified by the Protocol. The allocations have since been reduced according to the timeable for reductions set forth in the Protocol.

The Parties to the Montreal Protocol met in London on June 27-29, 1990 to consider revisions to the Protocol. In response to scientific evidence indicating greater than expected stratospheric ozone depletion, the Parties agreed to accelerate the phase-out schedules for the substances already controlled by the Protocol, and to add restrictions on other ozone-depleting chemicals, including methyl chloroform, carbon tetrachloride and other fully-halogenated CFCs. Specifically, the Parties voted to phase-out the already controlled CFCs and halons by 2000, carbon tetrachloride and all other fully halogenated CFCs by 2000, and methyl chloroform by 2005. The Parties also chose 1989 as the baseline year against which reductions of carbon tetracholoride, methyl chloroform and the other CFCs are to be measured.

In title VI of the recently enacted Clean Air Act Amendments of 1990, Congress included controls on ozone-depleting chemicals at least as stringent as those adopted by the Protocol Parties at their London meeting. Section 604 of the Act as amended requires a complete phaseout of Halons, carbon tetrachloride and the fully halogenated CFCs by 2000 and methyl chloroform by 2002. In the interim, section 604 provides a schedule of annual reductions in production and consumption from specified baseline levels. The first of these reductions takes effect beginning January 1, 1991.

Title VI also specifies a manner for implementing the reductions similar to that adopted by EPA in implementing the original Protocol's control requirements. Section 604 provides that every person or company that produced a controlled substance in the baseline year (1989 for methyl chloroform and carbon tetrachloride, 1986 for all other substances) reduce its production of that substance according to the reduction schedule. That setion also provides that

EPA promulgate regulations that reduce United States consumption of the controlled substances according to the same schedule. Section 607 requires that EPA issue persons who produced or imported controlled substances in the baseline years production and consumption allowances in the amount of each person's allowable production and "consumption" (defined as production plus imports minus exports) under the reduction schedule.

As noted above, the first year of the reduction schedule is 1991. While sections 604 and 607 allow EPA 10 months to, among others things, establish baselines against which reductions are to be measured, the Agency believes that baselines for at least 1991 should be promulgated by January 1, 1991, or as soon thereafter as possible. Otherwise, companies may not know exactly how much they must reduce in the first year of the reduction schedule until much of the year has passed. In their statement as Senate managers for the Amendments, Senators Max Baucus and John Chafee urged EPA to "quickly obtain the data needed to verify baselines against which to measure the required reductions" (Congressional Record, Oct. 27, 1990, p. 16947).

The Agency has baseline data for the five CFCs and three halons controlled by the original Protocol; the allowances issued under the current regulations are based on that data. EPA, however, does not have baseline data for carbon tetrachloride, methyl chloroform and the other fully halogenated CFCs. Given the importance of establishing baselines for 1991 as soon as possible, EPA by this notice is requesting baseline data for those chemicals under section 114 of the Act.

Section 114 authorizes EPA to require any person who operates any emission source or who is subject to any requirement of this Act to provide information that the Agency needs to carry out any provision of the Act, including sections 604 and 607. Section 604 requires reductions in all the controlled substances in 1991; section 607 requires issuance of allowances in accordance with the required reductions. If the requirements of these sections are to be workable, baselines for the 1991 reductions should be promulgated quickly. EPA thus believes it is appropriate to obtain baseline data under section 114.*

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that a section 114 letter was forwarded to the Office of Management and Budget (OMB) for review. It also announces our request for emergency processing under 5 CFR 1320.18. OMB has approved the section 114 letter and the Information Collection Request (ICR # 1432.05) associated with it. Clearance for the collection of information was approved on 11/19/90, and will expire on 2/28/91.

Send comments regarding the burden estimates or any other aspect of this collection to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460
and
Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

II. Statutory Authority

The Agency requests this information under section 114 of the Clean Air Act, which authorizes EPA to obtain information, even confidential business information, needed to carry out the provisions of the Act.

III. Information Requested

A. Affected Entities

Only entities that in 1989 produced, transformed through use as a feedstock, imported or exported the controlled substances specified in the following section are required to submit the information specified in section D.

B. Controlled Substances Covered by Request

The request covers the following chemicals:

(1) CF3C1-Chlorotrifluoromethane (CFC–13)
(2) C2FC15-Pentachlorofluoroethane (CFC–111)
(3) C2F2C14-Tetrachlorodifluoroethane (CFC–112)
(4) C3FC17-(CFC–211)
(5) C3F2C16-(CFC–212)
(6) C3F3C15-(CFC–213)
(7) C3F4C14-(CFC–214)
(8) C3F5C13-(CFC–215)
(9) C3F6C12-(CFC–216)
(10) C3F7C1-(CFC–217)
(11) CC14-Carbon Tetrachloride
(12) C2H3C13–1,1,1 Trichloroethane (Methyl Chloroform)
(13) isomers of any of the above chemicals, except 1,1,2-Trichloroethane

C. Definitions

1. *Controlled substance* means any bulk quantity of a chemical listed in section B, whether existing alone or in mixtures including azeotropes. The definition of "bulk" excludes any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. (*See* 53 FR 30581.)

In effect, EPA has defined bulk in terms of the chemical's container. A bulk container serves to transport the substance and is not used directly in the application of the chemical or as part of a "use system."

Isotanks used for transporting large volumes of these chemicals are clearly bulk containers, as are 50-gallon drums and pressurized cylinders. Conversely, an aerosol that contains methyl chloroform as its solvent is not a bulk container; instead it is considered a product.

Although the distinction between a bulk container like an isotank and a use system such as an aerosol is generally clear, some containers are not obviously either bulk containers holding controlled substances or parts of use systems that are considered products. For example, a small container of methyl chloroform to be used in a paint sprayer is considered bulk because the methyl chloroform while in the container is not acting and will not act as a paint thinner. Once the methyl chloroform is emptied into the paint sprayer, the container serves no purpose in the operation of the sprayer and is discarded.

Conversely, it is possible that a reservoir or container housing a controlled substance could be designed to be inserted into a product for the substance to be used and the product to work. This reservoir might be transported independently of the product in which it is to be used, but if it is considered a necessary part of the use system, it would not be considered bulk. For example, a small reservoir of CFC–113 that serves as a fusing agent for a laser printer would be considered a product if the printer cannot operate without the reservoir attached.

In situations where it is not clear whether the container is intended to be used directly in the application of the chemical (and is therefore a product) or serves only to store and transport the controlled substance (and is thus a bulk container), the following rule of thumb should be used: when, and only when, an importer or exporter cannot determine how a container is used in applying the chemical, chemical containers of one gallon (or its metric

* EPA notes that section 603 provides for submission of baseline data about halfway through 1991. That provision, however, does not preclude EPA form obtaining baseline data under section 114, and for the reasons discussed above, EPA believes that earlier submission of baseline data is needed.

equivalent of four liters) or less are considered products. Chemicals in containers larger than one gallon are considered bulk and thus controlled substances. This "rule of thumb" only applies when the eventual use of the container is not known and cannot be determined with reasonable efforts.

2. *Production* means the manufacture of a controlled substance from any raw material or feedstock chemical (*i.e.*, virgin production). The term includes any spills or ventings of controlled substances equal to or in excess of one hundred pounds per event. However, production does not include the manufacture of controlled substance that are used and entirely consumed except for trace quantities in the manufacture of other chemicals, nor does production include the recyling of used controlled substances. (*See* 53 FR 30583–4 and 55 FR 24495.)

3. *Import* means the transport of virgin, used and recycled controlled substances from outside the United States or its territories to persons within the United States or its territories, including imports to bonded warehouses. The amount imported is considered to be the total net volume as recorded on the Entry Summary Form to the U.S. Customs Service. Thus, import amounts should not net out any returned "heels." (*See* 53 FR 30581–3 and 54 FR 28064.)

For the purpose of assigning company baselines, EPA defines "importer" as the first United States owner of the imported controlled substances who is a supplier to or a member of the domestic industry that uses the controlled substances. Generally the "importer of record" on the U.S. Customs document is in fact an importer under this definition. However, there are cases where the importer of record is a transfer or shipping agent acting on behalf of the first U.S. owner. EPA does not intend to allocate baseline allowances to such agents.

4. *Export* means the transport of virgin, used and recycled controlled substances from within the United States or its territories to persons or countries outside the United States or its territories, including transfers to affiliates. However, exports exclude shipments to United States military bases or to ships for on-board use. (*See* 53 FR 30581–2.)

5. *Transform* means the use and entire consumption (except for trace quantities) of virgin, used or recycled controlled substances as a feedstock in the manufacture of another substance. Companies that produce and then transform a substance listed in section B are required to report the consumed substance as transformation, separately from production as noted in section C(2). Companies that purchased substances listed in section B and then used some or all of the substances as a feedstock must also report this as transformation.

D. Data Required

EPA is requiring that each affected entity provide data on the quantity of each of the controlled substances that it produced, transformed, imported or exported in 1989 as defined under section B and C.

Producers who manufactured one or more of the substances listed in section B from raw materials or feedstock chemicals are required to submit: (1) Name, address and telephone number of company contact; and (2) the amount (in kilograms) of each listed substances it produced in 1989 in the United States or its territories and the location of its production, as well as documentation of its production such as plant records.

Companies that produced and then transformed one or more of the substances listed in section B as feedstock chemicals are required to submit, in addition to their production report, the amount (in kilograms) of each listed substances used and entirely consumed except for trace quantities as a chemical intermediary in the production of another chemical in 1989. Documentation supporting the submission of 1989 production and transformation levels could include production statements used for other reporting purposes or similar information.

Companies that purchased and then transformed one or more of the substances listed in section B as feedstock chemicals are required to submit: (1) Name, address and telephone number of company contact; (2) the amount (in kilograms) of each listed substance it entirely consumed (except for trace quantities) as a chemical intermediary in the production of another chemical in 1989; (3) copies of invoices or receipts documenting the purchase of the listed substance by the reporting company; and (4) description of the commercial use of the resulting chemical.

Importers who transported the controlled substances listed in section B from outside the United States or its territories to persons within the United States or its territories are required to submit: (1) Name, address and telephone number of company contact; (2) the amount (in kilograms) of each of the listed substances which it imported into the United States or its territories in 1989, and for each shipment, the Entry Number, Customs District and Port Code, Employer Identification Number (EIN) or importer number, the designated "importer of record" on the U.S. Customs Entry Summary Form, commodity code, the date and port of entry and the country in which it was produced; and (3) copies of the Entry Summary Form for each shipment (if these are unavailable, other official papers documenting the import may be substituted).

Exporters who transported the controlled substances listed in section B from within the United States or its territories to outside the United States or its territories are required to submit: (1) Name, address and telephone number of contact; (2) the amount (in kilograms) of each of the listed substances which in 1989 it exported from the United States or its territories, and for each shipment, the producer of the chemical, the date and port of exit, the EIN, Customs District and Port Code, the commodity code, and the country of final destination; and (3) copies of the invoices documenting the purchase of the chemical from the producer, and of the shipper's export declaration, invoices or bills of lading for each shipment documenting the exported volume and date of the listed substances.

E. Confidential Business Information

Anyone submitting information must assert a claim of confidentiality for any data it wishes to have treated as confidential business information (CBI) under 40 CFR, part 2, Subpart B. Failure to assert a claim of confidentiality at the time of submission may result in disclosure of the information by the Agency without further notice.

The Bruce Company and ICF, Incorporated are hereby designated as Authorized Representatives of the Administrator of the United States Environmental Protection Agency (EPA) for the purpose of assisting EPA in the development and the implementation of national regulations for the protection of stratospheric ozone, including the development of the 1989 baseline, under section 157(b) of the Clean Air Act.

The Authorized Representatives, under EPA contract 68–D9–0068 may have access to any information received by the Global Change Division within the Office of Atmospheric and Indoor Air Programs for use in reviewing the need for possible control of any substance, practice, process or activity which may reasonably be anticipated to affect stratospheric ozone. In general, this information will pertain to the feasibility and costs of achieving controls and baseline data for

production, imports and exports. Some of this information may be claimed as confidential business information. Access to such information is necessary in order that the Bruce Company and ICF, Incorporated may carry out work required by the contract.

Authorized Representatives of the Administrator are subject to the provisions of 42 U.S.C. 7414(c) respecting confidential business information as implemented by 40 CFR 2.301(h).

F. Submission of Data

The data required under this request must be submitted to EPA by December 17, 1990. It should be sent to: Daniel Blank (Baseline); Global Change Division; Office of Atmospheric and Indoor Air Programs (ANR-445); Office of Air and Radiation; 401 M Street SW., Washington, DC 20460.

IV. Additional Information

Paperwork Reduction Act

The information collection requirements in this request have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control number 2060-0170.

The public reporting burden for this one-time collection of information is estimated to average 8 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information. The estimated number of respondents is 49, and the estimated total annual burden on respondents is 392 hours.

Dated: November 11, 1990.

Eileen Claussen,

Office Director.

[FR Doc. 90-27807 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

Office of Research and Development

[FRL-3863-5]

Ambient Air Monitoring Reference and Equivalent Methods

Notice is hereby given that EPA, in accordance with 40 CFR part 53 has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is identified as follows:

EQL-1290-080, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission Spectrometry (State of New Hampshire)."

The applicant's request for an equivalent method determination for the above method was received on June 22, 1990. Additional requested information pertinent to the original submittal was received on September 28, 1990.

This method has been tested by the applicant, the State of New Hampshire, Department of Environmental Services, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with nitric acid facilitated by ultrasonication. The lead content of the sample is analyzed by a Spectro inductively coupled argon plasma optical emission spectrometer using the 220.35 nm lead emission line and instrument conditions optimized by the user laboratory. Technical questions concerning the method should be directed to the State of New Hampshire, Department of Environmental Services, Laboratory Service Unit, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302-0095.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of § 2.8 of appendix C to 40 CFR part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR part 53.

Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone (919) 541-2622.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 90-27688 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3863-7]

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1987-1988

This notice publishes the consolidated subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1987 and 1988. These determinations were made pursuant to the EPA protests procedures set forth at 40 CFR 35.939 (assistance awarded prior to May 12, 1982), 40 CFR part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 CFR part 33, March 28, 1983 Final Rules (assistance awarded after March 28, 1983).

This is the ninth EPA subject index which lists only the decisions issued in the years stated. This first index, listing Regional Administrator protest appeal determinations issued during 1974 through 1977, was published at 43 FR 29086-95 (July 4, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812-18 (May 2, 1979), the index of 1979 determinations published at 45 FR 58770-74 (September 4, 1980), the index of 1980 determinations published at 46 FR 30476-80 (June 8, 1981), the index of 1981 and 1982 determinations published at 49 FR 36004-15 (September 13, 1984), the index of 1983 decisions published at 50 FR 4148-54 (January 29, 1985), the index of 1984 decisions published at 50 FR 23061-68 (May 30, 1985), the index of 1985 decisions published at 51 FR 32038-46 (September 8, 1986), and the index of 1986 decisions published at 52 FR 13052-59 (April 20, 1987).

The index lists 80 appeal determinations and 4 reconsideration request determinations issued by the EPA Regional Administrators in 1987 and 1988.

The determinations are cited informally with the names of the

assistance recipients and protesters shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for that year. This number is not part of the preferred citation, which should state the following: Grantee, State, (EPA Region ____, date of determination) (Protest of _____). Beginning with the 1988 determinations, a concise statement of the type of procurement involved is included in brackets at the end of each digest note. Except where otherwise noted, the bid protest appeals in this index arise under the Clean Water Act wasterwater treatment construction grant program. For administrative convenience, the term "wastewater treatment" is abbreviated in the index as "WWT."

The issues have been divided into two major subject headings and then alphabetized. Procedural protest issues are listed under the heading "Protest Appeals:" two new subject headings—"Harmless Error" and "Remand"—are included under this heading. Substantive procurement issues are listed under the heading "Procurement."

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the Office of General Counsel in EPA Headquarters.

FOR FURTHER INFORMATION CONTACT: Jonathan S. Cole: Grants, Contracts, General Law and Administration Division (LE-132G), Office of General Counsel, United States Environmental Protection Agency, Washington, DC 20460; (202) 382-5313.

Dated: October 26, 1990.

E. Donald Elliott,

Assistant Administrator and General Counsel (LE-130).

Consolidated Index To 1978-1988 EPA Bid Protest Appeal Determinations

Bid Protest Appeals—Procedural Matters

A/E Judgment

87:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (EPA defers to technical decisions of grantee which are rationally based).

87:22 Lancaster, OH (V, 7-23-87) (*Floater Vehicle, Inc.*) (rational basis for engineering judgment that equipment previously manufactured by bidder did not satisfy experience requirements in the IFB).

87:35 Moundsville, WV (III, 11-6-87) (*Phoenix Process Equipment Co.*) (EPA will not substitute its judgment for a grantee's rationally-based engineering decision).

87:38 Bonner Springs, KS (VII, 11-16-87) (*Floater Vehicle, Inc.*) (grantee had performance-based reasons for specifications which protester did not meet).

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (EPA defers to rationally based engineering for experience requirement) [WWT plant recessed plate filter press system supply contract].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (EPA defers to grantee's professional engineering opinion that specification for fiber optic cable is performance-based and reflects project's minimum needs as having a rational basis) [WWT plant distributed control system supply].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR & National Hydro Systems, Inc.*) (rational basis for engineering judgment that equipment manufactured by bidder did not satisfy experience requirements and therefore required extended warranty and surety bond) [secondary and nitrification facilities—clarifiers/air diffusers].

Burden of Proof

87:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (protester alleging specifications are unduly restrictive as applied must first show that it was excluded from the competition).

87:32 Vassar, MI (V, 10-2-87) (*R.C. Hendrick & Son, Inc.*) (grantee has initial burden where it proposes to award contract to other than apparent low bidder).

87:35 Moundsville, WV (III, 11-6-87) (*Phoenix Process Equipment, Co.*) (protester alleging unduly restrictive specifications has initial burden to show it was excluded from the competition—burden then shifts to grantee to show that the specifications are based on minimum project needs and a rational basis exists to exclude protester's equipment).

88:08 East Bay MUD, CA (3-31-88) (*Dan Caputo Co.*) (protester challenging proposed award to low bidder bears burden of proving that grantee action is not in accordance with EPA requirements) [construction of WWT plant].

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (grantee bears burden of proof of delivery of protest decision in manner which establishes date of receipt, preferable certified mail, where it seeks to dismiss appeal as untimely) [self-cleaning screening equipment].

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (protester challenging recommendation of award to low bidder must prove grantee's actions are fraudulent, clearly in error, or without rational basis) [interceptor sewer construction].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (protester alleging unduly restrictive specifications must first prove exclusion by specifications, then grantee must demonstrate that specifications are performance-based and reflect minimum performance needs of project) [WWT plant distributed control system supply].

88:21 Washington Suburban Sanitary Commission, MD (III, 6-17-88) (*Chemcon, Inc.*) (protester bears burden of affirmatively proving claim concerning applicability of Small Business Enterprise regulations) [sewage treatment system nutrient removal upgrade].

88:24 Coos Bay, OR (X, 7-11-88) (*Tri-State Construction, Inc.*) (bidder seeking to withdraw bid must prove alleged mistake by clear and convincing evidence) [wastewater conveyance system improvements].

88:26 Tacoma, WA (X, 7-25-88) (*Fluid Engineering Associates*) (protester challenging recommendation of award to low bidder must prove grantee's actions are fraudulent, clearly in error, or without rational basis) (protester alleging unduly restrictive specifications could not refute grantee's showing of rational basis for its protest determination) [digester gas and clean gas compressor systems].

88:31 Tacoma, WA (X, 8-15-88) (*Fluid Engineering Associates*) (*Reconsideration*) (EPA has inherent authority to reconsider its protest appeal decisions) (reconsideration denied where protester failed to meet burden of showing a material factual mistake or clear legal error in EPA's decision) [digester gas and clean gas compressor systems].

88:33 Buckeye, AZ (IX, 8-25-88) (*National Projects, Inc.*) (protester challenging recommendation of award to low bidder must prove grantee's action violates EPA requirements) [WWT plant construction].

Exhaustion of Administrative Remedies

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (appeal is premature where it was filed with EPA before grantee issued a protest determination).

87:21 Fayetteville, AR (VI, 7-22-87) (*Rainbow Irrigation Systems, Inc.*) (EPA regulations provide for issuance of a

written protest determination before appeal to EPA).

87:40 Berkeley, CA (IX, 12-31-87) (*ABC Service*) (EPA will not accept a protest appeal until the protester has exhausted all administrative remedies at the grantee level and has received a final protest determination).

88:23 American Samoa (IX, 7-1-88) (*Mad-TIFF Development Corp.* and *Cyclops Pipeline Services, Inc.*) (appeal dismissed without prejudice as premature where it was filed with EPA before grantee issued a final protest determination) [sewer system rehabilitation].

Harmless Error [New Subject Heading]

88:05 Largo, FL (IV 3-11-88) (*Hycon Constr. Systems Corp.*) (Defective IFB resulting in no bidder prejudice is considered harmless error, for which EPA will grant no relief) (Deficiencies in IFB due to failure to disclose all of grantee's evaluation criteria harmless error, where grantee found protester nonresponsible based upon evidence concerning protester's financial responsibility and work history, which were clearly referenced in bid documents as evaluation criteria, and where the criteria were applied to all bidders) [consideration of interceptor sewers].

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (flawed and ambiguous evaluation criteria harmless error where grantee evaluated bids in good faith to select combination of items closest to what it expected to build and protester not prejudiced by deficiencies in IFB) [sewer rehabilitation].

Jurisdiction

87:06 Owatonna, MN (V, 3-30-87) (*Bailey Controls Div. of Babcock & Wilcox Co.*) (post-contract award matters are not protestable).

87:09 Port Arthur, TX (VI, 4-10-87) (*Baytown Construction Co.*) (local labor ordinance not applied to EPA-funded project raises no protestable issues).

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable).

87:16 Warminster, PA (III, 6-4-87) (*Chemcon, Inc.*) (independent decision by prime contractor to substitute a subcontractor is a contract administration matter which is not protestable).

87:39 Bristol, TN & VA (IV, 11-30-87) (*American Bio Tech*) (protest appeal became moot when grantee gave protester the relief it sought from EPA).

88:09 Hudson County, NJ (II, 4-11-88) (*Mayo, Lynch and Associates, Inc.*) (bid protest appeal dismissed where issue raised is currently before State court of competent jurisdiction) [engineering services—prequalification].

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (EPA procurement regulations are not applicable to contract work outside scope of grant agreement, hence not funded by EPA) [sewer rehabilitation].

88:23 Amerian Samoa (IX, 7-1-88) (*Mad-TIFF Development Corp.* and *Cyclops Pipeline Services, Inc.*) (appeal dismissed without prejudice as premature where it was filed with EPA before grantee issued a final protest determination) [sewer system rehabilitation].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable) [secondary and nitrification facilities—clarifiers/air diffusers].

88:37 Reading, PA (III, 10-18-88) (*American Surfpac Corp.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable) [PVC media supply].

Procedures

87:03 Orange, TX (VI, 3-17-87) (*Cajun Contractors & Engineers, Inc.*) (a hand-delivered written notice is a sufficient means of "telegraphing" the Regional Counsel's office with notice of intent to file a protest appeal within 7 calendar days of the grantee's determination).

87:05 Lackawanna County, PA (III, 3-26-87) (*Mele Construction Co., Inc.*) (summary dismissal of a bid protest appeal is discretionary with EPA).

87:08 Anchorage, AK (X, 4-9-87) (*Frank Coluccio Construction Co.*) (EPA regulations contemplate that grantees provide bidders with a meaningful opportunity for review of protests).

87:09 Port Arthur, TX (VI, 4-10-87) (*Baytown Construction Co.*) (issue not raised during initial protest to grantee will not be considered by EPA on appeal).

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (protest filed with general contractor instead of grantee was untimely) (telegraphic notice of protest appeal must be followed by submittal of a complete protest appeal within 7 calendar days of the notice).

87:24 Norwich, NY (II, 7-31-87) (*Statiflo Int'l, Inc.*) (protester has only 7 calendar days from telegraphic appeal notice to submit complete protest appeal).

87:35 Strongsville, OH (V, 11-6-87) (*Field Gymmy, Inc.*) (EPA regulations do not specify how a recipient is to review a protest but do not require an opportunity for prompt meaningful review).

87:37 East Tawas, MI (V, 11-12-87) (*Devere Construction Co., Inc.*) (failure to furnish interested parties with documents filed with EPA is not a basis for dismissal where no prejudice results) (EPA resolves issues not explicitly addressed by its regulations by looking to Comptroller General decisions and other comparable federal procurement law).

88:14 Bellingham, MA (I, 5-18-88) (*P. Gioioso & Sons, Inc.*) (appeal dismissed because protester's filing or protest with state, not grant recipient, precludes exhaustion of administrative remedies at recipient level) (protest filed with another entity does not relieve protester of duty to protest directly to grant recipient) [construction of interceptor sewer].

88:17 Atlanta, GA (IV, 6-2-88) (*Parkson Corp.*) (rejection of all bids for good cause renders bid protest moot) [diffuser system replacement].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (proper parties in protest appeal of grantee's prequalification determination alleging unduly restrictive prequalification specifications are protester and grantee) [WWT plant distributed control system supply].

88:21 Washington Suburban Sanitary Commission, MD (III, 6-17-88) (*Chemcon, Inc.*) (EPA remands protest to grantee to consider additional information where protester not notified of experience requirement and unclear whether doubts about equipment performance related to same model pump) [installation of diaphragm metering pumps].

88:23 American Samoa (IX, 7-1-88) (*Madd-TIFF Development Corp.* and *Cyclops Pipeline Services, Inc.*) (appeal dismissed without prejudice as premature where it was filed with EPA before grantee issued a final protest determination) [sewer system rehabilitation].

88:30 South Adams County, CO (VIII, 8-10-88) (*Reid Burton Construction Co., Inc.*) (EPA upholds recipient's protest determination denying protester a hearing) [Superfund cooperative agreement—permanent water treatment facility].

88:33 Buckeye, AZ (IX, 8-25-88) (*National Projects, Inc.*) (issue not raised during initial protest to grantee will not be considered by EPA on appeal) [WWT plant construction].

Rational Basis Test

87:08 Anchorage, AK (X, 4-9-87) (*Frank Coluccio Construction Co.*) (EPA will reverse a grantee procurement decision if it fails to comply with federal procurement requirements or lacks a rational basis).

87:09 Port Arthur, TX (VI, 4-10-87) (*Baytown Construction Co.*) (grantee had a rational basis for denying a protest about a local labor ordinance which was not applied to the EPA-funded project).

87:12 La Porte, TX (VI, 4-28-87) (*Baytown Construction Co., Inc.*) (EPA found no rational basis in summary grantee decision not addressing substantive issues raised by the protest).

87:22 Lancaster, OH (V, 7-23-87) (*Floater Vehicle, Inc.*) (EPA will affirm a grantee protest decision if it has a rational basis and the grantee complied with EPA procurement requirements).

87:28 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (EPA regulations limit EPA review of protest appeals).

87:29 Tacoma, WA (X, 9-4-87) (*Frank Coluccio Construction Co.*) (EPA defers to a grantee protest determination unless it has no rational basis).

87:32 Vassar, MI (V, 10-2-87) (*R.C. Hendrick & Son. Inc.*) (EPA will defer to a grantee procurement decision if it meets minimum federal requirements).

87:33 Clackamas County, OR (X, 10-23-87) (*Environmental Pollution Control, Inc.*) (EPA review is limited to a determination of whether the grantee's decision is consistent with federal requirements and has a rational basis).

88:03 Ashland, OH (V, 1-29-88) (*Statiflo International, Inc.*) (Responsibility determinations by grantee are discretionary decisions and will be upheld unless without any rational basis or clearly erroneous) (Grantee's request for manufacturing history and guaranteed delivery date was rational and failure to provide requested history and guaranteed delivery date could support determination of nonresponsibility) [trickling filter media].

88:05 Largo, FL (IV, 3-11-88) (*Hycon Constr. Systems Corp.*) (Grantee's determination will not be overturned by EPA unless shown to be clearly in error or lacking a rational basis) (bidder's failure to satisfy required demonstration of financial responsibility and work history was rational basis for nonresponsibility determination) [construction of interceptor sewers].

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (EPA defers to rationally based engineering decision for experience requirement) [WWT plant recessed plate filter press system supply contract].

88:08 East Bay MUD, CA (3-31-88) (*Dan Caputo Co.*) (purpose of EPA review of bid protest is to determine if rational basis exists for grantee's protest determination; EPA need not determine whether it would have reached the same result as grantee) [construction of WWT plant].

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (grantee cannot attempt to provide rational basis justifying restrictive specifications for first time on appeal, where sole source procurement attempted under guise of formally advertised, competitive bid) (appeal subject to dismissal as untimely may be revised under sua sponte review authority) [self-cleaning screening equipment].

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (purpose of EPA bid protest appeal is to determine whether grantee has met EPA procurement requirements and has rational basis for protest determination) [sewer rehabilitation].

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (EPA defers to a grantee protest determination unless it has no rational basis) [interceptor sewer construction].

88:18 Westchester County, NY (II, 6-3-88) (*Gates Construction Corp.*) (grantee's responsibility determination upheld as having had a rational basis) [outfall pipeline construction].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (grantee's procurement determination based on restrictive specification reversed as lacking a rational basis) [tertiary filter installation].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (EPA defers to grantee's professional engineering opinion that specification for fiber optic cable is performance-based and reflects project's minimum needs as having a rational basis) [WWT plant distributed control system supply].

88:24 Coos Bay, OR (X, 7-11-88) (*Tri-State Construction, Inc.*) (grantee's determination not to allow bid withdrawal due to mistake in judgment by bidder upheld as rationally based) [wastewater conveyance system improvements].

88:26 Tacoma, WA (X, 7-25-88) (*Fluid Engineering Associates*) (EPA upholds grantee's rationally based determination that alleged unduly restrictive specification is performance related and represents minimum performance need) [digester gas and clean gas compressor systems].

88:27 Atlanta, GA (IV, 7-27-88) (*SIHI Pumps, Inc.*) (grantee had rational basis for upholding engineer's determination that protestor's equipment did not meet required minimum performance specifications) [gas compressor supply contract].

88:29 Chickamauga, GA (IV, 8-10-88) (*Aquasystems International, N.V.*) (grantee's denial of protest lacks rational basis for failure to justify each detailed specification relied upon in rejecting protester's equipment as "equal" to brand name) [WWT plant upgrade].

88:30 South Adams County, CO (VIII, 8-10-88) (*Reid Burton Construction Co., Inc.*) (recipient's protest determination concerning MBE compliance has rational basis and complies with part 33 procurement requirements) [Superfund cooperative agreement—permanent water treatment facility].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR & National Hydro Systems, Inc.*) (rational basis for engineering judgment requiring new manufacturer of equipment to provide extended warranty and surety bond) [secondary and nitrification facilities-clarifiers/air diffusers].

88:33 Buckeye, AZ (IX, 8-25-88) (*National Projects, Inc.*) (grantee's protest determination concerning MBE compliance has rational basis and complies with part 33 procurement requirements) [WWT plant construction].

88:35 South Tahoe, CA (IX, 9-21-88) (*Ford Construction Co.*) (EPA will reverse a grantee procurement decision if it fails to comply with federal procurement requirements or lacks a rational basis) [retention basin sealing project].

88:38 Orosi, CA (IX, 10-24-88) (*Daniel Ontiveros Construction Co.*) (EPA will reverse a grantee procurement decision if it fails to comply with federal procurement requirements or lacks a rational basis) [sewer collection system construction].

88:40 Edmonds, WA (X, 11-23-88) (*Wright Schuchart Harbor Co.*) (EPA reverses grantee's protest determination that failure to submit MBE/WBE documentation prior to bid opening renders bid nonresponsive, where grantee erroneously applies state law and admits that under federal requirements EPA would likely reverse grantee's decision) [WWT plant construction].

Recipient Determination

87:12 La Porte, TX (VI, 4-28-87) (*Baytown Construction Co., Inc.*) (no

rational basis found where grantee decision is summary and fails to address substantive issues raised by the protest).

88:10 Lower Fountain Creek, CO (VIII, 4–18–88) *Wiesemann Engineering, Inc.*) (grantee cannot attempt to provide rational basis justifying restrictive specifications for first time on appeal, where sole source procurement attempted under guise of formally advertised, competitive bid) [self-cleaning screening equipment].

88:13 North Augusta, SC (IV, 5–13–88) (*Sheriff Constr. Co. & Rockdale Pipe Line, Inc.*) (grantee's rejection of all bids in lieu of issuing written protest determination reversed by EPA where alleged grounds for rejection lacked merit) (low bid determination must be based on "bottom line total" unless bid documents clearly explain methods for evaluating and determining low bid price) [improvement of interceptor sewer]. **Note:** See EPA's Reconsideration Decision 88:22 (6–29–88).

88:14 Bellingham, MA (I, 5–18–88) (*P. Gioioso & Sons, Inc.*) (because bidder filed protest with state, not grant recipient, recipient never issued determination that EPA can review) [construction of interceptor sewer].

88:23 American Samoa (IX, 7–1–88) (*Mad-TIFF Development Corp. & Cyclops Pipeline Services, Inc.*) (appeal dismissed without prejudice as premature where it was filed with EPA before grantee issued a final protest determination) [sewer system rehabilitation].

Reconsideration

87:22 Lancaster, OH (V, 8–28–87) (*Floater Vehicle, Inc.*) (*Reconsideration*) (EPA has inherent authority to reconsider its protest appeal decisions) (reconsideration denied where protester failed to meet burden of showing a material factual mistake or clear legal error in EPA's decision).

87:29 Tacoma, WA (X, 9–19–87) (*Frank Coluccio Construction Co.*) (*Reconsideration*) (denied where no clear showing of material factual mistake, newly discovered evidence or substantial legal error.

88:22 North Augusta, SC (IV, 6–29–88) (*Sheriff Construction Co. & Rockdale Pipe Line, Inc.*) (*Reconsideration*) (denied where no clear showing of material factual mistake, newly discovered evidence or substantial legal error) [improvement of interceptor sewer].

88:31 Tacoma, WA (X, 8–15–88) (*Fluid Engineering Associates*) (*Reconsideration*) (EPA has inherent authority to reconsider its protest appeal decisions) (reconsideration denied where protester failed to meet burden of showing a material factual mistake or clear legal error in EPA's decision) [digester gas and clean gas compressor systems].

Remand

88:21 Washington Suburban Sanitary Commission, MD (III, 6–17–88) (*Chemcon, Inc.*) (EPA remands protest to grantee to consider additional information where protester not notified of experience requirement and unclear whether doubts about equipment performance relate to same model pump) [installation of diaphragm metering pumps].

Remedy

88:45 Key West, FL (IV, 12–29–88) (*Zimpro, Inc.*) (*Supplemental Determination*) (no remedy from EPA available to protester where contract awarded and construction completed with other supplier's equipment) [fluid bed sludge incineration system].

Review

Authority and Scope of Review

87:21 Fayetteville, AR (VI, 7–22–87) (*Rainbow Irrigation Systems, Inc.*) (EPA may review a grantee procurement action independent of a protest or appeal).

88:14 Bellingham, MA (I, 5–18–88) (*P. Gioioso & Sons, Inc.*) (because bidder filed protest with state, not grant recipient, recipient never issued determination that EPA can review) [construction of interceptor sewer].

88:18 Westchester County, NY (II, 6–3–88) (*Gates Construction Corp.*) (Federal Acquisition Regulation applies only to procurement by Federal executive agencies, not to recipients of Federal assistance) [outfall pipeline construction].

88:31 Tacoma, WA (X, 8–15–88) (*Fluid Engineering Associates*) (*Reconsideration*) (EPA has inherent authority to reconsider its protest appeal decisions) (reconsideration denied where protester failed to meet burden of showing a material factual mistake or clear legal error in EPA's decision) [digester gas and clean gas compressor systems].

Sua Sponte Review

87:12 La Porte, TX (VI, 4–28–87) (*Baytown Construction Co., Inc.* (EPA has authority to independently review grantee procurement actions if a protest is procedurally defective but raises issues central to the integrity of the comptetive procurement process).

87:18 Ames, IA (VII, 6–29–87) (*Twill Steel, Ltd.*) (timeliness of protest not addressed where sua sponte review is appropriate to provide guidance on EPA's MBE/WBE policy).

87:19 Key West, FL (IV, 7–13–87) (*Zimpro, Inc.*) (sua sponte review of grantee approval of alternate equipment under a "brand name or equal" specification) **Note:** See EPA's Supplemental Determination, 88:45 (12–29–88).

87:21 Fayetteville, AR (VI, 7–22–87) (*Rainbow Irrigation Systems, Inc.*) (EPA will review and reverse a grantee procurement action to preserve the integrity of formal advertising).

88:10 Lower Fountain Creek, CO (VIII, 4–18–88) (*Wiesemann Engineering, Inc.*) (EPA may review otherwise untimely appeal under sua sponte review authority, especially where statutory mandate of Clean Water Act encourages maximum free and open competition and unauthorized sole source procurement is alleged) [self-cleaning screening equipment].

88:16 Gresham, OR (X, 5–25–88) (*Humphrey Construction Co.*) (EPA sua sponte reviews improperly filed protest, where Clean Water Act's mandate of maximum competition is involved) [WWT plant construction].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6–13–88) (*Environmental Control Dynamics, Inc.*) (sua sponte review power exercised by EPA where restrictive specifications are alleged) [tertiary filter installation].

88:41 Moundsville-Glendale, WV (III, 11–30–88) (*Komline-Sanderson*) (EPA may review otherwise untimely appeal under sua sponte review authority especially where issues of importance to basic integrity of competitive procurement system are involved) [belt filter press & captivated sludge process].

88:45 Key West, FL (IV, 12–29–88) (*Zimpro, Inc.*) (*Supplemental Determination*) (EPA's sua sponte review authority, though the exception, is of long standing and appropriate where grantee procurement violates Clean Water Act mandate for free and open competition) [fluid bed sludge incineration system].

Standing

87:16 Warminster, PA (III, 6–4–87) (*Chemcom, Inc.*) (protester lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor).

87:27 Toledo, OH (V, 8–11–87) (*Chemcon, Inc.*) (supplier/subcontractor may protest restrictiveness of specifications).

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6–13–88) (*Environmental Control Dynamics, Inc.*) (supplier has standing to protest grantee's action

resulting in cancellation of prime contractor's purchase order and instruction to contractor to substitute another supplier's product) [tertiary filter installation].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (protester lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor) [secondary and nitrification facilities—clarifiers/air diffusers].

88:34 Florham Park, NJ (II, 9-6-88) (*Lakeside Equipment Corp.*) (protester lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor) [WWT plant equipment supply].

88:37 Reading, PA (III, 10-18-88) (*American Surfpac Corp.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable) [PVC media supply].

88:42 Crisfield, MD (III, 12-2-88) (*L.A. Merrell Construction Co.*) (bidder who withdraws bid prior to bid opening has no direct financial interest and therefore lacks standing to protest award) [WWT plant construction].

88:43 Salisbury, MD (III, 12-8-88) (*Beiler Equipment Co., Inc.*) (party who did not submit a bid has no direct financial interest and therefore lacks standing) [liquid sludge application equipment].

Summary Disposition

87:05 Lackawanna County, PA (III, 3-26-87) (*Mele Construction Co., Inc.*) (EPA denies grantee's request to summarily dismiss appeal due to complexity of issues) (summary dismissal of a bid protest appeal is discretionary with EPA).

87:24 Norwich, NY (II, 7-31-87) (*Statiflo Int'l, Inc.*) (late telegraphic appeal notice and no complete protest appeal).

87:38 Bristol, TN & VA (IV, 11-30-87) (*American Bio Tech*) (appeal is moot where grantee gives protester the relief it seeks from EPA).

88:15 East Bay MUD (IX, 5-24-88) (*Dan Caputo Co.*) (appeal dismissed as moot where grantee provides protester with relief sought in its protest) [WWT plant construction].

Time Limitations

87:01 Plymouth, IN (V, 1-20-87) (*Winzeler Excavation Co.*) (a nonresponsive bidder lacks standing to protest grantee's rejection of all bids).

87:02 Grand Forks, ND (VIII, 3-5-87) (*Autocon Industries, Inc.*) (supplier rejected in prequalification process has standing to protest).

87:11 York, PA (III, 4-23-87) (*Philips Brothers Electrical Contractors, Inc.*) (appeal received by EPA 11 days after protester receives grantee determination is untimely) (EPA strictly construes the requirement that protest appeals be filed within 7 calendar days from receipt of adverse grantee protest determination).

87:12 La Porte, TX (VI, 4-28-87) (*Baytown Construction Co., Inc.*) (EPA declines to dismiss appeal on procedural ground where grantee fails to establish initial protest was untimely and protest raises issues fundamental to the competitive procurement process which EPA may review sua sponte).

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (protest filed with general contractor instead of grantee was untimely and dismissed by EPA on appeal).

87:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (protest alleging unduly restrictive specifications must be filed before bid opening).

87:20 St. Ignace, MI (V, 7-14-87) (*Proksch Construction Co.*) (appeal was untimely where bidder filed initial protest more than 2 weeks after contract award).

87:21 Fayetteville, AR (VI, 7-22-87) (*Rainbow Irrigation Systems, Inc.*) (initial protest is untimely where bidder fails to file within 7 days after it learns of bid rejection) (filing period for initial protest of bid rejection runs from bidder's knowledge of rejection, not from receipt of grantee's underlying rationale).

87:24 Norwich, NY (II, 7-31-87) (*Statiflo Int'l, Inc.*) (telegraphic appeal notice received 8 days after protester received grantee determination is late) (protester runs the risk of late delivery).

87:25 Gadsden, AL (IV, 8-3-87) (*Haren Construction Co., Inc.*) (protest appeal challenging specifications as unduly restrictive as written is untimely if initial protest is not filed prior to bid opening).

87:27 Toledo, OH (V, 8-11-87) (*Chemcon, Inc.*) (untimely protest and protest appeal) (communications between grantee and protester cannot enlarge the time for appeal).

87:28 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (appeal filed on 7th day after verbal notice of adverse grantee decision was timely) (counter-protest filed with grantee on 45th day after bid opening was clearly untimely).

87:34 Strongsville, OH (V, 11-6-87) (*Field Gymmy, Inc.*) (protest challenging specifications as unduly restrictive must be filed before bid opening to preserve integrity of competitive bidding process and to avoid undue project delay).

87:35 Chalfont, VA (III, 11-9-87) (*M. Matthews Sheet Metal Co., Inc.*) (late protest challenging grantee's compliance with EPA's MBE policy).

87:36 East Tawas, MI (V, 11-12-87) (*Devere Construction Co., Inc.*) (telegraphic notice of appeal extends the time for appeal 7 days).

87:38 Bristol, TN & VA (IV, 11-30-87) (*American Bio Tech*) (protests which challenge prequalification procedures as written are to be filed before the prequalification submittal deadline).

87:39 Salem, UT (VIII, 12-16-87) (*Richtech, Inc.*) (protest filed after bid opening alleging that experience clause unduly restricted competition was untimely).

88:04 Delmar, MD (III, 2-2-88) (*M. Nelson Barnes and Sons, Inc.*) (procedural time requirements will be strictly construed) (protest appeal dismissed as untimely where the adversely affected party did not file initial protest within seven calendar days of date the basis for protest was known or should have been known) [tertiary WWT system construction].

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (protest based upon experience requirement is untimely and is waived unless raised before bid opening) [WWT plant recessed plate filter press system supply contract].

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (EPA declines to dismiss appeal on procedural ground where grantee fails to establish initial appeal was untimely and protest raises issues fundamental to competitive procurement process and subject to sua sponte review) [self-cleaning screening equipment].

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co.* and *Rockdale Pipe Line, Inc.*) (alleged ambiguity appearing on face of bid documents should be protested prior to bid opening) [improvement of interceptor sewer].

88:14 Bellingham, MA (I, 5-18-88) (*P. Gioioso & Sons, Inc.*) (protest of grantee's refusal to permit withdrawal of bid filed nearly one month after request dismissed as untimely) [construction of interceptor sewer].

88:16 Gresham, OR (X, 5-25-88) (*Humphrey Construction Co.*) (EPA reviews improperly filed protest under sua sponte review authority) [WWT plant construction].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (grantee's equivocal oral statements that protester's equipment is unacceptable, but still being considered, do not constitute recipient's final determination triggering protest time limits) [tertiary filter installation].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (protest challenging alleged unduly restrictive specification permitting only fiber optic cable concerns impropriety in solicitation, clearly apparent before bid opening or deadline for receipt of initial proposals, and is dismissed as untimely because filed after deadline for prequalification submittals) [WWT plant distributed control system supply].

88:21 Washington Suburban Sanitary Commission, MD (III, 6-17-88) (*Chemcon, Inc.*) (protest appeal filed within seven calendar days after adversely affected party receives recipient determination is timely) [sewage treatment system nutrient removal upgrade].

88:27 Atlanta, GA (IV, 7-27-88) (*SIHI Pumps, Inc.*) (protest alleging unduly restrictive specifications must be filed before bid opening) [gas compressor supply contract].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (protest filed more than one month after bid opening alleging restrictive sole source specification dismissed as untimely) [secondary and nitrification facilities—clarifiers/air diffusers].

88:43 Salisbury, MD (III, 12-8-88) (*Beiler Equipment Co., Inc.*) (protest alleging unduly restrictive specifications should be filed before bid opening) [liquid sludge application equipment].

Bid Protest Appeals—Procurement

A/E Services

No entries.

Bid Shopping

87:11 York, PA (III, 4-23-87) (*Philips Brothers Electrical Contractors, Inc.*) (EPA does not prohibit bid shopping).

87:28 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (EPA neither prohibits nor condones bid shopping).

Bidders & Offerors

No entries.

Bids

Acceptance Period

No entries.

Addendum

87:03 Orange, TX (VI, 3-17-87) (*Cajun Contractors & Engineers, Inc.*) (grantee had rational basis for finding bid to be responsive where bidder gave constructive acknowledgement of material addenda).

87:33 Clackamas County, OR (X, 10-23-87) (*Environmental Pollution Control, Inc.*) (issuance of addenda to accommodate one bidder compromised the integrity of the competitive bidding process).

Alternates

87:10 Reading, PA (III, 4-23-87) (*Superior Construction, Inc.*) (failure to bid on alternate items not selected by the grantee did not render the bid nonresponsive).

Ambiguity

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co.* and *Rockdale Pipe Line, Inc.*) (protest based on alleged ambiguity on face of bid documents should be filed before bid opening) [improvement of interceptor sewer].

Base Bids

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (single base bidding is prohibited under EPA regulations) [self-cleaning screening equipment].

88:16 Gresham, OR (X, 5-25-88) (*Humphrey Construction Co.*) (single base bid solicitation method, in which all bidders base prices on same named brand of equipment whether or not other equipment will ultimately be used, prevents substitute manufacturers from effectively competing with specified name brand, and is prohibited as unduly restrictive) [WWT plant construction].

Cancellation of Solicitation (See also Rejection of All Bids)

88:17 Atlanta, GA (IV, 6-2-88) (*Parkson Corp.*) (rejection of all bids and cancellation of solicitation justified based on need to timely comply with consent order and desire to use more readily implementable alternate system with proven long-term performance record) [diffuser system replacement].

Evaluation

87:07 Bonner Springs, KS (VII, 4-7-87) (*IME, Inc.*) (a grantee may not give bidders unequal treatment or rely on undisclosed bid evaluation criteria) (all bids must be evaluated uniformly under the criteria specified in the bidding documents).

87:08 Anchorage, AK (X, 4-9-87) (*Frank Coluccio Construction Co.*) (undisclosed bid evaluation criteria cannot form the basis for finding a bid nonresponsive).

87:29 Tacoma, WA (X, 9-4-87) (*Frank Coluccio Construction Co.*) (grantees must evaluate bids in accordance with the methods and criteria in the bidding documents).

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (bid evaluation method flawed where privilege not specifically reserved to award contract with optional, but not alternate items) [sewer rehabilitation].

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (grantees must evaluate bids in accordance with the methods and criteria in the bidding documents) [interceptor sewer construction].

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co.* & *Rockdale Pipe Line, Inc.*) (all bids must be evaluated uniformly under the criteria specified in the bidding documents, and grantee could not subsequently attempt to negotiate by eliminating sub-items from bid) [improvement of interceptor sewer].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* & *National Hydro Systems, Inc.*) (rational basis for engineering judgment that equipment manufactured by bidder did not satisfy experience requirements and therefore required extended warranty and surety bond) [secondary and nitrification facilities—clarifiers/air diffusers].

Late

87:20 St. Ignace, MI (V, 7-14-87) (*Proksch Construction Co.*) (dismissal of untimely protest appeal challenging a late bid).

88:02 Mount Airy, MD WWTP (III, 1-14-88) (*M.A. Bongiovanni, Inc.*) (timeliness of bid submission is a fundamental federal procurement principle and may be determined by reference to Federal law) (Hand delivered bid submitted approximately 30 minutes after advertised time for bid submission, and after the only bid which was timely received had already been opened, is nonresponsive and cannot be basis of a contract award. Late bid submission cannot be waived as a minor informality) [modifications to WWT facility].

Mistake

87:14 San Francisco, CA (IX, 5-21-87) (*Homer J. Olsen, Inc.*) (discrepancy in amounts on bid schedule and MBE subcontractor list did not constitute a mistake).

87:29 Tacoma, WA (X, 9-4-87) (*Frank Coluccio Construction Co.*) (inadvertent omission of line item price included in total bid price and easily discernible from face of bid did not render the bid nonresponsive).

88:24 Coos Bay, OR (X, 7-11-88) (*Tri-State Construction, Inc.*) (EPA upholds grantee's denial of bid withdrawal where judgmental mistake was not apparent on face of bid, and not claimed for eight days after bid opening) [wastewater conveyance system improvements].

Preparation Costs

No entries.

Qualified

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (bid containing numerous material exceptions which could affect price, quantity, quality or delivery, is unresponsive) [self-cleaning screening equipment].

Rejection of All Bids

87:01 Plymouth, IN (V, 1-20-87) (*Winzeler Excavating Co.*) (EPA grantees may reject all bids only for sound, documented business reasons in the best interest of the EPA program) (possibility of a protest is an insufficient basis for rejecting all bids).

87:04 Dennison, OH (V, 3-25-87) (*B & B Construction Co., Inc.*) (rejection of all bids was appropriate where total bids on multiple contracts for a single project far exceeded the engineer's estimate).

87:08 Anchorage, AK (X, 4-9-87) (*Frank Coluccio Construction Co.*) (possibility of litigation is an inadequate basis for rejecting all bids).

87:32 Clackamas County, OR (X, 10-23-87) (*Environmental Pollution Control, Inc.*) (grantee must reject all bids and rebid where equipment offered fails to meet the project specifications).

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co.* and *Rockdale Pipe Line, Inc.*) (EPA overturns grantee's rejection of all bids absent sound, documented business reasons in the best interest of the EPA program) [improvement of interceptor sewer].

88:15 East Bay MUD (IX, 5-24-88) (*Dan Caputo Co.*) (rejection of all bids appropriate where MBE specifications were ambiguous and inadequate, three low bids were unacceptable, and all otherwise acceptable bids were unreasonably high and award would not be in the public interest) (WWT plant construction].

88:17 Atlanta, GA (IV, 6-2-88) (*Parkson Corp.*) (recipient's discretionary determination to reject all bids and cancel solicitation prior to bid opening was justified based on need to timely comply with consent order and desire to use more readily implementable alternate system with proven long-term performance record) [diffuser system replacement].

Signature

No entries.

Time to Prepare

No entries.

Unbalanced

87:05 Lackawanna County, PA (III, 3-26-87) (*Mele Construction Co., Inc.*) (whether an unbalanced bid is acceptable depends on whether it is reasonably certain to result in the lowest price).

87:26 Greene County, PA (III, 8-11-87) (*Independent Enterprises, Inc.*) (an unbalanced bid is not regarded as a nonresponsive bidding technique and should not be automatically rejected).

88:44 Manchester, NH (I, 12-16-88) (*P. Gioioso & Sons, Inc.*) (unbalanced bid not automatically nonresponsive—acceptability depends on whether bid is reasonably certain to result in lowest cost to the government) [interceptor sewer construction].

Unit Pricing

No entries.

Bonds

87:36 East Tawas, MI (V, 11-12-87) (*Devere Construction Co., Inc.*) (omission of amount in bid bond rendered bid nonresponsive and could not properly be waived after bid opening).

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (bidder did not satisfy experience requirements where grantee required extended warranty and surety bond) [secondary and nitrification facilities—clarifiers/air diffusers].

Buy American

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (Buy American clause in contract requires preference for American materials, not exclusion of foreign companies) [WWT plant recessed plate filter press system supply contract].

88:15 East Bay MUD (IX, 5-24-88) (*Dan Caputo Co.*) (denial of protest involving Brooks-Murkowski Act restrictions) [WWT plant construction].

Competition

Free and Open

87:09 Port Arthur, TX (VI, 4-10-87) (*Baytown Construction Co.*) (local labor ordinance could not be applied to EPA-funded project).

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (allowing grantee to prequalify bidder after bid opening violates concept of prequalification and affords prospective bidder unfair competitive advantage) [interceptor sewer construction].

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co.* & *Rockdale Pipe Line, Inc.*) (in sealed bid procurement, award is to be made principally on basis of price, to apparent lowest, responsive, responsible bidder) (EPA overturns grantee's rejection of all bids based upon filing of bid protest, absent sound, documented business reasons in the best interest of the EPA program) [improvement of interceptor sewer].

88:16 Gresham, OR (X, 5-25-88) (*Humphrey Construction Co.*) (single base bid specifications prevent free and open competition by preventing substitute equipment manufacturers from effectively competing with specified name brand) [WWT plant construction].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (specification requiring fiber optic cable not unduly restrictive of competition where three prospective suppliers met requirement) [WWT plant distributed control system supply].

88:26 Tacoma, WA (X, 7-25-88) (*Fluid Engineering Associates*) (type of specification used must inhibit competition only to minimum degree necessary in context of particular procurement, based on case-by-case evaluation) [digester gas and clean gas compressor systems].

88:39 S. Pittsburgh, TN (IV, 11-10-88) (*Henderson Excavating Co., Inc.*) (state licensing requirement may restrict free and open competition).

88:41 Moundsville-Glendale, WV (III, 11-30-88) (*Komline-Sanderson*) (Equipment available from a single source must be procured through non-competitive negotiation pursuant to sole source requirements, not as a subcontract item under a formally advertised prime contract) [belt filter press & captivated sludge process].

Competitive Negotiation

88:01 Berkeley County, WV (III, 1-20-88) (*P.C. DiMagno Engineers and Surveyors*) (in negotiated procurement, determination of acceptable proposals is primarily a matter of procurement discretion, not to be disturbed absent clear showing that determination violated statute or regulation, or lacked reasonable basis) [engineering services].

Conflict of Interest

No entries.

Engineering Judgment

87:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (EPA deferred to grantee's methods and procedures for testing equipment which involved technical engineering decisions) (EPA gives grantees wide discretion in this area so long as a rational basis exists for those decisions).

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (EPA defers to

rationally based engineering decision for experience requirement) [WWT plant recessed plate filter press system supply contract].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (EPA defers to grantee's professional engineering opinion that specification for fiber optic cable is performance-based and reflects project's minimum needs as having a rational basis) [WWT plant distributed control system supply].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (rational basis for engineering judgment that equipment manufactured by bidder did not satisfy experience requirements and therefore required extended warranty and surety bond) [secondary and nitrification facilities—clarifiers/air diffusers].

Experience Requirements

87:39 Salem City, UT (VIII, 12-16-87) (*Richtech, Inc.*) (untimely protest of experience requirements in IFB).

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (EPA defers to rationally based engineering decision for experience requirement) [WWT plant recessed plate filter press system supply contract].

88:21 Washington Suburban Sanitary Commission, MD (III, 6-17-88) (*Chemcon, Inc.*) (EPA regulations permit experience requirements in specifications if justified, based on rational basis, and do not unduly restrict competition) (EPA remands protest to grantee to consider protester's additional information due to grantee's failure to notify protester of experience requirement) [sewage treatment system nutrient removal upgrade].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (rational basis for engineering judgment that equipment manufactured by bidder did not satisfy experience requirements) [secondary and nitrification facilities—clarifiers/air diffusers].

87:22 Lancaster, OH (V, 7-23-87) (*Floater Vehicle, Inc.*) (failure to demonstrate experience or alternatively post bond made bidder nonresponsible).

Invitation for Bids

Alternate

No entries.

Defective

88:05 Largo, FL (IV, 3-11-88) *Hycon Constr. Systems Corp.*) (bid documents must set forth methods and criteria to be used in evaluating bids, to provide equal opportunity to all prospective bidders and foster free and open competition, by giving notice of what is expected in meeting contract requirements) (failure to include all of grantee's responsibility criteria in bid documents and to make protester aware of grantee's evaluation process was harmless error absent prejudice to protester) [construction of interceptor sewers].

88:06 Buffalo Sewer Authority, NY (II, 3-22-88) (*Manhattan Gunite, Inc.*) (where both IFB and bid bond unambiguously state that penal sum of bid was five percent of bid, other language in IFB and bond referring to penal sum of the bond "in the amount of five percent thereof" does not render ambiguous the amount of penal sum and require a rebid) [sewer construction].

Jurisdiction

87:29 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (EPA reviews State law issues only to determine possible conflict with overriding federal requirements).

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (EPA procurement regulations not applicable to contract work outside scope of grant agreement, hence not funded by EPA) [sewer rehabilitation].

License Requirement

88:39 S. Pittsburgh, TN (VI, 11-10-88) (*Henderson Excavating Co., Inc.*) (licensing requirement normally matter of bidder responsibility).

Listing

87:01 Plymouth, IN (V, 1-20-87) (*Winzeler Excavating Co.*) (where IFB did not expressly make listing of subcontractors a matter of bid responsiveness, bidder's failure to include such a list did not make its bid nonresponsive).

87:28 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (IFB made manufacturer listing a bid responsiveness matter causing rejection of a bid with a blank list).

Minority Business and Women's Business Enterprise (MBE/WBE)

87:05 Lackawanna County, PA (III, 3-26-87) (*Mele Construction Co.*) (bid may not be rejected for failure to submit MBE compliance form where IFB did not make it a responsiveness matter).

87:14 San Francisco, CA (IX, 5-21-87) (*Homer J. Olsen, Inc.*) (discrepancy in amount on bid schedule and MBE subcontractor list did not constitute a bid mistake).

87:18 Ames, IA (VII, 6-29-87) (*Twin Steel, Ltd.*) (compliance with EPA's MBE/WBE policy is a matter of bidder responsibility unless the IFB clearly makes it a matter of bid responsiveness).

87:22 Lancaster, OH (V, 7-23-87) (*Floater Vehicle, Inc.*) (MBE/WBE documentation is ordinarily a matter of bidder responsibility, not bid responsiveness).

87:30 Elyria, OH (V, 9-17-87) (*Underground Utilities, Inc.*) (ambiguity in IFB about whether MBE/WBE documentation was a bid responsiveness matter made it a bidder responsibility matter).

87:35 Chalfont, VA (III, 11-9-87) (*M. Matthews Sheet Metal Co., Inc.*) (untimely protest challenging grantee's compliance with EPA's MBE policy).

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (compliance with MBE clause is a matter of responsibility, rather than responsiveness, unless grantee clearly specifies otherwise, and may be determined at any time up to the award of the contract) [WWT plant recessed plate filter press system supply contract].

88:08 East Bay MUD, CA (3-31-88) (*Dan Caputo Co.*) (EPA strictly construes requirement of unambiguous language making MBE/WBE compliance a matter of responsiveness and examines IFB as well as bid documents in their entirety to determine overall clarity of bidding requirements) (provision that affirmative steps for MBE participation are a matter of responsiveness does not necessarily make other MBE requirements, such as submission of completed MBE form, a matter of responsiveness) [construction of WWT plant].

88:30 South Adams County, CO (VIII, 8-10-88) (*Reid Burton Construction Co., Inc.*) (MBE compliance is a matter of responsibility unless the recipient clearly specifies otherwise, and compliance determination can be made at any time up to the award of the contract) [Superfund Cooperative Agreement—permanent water treatment facility].

88:33 Buckeye, AZ (IX, 8-25-88) (*National Projects, Inc.*) (compliance with MBE clause is a matter of responsibility, rather than responsiveness, unless grant recipient clearly specifies otherwise, and may be determined at any time up to the award of the contract) [WWT plant construction].

88:35 South Tahoe, CA (IX, 9-21-88) (*Ford Construction Co.*) (bid may not be rejected as nonresponsive for failure to include completed MBE documentation, unless bid documents clearly and unambiguously state that such failure will cause bid rejection as

nonresponsive) [retention basin sealing project].

88:38 Orosi, CA (IX, 10–24–88) (*Daniel Ontiveros Construction Co.*) (minority business contractor must comply with MBE/WBE requirements to same extent as any other contractor) [sewer collection system construction].

Prequalification

87:02 Grand Forks, ND (VIII, 3–5–87) (*Autocon Industries, Inc.*) (suppliers must be given equal treatment under a prequalification process) (it is improper to reject a prequalification submittal as nonresponsive based on nonmaterial terms).

87:12 La Porte, TX (VI, 4–28–87) (*Baytown Construction Co., Inc.*) (grantee unnecessarily restricted competition by failing to provide submitter an opportunity to rebut information behind finding on nonresponsibility).

87:32 Clackamas County, OR (X, 10–23–87) (*Environmental Pollution Control, Inc.*) (grantee's lack of adherence to its prequalification procedures compromised integrity of the competitive bidding process by giving an unfair advantage to one bidder).

87:34 Moundsville, WV (III, 11–6–87)(*Phoenix Process Equipment Co.*) (grantee had a rational basis for its decision not to prequalify protester's equipment based on minimum project needs).

88:09 Hudson County, NJ (II, 4–11–88) (*Mayo, Lynch and Associates, Inc.*) (appeal by one of two joint applicants for inclusion on prequalified list dismissed because EPA cannot force other joint applicant, whose individual application for inclusion was accepted, to support other applicant's unilateral appeal of denial of joint application) [engineering services—prequalification].

88:12 Klamath Falls, OR (X, 5–6–88) (*C.M. General Contracting, Inc.*) (when specifications require all bidders to prequalify before bid opening, prequalification process as to all bidders must be completed prior to bid opening) (bidder may not be considered unless prequalified in accordance with criteria in bid documents) [interceptor sewer construction].

88:20 Des Moines, IA (VII, 6–16–88) (*Foxboro Co.*) (grantee had a rational basis for its decision not to prequalify protester's equipment based on minimum project needs) [WWT plant distributed control system supply].

Responsibility

87:10 Reading, PA (III, 4–23–87) (*Superior Construction, Inc.*) (EPA will not reserve a rationally based grantee determination of responsibility absent evidence of fraud or bad faith).

87:12 La Porte, TX (VI, 4–28–87) (*Baytown Construction Co., Inc.*) (grantee must give submitter an opportunity to rebut information behind a nonresponsibility finding under a prequalification process) (past performance on similar projects may be a factor for determining responsibility but requires a full review of the available information).

87:13 Greene County, OH (V, 5–5–87) (*Complete General Construction Co.*) (where IFB did not clearly make submittal of EEO and experience statements a matter of bid responsiveness, grantee improperly treated issue as a bid responsiveness matter rather than one of bidder responsibility).

87:18 Ames, IA (VII, 6–29–87) (*Twin Steel, Ltd.*) (grantee's affirmative finding of responsibility had a rational basis where bidder proposed no MBE participation but took affirmative steps to use MBEs).

87:22 Lancaster, OH (V, 7–23–87) (*Floater Vehicle, Inc.*) (grantee properly rejected bidder as nonresponsible due to failure to demonstrate experience or post performance bond).

87:23 Altoona, IA (VII, 7–29–87) (*Floater Vehicle, Inc.*) (failure to submit a suspension/debarment certificate was a matter of bidder responsibility curable after bid opening).

87:31 Vassar, MI (V, 10–2–87) (*R.C. Hendrick & Son, Inc.*) (submittal of a FmHA compliance statement was a bidder responsibility matter which could be met after bid opening but prior to contract award).

88:03 Ashland, OH (V, 1–29–88) (*Statiflo International, Inc.*) (Responsibility determinations by grantee are discretionary decisions and will be upheld unless without any rational basis or clearly erroneous) (Grantee's request for manufacturing history and guaranteed delivery date was rational and failure to provide requested history and guaranteed delivery date could support determination of nonresponsibility) [trickling filter media].

88:05 Largo, FL (IV, 3–11–88) (*Hycon Constr. Systems Corp.*) (grantee must take into consideration all available information in determining a bidder's responsibility) (concept of responsibility encompasses financial resources, capability to meet schedules, necessary experience, organization and skills, and overall satisfactory performance record on similar contracts) (nonresponsibility determination impacts only on a particular procurement action and should not be used to find protester nonresponsible in another case) [construction of interceptor sewers].

88:07 Milwaukee, WI (V, 3–25–88) (*EIMCO Equipment Co.*) (EPA will not reverse a rationally based grantee determination of nonresponsibility based on failure to meet experience requirement absent evidence of fraud or bad faith) [WWT plant recessed plate filter press system supply contract].

88:08 East Bay MUD, CA (3–31–88) (*Dan Caputo Co.*) (responsibility defined as apparent ability of bidder to successfully perform) (matters of responsibility generally may be cured after bid opening) [construction of WWT plant].

88:18 Westchester County, NY (II, 6–3–88) (*Gates Construction Corp.*) (grantee has wide discretion in determining bidder responsibility) (consideration after bid opening and before contract award of relevant and material information relating to bidder responsibility is proper) [outfall pipeline construction].

88:25 West Conshohocken, PA (III, 7–19–88) (*Kohler Brothers, Inc.*) (where IFB did not clearly make submittal of supporting documents a matter of bid responsiveness, grantee improperly treated issue as one of bid responsiveness rather than bidder responsibility) [wastewater pumping station].

88:30 South Adams County, CO (VIII, 8–10–88) (*Reid Burton Construction Co., Inc.*) (MBE compliance is a matter of responsibility unless the recipient clearly specifies otherwise, and compliance determination can be made at any time up to the award of the contract) [Superfund Cooperative Agreement—Permanent Water Treatment Facility].

88:33 Buckeye, AZ (IX, 8–25–88) (*National Projects, Inc.*) (MBE compliance is a matter of bidder responsibility) [WWT plant construction].

88:35 South Tahoe, CA (IX, 9–21–88) (*Ford Construction Co.*) (MBE/WBE compliance is a matter of responsibility unless grant recipient clearly specifies otherwise) [retention basin sealing project].

88:38 Orosi, CA (IX, 10–24–88) (*Daniel Ontiveros Construction Co.*) (EPA reverses grantee determination that inadvertent omission of MBE/WBE compliance form renders bid nonresponsive) [sewer collection system construction].

88:40 Edmonds, WA (X, 11–23–88) (*Wright Schuchart Harbor Co.*) (EPA reverses grantee determination that inadvertent omission of MBE/WBE compliance form renders bid

nonresponsive) [WWT plant construction].

Responsiveness

87:01 Plymouth, IN (V, 1-20-87) (*Winzeler Excavating Co.*) (where IFB did not expressly make listing of subcontractors a matter of responsiveness, bidder's failure to include such a list in its bid did not render the bid nonresponsive).

87:03 Orange, TX (VI, 3-17-87) (*Cajun Contractors & Engineers, Inc.*) (grantee had rational basis for finding bid to be responsive where bidder gave constructive acknowledgment of material addenda).

87:05 Lackawanna County, PA (III, 3-26-87) (*Mele Construction Co., Inc.*) (bid may not be rejected for failure to submit BME compliance form where IFB did not expressly make it a matter of responsiveness).

87:07 Bonner Springs, KS (VII, 4-7-87) (*IME, Inc.*) (a bid must be rejected as nonresponsive if it fails to meet a material term of the IFB) (grantee properly rejected a bid without a delivery date, but improperly accepted a bid which deviated from a different material term).

87:08 Anchorage, AK (X, 4-9-87) (*Frank Coluccio Construction Co.*) (grantee's nonresponsiveness finding was improperly based on a nonmaterial term of the IFB and undisclosed bid evaluation criteria).

87:11 York, PA (III, 4-23-87) (*Philips Brothers Electrical Contractors, Inc.*) (grantee's rejection of manufacturer/supplier a bidder listed under a "brand name or equal" specification does not render the bid nonresponsive).

87:13 Greene County, OH (V, 5-5-87) (*Complete General Construction Co.*) (bid was improperly rejected for failure to include EEO compliance and experience statements where IFB did not clearly make their submittal matters of responsiveness).

87:18 Ames, IA (VII, 6-29-87) (*Twin Steel, Ltd.*) (grantee properly treated MBE documentation as bidder responsibility matter) (MBE requirements were met even if regarded as a matter of bid responsiveness where bidder proposes no MBE participation and thus submits no MBE capability statements).

87:21 Fayetteville, AR (VI, 7-22-87) (*Rainbow Irrigation Systems, Inc.*) (grantee may not award a formally advertised contract in the absence of a responsive bid).

87:22 Lancaster, OH (V, 7-23-87) (*Floater Vehicle, Inc.*) (MBE/WBE documentation, EEO certification and DOT conformance certification are ordinarily matters of bidder responsibility, not bid responsiveness).

87:23 Altoona, IA (VII, 7-29-87) (*Floater Vehicle, Inc.*) (bid may not be rejected for failure to submit suspension/debarment certificate where IFB did not expressly make it a responsiveness matter).

87:28 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (grantee properly rejected bid due to omission of equipment list where IFB made it a responsiveness matter which is not waiveable).

87:29 Tacoma, WA (X, 9-4-87) (*Frank Coluccio Construction Co.*) (inadvertent omission of line item price included in the total bid price and easily discernible from face of the bid did not render the bid nonresponsive).

87:30 Elyria, OH (V, 9-17-87) (*Underground Utilities, Inc.*) (ambiguity in IFB about whether MBE/WBE documentation was a bid responsiveness matter).

87:31 Vassar, MI (V, 10-2-87) (*R.C. Hendrick & Son, Inc.*) (IFB did not make submittal of FmHA compliance statement a matter of bid responsiveness).

87:36 East Tawas, MI (V, 11-12-87 (*Devere Construction Co., Inc.*) (defective bid bond rendered bid nonresponsive) (responsiveness is determined at bid opening and grantee could not waive the defect after).

88:02 Mount Airy, MD (III, 1-14-88) (*M.A. Bongiovanni, Inc.*) (hand delivered bid submitted approximately 30 minutes after advertised time for bid submission, and after the only bid which was timely received had already been opened, is nonresponsive and cannot be basis of a contract award) [modifications to WWT plant].

88:03 Ashland, OH (V, 1-29-88) (*Statiflo International, Inc.*) (grantee's assertion, for the first time after bid protest was filed, that bid was nonresponsive because bid package was incomplete, is rejected, where grantee treated bid as responsive at bid opening) (grantee must use unequivocal language in bid documents informing all parties that failure to submit reference documents will render bid nonresponsive) (incomplete bid package which is deemed nonresponsive should be rejected at time of bid opening) [trickling filter media].

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (responsiveness does not depend upon bidder's intention, but rather, upon whether bid represents a definite and unqualified offer to meet the material terms of the IFB) (statements in bid transmittal letter are considered part of bid in determining responsiveness) (material qualifying statements in bid transmittal letter which can reasonably be read to suggest offer is subject to unspecified oral agreements renders bid nonresponsive) (bidder's insertion of language in bid documents limiting liability for damages is material and renders bid nonresponsive) [WWT plant recessed plate filter press system supply contract].

88:08 East Bay MUD, CA (3-31-88) (*Dan Caputo Co.*) (responsiveness requires bid to be in exact accord with material conditions of IFB) (material terms include price, quantity, quality or deliver, or any other term clearly identified by IFB as a requirement that must be complied with at risk of bid rejection) (material requirements in IFB cannot be waived or corrected after bid opening) (grantee's bid documents should be examined in entirety to determine if they contain clear and unambiguous language making compliance with particular IFB requirement a matter of responsiveness) [construction of WWT plant].

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (bid containing numerous material exceptions which could affect price, quantity, quality or delivery, is nonresponsive) [self-cleaning screening equipment].

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (noncompliance with prequalification procedures rendered bid nonresponsive) [interceptor sewer construction].

88:28 Dawson Springs, KY (IV, 8-4-88) (*3-D Enterprises, Inc.*) (bid not in accord with IFB is nonresponsive).

88:33 Buckeye, AZ (IX, 8-25-88) (*National Projects, Inc.*) (MBE documentation was a bidder responsibility matter) [WWT plant construction].

88:35 South Tahoe, CA (IX, 9-21-88) (*Ford Construction Co.*) (responsive bid must accord exactly with material conditions of IFB) (grantee properly treated MBE/WBE documentation as bidder responsibility matter) [retention basin sealing project].

88:36 Washington County, MD (III, 9-26-88) (*Peabody Barnes, Inc.*) (bid offering equipment meeting expressly applicable performance, name brand and design specifications is not nonresponsive because it fails to meet detailed design specifications applicable to a parallel, but different, technology) [grinder pump stations].

88:38 Orosi, CA (IX, 10-24-88) (*Daniel Ontiveros Construction Co.*) (bid may not be rejected as nonresponsive for noncompliance with MBE requirements unless bid documents

clearly and unambiguously state that such failure will cause bid rejection as nonresponsive) (responsive bid must accord exactly with material conditions of IFB and defects generally cannot be cured after bid opening) [sewer collection system construction].

88:40 Edmonds, WA (X, 11-23-88) (*Wright Schuchart Harbor Co.*) (EPA reverses grantee determination that inadvertent omission of MBE/WBE compliance form renders bid nonresponsive, where bid documents do not clearly and unambiguously state that such failure will cause bid rejection as nonresponsive) [WWT plant construction].

88:44 Manchester, NH (I, 12-16-88) (*P. Gioioso & Sons, Inc.*) (unbalanced bid not automatically nonresponsive—acceptability depends on whether bid is reasonably certain to result in lowest cost to government) [interceptor sewer construction].

Specifications

Brand Name or Equal

87:11 York, PA (III, 4-23-87) (*Philips Brothers Electrical Contractors, Inc.*) (grantee's rejection of bidder's proposed "or equal" item does not render the bid nonresponsive).

87:19 Key West, FL (IV, 7-13-87) (*Zimpro, Inc.*) (grantee may not approve proposed "or equal" item which fails to meet the salient performance characteristics listed in the bidding documents) *Note:* See EPA's Supplemental Determination, 88:45 (12-29-88).

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (permitted only where impractical or uneconomical to make clear and accurate description of technical requirements of item, in order to define performance or other salient characteristics) [self-cleaning screening equipment].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (where brand name specification used, grantee must list salient characteristics relating to minimum need which any offeror is required to meet) [tertiary filter installation].

88:29 Chickamauga, GA (IV, 8-10-88) (*Aquasystems International, N.V.*) (EPA reverses grantee's determination that protester's equipment not qualified as "equal" to brand name) [WWT plant upgrade].

88:45 Key West, FL (IV, 12-29-88) (*Zimpro, Inc.*) (*Supplemental Determination*) (EPA disfavors brand name or equal specifications) (equipment offered as "equal" to brand name cannot be accepted unless it meets all salient characteristics listed in bid documents) (if nonconforming equipment is adequate for project, proper course is to amend specifications) (if specifications found after bid opening to overstate minimum project needs, recipient should consider deleting equipment from contract award and competitively procuring alternate equipment under revised specifications) [fluid bed sludge incineration system].

Design (See also Unduly Restrictive Specifications)

No entries.

Local Preference

87:09 Port Arthur, TX (VI, 4-10-87) (*Baytown Construction Co.*) (local preference labor ordinance cannot be applied to EPA-funded project due to anti-competitive effects).

Minimum Need (See also Unduly Restrictive Specifications)

87:07 Bonner Springs, KS (VII, 4-7-87) (*IME, Inc.*) (a bid which deviates from a material term of the IFB is nonresponsive even though it may satisfy the grantee's minimum project needs) (specifications must incorporate a clear and accurate description of the technical requirements for the material to be procured).

88:29 Chickamauga, GA (IV, 8-10-88) (*Aquasystems International, N.V.*) (EPA reverses grantee's denial of protest where only one of many required technical specifications relate to minimum need) [WWT plant upgrade].

Oral Statements

No entries.

Performance

87:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (grantee had a rational basis for rejecting equipment after post-bid performance testing to determine lowest cost).

87:25 Gadsden, AL (IV, 8-3-87) (*Haren Construction Co., Inc.*) (rationally-based performance reason for rejecting equipment).

87:37 Bonner Springs, KS (VII, 11-16-87) (*Floater Vehicle, Inc.*) (grantee demonstrated performance-based reasons for specifications bidder failed to meet which were not unduly restrictive).

87:34 Moundsville, WV (III, 11-6-87) (*Phoenix Process Equipment Co.*) (rational basis for grantee's decision not to prequalify equipment which failed to meet performance-based specifications).

88:29 Chickamauga, GA (IV, 8-10-88) (*Aquasystems International, N.V.*) (EPA reversed grantee's denial of protest where only one of many required specifications relate to minimum performance needs) [WWT plant upgrade].

Salient Requirements

87:32 Clackamas County, OR (X, 10-23-87) (*Environmental Pollution Control, Inc.*) (a grantee may not accept equipment which fails to meet the salient performance characteristics listed in the bidding documents).

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (brand name specification also should contain salient requirements relating to minimum needs of project which any offeror must meet) [tertiary filter installation].

88:29 Chickamauga, GA (IV, 8-10-88) (*Aquasystems International, N.V.*) (requirement of listing salient characteristics of brand name in bid documents) [floating aerators and mixing equipment].

88:45 Key West, FL (IV, 12-29-88) (*Zimpro, Inc.*) (*Supplemental Determination*) (equipment offered as "equal" to brand name cannot be accepted unless it meets all salient characteristics listed in bid documents) salient characteristics are material, must be strictly met, and cannot be waived) [fluid bed sludge incineration system].

Sole Source

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (sole source procurement authorized only if item available from only one source or if, after solicitation from several sources, competition is inadequate) (requires written justification for specifications not providing maximum free and open competition) (EPA closely scrutinizes sole source justifications) (specifications based on named product requiring manufacturer who does not regularly produce specified product to compete with one manufacturer who does, by duplicating its design, is unduly restrictive and constitutes unauthorized sole source procurement) [self-cleaning screening equipment].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (detailed design specifications met by only one brand constitute disguised sole source procurement) [tertiary filter installation].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (specifications cannot be deemed restrictive sole source when protester itself asserts its product could meet the specification) [secondary and

nitrification facilities—clarifiers/air diffusers].

88:41 Moundsville-Glendale, WV (III, 11-30-88) (*Komline-Sanderson*) (de facto sole source procurement must be subject of competitive negotiation and cannot be procured as subcontract item under formally advertised prime contract) [belt filter press & captivated sludge process].

Unduly Restrictive

88:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (where bidder failed to show its equipment was excluded from the competition it could not challenge the specifications as unduly restrictive).

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (protester may not avoid waiver of protest based on experience requirement which is allegedly unduly restrictive as applied, rather than on its face, when protester had no reasonable basis to believe it could qualify under the experience requirement [WWT plant recessed plate filter press system supply contract].

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (specifications calling for equipment which only one company can meet are unduly restrictive) [self-cleaning screening equipment].

88:16 Gresham, OR (X, 5-25-88) (*Humphrey Construction Co.*) (single base bid solicitation method, in which all bidders base prices on same named brand of equipment whether or not other equipment will ultimately be used, prevents substitute manufacturers from effectively completing, and is prohibited as unduly restrictive) [WWT plant construction].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (grantee's procurement determination based on restrictive specification overturned as lacking rational basis) [tertiary filter installation].

88:20 Des Moines, IA (VII, 6-18-88) (*Foxboro Co.*) (performance-based specification for fiber optic cable which reflects project's minimum needs is not unduly restrictive [WWT] plant distributed control system supply].

88:26 Tacoma, WA (X, 7-25-88) (*Fluid Engineering Associates*) (recipient demonstrated that alleged unduly restrictive specification is performance related and rational basis supports determination that the specification reflects its minimum performance needs) [digester gas and clean gas compressor systems].

88:29 Chickamauga, GA (IV, 8-10-88) (*Aquasystems International, N.V.*) (EPA reverses grantee's denial of protest where only one of many required specifications relates to minimum performance needs) [WWT plant upgrade].

State and Local Law

87:04 Dennision, OH (V, 3-25-87) (*B & B Construction Co.*) (EPA will not consider issues of State law unless there is an overriding federal requirement).

87:28 Jefferson Parish, LA (VII, 9-1-87) (*PALA-Interstate, Inc.*) (EPA normally will not consider State or local law issues absent an overriding federal concern and gives considerable deference to grantee legal opinions on such matters).

88:02 Mount Airy, MD (III, 1-14-88) (*M.A. Bongiovanni, Inc.*) (State and local law generally apply unless grantee's determination involves a matter of primarily federal concern) (Timeliness of bid submission is a fundamental federal procurement principle and may be determined by reference to Federal law) [modifications to WWT facility].

88:09 Hudson County, NJ (II, 4-11-88) (*Mayo, Lynch and Associates, Inc.*) (protest appeal involving alleged violation of State law dismissed where issue currently before State court of competent jurisdiction, absent overriding, Federal requirement) [engineering services—prequalification].

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (municipal and state procurement requirements, not EPA procurement regulations, apply to contract work outside scope of grant agreement, hence not funded by EPA) [sewer rehabilitation].

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (state statutory authority cannot relieve prospective bidder of duty to comply with prequalification criteria contained in bid documents in federally funded project) [interceptor sewer construction].

88:40 Edmonds, WA (X, 11-23-88) (*Wright Schuchart Harbor Co.*) (EPA reverses grantee's determination that state law controls question of whether compliance with MBE/WBE/SBE requirements is a matter of responsiveness) [WWT plant construction].

Subcontract Award

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (subcontractor substitution is a matter of contract administration and not protestable).

87:16 Warminster, PA (III, 6-4-87) (*Chemcon, Inc.*) (an independent decision by a prime contractor to substitute a subcontractor is a contract administration matter which is not protestable).

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (protestor lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor) [secondary and nitrification facilities—clarifiers/air diffusers].

88:34 Florham Park, NJ (II, 9-6-88) (*Lakeside Equipment Corp.*) (protester lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor) [WWT plant equipment supply].

88:37 Reading, PA (III, 10-18-88) (*American Surfpac Corp.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable) [PVC media supply].

Subcontractor Listing (See Listing Requirements)

Waiver

88:02 Mount Airy, MD (III, 1-14-88) (*M.A. Bongiovanni, Inc.*) (hand delivered bid submitted approximately 30 minutes after advertised time for bid submission, and after the only bid which was timely received had already been opened, is nonresponsive and cannot be basis of a contract award. The late bid submission cannot be waived as a minor informality) [modifications to WWT facility].

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (protest based upon allegedly unduly restrictive specifications, e.g., experience requirement, is untimely and is waived unless raised before bid opening) [WWT plant recessed plate filter press system supply contract].

[FR Doc. 90-27691 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3864-2]

Acid Rain Advisory Committee; Open Meeting

SUMMARY: On August 7, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) (55 FR 32134). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Acid Deposition Control title of the Clean Air Act Amendments of 1990. In the August 7, 1990 notice, EPA also sought nomination for candidates for membership on the ARAC.

OPEN MEETING DATES: Notice is hereby given that the Acid Rain Advisory Committee will hold an open meeting on December 13 from 9 a.m. to 5 p.m., and on December 14 from 9 a.m. to 3 p.m. at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington DC. Due to the size of the meeting room, seating is limited to approximately 175 individuals, and will be made available on a first come, first served basis.

The meeting will include a discussion of the goals and program principles which EPA is considering using in the development of the acid rain program, the role of the advisory committee and its relationship to the EPA rulemaking process, a discussion of the content of the acid rain legislation, a discussion of the major issue areas, and a discussion of the Agency's emerging Acid Rain Program Vision Statement. At this time, EPA also anticipates that the plenary meeting will break up into subcommittees (pursuant to 41 CFR, 101-6.1004(k)) "to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee."

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the ARAC meeting minutes will be available for public inspection in EPA Air Docket No. A-90-39 in room 1500 of EPA Headquarters, 401 M Street SW., Washington DC. Hours of inspection are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m. Monday through Friday.

COMMITTEE MEMBERSHIP: At this time EPA is in the process of contacting selected Advisory Committee nominees. The Committee will consist of approximately 40 individuals.

FOR FURTHER INFORMATION: Concerning the ARAC or its activities, please contact Mr. Paul Horwitz, Designated Federal Official to the Committee at (202) 475-9400, Fax (202) 252-0892, or by mail at US EPA, Acid Rain Division (ANR 445) Office of Air and Radiation, Washington DC 20460.

Dated: November 20, 1990.

William G. Rosenberg,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 90-27689 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3863-2]

Workshop on Toxicity Equivalency Factors for PCB Congeners

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the Environmental Protection Agency (EPA) Risk Assessment Forum to examine the existing toxicity and exposure data base on the polychlorinated biphenyls (PCBs) to ascertain the feasibility of developing Toxicity Equivalency Factors for various PCB congeners. The meeting will be held at the Holiday Inn, 550 C Street, SW., Washington, DC.

DATES: The workshop will begin on Tuesday, December 11, 1990 at 9 a.m. and end on Wednesday, December 12 at 12 p.m. Members of the public may attend as observers.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group's hotline number, (617) 648-7811 or call Mr. Chris Murray, Eastern Research Group, Inc., 6 Whittemore Street, Arlington, Massachusetts, 02174, Telephone (617) 641-5318 by Wednesday, December 5, 1990. Space is limited.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Thomas, U.S. Environmental Protection Agency, (RD-689), 401 M Street, SW., Washington, DC, 20460, Telephone (202) 475-6743 (FTS: 475-6743).

SUPPLEMENTARY INFORMATION: Given the widespread acceptance and acknowledged utility of the Toxicity Equivalency Factor (TEF) method for assessing the risks associated with exposures to complex mixtures of chlorinated dibenzo-p-dioxins and dibenzofurans, some have urged the development of comparable TEF schemes for other structurally related chemicals, such as polychlorinated biphenyls (PCBs).

EPA's Risk Assessment Forum has assembled approximately 20 experts in the fields of PCB toxicity and mechanisms of action, environmental exposure, and analytical methods for measuring PCBs in human and environmental samples. These experts will discuss topics related to the following issues:

- Is the existing database on toxicity and mechanisms of action sufficient to support a TEF-like scheme for the PCBs?
- What is known about environmental exposures to specific PCB congeners?
- What analytical methods are available to quantify individual congeners in environmental matrices?
- What are the important data gaps and what research is needed to fill them?

Information from the workshop will contribute to Risk Assessment Forum recommendations on whether to pursue development of a TEF-like scheme for the PCBs.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 90-27690 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3864-8]

Open Meeting of the International Environmental Technology Transfer Advisory Board

Under Public Law 92-463, notice is hereby give that a meeting of the International Environmental Technology Transfer Advisory Board (IETTAB) will be held on December 6, 1990 in the Main Lounge of the National Press Club located at 14th and F Streets, NW., Washington, DC. The meeting is open to the public and will run from 9 a.m. until approximately 12 p.m. It is expected that this will be the last full IETTAB meeting. The purpose of this meeting is to approve a final report.

Public comments can be made through written statements which will be distributed to Board Members. Written statements must be sent in care of the Executive Secretary listed below no later than November 30, 1990, in order to distribute to Board members before the meeting time. Seating for interested members of the public is limited to seventy seats. Seats will be filled on a first-come basis. To confirm your interest in attending, contact the Executive Secretary by November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mark Kasman, Executive, Secretary, Office of International Activities (A-106), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-7424.

Dated: November 14, 1990.

Terry Davies,

Assistant Administrator for Policy Planning and Evaluation.

[FR Doc. 90-27809 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-1-NH-2]

The New Hampshire Radiological Emergency Response Plan Site-Specific for the Seabrook Nuclear Power Station

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of New Hampshire formally submitted the New Hampshire Radiological Emergency Response Plan for Seabrook Station for radiological emergencies site-specific to the Seabrook Nuclear Power Station. The plan was submitted to the Regional Director of FEMA Region I for FEMA review on December 9, 1985, and a revision was again submitted on August 30, 1988, with updates and a reiteration of the Governor's prior formal request for FEMA's review, evaluation and approval. The State plan specifies the New Hampshire radiological emergency response in support of offsite planning and preparedness for the Seabrook Nuclear Power Station. New Hampshire is partially within the established plume and ingestion pathway emergency planning zones of the Seabrook Station.

On December 4, 1989, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 if the FEMA rule. The December 4, 1989, evaluation was based on a review of the New Hampshire plans; an evaluation of the joint exercise conducted on June 28–29, 1988, in accordance with § 350.9 of the FEMA rule; and, a report of the public meeting held on July 2, 1988, to discuss the site-specific aspects of the State of New Hampshire's Radiological Emergency Response Plan, the State of Maine's plan, and New Hampshire Yankee's Seabrook Plan for Massachusetts Communities in accordance with § 350.10 of the FEMA rule.

On February 9, 1990, the Regional Director provided the Associate Director of State and Local Programs and Support with an updated interim evaluation and recommendations regarding the status of offsite radiological emergency planning and preparedness for the New Hampshire portion of the Seabrook emergency planning zone. This evaluation continued to support FEMA's prior finding that New Hampshire's Radiological Emergency Response Plan and preparedness were adequate to protect the health and safety of the public in the New Hampshire portion of the plume and ingestion pathway emergency planning zones of Seabrook by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and are capable of being implemented. An updated interim finding was transmitted to the Nuclear Regulator Commission on February 9, 1990.

On September 7, 1990, FEMA provided the Nuclear Regulatory Commission with a finding that the alert and notification system for Seabrook was adequate to promptly alert and notify the public in the event of a radiological emergency at the site. This finding was based on an engineering design review; the above-mentioned February 9, 1990, interim finding, and the June 15, 1990, interim finding of adequacy for the Seabrook Plan for Massachusetts Communities; and the results of the May 16, 1990, public telephone survey.

Based on the abovementioned evaluations and recommendations for approval by the Regional Director and the review by the FEMA Headquarters staff, I reiterate my findings and determination of February 9, 1990, that the New Hampshire Radiological Emergency Response Plan and preparedness for the Seabrook Nuclear Power Station are adequate to protect the health and safety of the public in the New Hampshire portion of the plume and ingestion pathway emergency planning zones of Seabrook Station.

The offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. Therefore, I approve the New Hampshire Radiological Emergency Response Plan for Seabrook Station in accordance with 44 CFR 350.12 of the FEMA rule.

FEMA will continue to review the status of offsite plans and preparedness associated with the Seabrook Nuclear Power Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-1-NH-2 maintained by the Regional Director, FEMA Region I, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Dated: November 9, 1990.

For the Federal Emergency Management Agency.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 90-27659 Filed 11-23-90; 8:45 am]

BILLING CODE 6718-20-M

FEDERAL RESERVE SYSTEM

Banco De Venezuela, S.A.I.C.A., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. Banco De. Venezuela, S.A.I.C.A., Caracas, Venezuela; The International Group Trust, St. Helier, Jersey, Channel Islands; The Protector of the International Group Trust, St. Helier, Jersey, Channel Islands; Bavenez Finance (Jersey) Limited, St. Helier, Jersey, Channel Islands; Bavenez Finance, N.V., Curacao, Netherlands Antilles; Banco De Venezuela N.V., Curacao, Netherlands Antilles; and Bavenez Finance (USA), Inc., New York, New York; to acquire 100 percent of the voting shares of Centennial National Bank, New York, New York, a *de novo* bank.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Adairsville Bancshares, Inc., Adairsville, Georgia; to acquire 100 percent of the voting shares of The Peoples Bank, Crawfordville, Georgia.

Board of Governors of the Federal Reserve System, November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27607 Filed 11-23-90; 8:45 am]

BILLING CODE 6210-01-M

Banks of Iowa, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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, conflict 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. Banks of Iowa, Inc., Des Moines, Iowa; to engage *de novo* through its subsidiary, Banks of Iowa Credit Corporation, Des Moines, Iowa, in lending activities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Bancshares, Inc., Lincoln, Nebraska; to engage *de novo* through its subsidiary, Vistar Financial Services, Inc., Lincoln, Nebraska, in making consumer finance loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27606 Filed 11-23-90; 8:45 am]

BILLING CODE 6210-01-M

Carolina First Corporation, et al; Applications To Engage de Novo in Permissible Nonbanking Activities, Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90-26398) published at page 46995 of the issue for Thursday, November 8, 1990.

The end of comment period for the following notices is amended to end on November 30, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostain, Jr., Senior Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to engage *de novo* through its subsidiary, Carolina Interim Savings Bank, F.S.B., Greenville, South Carolina, in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Michigan Bank Corporation, Holland, Michigan; to engage *de novo* through FMB-Trust and Financial Services, National Association, Holland, Michigan, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27611 Filed 11-23-90; 8:45 am]

BILLING CODE 6210-01-M

James Cleo Thompson, Jr.; Change in Bank Control Notice; 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 December 7, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. James Cleo Thompson, Jr., Dallas, Texas; to acquire an additional 10.9 percent of the voting shares of Crockett County National Bancshares, Inc., Ozona, Texas, for a total of 32.27 percent and thereby indirectly acquire Crockett County National Bank, Ozona, Texas.

Board of Governors of the Federal Reserve System, November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27605 Filed 11-23-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Eligibility To Use GSA Sources of Supply and Services

AGENCY: Federal Supply Service, GSA.

ACTION: Notice.

SUMMARY: This notice provides information on the eligibility to use GSA sources of supply and services. This action is necessary to provide guidance concerning eligibility requirements to the U.S. Government and other

organizations which need to know what activities may be eligible to use GSA sources of supply and services.

FOR FURTHER INFORMATION CONTACT: Raywood Holmes, Marketing and Regulations Management Branch (703-557-7525).

SUPPLEMENTARY INFORMATION: This notice contains text that was extracted from GSA Order ADM 4800.2C, dated October 9, 1990, Subject: Eligibility to use GSA sources of supply and services. The text reads as follows:

Eligibility To Use GSA Sources of Supply and Services

1. *Purpose.* This order provides definitions and listings of those agencies and other activities authorized to use GSA sources of supply and services. It also provides definitive guidelines concerning eligibility requirements.

2. *Background.* The Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator to procure and supply personal property and nonpersonal services for the use of executive agencies, mixed-ownership Government corporations, as identified in the Government Corporation Control Act, and the District of Columbia. Other organizations may be eligible by reason of enabling statutory authority.

3. *Definition.* GSA sources of supply and services are defined as those support programs administered by GSA and prescribed in the Federal Property Management Regulations (FPMR) Parts 101-26—Procurement Sources and Programs, 101-39—Interagency Fleet Management Systems, 101-40—Transportation and Traffic Management, 101-43 thru 101-46, 101-48 and 101-49, Utilization and Disposal Programs; in the Federal Information Resources Management Regulation (FIRMR), 41 CFR ch. 201-32 for ADP and 41 CFR ch. 201-40 for telecommunications; and in the Federal Travel Regulation, 41 CFR 301-15, Travel Management Programs.

4. *Authority to use GSA sources of supply and services.* The authority to use GSA sources of supply and services is established by statute (*see* par. 7), regulation, and the specific terms of certain contracts.

5. *Eligible activities.* Organizations eligible to use GSA sources of supply and services are covered by the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereafter referred to as the Property Act. Definitions of the organizations follow. It is noted, however, that although an organization may be eligible to use these sources, it does not necessarily mean that resources or assets are available, especially in the case of the Interagency Fleet Management System, or that it would always be practical for GSA to make such sources available, or further still, that all contracts allow participation by non-Federal organizations.

a. *Executive agencies.* Subsections 201(a) and 211(b) of the Property Act provide for executive agencies' use of GSA sources of supply and services. Executive agencies, as defined in subsection 3(a) of the Property Act, include:

(1) *Executive departments.* These are the cabinet departments defined in 5 U.S.C. 101 and are listed in app. A.

(2) *Wholly owned Government corporations.* These are defined in 31 U.S.C. 9101 and are listed in app. A.

(3) *Independent establishments in the executive branch of the Government.* These are generally defined by 5 U.S.C. 104. However, it is often necessary to consult specific statutes, legislative histories, and other references to determine whether a particular establishment is within the executive branch. To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. A.

b. *Other Federal agencies, mixed-ownership Government corporations, and the District of Columbia.* Sections 201(b) and 211(b) of the Property Act authorize the Administrator of General Services to provide GSA sources of supply and services to these organizations upon request.

(1) *Other Federal agencies.* These are Federal agencies defined in subsection 3(b) of the Property Act that are not in the executive branch; i.e., any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction). To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. B.

(2) *Mixed-ownership Government corporations.* These are included in subsections 201(b) and 211(b) of the Property Act and defined in 31 U.S.C. 9101. They are listed in app. B.

(3) *District of Columbia.* The Government of the District of Columbia is eligible to use GSA sources of supply and services. The Government of the District of Columbia, and those parts thereof that have been determined by GSA to be eligible to use its sources of supply and services, are listed in app. B.

c. *The Senate, House of Representatives, and activities under the direction of the Architect of the Capitol.* These organizations are eligible to use GSA sources of supply and services, under subsection 602(e) of the Property Act, upon request. To the extent that GSA has determined that various activities qualify under this authority, they are listed in app. B.

d. *Other organizations authorized under the authority of the Property Act.* GSA has further determined, under the Property Act, that certain other types of organizations are eligible to use its sources of supply and services.

(1) *Cost-reimbursement contractors (and subcontractors) as property authorized.* Part 51 of the Federal Acquisition Regulation (FAR) provides that agencies may authorize certain contractors (generally cost-reimbursement contractors) to use GSA schedules, GSA stock, and GSA contract travel and transportation services. In each case, the written authorization must conform to the requirements of FAR part 51, Use of Government Sources by Contractors. Subpart 51.2 prescribes policies and procedures governing Federal agencies in authorizing cost-reimbursement contractors to obtain interagency fleet management system vehicles and related services. The eligibility of agency authorized cost-reimbursement contractors to obtain Government contract air/rail fares is limited to the city-pair routes of contract carriers which have agreed to furnish the GSA contract fare to such contractors. Regulations governing the use of contract air/rail passenger service by cost-reimbursement contractors are found at 41 CFR part 301-15, subpart B, specifically, § 301-15.24(h). GSA contracts for other travel related services; e.g., travel management services or contractor-issued charge cards, generally do not include cost-reimbursement contractors.

(2) *Fixed-price contractors (and subcontractors) purchasing security equipment.* Under subsection 201 of the Property Act, the Administrator has determined that fixed-price contractors and lower tier subcontractors who are required to maintain custody of security classified records and information may purchase security equipment from GSA. Procedures regarding these organizations are set forth in FPMR 101-26.507 and 101-26.407.

(3) *Non-Federal firefighting organizations cooperating with the Forest Service.* Under section 201 of the Property Act, it has been determined that certain non-Federal firefighting

organizations may purchase wildfire suppression equipment and supplies from the Federal Supply Service (FSS) (Article V, Agreement No. FSS 83-1, January 24, 1984).

(4) *Department of the Interior, Bureau of Indian Affairs.* Under a Memorandum of Understanding between the Department of the Interior and the General Services Administration (FSS-83-3) and Pub. L. 93-638, tribal Government grantees of the Bureau of Indian Affairs may use GSA sources of supply and services.

e. *Other statutes.* Other statutes authorize specific organizations to use GSA sources of supply and services. These organizations are listed in app. B, with appropriate annotations. The major categories of such organizations include:

(1) *Certain charitable institutions.* Pursuant to Pub. L. 95-355, the following activities are eligible to use GSA supply sources and are also listed in app. B:

(a) Howard University;
(b) Gallaudet University;
(c) National Technical Institute for the Deaf; and
(d) American Printing House for the Blind.

(2) *Certain territories.* Certain territories of the United States, as indicated in app. B, are eligible to use GSA sources of supply and services. (Note: This authority historically has depended on the authorizing provisions being reenacted in the annual appropriations act for the Department of the Interior.)

(3) *Foreign entities.* Section 607 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2357, provides that the President may authorize certain countries and organizations to use GSA sources of supply and services as part of the foreign policy of the United States. To the extent that the Department of State has made determinations on behalf of the President, they are included in app. C. Purchases made by international organizations through GSA sources of supply and services must be for civilian use only.

(4) *Nonappropriated fund activities.* FPMR 101-26.000 provides that military commissaries and nonappropriated fund activities may use GSA sources of supply and services for their own use, not for resale, unless otherwise authorized by the individual Federal agency and concurred in by GSA.

6. *Ineligible activities.* Except for the acquisiton of excess personal property through sponsoring agencies, Federal grantees are ineligible to use GSA sources of supply and services. In addition, a cost-reimbursement contractor cannot transfer procurement authorization to a third party leasing company to use GSA sources of supply and services, unless the leasing company has an independent authorization to use GSA contracts.

7. *Travel.* Organizations seeking to use GSA sources of supply and services for travel/transportation must obtain a separate determination. This is necessary to determine whether or not the requesting entity is eligible under the language of the specific contract for the servicing being requested; *i.e.,* travel management services, travel and transportation payment and expense control system (including contractor-issued charge cards for official travel), and/or air/rail passenger transportation.

8. *Excess, surplus, and forfeited property.* The eligibility of activities and organizations to obtain supplies and services from GSA's personal property utilization and disposal programs is governed by FPMR parts 101-43 thru 101-46 101-48, and 101-49, and not by this order.

9. *Determination of eligibility.* Activities or organizations other than those covered in the appendixes to this order may be eligible to use GSA sources of supply and services. Requests to use these services received from activities or organizations whose eligibility is in question must be forwarded to the Office of Customer Service and Marketing, Attention: Regulations Management Branch (FFPR), for determination.

Appendix A. Executive Agencies

The following have been determined to be "executive agencies," or parts thereof, for the purpose of using GSA sources of supply and services. This list is not all-inclusive; other activities also may be eligible to use GSA on a case-by-case basis (see par. 11). Listed here are major Federal activities and their subordinate entities about which inquiries have been received.

ACTION
Agency for International Development
Agriculture, Department of
Air Force, Department of
Alaska Natural Gas Transportation System
American Battle Monuments Commission
Army Corps of Engineers
Army, Department of the
Board for International Broadcasting
Bonneville Power Administration (administrative and housekeeping items)
Bureau of Land Management
Central Intelligence Agency
Commerce, Department of
Commission on Civil Rights
Commission on Fine Arts
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Products Safety Commission
Defense, Department of
Defense agencies and Joint Service Schools
Education, Department of
Energy, Department of
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of U.S.
Farm Credit Administration
Federal Communications Commission
Federal Election Commission
Federal Trade Commission
Forest Service, U.S.
General Services Administration
Government National Mortgage Association
Health and Human Services, Department of
Housing and Urban Development, Department of
Inter-American Foundation
Interior, Department of the
Interstate Commerce Commission
Justice, Department of
Kennedy Center
Labor, Department of
Legal Services Corporation (not its grantees)
Merit Systems Protection Board
National Aeronautics and Space Administration
National Archives and Records Administration
National Credit Union Administration (not individual credit unions)
National Council on the Handicapped
National Endowment of the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation
National Transportation Safety Board
Navy, Department of the
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Peace Corps
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
St. Elizabeths Hospital
St. Lawrence Seaway Development Corporation
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
State, Department of
Tennessee Valley Authority
Transportation, Department of
Treasury, Department of the
U.S. Arms Control and Disarmament Agency
U.S. Information Agency
U.S. International Development Agency
U.S. International Trade Commission
U.S. Postal Service
Veterans Affairs, Department of

Appendix B. Other Eligible Users

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and C. An asterisk indicates that special limitations may apply (see subpar.

7e(2)s. This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of those will be ruled upon by GSA on a case-by-case basis (see par. 11).

Administrative Conference of the U.S.
Administrative Office of the U.S. Courts
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay
American Printing House for the Blind
American Samoa, territorial and local governments of **
Architect of the Capitol
Architectural and Transportation Barriers Compliance Board
Banks for Cooperatives
Certain nonappropriated fund activities (generally, not for resale)
Coast Guard Auxiliary (through the U.S. Coast Guard)
Committee for Purchase from the Blind and Other Severely Handicapped
Contractors and subcontractors—cost-reimbursement (as authorized by the applicable agency's contracting official)
Contractors and subcontractors—fixed-price (security equipment only when so authorized by the applicable agency's contracting official)
Courts, Federal (not court reporters)
Delaware River Basin Commission
District of Columbia, Government of the Farm Credit Banks
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Home Loan Banks
Federal Intermediate Credit Bank
Federal Land Bank
Federal Reserve Board of Governors
Firefighters, Non-Federal (as authorized by the Forest Service, U.S. Department of Agriculture)
Gallaudet University
General Accounting Office
Government Printing Office
Guam, territorial and local governments of **
Harry S. Truman Scholarship Foundation
House of Representatives, U.S.
Howard University (including hospital)
Institute of Museum Services ***
Japan-United States Friendship Commission
Library of Congress
Marine Mammal Commission
National Bank for Cooperation (CoBank)
National Buildings Museum
National Capital Planning Commission ***
National Gallery of Art
National Guard Activities (only through U.S. Property and Fiscal Officers)
National Railroad Passenger Corporation (i.e., AMTRAK)
National Technical Institute for the Deaf
Navajo and Hopi Indian Relocation Commission
Neighborhood Reinvestment Corporation
Northern Mariana Islands, Commonwealth of the territorial and local governments *
Office of the Federal Inspector for the Alaska Natural Gas Transportation System
Prospective Payment Assessment Commission
Senate, U.S.
Susquehanna River Basin Commission
Trust Territory of the Pacific Islands, Government of ****
U.S. Railway Association
U.S. Representative, Office of Joint Economic Commission
CENPRO Project Saudi Arabia (when Saudi government cannot supply)
U.S. Soldiers' and Airmen's Home
U.S. Synthetic Fuels Corporation
Virgin Islands, territorial and local governments of (including Virgin Islands Port Authority) **
Washington Metropolitan Area Transit Authority
Water Resources Council

* Financial service—accounting and payroll only
** Financial service—accounting and payroll only
*** Financial service—payroll only
**** Palau only

Appendix C. International Organizations

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and B. This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of activities not listed will be ruled upon by GSA on a case-by-case basis (see par. 11).

African Development Fund
Asian Development Bank
Caribbean Organization
Customs Cooperation Council
European Space Research Organization
Food and Agriculture Organization of the United Nations
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agriculture Sciences
Inter-American Investment Corporation
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernmental Maritime Consultive Organization
Intergovernmental Committee for European Migration
International Atomic Energy Agency
International Bank of Reconstruction and Development (World Bank)
International Boundary Commission-United States and Canada
International Boundary and Water Commission-United States and Mexico
International Center for Settlement of Investment Disputes
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Development Association
International Fertilizer Development Center
International Finance Corporation
International Hydrographic Bureau
International Institute for Cotton (formerly International Cotton Institute)
International Joint Commission-United States and Canada
International Labor Organization
International Maritime Satellite Organization
International Monetary Fund
International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission-Canada
International Secretariat for Volunteer Services
International Telecommunications Satellite Organization
International Telecommunications Union
International Wheat Council
Lake Ontario Claims Tribunal
Multinational Force and Observers
Multinational Investment Guarantee Agency (M.I.G.A.)
NATO Communications and Information Systems Agency (NACISA)
Organization of African Unity
Organization of American States
Organization for Economic Cooperation and Development
Pan American Health Organization
Radio Technical Commission for Aeronautics
South Pacific Commission
United International Bureau for the Protection of Intellectual Property
United Nations
United Nations Educational, Scientific, and Cultural Organization
Universal Postal Union
World Health Organization
World Intellectual Property Organization
World Meteorological Organization
World Tourism Organization

Dated: November 13, 1990.

William B. Foote,

Assistance Commission for Customer Service and Marketing.

[FR Doc. 90-27710 Filed 11-23-90; 8:45 am]

BILLING CODE 6820-24-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Scholarships: Closing Date for Nominations from Eligible Institutions of Higher Education

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Public Law 93-642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR part 1801, and were published in the **Federal Register** on June 19, 1976 (43 FR 26366).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, CN 6302, Princeton, N.J. 08541-6302 postmarked no later than Friday, December 1, 1990.

Louis H. Blair,

Executive Secretary.

[FR Doc. 90-27778 Filed 11-23-90; 8:45 am]

BILLING CODE 6820-AB-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Request for Comments and Secondary Data Relevant to Occupational Exposure to Inorganic Lead

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning the health hazards of occupational exposure to inorganic lead. Interested parties may submit information on the health and safety aspects related to occupational exposure to inorganic lead, including but not limited to: (1) Exposure data, (2) biological monitoring data, (3) health effects related to occupational exposure to lead, (4) description of work practices, protective equipment, and control technology in use today, (5) methods of environmental and biological monitoring, and (6) results of epidemiological and laboratory animal studies.

This information will be used by NIOSH to determine the extent of potential health effects associated with occupational exposures to inorganic lead and to develop strategies for preventing and controlling these effects among workers.

DATES: Comments concerning this notice should be submitted by February 25, 1991.

ADDRESSES: Please submit four (4) copies of any information, comments, suggestions, or recommendations in writing to Dr. Richard W. Niemeier, Director, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Dr. Henryka Nagy, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-32, Cincinnati, Ohio 45226, 513/533-8369 or FTS 684-8369.

SUPPLEMENTARY INFORMATION: Pursuant to sections 20 and 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 and 671) and sections 103 and 501 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 813 and 951), NIOSH is authorized to gather information in order to develop recommendations for improving occupational safety and health. NIOSH has been concerned with the health and safety consequences associated with occupational exposure to inorganic lead (lead oxides, metallic lead, and lead salts). Industrial processes and operations that result in exposure to inorganic lead include smelting and refining, steel and iron production, steel welding, construction, cutting operations, manufacturing of lead-based paints, applying and removing lead-containing surface coatings, battery production, printing, plumbing, manufacturing and firing of firearms ammunition. In addition to exposures at the workplace, non occupational exposures can occur when pursuing hobbies such as ceramics, stained glass, and pewter crafts that involve lead compounds. Uptake of lead in the workplace occurs mainly through inhalation, although ingestion of lead can contribute to the total lead body burden. Exposure to lead can result in the inhibition of heme synthesis, brain damage, renal diseases, and reproductive system effects (germ cells). Occupational exposures to lead are also associated with hypertension and may be associated with an increased risk of cancer. Exposures to lead are particularly dangerous for pregnant women and their fetuses and children. High prenatal exposure may result in mental retardation, seizures, and sensory-motor deficits in children. Chronic, low level, prenatal exposures may cause preterm births, reduced birth weight, and abnormalities in the mental and motor development of infants.

NIOSH is interested in obtaining existing and available materials, including reports and research findings, to evaluate the extent of the existing problem and to develop strategies to prevent and control exposure to inorganic lead.

Examples of requested information include but are not limited to:

1. Occupational, biological, and environmental exposure data, including number, age, and sex of workers at risk, and duration of their exposure.
2. Results of epidemiological and clinical studies or other health effects data reported since 1978 on lead-exposed workers (*e.g.*, anemia, neurological and behavioral changes, infertility, neurobehavioral effects of fetal lead exposures, miscarriages, hypertension, increased incidence of cancer, and any other symptoms which may be suspected of being related to occupational lead exposure).
3. Laboratory animal studies reported since 1978.
4. Descriptions of industrial processes and operations that generate airborne lead (*e.g.*, manufacture of lead-containing products, bridge and building demolition, applying and removing lead-containing surface coatings).
5. Measurements of airborne concentrations of specific lead compounds found in the workplace, including particle sizes.
6. Information on lead exposures among children and other family members of lead-exposed workers.
7. Methods of environmental and biological monitoring used to evaluate lead exposure.
8. Data on the correlation between environmental and biological monitoring.
9. Information on the effectiveness of personal protective equipment, engineering controls (particularly new or innovative control technologies), work practices, and training that have been used to limit workers' exposure to lead.
10. Information on nonoccupational exposures occurring during hobby activities or other activities away from the workplace.

All information received in response to this notice (except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or that exempt from disclosure under the Freedom of Information Act) will be available for public examination and copying at the above address.

Dated: November 19, 1990.

Melvin J. Myers,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 90-27657 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-19-M

Advisory Committee for Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET).

Time and Date: 2 p.m.-5 p.m., December 10, 1990, 8 a.m.-5 p.m., December 11, 1990.

Place: Room 503, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for

eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to the Discussed: Prevention and control of tuberculosis in minority populations and recommendations for tuberculosis prevention and control in migrant farm workers. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDS, 1600 Clifton Road NE., Mailstop E-10, Atlanta, Georgia 30333, telephone 404/639-2501 or FTS 236-2501.

Dated: November 20, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-27827 Filed 11-21-90; 1:08 pm]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Biological Response Modifiers Advisory Committee

Date, time, and place. December 13 and 14, 1990, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 13, 1990, 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 5:30 p.m.; open committee discussion, December 14, 1990, 8:30 a.m. to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 4 p.m.; Gretchen Hascall, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695. A meeting agenda and list of committee members will be available upon request.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 3, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 13, 1990, from 9:30 a.m. to 12 m., the committee will discuss an update on gene therapy, and from 1 p.m. to 5:30 p.m., they will discuss granulocyte macrophage colony stimulating factor (Immunex Corp.) used for (1) promotion of autologous bone marrow transplantation engraftment, and (2) the treatment of autologous or allogeneic bone marrow transplant failure or delay in engraftment. On December 14, 1990, the committee will discuss granulocyte colony stimulating factor (Amgen, Inc.) for the prevention of infections associated with certain chemotherapeutic regimens of nonmyeloid malignancies.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to an investigational new drug application. 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 an 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: November 19, 1990.

Joseph A. Levitt,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-27633 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Department of Health and Human Services. This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before this advisory committee. For this meeting the Department is following the procedures in 21 CFR part 14 that apply to meetings of advisory committees to the Food and Drug Administration.

MEETING: The following advisory committee meeting is announced:

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee)

Date, time, and place. December 11, 12, and 13, 1990, 8:30 a.m. St. Anthony Hotel, Conference rm., 300 East Travis St., San Antonio, TX.

Type of meeting and contact person. Open committee discussion, December 11, 1990, 8:30 a.m. to 5 p.m.; open committee discussion, December 12, 1990, 8:30 a.m. to 5 p.m.; open committee discussion, December 13, 1990, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; Ronald F. Coene, National Center for Toxicological Research (HFT-10) Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3155.

General function of the committee. The committee shall advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the Air Force and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the advisory committee is desirable.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentaton should notify the contact person before November 30, 1990, and submit a brief statement of the general nature of the evidence or argument they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

Agenda—Open committee discussion. The committee will conduct a review of a draft document of a reanalysis of the 1987 Air Force Health Study: An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. A final agenda will be available on December 4, 1990 by contacting the committee contact person.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Each advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in

accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: November 16, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27634 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0379]

Evaluation of the Safety of Amino Acids and Related Products; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) is about to begin a study of the safety of amino acids and related products. Current regulated uses of these products are identified and described in 21 CFR 172.320. However, these substances are also being used as food components for purposes that have not been approved by FDA. The agency has requested that LSRO/FASEB review scientific information and data related to the safety of the use of free amino acids and provide an up-to-date report on its findings.

To assist in the preparation of its scientific report, LSRO/FASEB is inviting the submission of scientific data and information bearing on this topic. LSRO/FASEB will provide an opportunity for oral presentations at an open meeting.

DATES: The LSRO/FASEB open meeting will be held at 9 a.m. on Monday, February 4, 1991. Requests to make oral presentations at the open meeting must be submitted in writing and received by December 31, 1990. Written presentations of scientific data and information should be submitted by January 25, 1991.

ADDRESSES: Written requests to make oral presentations of scientific data and information at the open meeting must be submitted to the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, and to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Two copies of the scientific data and information must be submitted to each office. The meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above).

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030, or

Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0087.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of foods and cosmetics.

Free amino acids have been used to improve the protein quality of foods for many years. There is also a history of use of free amino acids in foods designed to meet the nutritional requirements of individuals who have impaired digestion and absorption capacity and for individuals who have severe hypersensitivity to intact proteins. These uses are covered under food additive regulation 21 CFR 172.320.

Free amino acids have also been used as food supplements as dietary supplements, but FDA has not approved these uses nor found them to be generally recognized as safe. Recently, attention has been drawn to these uses of free amino acids because of the health problems associated with the use of L-tryptophan supplements.

FDA is announcing that it has asked FASEB, as a task under this contract, to provide FDA's Center for Food Safety and Applied Nutrition with an up-to-date scientific review of the safety of use of free amino acids. In response to this request, FASEB had directed its LSRO to obtain state-of-the-art scientific information about the safety of amino acids and related products as currently used. LSRO/FASEB will undertake a study and prepare a documented scientific report that summarizes information on free amino acids and related amino acid-type products currently available on the market or under development.

The study will: (a) Identify current products in the marketplace and describe their active principal ingredients and total nutrient composition; (b) describe current label and labeling information on products identified in (a) above, including descriptions of recommended intake levels; (c) review dietary exposure data to subject substances by the U.S. population and subgroups; (d) identify animal or clinical studies and case reports that bear on the safety of these products as currently used; and (e) identify safety end points and provide guidelines for interpretation of data for evaluating safety issues.

In addition, the study report will address: (a) The safe range of intake, if any, for each amino acid and related compounds from special dietary foods; (b) the criteria utilized in evaluating safety of each amino acid; and (c) a critique of strengths and weaknesses of available scientific evidence.

Pursuant to its contact with FDA, FASEB will provide the agency with a scientific report on these issues by September 30, 1991.

Dated: November 15, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27586 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, Room #702, Rockville, MD 20852, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statue to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from April 24, 1990, through July 16, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contract"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Sheila Pedicini on behalf of Enrico Pedicini, New Haven, Connecticut, Claims Court Number 90-0347 V
2. Gary and Naomi Ziesemer on behalf of Theodore Ziesemer, Deceased, Olympia, Washington, Claims Court Number 90-0348 V
3. Virginia DiLeo on behalf of Jeffrey DiLeo, Bridgewater, New Jersey, Claims Court Number 90-0363 V
4. Clara Shackil on behalf of Deanna Marrero, Passaic, New Jersey, Claims Court Number 90-0371 V
5. David and Jean Hellebrand on behalf of Lacy Hellebrand, Deceased, Dallas, Texas, Claims Court Number 90-0372 V
6. Melvin and Doreen Palmer on behalf of Matthew Palmer, Denison, Iowa, Claims Court Number 90-0374 V
7. Morris Duane Moore on behalf of Michael Duane Moore, Deceased, Denton, Texas, Claims Court Number 90-0376 V
8. Vincent and Peggy Hill on behalf of Michael Dennis, Los Angeles, California, Claims Court Number 90-0387 V
9. Kendee Connor on behalf of Kenneth Connor, Butler, Pennsylvania, Claims Court Number 90-0388 V
10. Virginia and Robert Shea on behalf of Ryan Shea, Deceased, Tilton, New Hampshire, Claims Court Number 90-0394 V
11. Gary Koston on behalf of Jenna Koston, Oceanside, California, Claims Court Number 90-0395 V
12. Pat and Kathryn Maley on behalf of Bryan Maley, Irvine, California, Claims Court Number 90-0398 V
13. Roger and Heidi Misasi on behalf of Maggie Jo Misasi, Wichita, Kansas, Claims Court Number 90-0400 V
14. Kathy Brown on behalf of Nicole Brown, Chico, California, Claims Court Number 90-0402 V
15. David and Janet Allen on behalf of Wanda Leann Allen, Deceased, Lincoln County, Michigan, Claims Court Number 90-0409 V
16. Steven Loy, Burlington, North Carolina, Claims Court Number 90-0412 V
17. Darrell and Theresa Hine on behalf of Brandy Hine, Martinsville, Tennessee, Claims Court Number 90-0413 V

18. Lee and Sue Summar on behalf of Kevin Summar, Memphis, Tennessee, Claims Court Number 90-0415 V
19. Ruth Fisher, Voorhees, New Jersey, Claims Court Number 90-0421 V
20. Roman and Lorraine Dolney on behalf of Debra Dolney, Tampa, Florida, Claims Court Number 90-0422 V
21. Laura Mackler on behalf of Elizabeth Mackler, Newport, Rhode Island, Claims Court Number 90-0425 V
22. Douglas and Jean Neher on behalf of Janine Neher, Hanford, California, Claims Court Number 90-0431 V
23. Keith Wadding on behalf of Brian Wadding, Trenton, Tennessee, Claims Court Number 90-0432 V
24. Michael Whatley, Longview, Texas, Claims Court Number 90-0438 V
25. George and Gwen Santos on behalf of Donn Santos, Hilo, Hawaii, Claims Court Number 90-0449 V
26. Nancy Melvin on behalf of Shalana Melvin, Bloomington, Indiana, Claims Court Number 90-0450 V
27. Steven and Tonya Mayton on behalf of Steven Mayton, Owensville, Kentucky, Claims Court Number 90-0451 V
28. Diane Clark on behalf of Denise Bailey, Deceased, Richmond, Virginia, Claims Court Number 90-0454 V
29. Mary Ann and Larry Mills on behalf of Kelly Ann Mills, Deceased, Beaumont, Texas, Claims Court Number 90-0460 V
30. Benjamin and Janet Riley on behalf of Keith Riley, Orinda, California, Claims Court Number 90-0466 V
31. Joseph and Gloria Spagiare on behalf of Lynn Ann Spagiare, Pittsburgh, Pennsylvania, Claims Court Number 90-0468 V
32. Elizabeth Miller, Spokene, Washington, Claims Court Number 90-0474 V
33. Viren and Jennifer Franks on behalf of Nichole Lemmer, Deceased, Bexar County, Texas, Claims Court Number 90-0483 V
34. Aldine Dockery on behalf of Rexford Dockery, Indianapolis, Indiana, Claims Court Number 90-0484 V
35. Edward and Joyce Gleason on behalf of Shane Gleason, Brooklyn, New York, Claims Court Number 90-0485 V
36. Dawn Widdoss on behalf of Crystal Miller, Deceased, Stroudsburg, Pennsylvania, Claims Court Number 90-0486 V
37. Nancy Follweiler on behalf of Paula Follweiler, Allentown, Pennsylvania, Claims Court Number 90-0487 V
38. Patricia Lamb on behalf of Alicia Lamb, Philadelphia, Pennsylvania, Claims Court Number 90-0493 V
39. Susan LeTeure on behalf of Kimberly LeTeure, Bangor, Maine, Claims Court Number 90-0503 V
40. Ellen Donnelly on behalf of Sean Donnelly, Queens, New York, Claims Court Number 90-0504 V
41. Drew and Donna Bachman on behalf of Stephen Bachman, Metairie, Louisiana, Claims Court Number 90-0509 V
42. Donna Black on behalf of Duane Black, Covington, Kentucky, Claims Court Number 90-0511 V
43. Samuel and Kim Martin on behalf of Ryan Martin, Ponca City, Oklahoma, Claims Court Number 90-0515 V
44. Laura Epstein on behalf of Mischa Epstein, Springfield, Massachusetts, Claims Court Number 90-0516 V
45. Theresa Heisler on behalf of Jeremy Heisler, Plymouth, Massachusetts, Claims Court Number 90-0529 V
46. James and Cynthia Thompson on behalf of Erick Thompson, Ithsca, New York, Claims Court Number 90-0530 V
47. Ronald Posey, Rusten, Louisiana, Claims Court Number 90-0531 V
48. Michael and Mary Ann Jay on behalf of Matthew Jay, Deceased, Whittier, California, Claims Court Number 90-0534 V
49. Dawn R. Stahl on behalf of Preston John Stahl, Salt Lake City, Utah, Claims Court Number 90-0536 V
50. Kathryn Clark, Little Rock, Arkansas, Claims Court Number 90-0537 V
51. Walter J. Street, Jr. on behalf of Walter Street, III, Deceased, Richmond, Virginia, Claims Court Number 90-0542 V
52. Gina Coufal on behalf of Joshua Coufal, Westminster, Colorado, Claims Court Number 90-0543 V
53. DeeAnn Renae Hackett, Brookings, South Dakota, Claims Court Number 90-0546 V
54. Craig and Catherine Tweten on behalf of Christopher Tweten, Minot, North Dakota, Claims Court Number 90-0549 V
55. Mary Zang on behalf of Shaina McDermott, Kansas City, Kansas, Claims Court Number 90-0550 V
56. Edwin and Susan Hodges on behalf of Kara Hodges, Deceased, Pittsburg, California, Claims Court Number 90-0551 V
57. Scott and Rhonda Messner on behalf of Jennifer Messner, Lakenheath, England, Claims Court Number 90-0552 V
58. Julie Prince on behalf of Lindsey Prince, Woodland Hills, California, Claims Court Number 90-0558 V
59. Thomas and Brenda Behnke on behalf of Jessica Behnke, Wauseon, Ohio, Claims Court Number 90-0562 V
60. Steven and Cindy Oxley on behalf of Richelle Oxley, Binghamton, New York, Claims Court Number 90-0565/0566 V
61. Richmond and Theresa Aea on behalf of Stephen Aea, Honolulu, Hawaii, Claims Court Number 90-0568 V
62. Roger and Barbara Boychek on behalf of Serina Boychek, Erie, Pennsylvania, Claims Court Number 90-0574 V
63. Lynn Bruess on behalf of Matthew Bruess, Deceased, LeSuerur, Minnesota, Claims Court Number 90-0576 V
64. Mark and Amanda Davis on behalf of Tiffany Davis, Deceased, Waynesburg, Pennsylvania, Claims Court Number 90-0577 V
65. James and Elizabeth McClendon on behalf of Kristen McClendon, Richland, Mississippi, Claims Court Number 90-0579 V
66. Kristen Adam, New Orleans, Louisiana, Claims Court Number 90-0583 V
67. Jeffrey Kundicz, Brockton, Massachusetts, Claims Court Number 90-0584 V
68. Brenda Perkins on behalf of Melanie Perkins, Montgomery, Alabama, Claims Court Number 90-0589 V
69. Sharon Long on behalf of Michael Aubrey Long, Deceased, Hoffman Estates, Illinois, Claims Court Number 90-0590 V
70. Cheryl Coffelt on behalf on Julie Janell Coffelt, Branson, Missouri, Claims Court Number 90-0591 V
71. Joseph and Cynthia Matteo on behalf of Jason Matteo, Philadelphia, Pennsylvania, Claims Court Number 90-0594 V
72. Judy Estes on behalf on Eric Estes, Deceased, Evansville, Indiana, Claim Court Number 90-0595 V
73. Eugene and Barbara Hickok on behalf of Mary Catherine Hickok, Wayzata, Minnesota, Claims Court Number 90-0596 V
74. Shaun Bell on behalf of Raychael Bell, Harrisonville, Missouri, Claims Court Number 90-0597 V
75. Kenneth and Monica O'Connor on behalf of Daniel O'Connor, Edison, New Jersey, Claims Court Number 09-0600 V
76. Betty Truscz on behalf of Richard Truscz, Deceased, Bangor, Maine, Claims Court Number 90-0601 V
77. Mary McGaughey on behalf of Holley McGaughey, Clackamas, Oregon, Claims Court Number 90-0602 V
78. Donna Mohoney (Nagle), Tucson, Arizona, Claims Court Number 90-0603 V
79. Larry and Sylvia Shelley on behalf of Michael Shelley, Manheim, Pennsylvania, Claims Court Number 90-0604 V
80. Delia Tennyson on behalf of Ansley Tennyson, Deceased, Quitman, Georgia, Claims Court Number 90-0605 V
81. Vazma Tomac on behalf of Timothy Tomac, Sunnyvale, California, Claims Court Number 90-0606 V
82. Donald Knoblauch on behalf of Ruth Knoblauch, Lowpoint, Illinois, Claims Court Number 90-0607 V
83. Robin and Ruth Cooper on behalf of Jason Cooper, Wichita, Kansas, Claims Court Number 90-0608 V
84. Gary and Donna Brittingham on behalf of Ashley Brittingham, Salisbury, Maryland, Claims Court Number 90-0612 V
85. Dale and Karen Cain on behalf of Alexander Cain, Anchorage, Alaska, Claims Court Number 90-0618 V
86. Michael and Wendy Resnick on behalf of Robert Resnick, Sarasota, Florida, Claims Court Number 90-0619 V
87. Denise Matranga, Sacramento, California, Claims Court Number 90-0622 V
88. Joyce Lind on behalf of Jason Lind, Modesto, California, Claims Court Number 90-0623 V
89. James R. Leva on behalf of James M. Leva, Bloomfield, Connecticut, Claims Court Number 90-0624 V
90. Matthew and Leah Goodrich on behalf of Mitchell Goodrich, Baton Rouge, Louisiana, Claims Court Number 90-0637 V
91. Eugene Moteles on behalf of Shannon Moteles, Clifton Heights, Pennsylvania, Claims Court Number 90-0644 V

92. Joan Johnson on behalf of Tiffany Johnson, Deceased, Mobile, Alabama, Claims Court Number 90-0645 V
93. Beverly Perry, Kenmore, New York, Claims Court Number 90-0646 V
94. Anna Greider on behalf of Clara G. Thiel, Runnemede, New Jersey, Claims Court Number 90-0648 V
95. Victoria Kargacos on behalf on Jeffery Kargacos, San Diego, California, Claims Court Number 90-0665 V

Dated: November 19, 1990.

John Kelso,

Acting Administrator.

[FR Doc. 90-27640 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Impact of Potential Oil Spills in the Arctic Ocean on Alaska Natives

AGENCY: Office of the Secretary, Interior.

ACTION: Request for information.

SUMMARY: Section 8302 of the Oil Pollution Act of 1990, Public Law 101-380, directs the Secretary of the Interior, in consultation with the Governor of Alaska, to conduct a study of the issues associated with the recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean, and to transmit a report to the Congress on the study's findings and conclusions.

This notice invites interested persons to identify issues to be included in the report and requests information on these issues. To facilitate public input, topics proposed to be covered in the report have been identified below in "Supplementary Information."

DATES: Written comments and other pertinent information should be submitted no later than December 20, 1990.

ADDRESSES: Written comments and other information should be submitted to the Regional Environmental Officer, Office of Environmental Affairs, U.S. Department of the Interior, 1689 C Street, room 119, Anchorage, AK, 99501-5126.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Gates, Regional Environmental Officer, U.S. Department of the Interior, Anchorage, AK 907-271-5011.

SUPPLEMENTARY INFORMATION: Section 8302 of the Act recognizes that potential sources of oil pollution in the Beaufort and Chukchi Seas include transshipment of Canadian oil via tankers, and exploration, development, production, and transportation activities on Outer Continental Shelf (OCS) lease areas. The Act recognizes that the Beaufort and Chukchi Seas are important to Alaska Natives for subsistence resources and that an oil spill, if not properly contained and removed, could significantly affect those resources. The subject report, which will be based on existing information, will summarize Alaska Native concerns regarding oil spills and oil-spill cleanup activities in the Beaufort and Chukchi Seas. In addition, the report will summarize existing and potential oil exploration, development, production, and transportation activities in Canada and the United States that could result in an oil spill in the Beaufort or Chukchi Seas. The report will also summarize oil-spill prevention, oil-spill contingency plans, oil-spill response organizations, research on oil-spill response technologies for the Beaufort and Chukchi Seas, and potential recovery of damages for oil-spill related injuries to subsistence resources.

Interested persons are encouraged to comment on these subjects as well as to provide specific information on the topics described below. Copies of regulations, policies, and other documents referenced by commenters should be provided to the Regional Environmental Officer in Anchorage.

- Communities and subsistence resources potentially at risk from an oil spill in the Beaufort and Chukchi Seas.
- Specific Alaska Native concerns regarding the effects of oil spills and oil-spill cleanup activities in the Beaufort and Chukchi Seas.
- Potential sources and quantities of crude-oil pollution from existing and proposed United States and Canadian onshore and offshore oil exploration, development, production, and transportation activities.
- Oil-spill prevention measures associated with oil exploration, development, production, and transportation activities in the United States and Canada.
- Canadian and United States oil-spill contingency plan requirements and contingency plans and coordinated actions for the activities described in the previous item, including public- and private-sector plans.
- Current and planned research (including funding levels) on oil-spill response technologies for the Beaufort and Chukchi Seas.
- International, national, state, or local laws, regulations, or policies available to compensate for loss of subsistence resources to Alaska Natives and liability limitations.

A **Federal Register** notice will be published on the availability of the final report.

Dated: November 19, 1990.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 90-27656 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[AK-070-01-4230-10; F-86888]

Lease of Public Land; PAH River Flats, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice extends the public comment period in notice document 90-23925 appearing on page 41276, in the issue of Wednesday, October 10, 1990.

DATES: Comments must be received by January 10, 1991.

ADDRESSES: Comments must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709-3844.

FOR FURTHER INFORMATION CONTACT: Betsy Bonnell, (907) 474-2336.

Dated: November 8, 1990.

Helen M. Hankins,

Kobuk District Manager.

[FR Doc. 90-27593 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Small-Anthered Bittercress for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the small-anthered bittercress (*Cardamine micranthera*). This perennial herb historically occurred in Stokes and Forsyth Counties, North Carolina, and Patrick County, Virginia. Presently, the small-anthered bittercress is known from a few small streams in the Dan River drainage in Stokes County, North Carolina, and Patrick County, Virginia. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before January 25, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321; FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the small-anthered bittercress (*Cardamine micranthera*). The areas of emphasis for recovery actions are the tributaries of the Dan River in North Carolina and Virginia. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 16, 1990.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 90-27591 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Date: November 20, 1990.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2) the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4) are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC

MFA Incorporated, 615 Locust Street, Columbia, MO 65201

615 Locust Street, Columbia, MO 65201

Ann Simpson, 615 Locust Street, Columbia, MO 65201.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27652 Filed 11-23-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31768]

Maine Coast Railroad Corp.—Tracking Rights Exemption—Maine Central Railroad Co. and Springfield Terminal Railway Co.

Maine Central Railroad Company (MEC), as owner, and Springfield Terminal Railway Company, as lessee, have agreed to grant overhead trackage rights to Maine Coast Railroad Corporation over MEC's line between milepost 33.79, at Hardings, ME, and milepost 27.5, at Brunswick, ME, a distance of approximately 6.2 miles. The trackage rights were to become effective on November 13, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James E. Howard, Kirkpatrick & Lockhart, 84 State Street, Boston, MA 02109.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 15, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27650 Filed 11-23-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 11)]

Intrastate Rail Rate Authority—Kentucky

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional certification.

SUMMARY: The State of Kentucky has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C. 2d 680, 685 (1989), the Commission provisionally recertifies the State of Kentucky to regulate intrastate rail rates, classifications, rules, and practices. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

DATES: This provisional recertification will be effective on November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

Decided: November 20, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27834 Filed 11-21-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31760]

Andrew M. Muller, Jr.—Continuance in Control Exemption—Reading Blue Mountain and Northern Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Andrew M. Muller, Jr., from the requirements of 49 U.S.C. 11343 to continue in control of Reading Blue Mountain & Northern Railroad Company (RBM&N) when RBM&N becomes a rail common carrier through the acquisition and operation of certain rail lines of Consolidated Rail Corporation, subject to standard labor protective conditions. RBM&N will connect with Blue Mountain and Reading Railroad Company, a Class III rail common carrier already controlled by Muller. The exemption is related to the notices of exemption in Finance Docket Nos. 30305 (Sub-No. 2) and 31759.

DATES: This exemption is effective on November 26, 1990. Petitions to reopen must be filed by December 17, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31760 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: William P. Quinn, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

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

Decided: November 16, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27653 Filed 11-23-90; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Bankruptcy Rules to consider future revisions to the Bankruptcy Rules. The meeting will be open to public observation.

DATES: January 17-18, 1991.

ADDRESSES: The Ritz-Carlton Hotel, 33533 Ritz-Carlton Drive, Laguna Niguel, CA 92677.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone (202) 633-6021.

Dated: October 18, 1990.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 90-27643 Filed 11-23-90; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 46-90]

Privacy Act of 1974; Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A-130, the Department has completed a review of its Privacy Act systems of records to identify minor changes that will more accurately describe these records. As a result, five Department components are republishing systems of records to make minor changes. In addition, the Executive Office for United States Attorneys is publishing a revised Appendix of United States Attorney Office Locations.

For public convenience, we have italicized the changes to the system decriptions which are printed below following the Table of Contents.

Comments, if any, may be addressed to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 529, IND Bldg.).

Dated: November 2, 1990.

Harry H. Flickinger,

Assistant Attorney General for Administration.

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JUSTICE/ATR-002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATIONS:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress, and citizens whose correspondence is *received directly or* referred by *members of Congress or* Congressional or White House staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to correspondence from *citizens, present and former* members of the Congress and White House staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exists under 44 U.S.C. 3101 and 5 U.S.C. 301.

PURPOSES(S):

The purpose of this system is to enable Antitrust Division personnel to monitor responses and identify other material related to citizen inquiries and inquiries or referrals by members or committees of the Congress and by the White House staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Paper documents are stored in *looseleaf binders and* file folders; abbreviated or summarized information is stored in a computerized tracking system.

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, subject matter, control number, etc., Summary data on inquiries received prior to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, a summary data is retrieved from magnetic disks and tapes. Summary data consists of data elements as Congressional Member or constituent name, subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Unit: Antitrust Division: U.S. Department of Justice: 10th & Constitution Avenue, NW., Washington, DC 20530

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access for a record from this system shall be written and clearly identified as "Privacy Access Request". The request should include the name of the member of Congress or White House staff originating a request or referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information maintained in the system are those records reflecting inquiries or referrals of citizen correspondence by *present and former* members of Congress or White House staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRM-012

SYSTEM NAME:

Organized Crime and Racketeering Section, General Index File and Associated Records.

SYSTEM LOCATION:

U.S. Department of Justice; Criminal Division, Organized Crime and Racketeering Section; 10th Street and Constitution Avenue NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been prosecuted or are under investigation for potential or actual criminal prosecution as well as persons allegedly involved in organized criminal activity and those alleged to be associated with the subject.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing individual names and the associated records to which they relate, arranged either by subject matter or individual identifying number, of all incoming correspondence, cases, matters, investigations, and memoranda assigned, referred, or of interest, to the

Organized Crime and Racketeering Section. The records in this system concern matters primarily involving organized crime and include, but are not limited to, case files; investigative reports; intelligence reports; subpoena and grand jury files; records of warrants and electronic surveillances; records of indictment, prosecution, conviction, parole, probation, or immunity; legal papers; evidence; exhibits; items classified confidential, secret, and top secret; and various other files related to the Sections activities and it ongoing investigations, prosecutions, cases, and matters. Records concerning subject matters described in this system may also be contained in JUSTICE/CRM-001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 and the Presidential Directive on the Federal Drive Against Organized Crime, issued May 5, 1966 (Weekly Compilation of Presidential Documents, Vol. 2, W. No. 18 (1966)). In addition, this system is maintained to assist in implementing and enforcing the criminal laws of the United States, particularly those codified in title 18, United States Code. This system is also maintained to implement the provisions codified in 28 CFR 0.55 particularly subsection (g).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question maybe disseminated to the appropriate federal, state, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter may be disseminated in an appropriate federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice; (4) a record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) a record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings; (6) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter; (7) a record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person; (8) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (9) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (10) a record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; (11) a record may be disseminated to the public, news media, trade association, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi, provided that the record does not contain an information identifiable to a specific individual other than such modus operandi; (12) a record maybe disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return; (13) a record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making provisions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.60.

Information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Information *may* be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and *a record may be released* to the National Archives and Records *Administration and to the General Services Administration* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records in this sytem are stored on various documents, tapes, disc packs, and punch cards, some of which are contained in files, on index cards, or in related type materials.

RETRIEVABILITY:

The system is accessed by name but may be grouped for the conveninence of the user by subject matter, e.g., parole file, photograph file, etc.

SAFEGUARDS:

Materials related to the system are maintained in appropriately restricted areas and are safeguarded and protected in accordance with applicable Department rules.

RETENTION AND DISPOSAL:

Currently there are no provisions for the disposal of the records in the system.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Criminal Division, U.S. Department of Justice; 10th Street and Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Inquiry concerning the system should be addressed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request". Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record, the name and of the case or matter involved, if known, and the name of the judicial district involved, if known. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the system manager listed above. Records in this system are exempt from the access provisions of the Act in accordance with the applicable exemption notice.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Records in this system are exempt from the contesting provisions of the Act in accordance with the applicable exemption notice.

RECORD SOURCE CATEGORIES:

1. Federal, state, local, or foreign government agencies concerned with the administration of criminal justice and non-law enforcement agencies both public and private; 2. Members of the public; 3. Government employees; 4. Published material; 5. Witnesses and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G), (H), and (I), (e)(5), and (8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register**.

JUSTICE/JMD-016

SYSTEM NAME:

Employee Assistance Program Treatment and Referral Records, JUSTICE/JMD-016.

SYSTEM LOCATION:

Justice Management Division, Department of Justice, 10th St. & Constitution Avenue, NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Offices, Boards and Divisions and, upon occasion, of the Bureaus of the Department (as listed at 28 CFR 0.1); United States Attorney organizations; and the Office of Justice Programs of the Department of Justice who have sought counseling or been referred to or for treatment through the EAP. To the limited degree that treatment and referral may be provided to family members of these employees, these individuals, too, may be covered by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of employees (and in limited cases, employee family members) who have sought or been referred to the EAP for treatment or referral. Examples of data found in such records include: Notes and documentation of internal EAP counseling, records of treatment and counseling referrals, records of employee attendance at treatment and counseling programs, prognosis or treatment information, documents received from supervisors or personnel on work place problems or performance, home addresses and/or phone numbers, insurance data, supervisors' phone number, addresses of treatment facilities or individuals providing treatment, leave records, written consent forms and abeyance agreements (see below), information on confirmed unjustified positive drug tests, results from EAP treatment drug tests and identification data, such as sex, job title and series, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, *et seq.* and 290ee, *et seq.;* 42 CFR Sec. 2, *et seq.;* Executive Order 12564, 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. No. 100-71, Sec. 503 (July 11, 1937).

PURPOSE:

These records are to be used by EAP personnel in the execution of the counseling and rehabilitation function. They document the nature and effects of employee problems and counseling by the EAP and referral to, and progress and participation in, outside treatment and counseling programs and the rehabilitation process. These records may also be used to track compliance with agreements made to mitigate discipline based upon treatment (abeyance agreements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures permitted by the Privacy Act itself,[1] 5 U.S.C. 552a(b), permissive disclosures, without individual consent, are as follows:

(a) To report, under State law, incidents of suspected child abuse or neglect to appropriate State or local authorities.

(b) To the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. The request should follow the record access procedure, listed above, and should state clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Freedom of Information Act/ Privacy Act Request."

RECORD SOURCE CATEGORIES:

Records are generated by EAP personnel, referral counseling and treatment programs or individuals, the employee who is the subject of the record, personnel office and the employee's supervisor. In the case of drug abuse counseling, records may also be generated by the staff of the Drug-Free Workplace Program and the Medical Review Officer.

[1] To the extent that release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, JMD will follow such restrictions. *See* 42 U.S.C. 290dd and 290ee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored in paper folders in locked file cabinets in accordance with 42 CFR 2.16.

RETRIEVABILITY:

Records are indexed and retrieved by identifying number or symbol, cross-indexed to employee names.

SAFEGUARDS:

Records are kept in a secure room in locked file cabinets. Only the EAP Administrator or a designated staff member will access or disclose the records.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with the counselor unless a longer retention period is necessary because of pending administrative or judicial procedings. In such cases, the records are retained for six months after the case is closed. Records are destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Director, Employee, Assistance Programs, Justice Management Division, Department of Justice, 10th St. & Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Make all requests for access in writing to the system manager identified above. Clearly mark the envelope and letter "Freedom of Information Act/Privacy Act Requests." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling, any other information which may assist in identifying and locating the record, and a return address.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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SYSTEM NAME:

Appendix of United States Attorneys' office locations: (Written requests for access to records in any of the following U.S. Attorneys' offices except the District of Columbia may be addressed to: FOIA/Privacy Unit, Patrick Henry Building, 601 D Street NW., Room 6410, Washington, D.C. 20530.

Requests for access to records in the District of Columbia may be addressed to: FOIA/Privacy, United States Attorney's Office for the District of Columbia, Judiciary Center Building, 555 4th Street NW., Washington, D.C. 20001.

Systems are located as listed below:

Alabama, N.
200 Federal Building
1800 Fifth Avenue North
Birmingham, Alabama 35203

Alabama, M.
500 Federal Building & Courthouse
15 Lee Street
Montgomery, Alabama 36104

Alabama, S.
169 Dauphin Street, Suite 200
Mobile, Alabama 36602

Alaska
Fed. Bldg. & U.S. Courthouse
Rm. C-253
222 West 7th Ave., #9
Anchorage, Alaska 99513

Arizona
4000 U.S. Courthouse
230 First Avenue
Phoenix, AZ 85025

Arkansas, E
331 P.O. & Courthouse Bldg.
600 West Capitol
Little Rock, Arkansas 72203

Arkansas, W
6th & Rogers
U.S. Post Office & Courthouse Bldg.
Fort Smith, Arkansas 72901

California, N
450 Golden Gate Avenue, *Rm. 16201*
San Francisco, Calif. 94102

California E
3305 Federal Building
650 Capitol Mall
Sacramento, Calif. 95814

California, C
312 N. Spring Street, *Rm. 1306* Los Angeles, Calif. 90012

California, S
940 Front Street
Rm. 5-N-19
U.S. Courthouse
San Diego, Calif. 92189

Colorado
1961 Stout Street
Suite 1200—Drawer 3615
Federal Office Bldg.
Denver, Colorado 80294

Connecticut
United States Courthouse
141 Church Street
New Haven, Connecticut 06508

Delaware
J. Caleb Boggs Fed. Bldg.
844 King Street, Rm. 5110
Wilmington, Del. 19801

D.C.
Judiciary Center Bldg.
555 4th Street NW.
Washington, D.C. 20001

Florida, N
315 South Calhoun St.
Suite 510
Tallahassee, Florida 32301-1841

Florida, M
Robert Timberlake Bldg., Rm. 400
500 Zack Street
Tampa, Florida 33602

Florida, S
155 South Miami Avenue
Miami, Florida 33130

Georgia, N
Room 1800 Richard Russell Bldg.
75 Spring Street,
Atlanta, Georgia 30335

Georgia, M
Old. P.O. Bldg., Rm 303
Mulberry & 3rd Streets
Macon, Georgia 31202

Georgia, S
U.S. Courthouse, Room 237
125 Bull Street
Savannah, Georgia 31412

Guam
Suite 502-A *Pacific News Building*
238 Archibishop Flores St.
Agana, Guam 96910

Hawaii
Rm. C-242, PJKK Federal Bldg.
Box 50183, 300 Ala Moana Blvd.
Honolulu, Hawaii 96850

Idaho
Rm. 328 Federal Building
Box 037, 550 W Fort Street
Boise, Idaho 83724

Illinois, N
Everett McKinley Dirksen Bldg.
Rm. 1500 S. 219 S. Darborn Street
Chicago, Illinois 60604

Illinois, S
Rm. 330
750 Missouri Avenue
East St. Louis, Illinois 62201

Illinois, C
Rm. 312 *Paul Findley Federal Bldg.*
600 East Monroe Street
Springfield, Illinois 62701

Indiana N
4th Floor, Federal Building
507 State Street
Hammond, Ind. 46320

Indiana S
U.S. Courthouse, *Fifth Floor*
40 E. Ohio Street
Indianapolis, Ind. 46204

Iowa, N
425 2nd Street *S.E.*, Suite 950
The Center
Cedar Rapids, Iowa 52401

Iowa, S
115 U.S. Courthouse
E 1st & Walnut Streets
Des Moines Iowa 50309

Kansas
385 Federal Building
444 Quincy Street
Topeka, Kansas 66683

Kentucky, E
Fourth Floor
Federal Building
Limestone & Barr Streets
Lexington, Kentucky 40507

Kentucky, W
Bank of Louisville Bldg.
510 West Broadway, 10th Floor
Louisville, Kentucky 40202

Louisiana, E
Hale Boggs Fed. Bldg.
501 Magazine St., Rm. 210
New Orleans, LA 70130

Louisiana, M
339 Florida St., Sixth Floor
Baton Rouge, LA 70801

Louisiana, W
401 Edwards Street
Suite 1000
Shreveport, LA 71101-*6133*
Maine
East Tower—6th Floor
100 Middle Street Plaza
Portland, Maine 04101
Maryland
8th Floor U.S. Courthouse
101 W. Lombard Street
Baltimore, MD 21201
Massachusetts
1107 John W. McCormack Fed. Bldg.
USPO & Courthouse
Boston, Mass 02109
Michigan E
817 Federal Building
231 W. Lafayette
Detroit, Michigan 46226
Michigan, W
Gerald R. Ford Federal Building & U.S. Courthouse
110 Michigan St., N.W. Room 399
Grand Rapids, Michigan 49503
Minnesota
234 U.S. Courthouse
110 South 4th Street
Minneapolis, Minn. 55401
Mississippi N
Rm. 265 Federal Building
911 West Jackson Avenue
Oxford, Miss. 38655
Mississippi S
245 East Capitol St., Rm 324
Jackson, Miss. 39201
Missouri, E
Rm. 414, U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101
Missouri, W
549 U.S. Courthouse
811 Grand Avenue
Kansas City, MO 64106
Montana
316 N. 26th St.
Federal Bldg., Rm. 5043
Billings, Montana 59101
Nebraska
Room 8000, USPO & Courthouse, *Edward Zorinsky Federal Bldg.*
215 N 17th Street
Omaha, Nebraska 68101
Nevada
701 E. Bridger Ave.
Suite 800
Las Vegas, Nevada 89101
New Hampshire
55 Pleasant Street, Rm. 439
Fourth Floor, Federal Bldg.
Concord, New Hampshire 03301
New Jersey
Federal Building
970 Broad Street, Rm. 502
Newark, N.J. 07102
New Mexico
625 Silver, S.W., 4th FL
Albuquerque, New Mex. 87102
New York, N
900 Federal Building
100 South Clinton Street
Syracuse, N.Y. 13260
New York, S
One St. Andrews Plaza
New York, N.Y. 10007
New York, E
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201
New York, W
502 U.S. Courthouse
68 Court Street
Buffalo, N.Y. 14202
N. Carolina, E
Fourth Floor, Federal Building
310 New Bern Avenue
Raleigh, N.C. 27611
N. Carolina, M
L. Richardson Preyer Federal Building
324 West Market Street
Greensboro, N.C. 27402
N. Carolina, W
Rm 306, *U.S.* Courthouse
100 Otis Street
Asheville, N.C. 28802
N. Dakota
219 Federal Building
655 1st Avenue, North
Fargo, N.D. 58102
Ohio, N
Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114
Ohio, S
Room 200
85 Marconi Boulevard
Columbus, Ohio 43215
Oklahoma, N
3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Okla 74103
Oklahoma, E
333 Federal Courthouse & Office Bldg.
Fifth & Okmulgee
Muskogee, Okla 74401
Oklahoma, W
Room 4434
U.S. Courthouse & Fed. Office Bldg.
Oklahoma City, Okla 73102
Oregon
312 U.S. Courthouse
620 S.W. Main Street
Portland, Oregon 97205
Penn. E
3310 U.S. Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106
Penn. M
Suite 309, Federal Building
Washington & Linden Streets
Scranton, PA 18501
Penn. W
633 U.S.P.O. & Courthouse
7th Avenue & Grant Street
Pittsburgh, PA 15219
Puerto Rico
Rm. 101, Fed. Office Bldg.
Carlos E. Chardon Avenue
Hato Rey, P.R. 00918
Rhode Island
Westminister Square Building
10 Dorrance Street, *Tenth Floor*
Providence, R.I. 02903
South Carolina
Federal Building
1100 Laurel Street
Columbia, S.C. 29201
S. Dakota
135 Fed. Bldg., & U.S. Courthouse
400 S. Phillips Avenue
Sioux Falls, S.D. 57102
Tennessee, E
509 Main Street
Knoxville, TN 37901
Tennessee, M
Room 879, U.S. Courthouse
801 Broadway
Nashville, TN 37203-*3870*
Tennessee, W
1026 Fed. Office Bldg.
167 North Main Street
Memphis, TN 38103
Texas, N
310 U.S. Courthouse
10th & Lamar Streets
Ft. Worth, TX 76102
Texas, S
Courthouse & Federal Bldg.
515 Rusk Avenue, 3rd Floor
Houston, TX 77002
Texas, E
700 North Street, Suite *102*
Beaumont, TX 77701
Texas, W
727 E. Durango Blvd.
Suite A-601
San Antonio, TX 78206
Utah
U.S. Courthouse, Room 476
350 South Main Street
Salt Lake City, UT 84101
Vermont
Federal Building
11 Elmwood Avenue, 6th Floor
Burlington, VT 05401
Virgin Islands
Federal Bldg., & U.S. Courthouse
Veterans Drive, Rm. 260
Charlotte Amalie
St. Thomas, V.I. 00802
Virginia, E
1101 King Street
Suite 502
Alexandria, VA 22314
Virginia, W
Room 456, Poff Federal Bldg.
210 Franklin Road, SW.
Roanoke, VA 24011
Washington, E
851 U.S. Courthouse
West 920 Riverside
Spokane, WA 99201
Washington, W
3600 Seafirst 5th Ave., Plaza
3600 Fifth Avenue
Seattle, WA 98104
West Virginia, N
Room *238*, Federal Building
1125-1141 Chapline Street
Wheeling, WV 26003
West Virginia, S
Room *3201*, Federal Building
500 Quarrier Street
Charleston, WV 25301
Wisconsin, E
330 Federal Building
517 East Wisconsin Avenue
Milwaukee, WI 53202
Wisconsin, W
120 N. Henry Street, Room 420
Madison, WI 53703
Wyoming
J.C. O'Mahoney Fed. Building
Room *4002*, 2120 Capitol Avenue
Cheyenne, WV 82001
North Mariana Islands

c/o U.S. Attorney's Office
6th Floor, Naura Bldg.
P.O. Box 377
Saipan, CM 96950

JUSTICE/FBI 601

SYSTEM NAME:

National Crime Information Center (NCIC).

SYSTEM LOCATIONS:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, D.C. 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Wanted Persons: 1. Individuals for whom Federal warrants are outstanding.

2. Individuals who have committed or have been identified with an offense which is classified as a felony or serious misdemeanor under the existing penal statutes of the jurisdictions originating the entry and felony or misdemeanor warrant has been issued for the individual with respect to the offense which was the basis of the entry. Probation and parole violators meeting the foregoing criteria.

3. A "Temporary Felony Want" may be entered when a law enforcement agency has need to take prompt action to establish a "want" entry for the apprehension of a person who has committed, or the officer has reasonable grounds to believe has committed, a felony and who may seek refuge by fleeing across jurisdictionary boundaries and circumstances preclude the immediate procurement of a felony warrant. A "Temporary Felony Want" shall be specifically identified as such and subject to verification and support by a proper warrant within 48 hours following the initial entry of a temporary want. The agency originating the "Temporary Felony Want" shall be responsible for subsequent verification or re-entry of a permanent want.

4. Juveniles who have been adjudicated delinquent and who have escaped or absconded from custody, even though no arrest warrants were issued. Juveniles who have been charged with the commission of a delinquent act that would be a crime if committed by an adult, and who have fled from the state where the act was committed.

5. Individuals who have committed or have been identified with an offense committed in a foreign country, which would be a felony if committed in the United States, and for whom a warrant of arrest is outstanding and for which act an extradition treaty exists between the United States and that country.

6. Individuals who have committed or have been identified with an offense committed in Canada and for whom a Canada-Wide Warrant has been issued which meets the requirements of the Canada-U.S. Extradition Treaty, 18 U.S.C. 3184.

B. Individuals who have been charged with serious and/or significant offenses.

C. Missing Persons: 1. A person of any age who is missing and who is under proven physical/mental disability or is senile, thereby subjecting himself or others to personal and immediate danger.

2. A person of any age who is missing under circumstances indicating that his disappearance was not voluntary.

3. A person of any age who is missing under circumstances indicating that his physical safety is in danger.

4. A person who is missing and declared unemancipated as defined by the laws of his state of residence and does not meet any of the entry criteria set forth in 1, 2, or 3 above.

D. Individuals designated by the U.S. Secret Service as posing a potential danger to the President and/or other authorized protectees.

E. Unidentified Persons: 1. Any unidentified deceased person. 2. Any person who is living and unable to ascertain his/her identity (e.g., infant, amnesia victim). 3. Any unidentified catastrophe victim. 4. Body parts when a body has been dismembered.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Stolen Vehicle File: 1. Stolen vehicles. 2. Vehicles wanted in conjunction with felonies or serious misdemeanors. 3. Stolen vehicle parts, including certificates of origin or title.

B. Stolen License Plate File: 1. Stolen or missing license plate.

C. Stolen/Missing Gun File: 1. Stolen or missing guns. 2. Recovered guns, when ownership of which has not been established.

D. Stolen Article File.

E. Wanted Persons File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: A. Wanted Persons."

F. Securities File: 1. Serially numbered stolen, embezzled, counterfeited, missing securities.

2. "Securities" for present purposes of this file are currency (e.g., bills, bank notes) and those documents or certificates which generally are considered to be evidence of debt (e.g., bonds, debentures, notes) or ownership of property (e.g., common stock, preferred stock), and documents which represent subscription rights, warrants and which are of those types trades in the securities exchanges in the United States, except for commodities futures. Also included are warehouse receipts, travelers checks and money orders.

G. Stolen Boat File

H. Computerized Criminal History File: A cooperative Federal-state program for the interstate exchange of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

I. Missing Person File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: C. Missing persons."

J. U.S. Secret Service Protective File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: D."

K. Identification records regarding persons enrolled in the United States Marshals Service Witness Security Program who have been charged with serious and/or significant offenses: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: B."

L. Foreign Fugitive File: Indentification data regarding persons who are fugitives from foreign countries, who are described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: A. Wanted Persons, 5."

M. Canadian Warrant File: Identification data regarding Canadian wanted persons who are described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: A. Wanted Persons, 6."

N. Unidentified Person File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: E. Unidentified Persons."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 28 U.S.C. 534; Department of Justice Appropriation Act, 1973, Pub. L. 92-544, 86 Stat. 1115, Securities Acts Amendment of 1975, Pub. L. 94-29, 89 Stat. 97; and Exec. Order No. 10450, 3 CFR (1974).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in NCIC files is exchanged with and for the official use of authorized officials of the Federal Government, the States, cities, penal and other institutions, and certain foreign governments. The data is exchanged through NCIC lines to Federal criminal justice agencies, criminal justice agencies in the 50 States, the District of Columbia, Puerto Rico, U.S. Possessions

and U.S. Territories. Additionally, data contained in the various "want files," i.e., the stolen vehicle file, stolen license plate file, stolen missing gun file, stolen article file, wanted person file, securities file and boat file may be accessed by the Royal Canadian Mounted Police. Criminal history data is disseminated to non-criminal justice agencies for use in connection with licensing for local/state employment or other uses, but only where such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States.

Data in NCIC files, other than the Computerized Criminal History File, is disseminated to (1) a nongovernmental agency or subunit thereof which allocates a substantial part of its annual budget to the administration of criminal justice, whose regularly employed peace officers have full police powers pursuant to state law and have complied with the minimum employment standards of governmentally employed police officers as specified by state statute; (2) a noncriminal justice governmental department of motor vehicle or driver's license registry established by a statute, which provides vehicles registration and driver record information to criminal justice agencies; (3) a governmental regional dispatch center, established by a state statute, resolution, ordinance or Executive order, which provides communications services to criminal justice agencies; and (4) the national Automobile Theft Bureau, a nongovernmental nonprofit agency which acts as a national clearinghouse for information on stolen vehicles and offers free assistance to law enforcement agencies concerning automobile thefts, identification and recovery of stolen vehicles.

Disclosures of information from this system, as described above, are for the purpose of providing information to authorized agencies to facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property, or similar criminal justice objectives.

Information on missing children, missing adults who were reported missing while children, and unidentified living and deceased persons may be disclosed to the National Center for Missing and Exploited Children (NCMEC). The NCMEC is a nongovernmental, nonprofit, federally funded corporation, serving as a national resource and technical assistance clearinghouse focusing on missing and exploited children. Information is disclosed to NCMEC to assist it in its efforts to provide technical assistance and education to parents and local governments regarding the problems of missing and exploited children, and to operate a nationwide missing children hotline to permit members of the public to telephone the Center from anywhere in the United States with information about a missing child.

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

To a Member of Congress or staff acting upon the *member's* behalf whom the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,*

To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the NCIC system is stored electronically for use in a computer environment.

RETRIEVABILITY:

On-line access to data in NCIC is achieved by using the following search descriptors. 1. Vehicle file:

(a) Vehicle identification number;

(b) License plate number;

(c) NCIC number (unique number assigned by the NCIC computer to each NCIC record). 2. License Plate File: (a) License plate number; (b) NCIC number. 3. Gun file: (a) Serial number of gun; (b) NCIC number. 4. Article File: (a) Serial number of article; (b) NCIC number. 5. Wanted Person File, U.S. Secret Service Protective File, Foreign Fugitive File, and Canadian Warrant File: (a) Name and one of the following numerical identifiers, date of birth, FBI Number (number assigned by the Federal Bureau of Investigation to an arrest fingerprint record). Social Security number (it is noted the requirements of the Privacy Act with regard to the solicitation of Social Security numbers have been brought to the attention of the members of the NCIC system). Operator's license number (drivers number). Miscellaneous identifying number (military number or number assigned by Federal, state, or local authorities to an individual's record). Origination agency case number. (b) Vehicle or license plate known to be in the possession of the wanted person. (c) NCIC number (unique number assigned to each NCIC record). 6. Securities File: (a) Type, serial number, denomination of security; (b) Type of security and name of owner of security; (c) Social Security number of owner of security; (d) NCIC number. 7. Boat File: (a) Registration document number; (b) Hull serial number; (c) NCIC number. 8. Computerized Criminal History File: (a) Name, sex, race and date of birth; (b) FBI number; (c) State identification number; (d) Social Security number; (e) Miscellaneous number. 9. Missing Person File: Same as "Wanted Person" File, plus the age, sex, race, height and weight, eye and hair color, of the missing individual. 10. Unidentified Person File: Age, sex, race, height and weight, eye and hair color, of the unidentified individual.

SAFEGUARDS:

Data stored in the NCIC is documented criminal justice agency information and access to that data is restricted to duly authorized criminal justice agencies. The following security measures are the minimum to be adopted by all criminal justice agencies having access to the NCIC.

Computerized Criminal History File. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the computerized file.

1. Computer Center: a. The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data. b. Since personnel at these computer centers can have access data stored in the system, they must be screened thoroughly under the authority and supervision of an NCIC control terminal agency. (This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a stated control terminal agency.) This screening will also apply to non-criminal justice maintenance or technical personnel. c. All visitors to these computer centers must be accompanied by staff personnel at all times. d. Computers having access to the NCIC must have the proper computer instructions written and other built-in controls to prevent criminal history data from being accessible to any terminals other than authorized terminals. e. Computers having access to the NCIC must maintain a record of all transactions against the criminal history filed in the same manner the NCIC

computer logs all transactions. The NCIC identifies each specific agency entering or receiving information and maintains a record of those transactions. This transaction record must be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data. f. Each State Control terminal shall build its data system around a central computer, through which each inquiry must pass for screening and verification. The configuration and operation of the center shall provide for the integrity of the data base.

2. Communications: a. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice, i.e., there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels. b. Physical security of the lines/channels must be protected too guard against clandestine devices being utilized to intercept of inject system traffic.

3. Terminal Devices Having Access to NCIC: a. All agencies having terminals on this system must be required to physically place these terminals in secure locations within the authorized agency. b. The agencies having terminals with access to criminal history must have terminal operators screened and restricted access to the terminal to a minimum number of authorized employees. c. Copies of criminal history data obtained from terminal devices must be afforded security to prevent any unauthorized access to or use of the data. d. All remote terminals on NCIC Computerized Criminal History will maintain a hard copy of computerized criminal history inquiries with notations of individual making request for record (90 days).

RETENTION AND DISPOSAL:

Unless otherwise removed, records will be retained in files as follows:

1. Vehicle File: a. Unrecovered stolen vehicle records (including snowmobile records) which do not contain vehicle identification numbers (VIN) therein, will be purged from file 90 days after *date of entry*. Unrecovered stolen vehicle records (including snowmobile records) which contain VIN's will remain in file for the year of entry plus

4. Unrecovered vehicles wanted in conjunction with a felony will remain in file for 90 days after entry. In the event a longer retention period is desired, the vehicle must be reentered. c. Unrecovered stolen VIN plates, certificates or origin or title, and serially numbered stolen vehicles engines or transmissions will remain in file for the year of entry plus 4.

(Job No. NC1-65-82-4, Part E. 13 h.(1))

2. License Plate File: Unrecovered stolen license plates not associated with a vehicle will remain in file for one year after the end of the plate's expiration year as shown in the record.

(Job No. NC1-65-82-4, Part E. 13 h.(2))

3. Gun file: a. Unrecovered weapons will be retained in file for an indefinite period until action is taken by the originating agency to clear the record. b. Weapons entered in file as "recovered" weapons will remain in file for the balance of the year entered plus 2.

(Job No. NC1-65-82-4, Part E. 13 h.(3))

4. Article File: Unrecovered stolen articles will be retained for the balance of the year entered plus one year.

(Job No. NC1-65-82-4, Part E. 13 h.(4))

5. Wanted Person File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record (except "Temporary Felony Wants", which will be automatically removed from the file after 48 hours).

(Job No. NC1-65-87-114, Part E. 13 h.(7))

6. Securities File: Unrecovered, stolen, embezzled, counterfeited or missing securities will be retained for the balance of the year entered plus 4, except for travelers checks and money orders, which will be retained for the balance of the year entered plus 2.

(Job No. NC1-65-82-4, Part E. 13h. (5))

7. Boat File: Unrecovered stolen boats will be retained in file for the balance of the year entered plus 4. Unrecovered stolen boat records which do not contain a hull serial number will be purged from file 90 days after date of entry.

(Job No. NC1-65-82-4, Part E. 13h. (6))

8. Missing Persons File: Will remain in the file until the individual is located or, in the case of unemancipated persons, the individual reaches the age of emancipation as defined by law of his state.

(Job No. N 1-65-87-11, Part E. 13h. (8))

9. Computerized Criminal History File: When an individual reaches age of 80.

(Job No. NC1-65-76-1)

10. U.S. Secret Service Protective File: Will be retained until names are removed by the U.S. Secret Service.

11. Foreign Fugitive File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record.

12. Canadian Warrant File: Person and located will remain in file indefinitely until action is taken by the originating agency to clear the record.

13. Unidentified Person File: Will be retained for the remainder of the year of entry plus 9.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, J. Edgar Hoover Building, *10th* and Pennsylvania Avenue NW., Washington, DC 20535.

NOTIFICATION PROCEDURES:

Same as the above.

RECORD ACCESS PROCEDURE:

It is noted the Attorney General is exempting this system from the access and contest procedures of the Privacy Act. However, the following alternative procedures are available to requester. The procedures by which an individual may obtain a copy of his computerized Criminal History are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification and in accordance with applicable State and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperative law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, DC by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or possibly, in the State's central identification agency.

CONTESTING RECORD PROCEDURES:

The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

RECORD SOURCE CATEGORIES:

Information contained in the NCIC system is obtained from local, State, Federal and international criminal justice agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H), (e)(8) (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/FBI-002

SYSTEM NAME:

The FBI Central Records System.

SYSTEM LOCATION:

a. Federal Bureau of Investigation, J. Edgar Hoover Building, 10th and Pennsylvania Avenue, NW., Washington, DC 20535; b. *56* field divisions (see Appendix); c. 16 Legal Attaché (see Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who relate in any manner to official FBI investigations including, but not limited to subjects, suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

b. Applicants for and current and former personnel of the FBI and persons related thereto who are considered relevant to an applicant investigation, personnel inquiry, or other personnel matters.

c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto who are considered relevant to the investigation.

d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance, and make inquiries concerning record material, including general correspondence, *and* contacts with other agencies, businesses, institutions, clubs; the public and the news media.

e. Individuals associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto.

(All manner of information concerning individuals may be acquired in connection with and relating to the varied investigative responsibilities of the FBI which are further described in "CATEGORIES OF RECORDS IN THE SYSTEM." Depending on the nature and scope of the investigation this information may include, among other things, personal habits and conduct, financial information, travel and organizational affiliation of individuals. The information collected is made a matter of record and placed in FBI files)

CATEGORIES OF RECORDS IN THE SYSTEM

The FBI Central Records Systems—The FBI utilizes a central records system of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in files. This abstract system is both a textual and an automated capability for locating mail. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.

The FBI *277* classifications used in its basic filing system which pertain primarily to Federal violations over which the FBI has investigative jurisdiction. However, included in the *277* classifications are personnel, applicant, and administrative matters to facilitate the overall filing scheme. These classifications are as follows (the word "obsolete" following the name of the classification indicates the FBI is no longer initiating investigative cases in these matters, although the material is retained for reference purposes):

1. Training Schools; National Academy Matters: FBI National Academy Applicants. Covers general information concerning the FBI National Academy, including background investigations of individual candidates.

2. Neutrality Matters. Title 18, United States Code, Sections 956 and 958 962; Title 22, United States Code, Sections 1934 and 401.

3. Overthrow or Destruction of the Government. Title 18, United States Code, Section 2385.

4. National Firearms Act, Federal Firearms Act; State Firearms Control Assistance Act; Unlawful Possession or Receipt of Firearms. Title 26, United States Code, Sections 5801–5812; Title 18, United States Code, Sections 921–928; Title 18, United States Code. Sections 1201–1203.

5. Income Tax. Covers violations of Federal income tax laws reported to the FBI. Complaints are forwarded to the Commissioner of the Internal Revenue Service.

6. Interstate Transportation of Strikebreakers. Title 18, United States Code, Section 1231.

7. Kidnapping. Title 28, United States Code, Sections 1201 and 1202.

8. Migratory Bird Act. Title 18, United States Code, Section 43; Title 16, United States Code, Section 703 through 718.

9. Extortion. Title 18, United States Code Sections 876, 877, 875, and 873.

10. Red Cross Act. Title 18, United States Code, Sections 706 and 917.

11. Tax (Other than Income) This classification covers complaints concerning violations of Internal Revenue law as they apply to other than alcohol, social security and income and profits taxes, which are forwarded to the Internal Revenue Service.

12. Narcotics. This classification covers complaints received by the FBI concerning alleged violations of Federal drug laws. Complaints are forwarded to the headquarters of the Drug Enforcement Administration (DEA), or the nearest district office of DEA.

13. Miscellaneous. Section 125, National Defense Act, Prostitution; Selling Whiskey Within Five Miles of An Army Camp. 1920 only. Subjects were alleged violators of abuse of U.S. flag, fraudulent enlistment, selling liquor and operating houses of prostitution within restricted bounds of military reservations. Violations of Section 13 of the Selective Service Act (Conscription Act were enforced by the Department of Justice as a war emergency measure with the Bureau exercising jurisdiction in the detection and prosecution of cases within the purview of that Section.

14. Sedition. Title 18, United States Code, Sections 2387, 2388, and 2391.

15. Theft from Interest Shipment. Title 18, United States Code, Section 859; Title 18, United States Code, Section 660; Title 18 United States Code, Section 2117.

16. Violations of Federal Injunction (obsolete). Consolidated into Classification 69, "Contempt of Court".

17. Fraud Against the Government *Department of Veterans Affairs, Department of Veterans Affairs Matters.* Title 18, United States Code, Section 287, 289, 290, 371, or 1001, and Title 38, United States Code, Sections 787(a), 787(b), 3405, 3501, and 3502.

18. May Act. Title 18, United States Code, Section 1384.

19. Censorship Matter (obsolete). Pub. L. 77th Congress.

20. Federal Grain Standards Act (obsolete) 1920 only. Subjects were alleged violators of contracts for sale. Shipment of Interstate Commerce, Section 5, U.S. Grain Standards Act.

21. Food and Drugs. This classification covers complaints received concerning alleged violations of the Food, Drug and Cosmetic Act; Tea Act; Import Milk Act; Caustic Poison Act; and Filled Milk Act. These complaints are referred to the Commissioner of the Food and Drug Administration of the field component of that Agency.

22. National Motor Vehicle Traffic Act, 1922–27 (obsolete). Subjects were possible violators of the National Motor Vehicle Theft Act, Automobiles seized by Prohibitions Agents.

23. Prohibition. This classification covers complaints received concerning bootlegging activities and other violations of the alcohol tax laws. Such complaints are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, or field representatives of the Agency.

24. Profiteering 1920–42. (obsolete). Subject are possible violators of the Lever Act—Profiteering in food and clothing or accused company was subject of file. Bureau conducted investigations to ascertain profits.

25. Selective Service Act; Selective Training and Service Act. Title 50, United States Code, Section 462; Title 50 United States Code, Section 459.

26. Interstate Transportation of Stolen Motor Vehicle; Interstate Transportation of Stolen Aircraft. Title 18, United States Code, Sections 2311 (in part), 2312, and 2313.

27. Patent Matter. Title 35, United States Code, Sections 104 and 105.

28. Copyright Matter. Title 17, United States Code, Sections 104 and 105.

29. Bank Fraud and Embezzlement. Title 18, United States Code, Sections 212, 213, 215, 334, 655–657, 1004–1006, 1008, 1009, 1014, and 1306; Title 12, United States Code, Section 1725(g).

30. Interstate Quarantine Law, 1922–25 (obsolete). Subjects alleged violators of Act of February 15, 1893, as amended, regarding interstate travel of persons afflicted with infectious diseases. Cases also involved unlawful transportation of animals, Act of February 2, 1903. Referrals were made to Public Health Service and the Department of Agriculture.

31. White Slave Traffic Act. Title 18, United States Code, Section 2421–2424.

32. Identification (Fingerprint) Matters. This classification covers general information concerning Identification (fingerprint) matters.

33. Uniform Crime Reporting. This classification covers general information concerning the Uniform Crime Reports, a periodic compilation of statistics of criminal violations throughout the United States.

34. Violation of Lacy Act. 1922–43. (obsolete) Unlawful Transportation and shipment of black bass and fur seal skins.

35. Civil Service. This classification covers complaints received by the FBI concerning Civil Service matters which are referred to the Office of Personnel Management in Washington or regional offices of that Agency.

36. Mail Fraud. Title 18, United States Code, Section 13341.

37. False Claims Against the Government. 1921–22. (obsolete) Subjects submitted claims for allotment, vocational training, compensation as veterans under the Sweet Bill. Letters were generally referred elsewhere (Veterans Bureau). Violators apprehended for violation of Article No. 1, War Risk Insurance Act.

38. Application for Pardon to Restore Civil Rights. 1921–35. (obsolete) Subjects allegedly obtained their naturalization papers by fraudulent means. Cases later referred to Immigration and Naturalization Service.

39. Falsely Claiming Citizenship. (obsolete) Title 18, United States Code, Sections 911 and 1015(a)(b).

40. Passport and Visa Matter. Title 18, United States Code, Sections 1451–1546.

41. Explosives (obsolete). Title 50, United States Code, Sections 121 through 144.

42. Deserter; Deserter, Harboring. Title 10, United States Code, Sections 808 and 885.

43. Illegal Wearing of Uniforms; False Advertising or Misuse of Names, Words, Emblems or Insignia; Illegal Manufacturer, Use, Possession, or Sale of Emblems and Insignia; Illegal Manufacture, Possession, or Wearing of Civil Defense Insignia; Miscellaneous, Forging or Using Forged Certificate of Discharge from Military or Naval Service; Miscellaneous, Falsely Making or Forging Naval, Military, or Official Pass; Miscellaneous, Forging or Counterfeiting Seal of Department or Agency of the United States, Misuse of the Great Seal of the United States or of the Seals of the President or the Vice President of the United States; Unauthorized Use of "Johnny Horizon" Symbol; Unauthorized Use of Smokey Bear Symbol. Title 18, United States Code, Sections 702, 703, and 704; Title 18, United States Code, Sections 701, 705, 707, and 710; Title 36, United States Code, Section 182; Title 50, Appendix, United States Code, Section 2284; Title 46, United States Code, Section 249; Title 18, United States Code, Sections 498, 499, 506, 709, 711, 711a, 712, 713, and 714; Title 12, United States Code, Sections 1457 and 1723a; Title 22, United States Code, Section 2518.

44. Civil Rights; Civil Rights, Election Laws, Voting Rights Act, 1965, Title 18, United States Code, Sections 241, 242, and 245; Title 42, United States Code, Section 1973; Title 18, United States Code, Section 243; Title 18, United States Code, Section 244, Civil Rights Act—Federally Protected Activities; Civil Rights Act—Overseas Citizens Voting Rights Act of 1975.

45. Crime on the High Seas (Includes stowaways on boats and aircraft). Title 18, United States Code, Sections 7, 13, 1243, and 2199.

46. Fraud Against the Government: (Includes Department of Health, Education and Welfare; Department of Labor (CETA), and Miscellaneous Government Agencies) Anti-Kickback Statute; Department Assistance Act of 1950; False Claims, Civil; Federal-Aid Road Act; Lead and Zinc Act; Public Works and Economic Development Act of 1965; Renegotiation Act, Criminal; Renegotiation Act, Civil; Trade Expansion Act of 1962; Unemployment Compensation Statutes; Economic Opportunity Act. Title 50, United States Code, Section 1211 et seq.; Title 31, United States Code, Section 231; Title 41, United States Code, Section 119; Title 40, United States Code, Section 489.

47. Impersonation. Title 18, United States Code, Section 912, 913, 915, and 916.

48. Postal. Violation (Except Mail Fraud). This classification covers inquiries concerning the Postal Service and complaints pertaining to the theft of mail. Such complaints are either forwarded to the Postmaster General or the nearest Postal Inspector.

49. Bankruptcy Fraud. Title 18, United States Code, Sections 151–155.

50. Involuntary Servitude and Slavery. U.S. Constitution, 13th Amendment; Title 18, United States Code, sections 1581–1588, 241, and 242.

51. Jury Panel Investigations. This classification covers jury panel investigations which are requested by the appropriate Assistant Attorney General as authorized by 28 U.S.C. 533 and AG memorandum #781, dated 11/9/72. These investigations can be conducted only up-on such a request and consist of an indices and arrest check, and only in limited important trials where defendant could have influence over a juror.

52. Theft, Robbery, Embezzlement, Illegal Possession or Destruction of Government Property. Title 18, United States Code, Sections 641, 1024, 1660, 2112, and 2114. Interference With Government Communications, Title 18, U.S.C., Section 1632.

53. Excess Profits On Wool. 1918 (obsolete). Subjects possible violator of Government Control of Wool Clip of 1918.

54. Customs Laws and Smuggling. This classification covers complaints received concerning smuggling and other matters involving importation and entry of merchandise into and the exportation of merchandise from the United States. Complaints are referred to the nearest district office of the U.S. Customs Service or the Commissioner of Customs, Washington, DC.

55. Counterfeiting. This classification covers complaints received concerning alleged violations of counterfeiting of U.S. coins, notes, and other obligations and securities of the Government. These complaints are referred to either the Director, U.S. Secret Service, or the nearest office of that Agency.

56. Election Laws. Title 18, United States Code, Sections 241, 242, 245, and 591–607; Title 42, United States Code, Section 1973; Title 26, United States Code, Sections 9012 and 9042; Title 2, United States Code, Sections 431–437, 439, and 441.

57. War Labor Dispute Act (obsolete). Pub. L. 89–77th Congress.

58. *Corruption of Federal Public Officials.* Title 18, United States Code, Sections 201–203, 205–211; Pub. L. 89–4 and 89–136.

59. World War Adjusted Compensation Act of 1924–44. (obsolete) Bureau of Investigation was charged with the duty of investigating alleged violations of all sections of the World War Adjusted Compensation Act (Pub. L. 472, 69th Congress (H.R. 10277)) with the exception of Section 704.

60. Anti-Trust, Title 15, United States Code, Sections 1–7, 12–27, and 13.

61. Treason or Misprision of Treason. Title 18, United States Code, Sections 2381, 2382, 2389, 2390, 756, and 757.

62. Administrative Inquiries. Misconduct Investigations of Officers and Employees of the Department of Justice and Federal Judiciary; Census Matters (Title 13, United States Code, Sections 211–214, 221–224, 304, and 305) Domestic Police Cooperation; Eight-Hour-Day Law (Title 40, United States, Code, Sections 321, 332, 325a, 326); Fair Credit Reporting Act (Title 15, United States Code, Sections 1681q and 1681r); Federal Cigarette Labeling and Advertising Act (Title 15, United States Code, Section 1333); Federal Judiciary Investigations; Kickback Racket Act (Title 18, United States Code, Section 874); Lands Division Matter, other Violations and/or Matters; Civil Suits—Miscellaneous; Soldiers' and Sailors' Civil Relief Act of 1940 (Title 50, Appendix, United States Code, Sections 510–590); Tariff Act of 1930 (Title 19, United States Code, Section 1304); Unreported Interstate Shipment of Cigarettes (Title 15, United States Code, Sections 375 and 376); Fair Labor Standards Act of 1938 (Wages and Hours Law) (Title 29, United States Code, Sections 201–219); Conspiracy (Title 18, United States Code, Section 371 (formerly Section 88, Title 18, United States Code); effective September 1, 1948).

63. Miscellaneous—Nonsubversive. This classification concerns correspondence from the public which does not relate to matters within FBI jurisdiction.

64. Foreign Miscellaneous. This classification is a control file utilized as a repository for intelligence information of value identified by country. More specific categories are placed in classification 108–113.

65. Espionage. Attorney General Guidelines on Foreign Counterintelligence; Internal Security Act of 1950; Executive Order 11905.

66. Administrative Matters. This classification covers such items as supplies, automobiles, salary matters and vouchers.

67. Personnel Matters. This classification concerns background investigations of applicants for employment with the FBI and folders for current and former employees.

68. Alaskan matters (obsolete). This classification concerns FBI investigations in the Territory of Alaska prior to its becomming a State.

69. Contenpt of Court. Title 18, United States Code, Sections 401, 402, 3285, 3691, 3692; Title 10, United States Code. Section 847; and Rule 42, Federal Rules of Criminal Procedure.

70. Crime on Government Reservation. Title 18, United States Code, Sections 7 and 13.

71. Bills of Lading Act, Title 49, United States Code, Section 121.

72. Obstruction of Criminal Investigations: Obstruction of Justice, Obstruction of Court Orders. Title 18, United States Code. Sections 1503 through 1510.

73. Application for Pardon After Completion of Sentence and Application for Executive Clemency. This classification concerns the FBI's background investigation in connection with pardon applications and request for executive clemency.

74. Perjury. Title 18, United States Code, Sections 1621, 1622, and 1623.

75. Bondsmen and Sureties. Title 18, United States Code, Section 1506.

76. Escaped Federal Prisoner. Escape and Rescue; Probation Violator, Parole Violator Parole Violator, Mandatory Release Violator. Title 18, United State Code, Sections 751–757, 1072; Title 18. United States Code. Sections 3651–3656; and Title 18, United States Code. Sections 4202–4207, 5037, and 4161–4166.

77. Applicants (Sepcial Inquiry, Departmental and Other Government Agencies, except those having special classifications). This classification covers the background investigations conducted by the FBI in connection with the aforementioned positions.

78. Illegal Use of Government Transportation Requests. Title 18, United States Code, Section 287, 495, 508, 641, 1001 and 1002.

79. Missing Persons. This classification covers the FBI's Identification Divsion's assistance in the locating of missing persons.

80. Laboratory Research Matters. At FBI Headquarters this classification is used for Laboratory research matters. In field office files this classification covers the FBI's public affairs matters and involves contact by the FBI with the general public, Federal and State agencies, the Armed Forces, Corporations, the news media and other outside organizations.

81. Gold Hoarding. 1933–45. (obsolete) Gold Hoarding investigations conducted in accordance with an Act of March 9, 1933 and Executive Order issued August 28, 1933. Bureau instructed by Department to conduct no further investigations in 1935 under the Gold Reserve Act of 1934. Thereafter, all correspondence referred to Secret Service

82. War Risk Insurance (National Life Insurance (obsolete)). This classification covers investigations conducted by the FBI in connection with civil suits filed under this statute.

83. Court of Claims. This classification covers requests for investigations of cases pending in the Bourt of Claims from the Assistant Attorney General in charge of the Civil Division of the Department of Justice.

84. Reconstruction Finance Corporation Act (obsolete). Title 15, United States Code, Chapter 14.

85. Home Owner Loan Corporation (obsolete). This classification concerned complaints received by the FBI about alleged violations of the Home Owners Loan Act, which were referred to the Home Owners Loan Corporation. Title 12 United States Code, Section 1464.

86. Fraud Against the Government—Small Business Administration. Title 15, United States Code, Section 645; Title 18, United States Code, Sections 212, 213, 215, 216, 217, 657, 658, 1006, 1011, 1013, 1014, 1906, 1907, and 1909.

87. Interstate Transportation of Stolen Property (Heavy Equipment—Commercialized Theft). Title 18, United States Code, Sections 2311, 2314, 2315 and 2318.

88. Unlawful Flight to Avoid Prosecution, Custody, or.Confinement; Unlawful Flight to Avoid Giving Testimony. Title 18, United States Code, Sections 1073 and 1074.

89. Assaulting or Killing a Federal Officer, Crimes Against Family Members, Congressional Assassination Statute, Title 18, United States Code, Sections 1111, 1114, 2232.

90. Irregularities in Federal Penal Institutions. Title 18, United States Code, Sections 1791 and 1792.

91. Bank Burglary; Bank Larcency; Bank Robbery. Title 18, United States Code, Section 2113.

92. Racketeer Enterprise Investigations. Title 18, United States Code. Section 3237.

93. Ascertaining Financial Ability. This classification concerns requests by the Department of Justice for the FBI to ascertain a person's ability to pay a claim, fine or judgment obtained against him by the United States Government.

94. Research matters. This classification concerns all general correspondence of the FBI with private individuals which does not involve any substantive violation of Federal law.

95. Laboratory Cases (Examination of Evidence in Other Than Bureau's Cases). The classification concerns non-FBI cases where a duly constituted State, county or a municipal law enforcement agency in a criminal matter has requested an examination of evidence by the FBI Laboratory.

96. Alien Applicant (obsolete). Title 10, United States Code, Section 310.

97. Foreign Agents Registration Act. Title 18, United States Code, Section 951; Title 22, United States Code, Sections 611–621; Title 50, United States Code, Sections 851–857.

98. Sabotage. Title 18, United States Code, Sections 2151–2156; Title 50, United States Code, Section 797.

99. Plant Survey (obsolete). This classification covers a program wherein the FBI inspected industrial plants for the purpose of making suggestions to the operations of those plants to prevent espionage and sabotage.

100. Domestic Security. This classification covers investigations by the FBI in the domesitc security field, e.g., Smith Act violations

101. Hatch Act (obsolete). Pub. L. 252, 76th Congress.

102. Voorhis Act, title 18, United States Code, Section 1386.

103. Interstate Transportation of Stolen Livestock, Title 18, United States Code, Sections 667, 2311, 2316 and 2317.

104. Servicemen's Dependents Allowance Act of 1942 (obsolete). Pub. L 625, 77th Congress, Sections 115–119.

105. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

106. Alien Enemy Control; Escaped Prisoners of War and Internees, 1944–55 (obsolete). Suspects were generally suspected escaped prisoners of war, members of foreign organizations, failed to register under the Alien Registration Act. Cases ordered closed by Attorney General after alien enemies returned to their respective countries upon termination of hostilities.

107. Denaturalization Proceedings (obsolete). This classification covers investigations concerning allegations that an individual fraudulently swore allegiance to the United States or in some other manner illegally obtained citizenship to the U.S., Title 8, United States Code, Section 738.

108. Foreign Travel Control (obsolete). This classification concerns security-type investigations wherein the subject is involved in foreign travel.

109. Foreign Political Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign political matters broken down by country.

110. Foreign Economic Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign economic matters broken down by country.

111. Foreign Social Conditions. This classification is a control file utilized as a repository for intelligence information concerning foreign social conditions broken down by country.

112. Foreign Funds. This classification is a control file utilized as a repository for intelligence information concerning foreign funds broken down by country.

113. Foreign Military and Naval Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign military and naval matters broken down by country.

114. Alien Property Custodian Matter (obsolute). Title 50, United States Code, Sections 1 through 38. This classification covers investigations concerning ownership and control of property subject to claims and litigation under this statute.

115. Bond Default; Bail Jumper. Title 18, United States Code, Sections 3146–3152.

116. Department of Energy Applicant; Department of Energy, Employee. This classification concerns background investigations conducted in connection with employment with the Department of Energy.

117. Department of Energy, Criminal. Title 42, United States Code, Sections 2011–2281; Pub. L. 93–438.

118. Applicant, Intelligence Agency (obsolute). This classification covers applicant background investigations conducted of persons under consideration for employment by the Central Intelligence Group.

119. Federal Regulation of Lobbying Act. Title 2, United States Code, Sections 261–270.

120. Federal Tort Claims Act, Title 28, United States Code, Sections 2671 to 2680. Investigations are conducted pursuant to specific request from the Department of Justice in connection with cases in which the Department of Justice represents agencies sued under the Act.

121. Loyalty of Government Employees (obsolute). Executive Order 9835.

122. Labor Management Relations Act, 1947. Title 29, United States Code, Sections 161, 162, 176–178 and 186.

123. Section inquiry, States Department, Voice of America (U.S. Information Center) (Pub. L. 402, 80th Congress) (obsolute). This classification covers loyalty and security investigations on personnel employed by or under consideration for employment for Voice of America.

124. European Recovery Program Administration), formerly Foreign Operations Administration, Economic Cooperation Administration or E.R.P., European Recovery Programs; A.I.D., Agency for International Development (obsolete). This classification covers security and loyalty investigations of personnel employed by or under consideration for employment with the European Recovery Program. Pub. L. 472, 80th Congress.

125. Railway Labor Act; Railway Labor Act—Employer's Liability Act Title 45, United States Code, Sections 151–163 and 181–188.

126. National Security Resources Board, Special Inquiry (obsolete). This classification covers loyalty investigations on employees and applicants of the National Security Resources Board.

127. Sensitive Positions in the United States Government, Pub. L. 266 (obsolete). Pub. L. 81st Congress.

128. International Development Program (Foreign Operations Administration) (obsolete). This classification covers background investigations conducted on individuals who are to be assigned to duties under the International Development Program.

129. Evacuation Claims (obsolete). Pub. L. 886, 80th Congress.

130. Special Inquiry. Armed Forces Security Act (obsolete). This classification covers applicant-type investigations conducted for the Armed Forces security agencies.

131. Admiralty Matter. Title 46, United States Code, Sections 741–752 and 781–799.

132. Special Inquiry, Office of Defense Mobilization (obsolete). This classification covers applicant-type investigations of individuals associated with the Office of Defense Mobilization.

133. National Science Foundation Act, Applicant (obsolete). Pub. L. 507, 81st Congress.

134. Foreign Counterintelligence Assets. This classification concerns individuals who provide information to the FBI concerning Foreign Counterintelligence matters.

135. PROSAB (Protection of Strategic Air Command Bases of the U.S. Air Force (obsolete). This classification covered contacts with individuals with the aim to develop information useful to protect bases of the Strategic Air Command.

136. American Legion Contact (obsolete). This classification covered liaison contracts with American Legion offices.

137. Informants. Other than Foreign Counterintelligence Assets. This classification concerns individuals who furnish information to the FBI concerning criminal violations on a continuing and confidential basis.

138. Loyalty of Employees of the United Nations and Other Public International Organizations. This classification concerns FBI investigations based on referrals from the Office of Personnel Management wherein a question or allegation has been received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422.

139. Interception of Communications (Formerly, Unauthorized Publication or Use of Communications). Title 47, United States Code, Section 605; Title 47, United States Code, Section 501; Title 18, United States Code, Sections 2510–2513.

140. Security of Government Employees; Fraud Against the Government, Executive Order 10450.

141. False Entries in Records of Interstate Carriers. Title 47, United States Code, Section 220; Title 49, United States Code, Section 20.

142. Illegal Use of Railroad Pass. Title 49, United States Code, Section 1.

143. Interstate Transport of Gambling Devices. Title 15, United States Code, Sections 1171 through 1180.

144. Interstate Transportation of Lottery Tickets. Title 18, United States Code, Section 1301.

145. Interstate Transportation of Obscene Materials. Title 18, United States Code, Sections 1462, 1464 and 1465.

146. Interstate Transporation of Prison-Made Goods. Title 18, United States Code, Sections 1761 and 1762.

147. Fraud Against the Government—Department of Housing and Urban Development, Matters. Title 18, United States Code, Sections 657, 709, 1006, and 1010; Title 12, United States Code, Sections 1709 and 1715.

148. Interstate Transportation of Fireworks. Title 18, United States Code, Section 836.

149. Destruction of Aircraft or Motor Vehicles. Title 18, United States Code, Sections 31–35.

150. Harboring of Federal Fugitives, Statistics (obsolete).

151. (Referral cases received from the Office of Personnel Management under Pub. L. 298). Agency for International Development; Department of Energy; National Aeronautics and Space Administration; Nation Science Foundation; Peace Corps; Action; U.S. Arms Control and Disarmament Agency; World Health Organization; International Labor Organization; International Communications Agency. This classification covers referrals from the Office of Personnel Management where an allegation has been received regarding an applicant's loyalty to the U.S Government. These referrals refer to applicants from Peace Corps; Department of Energy, National Aeronautics and Space Administration, Nuclear Regulatory Commission, United States Arms Control and Disarmament Agency and the International Communications Agency.

152. Switchblade Knife Act. Title 15, United States Code, Sections 1241–1244.

153. Automobile Information Disclosure Act. Title 15, United States Code. Sections 1231–1233.

154. Interstate Transportation of Unsafe Refrigerators. Title 15, United States Code, Sections 1211–1214.

155. National Aeronautics and Space Act of 1958. Title 18, United States Code, Section 799.

156. Employee Retirement Income Security Act. Title 29, United States Code, Sections 1021–1029, 1111, 1131, and 1141; Title 18, United States Code, Sections 644, 1027, and 1954.

157. Civil Unrest. This classification concerns FBI responsibility for reporting information on civil disturbances or demonstrations. The FBI's investigative responsiblity is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest which became effective April 5, 1976.

158. Labor-Management Reporting and Disclosure Act of 1959 (Security Matter) (obsolete). Pub. L. 86–257, Section 504.

159. Labor-Management Reporting and Disclosure Act of 1959 (Investigative Matter). Title 29, United States Code, Sections 501, 504, 522, and 530.

160. Federal Train Wreck Statute. Title 18. United States Code, Section 1992.

161. Special Inquiries for White House, Congressional Committee and Other Government Agencies. This classification covers investigations requested by the White House. Congressional committees or other Government agencies.

162. Interstate Gambling Activities. This classification covers information acquired concerning the nature and scope of illegal gambling activities in each field office.

163. Foreign Police Cooperation. This classification covers requests by foreign police for the FBI to render investigative assistance to such agencies.

164. Crime Aboard Aircraft. Title 49, United States Code, Sections 1472 and 1473.

165. Interstate Transmission of Wagering Information. Title 18, United States Code, Section 1065.

166. Interstate Transportation in Aid of Racketeering. Title 18, United States Code, Section 1952.

167. Destruction of Interstate Property. Title 15, United States Code, Sections 1281 and 1282.

168. Interstate Transportation of Wagering Paraphernalia. Title 18, United States Code, Section 1953.

169. Hydraulic Brake Fluid Act (obsolete); 76 Stat. 437, Pub. L. 87–637.

170. Extremist Informants (obsolete). This classification concerns individuals who provided information on a continuing basis on various extremist elements.

171. Motor Vehicle Seat Belt Act (obsolete). Pub. L. 88–201, 80th Congress.

172. Sports Bribery. Title 18, United States Code, Section 244.

173. Public Accommodations. Civil Rights Act of 1964 Public Facilities; Civil Rights Act of 1964 Public Education;

Civil Rights Act of 1964 Employment; Civil Rights Act of 1964. Title 42, United States Code, Section 2000; Title 18, United States Code. Section 245.

174. Explosives and Incendiary Devices; Bomb Threats (Formerly Bombing Matters; Bombing Matters, Threats). Title 18, United States Code, Section 844.

175. Assaulting, Kidnapping or Killing the President (or Vice President) of the United States. Title 18, United States Code, Section 1751.

176. Anti-riot Laws. Title 18, United States Code, Section 245.

177. Discrimination in Housing. Title 42, United States Code, Sections 3601–3619 and 3631.

178. Interstate Obscene or Harassing Telephone Calls. Title 47, United States Code, Section 223.

179. Extortionate Credit Transactions. Title 18, United States Code, Section 891–896.

180. Desecration of the Flag. Title 18, United States Code, Section 700.

181. Consumer Credit Protection Act. Title 15, United States Code, Section 1611.

182. Illegal Gambling Business: Illegal Gambling Business, Obstruction; Illegal Gamling Business Forfeiture. Title 18, United States Code, Section 1955; Title 18, United States Code, Section 1511.

183. Racketeer, Influence and Corrupt Organizations. Title 18, United States Code, Sections 1961–1968.

184. Police Killings. This classification concerns investigations conducted by the FBI upon written request from local Chief of Police or duty constituted head of the local agency to actively participate in the investigation of the killing of a police officer. These investigations are based on a Presidential Directive dated June 3, 1971.

185. Protection of Foreign Officials and Officials Guests of the United States. Title 18, United States Code, Sections 112, 970, 1116, 1117 and 1201.

186. Real Eastate Settlement Procedures Act of 1974. Title 12, United States Code, Section 2602; Title 12, United States Code, Section 2606, and Title 12, United States Code, Section 2607.

187. Privacy Act of 1974, Criminal. Title 5, United States Code, Section 552a.

188. Crime Resistance. This classification covers FBI efforts to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement as mandated by the Omnibus Crime Control and Safe Streets Action of 1968.

189. Equal Credit Opportunity Act. Title 15, United States Code, Section 1691.

190. Freedom of Information/Privacy Acts. This classification covers the creation of a correspondence file to preserve and maintain accurate records concerning the handling of requests for records submitted pursuant to the Freedom of Information—Privacy Acts.

191. False Identity Matters. (obsolete) This classification covers the FBI's study and examination of criminal elements' efforts to create false identities.

192. Hobbs Act—Financial Institutions; Commercial Institutions; Armored Carrier. Title 18, United States Code, Section 1951.

193. Hobbs Act—Commercial Institutions (obsolete). Title 18, United States Code, Section 1951; Title 47, United States Code, Section 506.

194. Hobbs Act—Corruption of Public Officials. Title 18, United States Code, Section 1951.

195. Hobbs Act—Labor Related. Title 18, United States Code, Section 1951.

196. Fraud by Wire. Title 18, United States Code, Section 1343.

197. Civil Actions or Claims Against the Government. This classification covers all civil suits involving FBI matters and most administrative claims filed under the Federal Tort Claims Act arising from FBI activities.

198. Crime on Indian Reservations. Title 18, United States Code, Sections 1151, 1152, and 1153.

199. Foreign Counterintelligence—Terrorism. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

200. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

201. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

202. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

203. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

204. Federal Revenue Sharing. This classification covers FBI investigations conducted where the Attorney General has been authorized to bring civil action whenever he has reason to believe that a pattern or practice of discrimination in disbursement of funds under the Federal Revenue Sharing status exists.

205. Foreign Corrupt Practices Act of 1977. Title 15, United States Code, Section 78.

206. Fraud Against the Government—Department of Defense, Department of Agriculture, Department of Commerce, Community Services Organization, Department of Transportation. (See classification 46 (supra) for a statutory authority for this and the four following classifications.)

207. Fraud Against the Government—Environmental Protection Agency, National Aeronautics and Space Administration, Department of Energy, Department of Transportation.

208. Fraud Against the Government—General Services Administration.

209. Fraud Against the Government—Department of Health, and Human Services (Formerly, Department of Health, Education, and Welfare).

210. Fraud Against the Government—Department of Labor.

211. Ethics in Government Act of 1978, Title VI (Title 28, Sections 591–596).

212. Foreign Counterintelligence—Intelligence Community Support. This is an administrative classification for the FBI's operational and technical support to other Intelligence Community agencies.

213. Fraud Against the Government—Department of Education.

214. Civil Rights of Institutionalized Persons Act (Title 42, United States Code. Section 1997).

215. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

216. thru 229. Foreign Counterintelligence Matters. (Same authority as 215)

230. thru 240. FBI Training Matters.

241. DEA Applicant Investigations.

242. Automation Matters.

243. Intelligence Identities Protection Act of 1982.

244. Hostage Rescue Team.

245. Drug Investigative task Force.

246 thru 248. Foreign Counterintelligence Matters. (Same authority as 215)

249. Environmental Crimes—Investigations involving toxic or hazardous waste violations.

250. Tampering With Consumer Products (Title 18, U.S. Code, Section 1395)

251. Controlled Substance—Robbery;—Burglary (Title 18, U.S. Code, Section 2118)

252. Violent Crime Apprehension Program (VICAP). Case folders containing records relevant to the VICAP Program, in conjunction with the National Center for the Analysis of Violent Crime Record System at the FBI Academy; Quantico, Virginia.

253. False Identification Crime Control Act of 1982 (Title 18, U.S. Code, Section 1028—Fraud and Related Activity in Connection With Identification Documents, and Section 1738—Mailing Private Identification Documents Without a Disclaimer)

254. Destruction of Energy Facilities (Title 18, U.S. Code, Section 1365) relates to the destruction of property of nonnuclear energy facilities.

255. Counterfeiting of State and Corporate Securities (Title 18, U.S. Code, Section 511) covers counterfeiting and forgery of all forms of what is loosely interpreted as securities.

256. Hostage Taking—Terrorism (Title 18, U.S. Code, Section 1203) prohibits taking of hostage(s) to compel third party to do or refrain from doing any act.

257. Trademark Counterfeiting Act (Title 18, United States Code, Section 2320) covers the international trafficking in goods which bear a counterfeited trademark.

256. Credit Card Fraud Act of 1984 (Title 18, United States Code, Section 1029) covers fraud and related activities in connection with access devices (credit and debit cards).

259. Security Clearance Investigations Program. (Same authority as 215)

260. Industrial Security Program. (Same authority as 215)

261. Security Officer Matters. (Same authority as 215)

262. Overseas Homicide (Attempted Homicide—International Terrorism. Title 18. United States Code. Section 2331.

263. Office of Professional Responsibility Matters.

264. Computer Fraud and Abuse Act of 1986. Electronic Communications Privacy Act of 1986. Title 18, United States Code, Section 1030; Title 18, United States Code, Section 2701.

265. Acts Terrorism in the United States—International Terrorist. (Followed by predicate offense from other classification.)

266. Acts of Terrorism in the United States—Domestic Terrorist. (Followed by predicate offense from other classification.)

267. Drug-Related Homicide. Title 21 U.S. Code, Section 848(e).

268. Engineering Technical Matters—FCI.

269. Engineering Technical Matters—Non-FCI.

270. Cooperative Witnesses.

271. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

272. Money Laundering. Title 18, U.S. Code, Sections 1956 and 1957.

273. Adoptive Forfeiture Matter—Drug. Forfeiture based on seizure of property by state, local or other Federal authority.

274. Adoptive Forfeiture Matter—Organized Crime. (Same explanation as 273.)

275. Adoptive Forfeiture Matter—White Collar Crime. (Same explanation as 273.)

276. Adoptive Forfeiture Matter—Violent Crime/Major Offenders Program. (Same explanation as 273.)

277. Adoptive Forfeiture Matter—Counterterrorism Program. (Same explanation as 273.)

Records Maintained in FBI Field Divisions—FBI field divisions maintain for limited periods of time investigative, administrative and correspondence records, including files, index cards and related material, some of which are duplicated copies of reports and similar documents forwarded to FBI Headquarters. Most investigative activities conducted by FBI field divisions are reported to FBI Headquarters at one or more stages of the investigation. There are, however, investigative activities wherein no reporting was made to FBI Headquarters, e.g., pending cases not as yet reported and cases which were closed in the field division for any of a number of reasons without reporting to FBI Headquarters.

Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. These records are lists of individuals which contain certain biographic data, including physical description and photograph. They may also contain information concerning activities of the individual as reported to FBIHQ by the various field offices. The establishment of these lists is necessitated by the needs of the Division to have immediate access to pertinent information duplicative of data found in the central records without the delay caused by a time-consuming manual search of central indices. The manner of segregating these individuals varies depending on the particular needs of the FBI Division. The information pertaining to individuals who are a part of the list is derivative of information contained in the Central Records System. These duplicative records fall into the following categories:

(1) Listings of individuals used to assist in the location and apprehension of individuals for whom legal process is outstanding (fugitives):

(2) Listings of individuals used in the identification of particular offenders in cases where the FBI has jurisdiction. These listings include various photograph albums and background data concerning persons who have been formerly charged with a particular crime and who may be suspect in similar criminal activities; and photographs of individuals who are unknown but suspected of involvement in a particular criminal activity, for example, bank surveillance photographs:

(3) Listings of individuals as part of an overall criminal intelligence effort by the FBI. This would include photograph albums, lists of individuals known to be involved in criminal activity, including theft from interstate shipment, interstate transportation of stolen property, and individuals in the upper echelon of organized crime:

(4) Listings of individuals in connection with the FBI's mandate to carry out Presidential directives on January 8, 1943, July 24, 1950. December 15, 1953, and February 18, 1976, which designated the FBI to carry out investigative work in matters relating to espionage, sabotage, and foreign counterintelligence. These listings may include photograph albums and other listings containing biographic data regarding individuals. This would include lists of identified and suspected foreign intelligence agents and informants:

(5) Special indices duplicative of the central indices used to access the Central Records System have been created from time to time in conjunction with the administration and investigation of major cases. This duplication and segregation facilitates access to documents prepared in connection with major cases.

In recent years, as the emphasis on the investigation of white collar crime, organized crime, and hostile foreign intelligence operations has increased, the FBI has been confronted with increasingly complicated cases, which require more intricate information processing capabilities. Since these complicated investigations frequently involve massive volumes of evidence and other investigative information, the FBI uses its computers, when necessary to collate, analyze, and retrieve investigative information in the most accurate and expeditious manner possible. *It should be noted that this computerized investigative information, which is extracted from the main files or other commercial or governmental sources, is only maintained as necessary to support the FBI's investigative activities.* Information from these internal computerized subsystems of the "Central Records

System" is not accessed by any other agency. All disclosures of computerized information are made in printed form in accordance with the routine uses which are set forth below.

Records also are maintained on a temporary basis relevant to the FBI's domestic police cooperating program, where assistance in obtaining information is provided to state and local police agencies.

Also, personnel type information, dealing with such matters as attendance and production and accuracy requirements is maintained by some divisions.

(The following chart identifies various listings or indexes maintained by the FBI which have been or are being used by various divisions of the FBI in their day-to-day operations. The chart identifies the list by name, description and use, and where maintained, i.e. FBI Headquarters and/or Field Office. The number in parentheses in the field office column indicates the number of field offices which maintain these indices. The chart indicates, under "status of index," those indexes which are in current use (designated by the word "active") and those which are no longer being used, although maintained (designated by the word "inactive"). There are 27 separate indices which are classified in accordance with existing regulations and are not included in this chart. The following indices are no longer being used by the FBI and are being maintained at FBIHQ pending receipt of authority to destroy: Black Panther Party Photo Index; Black United Front Index; Security Index; and Wounded Knee Album.)

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Administrative Index (ADEX)	Consists of cards with descriptive data on individuals who were subject to investigation in a national emergency because they were believed to constitute a potential or active threat to the internal security of the United States. When ADEX was started in 1971, it was made up of people who were formerly on the Security Index, Reserve Index, and Agitator Index. This index is maintained in two separate locations in FBI Headquarters. ADEX was discontinued in January 1978.	Inactive	Yes	Yes (29).
Anonymous Letter File	Consists of photographs of anonymous communications and extorionate credit transactions, kidnapping, extortion and threatening letters.	Active	Yes	No.
Associates of DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of individuals whom DEA has identified as associates of Class 1 Narcotics Violators.	Active	Yes	Yes (56).
Background Investigation Index—Department of Justice.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with Department of Justice, such as U.S. Attorney, Federal judges, or a high level Department position.	Active	Yes	No.
Background Investigation Index—White House, Other Executive Agencies, and Congress.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with the White House, Executive agencies (other than the Department of Justice) and the Congress.	Active	Yes	No.
Bank Fraud and Embezzlement Index.	Consists of individuals who have been the subject of "Bank Fraud and Embezzlement" investigation. This file is used as an investigative aid.	Active	No	Yes (1).
Bank Robbery Album	Consists of photos of bank robbers, burglars, and larceny subjects. In some field offices at will also contain pictures obtained from local police departments of known armed robbers and thus potential bank robbers. The index is used to develop investigative leads in bank robbery cases and may also be used to show to witnesses of bank robberies. It is usually filed by race, height, and age. This index is also maintained in one resident agency (a suboffice of a field office).	Active	No	Yes (47).
Bank Robbery Nickname index.	Consists of nicknames used by known bank robbers. The index card on each would contain the real name and method of operation and are filed in alphabetical order.	Active	No	Yes (1).
Bank Robbery Note File	Consists of photographs of notes used in bank robberies in which the suspect has been identified. This index is used to help solve robberies in which the subject has not been identified but a note was left. The role is compared with the index to try to match the sentence structure and handwriting for the purpose of identifying possible suspects.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Bank Robberv Suspect Index	Consists of a control file or index cards with photos, if available, of bank robbers or burglars. In some field offices these people may be part of the bank robbery album. This index is generally maintained and used in the same manner as the bank robbery album.	Active	No	Yes (33).
Car Ring Case Photo Album	Consists of photos of subjects and suspects involved in a large car theft ring investigation. It is used as an investigative aid.	Active	No	Yes (3).
Car Ring Case Photo Album and Index.	Consists of photos of subjects and suspects involved in a large car theft ring investigation. The card index maintained in addition to the photo album contains the names and addresses appearing on fraudulent title histories for stolen vehicles. Most of these names appearing on these titles are fictitious. But the photo album and card indexes are used as an investigative aid.	Active	No	Yes (1).
Car Ring Case Toll Call Index	Consists of cards with information on persons who subscribe to telephone numbers to which toll calls have been placed by the major subjects of a large car theft ring investigation. It is maintained numerically by telephone number. It is used to facilitate the development of probably cause for a court-approved wiretap.	Active	No	Yes (2).
Car Ring Theft Working Index	Contains cards on individuals involved in car ring theft cases on which the FBI Laboratory is doing examination work.	Active	Yes	No.
Cartage Album	Consists of photos with descriptive data of individuals who have been convicted of theft from interstate shipment or interstate transportation of stolen property where there is a reason to believe they may repeat the offense. It is used in investigating the above violations.	Active	No	Yes (3).
Channelizing Index	Consists of cards with the names and case file numbers of people who are frequently mentioned in information reports. The index is used to facilitate the distributing or channeling of informant reports to appropriate files.	Active	No	Yes (9).
Check Circular File	Consists of fliers numerically in a control file on fugitives who are notorious fradulent check passers and who are engaged in a continuing operation of passing checks. The fliers which include the subject's name, photo, a summary of the subject's method of operation and other identifying data is used to alert other FBI field offices and business establishments which may be the victims of bad checks.	Active	Yes	Yes (43).
Computerized Telephone Number File (CTNF) Intelligence.	Consists of a computer listing of telephone numbers (and subscribers' names and addresses) utilized by subjects and/or certain individuals which come to the FBI's attention during major investigations. During subsequent investigations, telephone numbers, obtained through subpoena, are matched with the telephone numbers on file to determine connections or associations.	Active	Yes	No.
Con Man Index	Consists of computerized names of individuals, along with company affiliation, who travel nationally and internationally while participating in large-dollar-value financial swindles.	Active	Yes	No.
Confidence Game (Flim Flam) Album.	Consists of photos with descriptive information on individuals who have been arrested for confidence games and related activities. It is used as an investigative aid.	Active	No	Yes (4).
Copyright Matters Index	Consists of cards of individuals who are film collectors and film titles. It is used as a reference in the investigation of copyright matters.	Active	No	Yes (1).
Criminal Intelligence Index	Consists of cards with name and file number of individuals who have become the subject of an antiracketeering investigation. The index is used as a quick way to ascertain file numbers and the correct spelling of names. This index is also maintained in one resident agency.	Active	No	Yes (2).
Criminal Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of narcotic violators—persons known to manufacture, supply, or distribute large quantities of illicit drugs—with background data. It is used by the FBI in their role of assisting DEA in disseminating intelligence data concerning illicit drug trafficking. This index is also maintained in two resident agencies.	Active	Yes	Yes (56).
Deserter Index	Contains cards with the names of individuals who are known military deserters. It is used as an investigative aid.	Active	No	Yes (4).
False Identities Index	Contains cards with the names of deceased individuals whose birth certificates have been obtained by other persons for possible false identification uses and in connection with which the FBI laboratory has been requested to perform examinations.	Inactive	Yes	No.
False Identities List	Consist of a listing of names of deceased individuals whose birth certificates have been obtained after the person's death, and thus whose names are possibly being used for false identification purposes. The listing is maintained as part of the FBI's program to find persons using false identities for illegal purposes.	Inactive	No	Yes (31).
False Identity Photo Album	Consists of names and photos of people who have been positively identified as using a false identification. This is used as an investigative aid in the FBI's investigation of false identities.	Inactive	No	Yes (2).
FBI/Inspector General (IG) Case Pointer System (FICPS).	Consists of computerized listing of individual names of organizations which are the subject of active and inactive fraud investigations, along with the name of the agency conducting the investigation. Data is available to IG offices throughout the federal government to prevent duplication of investigative activity.	Active	Yes	No.
FBI Wanted Persons Index	Consists of cards on persons being sought on the basis of Federal warrants covering violations which fall under the jurisdiction of the FBI. It is used as a ready reference to identify those fugitives.	Active	Yes	No.
Foreign Counterintelligence (FCI).	Consists of cards with identity background data on all active and inactive operational and informational assets in the foreign counterintelligence field. It is used as a reference aid on the FCI Asset program.	Active	Yes	No.
Fraud Against the Government Index.	Consists of individuals who have been the subject of a "fraud against the Government" investigation. It is used as investigative aid.	Active	No	Yes (1).
Fugitive Bank Robbers File	Consists of fliers on bank robbery fugitives filed sequentially in a control file. FBI Headquarters distributes to the field offices fliers on bank robbers in a fugitive status for 15 or more days to facilitate their location.	Active	Yes	Yes (43).
General Security Index	Contains cards on all persons that have been the subject of a security classification investigation by the FBI field office. These cards are used for general reference purposes.	Active	No	Yes (1).
Hoodlum License Plate Index	Consists of cards with the license plates numbers and descriptive data on known hoodlums and cars observed in the vicinity of hoodlum homes. It is used for quick identification of such person in the course of investigation. The one index which is not fully retrievable in maintained by a resident agency.	Active	No	Yes (3).
Identification Order Fugitive Flier File.	Consists of fliers numerically in a control file. When immediate leads have been exhausted in fugitive investigations and a crime of considerable public interest has been committed, the fliers are given wide circulation among law enforcement agencies throughout the United States and are posted in post offices. The fliers contain the fugitive's photograph, fingerprints, and description.	Active	Yes	Yes (49).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Informant Index	Consists of cards with the name, symbol numbers, and brief background information on the following categories of active and inactive informants, top echelon criminal informants, security informants, criminal information, operational and informational assets, extremist informants (discontinued), plant informant—informants on and about certain military bases (discontinued), and potential criminal informants.	Active	No	Yes (56)
Informants in Other Field Offices, Index of.	Consist of cards with names and/or symbol numbers of informants in other FBI field offices that are in a position to furnish information that would also be included on the index card.	Active	No	Yes (15).
Interstate Transportation of Stolen Aircraft Photo Album.	Consists of photos and descriptive data on individuals who are suspects known to have been involved in interstate transportation of stolen aircraft. It is used as an investigative aid.	Active	No	Yes (1).
IRS Wanted List	Consists of one-page fliers from IRS on individuals with background information who are wanted by IRS for tax purposes. It is used in the identification of persons wanted by IRS.	Active	No	Yes (11).
Kidnapping Book	Consists of data, filed chronologically, on kidnappings that have occurred since the early fifties. The victims' names and the suspects, if known, would be listed with a brief description of the circumstances surrounding the kidnapping. The file is used as a reference aid in matching up prior methods of operation in unsolved kidnapping cases.	Active	Yes	No.
Known Check Passers Album	Consists of photos with descriptive data of persons known to pass stolen, forged, or counterfeit checks. It is used as an investigative aid.	Active	No	Yes (4).
Known Gambler Index	Consists of cards with names, descriptive data, and sometimes photos of individuals who are known bookmakers and gamblers. The index is used in organized crime and gambling investigations. Subsequent to GAO's review, and at the recommendation of the inspection team at one of the two field offices where the index was destroyed and thus is not included in the total.	Active	No	Yes (5).
La Cosa Nostra (LCN) Membership Index.	Contains cards on individuals having been identified as members of the LCN index. The cards contain personal data and pictures. The index is used solely by FBI agents for assistance in investigating organized crime matters.	Active	Yes	Yes (55).
Leased Line Letter Request Index.	Contains cards on individuals and organizations who are or have been the subject of a national security electronic surveillance where a leased line letter was necessary. It is used as an administrative and statistical aid.	Active	Yes	No.
Mail Cover Index	Consists of cards containing a record of all mail covers conducted on individuals and groups since about January 1973. It is used for reference in preparing mail cover requests.	Active	Yes	No.
Military Deserter Index	Consists of cards containing the names of all military deserters where the various military branches have requested FBI assistance in locating. It is used as an administrative aid.	Active	Yes	No.
National Bank Robbery Album	Consists of fliers on bank robbery suspects held sequentially in a control file. When an identifiable bank camera photograph is available and the case has been under investigation for 30 days without identifying the subject, FBIHQ sends a flier to the field offices to help identify the subject.	Active	Yes	Yes (42).
National Fraudulent Check File.	Contains photographs of the signature on stolen and counterfeit checks. It is filed alphabetically but there is no way of knowing the names are real or fictitious. The index is used to help solve stolen check cases by matching checks obtained in such cases against the index to identify a possible suspect.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
National Security Electronic Surveillance Card File.	Contains cards recording electronic surveillances previously authorized by the Attorney General and previously and currently authorized by the FISC; current and previous assets in the foreign counterintelligence field; and a historical, inactive section which contains cards believed to record nonconserted physical entries in national security cases, previously toll billings, mail covers and leased lines. The inactive section also contains cards reflecting previous Attorney General approvals and denials for warrantless electronic surveillance in the national security cases.	Inactive	Yes	No.
Night Depository Trap Index	Contains cards with the names of persons who have been involved in the theft of deposits made in bank night depository boxes. Since these thefts have involved various methods, the FBI uses the index to solve such cases by matching up similar methods to identify possible suspects.	Active	Yes	No.
Organized Crime Photo Album	Consists of photos and background information on individuals involved in organized crime activities. The index is used as a ready reference in identifying organized crime figures within the field offices' jurisdiction.	Active	No	Yes (13).
Photospread Identification Elimination File.	Consists of photos of individuals who have been subjects and suspects in FBI investigations. It also includes photos received from other law enforcement agencies. These pictures can be used to show witnesses of certain crimes.	Active	No	Yes (14).
Prostitute Photo Album	Consists of photos with background data on prostitutes who have prior local or Federal arrests for prostitution. It is used to identify prostitutes in connection with investigations under the White Slave Traffic Act.	Active	No	Yes (4).
Royal Canadian Mounted Policy (RCMP) Wanted Circular File.	Consists of a control file of individuals with background information of persons wanted by the RCMP. It is used to notify the RCMP if an individual is located.	Active	No	Yes (17).
Security Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
Security Subjects Control Index.	Consists of cards containing the names and case file numbers of individuals who have been subject to security investigations check. It is used as a reference source.	Active	No	Yes (1).
Security Telephone Number Index.	Contains cards with telephone subscriber information subpoenaed from the telephone company in any security investigation. It is maintained numerically by the last three digits in the telephone number. It is used for general reference purposes in security investigations.	Active	No	Yes (1).
Selective Service Violators Index.	Contains cards on individuals being sought on the basis of Federal warrants for violation of the Selective Service Act.	Active	Yes	No.
Sources of Information Index	Consist of cards on individuals and organizations such as banks, motels, local government that are willing to furnish information to the FBI with sufficient frequency to justify listing for the benefit of all agents. It is maintained to facilitate the use of such sources.	Active	No	Yes (10).
Special Services Index	Contains cards of prominent individuals who are in a position to furnish assistance in connection with FBI investigative responsibility.	Active	No	Yes (28).
Stolen Checks and Fraud by Wire Index.	Consists of cards on individuals involved in check and fraud by wire violations. It is used as an investigative aid.	Active	No	Yes (1).
Stop Notices Index	Consists of cards on names of subjects or property where the field office has placed a stop at another law enforcement agency or private business such as pawn shops in the event information comes to the attention of that agency concerning the subject or property. This is filed numerically by investigative classification. It is used to insure that the agency where the stop is placed is notified when the subject is apprehended or the property is located or recovered.	Active	No	Yes (43).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Surveillance Locator Index	Consists of cards with basic data on individuals and businesses which have come under physical surveillance in the city in which the field office is located. It is used for general reference purposes in antiracketeering investigations.	Active	No	Yes (2).
Telephone Number Index—Gamblers.	Contains information on persons identified usually as a result of a subpoena for the names of subscribers to particular telephone numbers or toll records for a particular phone number of area gamblers and bookmakers. The index cards are filed by the last three digits of the telephone number. The index in used gambling investigations.	Active	No	Yes (2).
Telephone Subscriber and Toll Records Check Index.	Contains cards with information on persons identified as the result of a formal request or subpoena to the phone company for the identity of subscribers to particular telephone numbers. The index cards are filed by telephone number and would also include identity of the subscriber, billing party's identity, subscriber's address, date of request from the telephone company, and file number.	Active	No	Yes (1).
Thieves, Couriers and Fences Photo Index.	Consists of photos and background information on individuals who are or are suspected of being thieves, couriers, or fences based on their past activity in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Toll Record Request Index	Contains cards on individuals and organizations on whom toll records have been obtained in national security related cases and with respect to which FBIHQ had to prepare a request letter. It is used primarily to facilitate the handling of repeat requests on individuals listed.	Active	Yes	No.
Top Burglar Album	Consists of photos and background data of known and suspect top burglars involved in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Top Echelon Criminal Informer Program (TECIP) Index.	Consists of cards containing identity and brief background information on individuals who are either furnishing high level information in the organized crime area or are under development to furnish such information. The index is used primarily to evaluate, corroborate, and coordinate informant information and to develop prosecutive data against racket figures under Federal, State, and local statutes.	Active	Yes	No.
Top Ten Program File	Consists of fliers, filed numerically in a control file, on fugitives considered by the FBI to be 1 of the 10 most wanted. Including a fugitive of the top 10 usually assures a greater national news coverage as well as nation-wide circulation of the flier.	Active	Yes	Yes (44).
Top Thief Program Index	Consists of cards of individuals who are professional burglars, robbers, or fences dealing in items likely to be passed in interstate commerce or who travel interstate to commit the crime. Usually photographs and background information would also be obtained on the index card. The index is used as an investigative aid.	Active	No	Yes (27).
Truck Hijack Photo Album	Contains photos and descriptive data of individuals who are suspected truck hijackers. It is used as an investigative aid and for displaying photos to witnesses and/or victims to identify unknown subjects in hijacking cases.	Active	No	Yes (4).
Truck Thief Suspect Photo Album.	Consists of photos and background data on individuals previously arrested or are currently suspects regarding vehicle theft. The index is used as an investigative aid.	Active	No	Yes (1).
Traveling Criminal Photo Album.	Consists of photos with identifying data of individuals convicted of various criminal offenses and may be suspects in other offenses. It is used as an investigative aid.	Active	No	Yes (1).
Veterans Administrative (VA)/Federal Housing Administration Matters (FHA) Index.	Consists of cards of individuals who have been subject of an investigation relative to VA and FHA matters. It is used as an investigative aid.	Active	No	Yes (1).
Wanted Fliers File	Consists of fliers, filed numerically in a control file, on badly wanted fugitives whose apprehension may be facilitated by a flier. The flier contains the names, photographs, aliases, previous convictions, and a caution notice.	Active	Yes	Yes (46).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Wheeldex	Contains the nicknames and the case file numbers of organized crime members. It is used in organized crime investigations.	Active	No	Yes (1).
White House Special Index	Contains cards on all potential White House appointees, staff members, guests, and visitors that have been referred to the FBI by the White House security office for a records check to identify any adverse or derogatory information. This index is used to expedite such check in view of the tight timeframe usually required.	Active	Yes	No.
Witness Protection Program Index.	Contains cards on individuals who have been furnished a new identity by the U.S. Justice Department because of their testimony in organized crime trials. It is used primarily to notify the U.S. Marshals Service when information related to the safety of a protected witness comes to the FBI's attention.	Active	Yes	No.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, Title 44, United States Code, chapter 31, section 3101; and title 36, Code of Federal Regulations, chapter XII, require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government, title 28, United States Code, section 534, delegates authority to the Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime and other records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, both investigative and administrative, are maintained in this system in order to permit the FBI to function efficiently as an authority, responsive component of the Department of Justice. Therefore, information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who have need of the information in the performance of their official duties.

Personal information from this system may be disclosed as a routine use to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

In addition, personal information may be disclosed from this system to members of the Judicial Branch of the Federal Government in response to a specific request, or at the initiation of the FBI, where disclosure appears relevant to the authorized function of the recipient judicial office or court system. An example would be where an individual is being considered for employment by a Federal judge.

Information in this system may be disclosed as a routine use to any state or local government agency directly engaged in the criminal justice process, e.g., police, prosecution, penal, probation and parole, and the judiciary, where access is directly related to a law enforcement function of the recipient agency e.g. in connection with a lawful criminal or intelligence investigation, or making a determination concerning an individual's suitability for employment as a state or local law enforcement employee or concerning a victim's compensation under a state statute. Disclosure to a state or local government agency, (a) not directly engaged in the criminal justice process or (b) for a licensing or regulatory function, is considered on an individual basis only under exceptional circumstances, as determined by the FBI.

Information in this system pertaining to the use, abuse or traffic of controlled substances may be disclosed as a routine use to federal, state or local law enforcement agencies and to licensing or regulatory agencies empowered to engage in the institution and prosecution of cases before courts and licensing boards in matters relating to controlled substances, including courts and licensing boards responsible for the licensing or certification of individuals in the fields of pharmacy and medicine.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector if deemed necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example would be where the activities of an individual are disclosed to a member of the public in order to elicit his/her assistance in our apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

Information in this system may be disclosed to legitimate agency of a foreign government where the FBI determines that the information is relevant to that agency's responsibilities, and dissemination

serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property. This would include releases of information in accordance with 28 CFR 50.2.

A record relating to an actual or potential civil or criminal violation of the copyright statute, Title 17, United States Code, or the trademark statutes. Titles 15 and 17, U.S. Code, may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such titles.

The FBI has received inquiries from private citizens and Congressional offices on behalf of constituents seeking assistance in locating individuals such as missing children and heirs to estates. Where the need is acute, and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the requester. Information will be provided only in those instances where there are reasonable grounds to conclude from available information the individual being sought would want the information to be furnished, e.g., an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority.

Information contained in this system, may be made available to a Member of Congress or staff acting upon the member's behalf when the member of staff requests the information in behalf of and at the request of the individual who is the subject of the record.

A record from this system of records may be disclosed as a routine use to *the National Archives and Records Administration and General Services Administration* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABLITY:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. Index records, or pointers to specific FBI files, are created on all manner of subject matters, but the predominant type record is the name index record. It should be noted the FBI does not index all individuals who furnish information or all names developed during the course of an investigation. Only that information considered pertinent, relevant, or essential for future retrieval, is indexed. In certain major cases, individuals interviewed may be indexed to facilitate the administration of the investigation. The FBI has automated that portion of its index containing the most recent information—15 years for criminal related matters and 30 years for intelligence and other type matters. Automation will not change the "Central Records System"; it will only facilitate more economic and expeditious access to the main files. Searches against the automated records are accomplished on a "batch off-line" basis for certain submitting agencies where the name search requests conform to FBI specified formats and also in an "on-line" mode with the use of video display terminals for other requests. The FBI will not permit any organization, public or private, outside the FBI to have direct access to the FBI indices system. All searches against the indices data base will be performed on site within FBI space by FBI personnel with the assistance of the automated procedures, where feasible. Automation of the various FBI field office indices *was completed in 1989.* This automation initiative has been on a "day-one" basis. This indices system points to specific files within a given field office. Additionally, certain complicated investigative matters may be supported by specialized computer systems or by individual microcomputers. Indices created in these environments are maintained as part of the particular computer system and accessible only through the system or through printed listings of the indices. *Full text retrieval is used in a limited number of cases as an investigative technique. It is not part of the normal search process and is not used as a substitute for the General Index or computer indices mentioned above.*

The FBI will transfer historical records to the National Archives consistent with 44 U.S.C. 2103. No record of individuals or subject matter will be retained for transferred files; however, a record of the file numbers will be retained to provide full accountability of FBI files and thus preserve the integrity of the filing system.

SAFEGUARDS:

Records are maintained in a restricted area and are accessed only by agency personnel. All FBI employees receives a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the jobs. Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices, is transmitted in encrypted form to prevent interception and interpretation. Information transmitted in teletype form is placed in the main files of both the receiving and transmitting field offices. Field offices involved in certain complicated investigative matters may be provided with on-line access to the duplicative computerized information which is maintained for them on disk storage in the FBI Computer Center in Washington, D.C., and this computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. section 2104.

FBI record disposition programs relevant to this System are conducted in accordance with the FBI Records Retention Plan and Disposition Schedule which was approved by the Archivist of the United States and the U.S. District Court, District of Columbia.

Investigative, applicant and administrative records which meet the destruction criteria will be destroyed after 20 or 30 years at FBI Headquarters and after 1, 5, 10 or 20 years in FBI Field Offices. Historical records will be transferred to the National Archives after 30 or 50 years, contingent upon investigative and administrative needs. The administrative indices and listings described within this System were appraised separately and disposition authority established. (Job No. NC1-65-82-4 and amendments)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation; Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Requests for access to information maintained at FBI Headquarters must be addressed to the Director, Federal Bureau of Investigation, Washington, DC 20535. Requests for information maintained at FBI field divisions or Legal Attaches must be made separately and addressed to the specific field division or Legal Attache listed in the appendix to this system notice.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, DC 20535, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1)(2) and (3), (e)(4)(G) and (H), (e)(8) (f), (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e)

Appendix of Field Divisions and Legal Attaches for the Federal Bureau of Investigation Field Divisions; Justice/FBI-999

5th Floor, 445 Broadway, Albany, NY 12201.
POB 25186, Albuquerque, NM 87125.
POB 100560, Anchorage, AK 99510.
POB 1683, Atlanta, GA 30370.
7142 Ambassador Road, Baltimore, MD 21207.
2122 Building, Birmingham, AL 35203.
John F. Kennedy Federal Office Building, Boston, MA 02203.
111 West Huron Street, Buffalo, NY 14202.
6010 Kenley Lane, Charlotte, NC 28217.
219 S. Dearborn St., Chicago, IL 60604.
POB 1277, Cincinnati, OH 45201.
1240 E. 9th St., Cleveland, OH 44199.
POB 137, Columbia, SC 29202.
1801 W. Lamar, Dallas, TX 75202
POB 1229, Denver, CO 80201.
POB 2118, Detroit, MI 48231.
700 E. San Antonio Ave., El Paso, TX 79901.
POB 50164, Honolulu, HI 96850.
POB 61369, Houston, TX 77208.
POB 1186, Indianapolis, IN 46206.
100 W. Capitol St., Jackson, MS 39269.
POB 8928, Jacksonville, FL 32239.
POB 2449, Kansas City, MO 64142.
POB 10368, Knoxville, TN 37919.
POB 16032, Las Vegas, NV 89101.
POB 21470, Little Rock, AR 72221-1470.
11000 Wilshire Blvd., Los Angeles, CA 90024.
POB 2467, Louisville, KY 40201.
167 N. Main St., Memphis, TN 38103,
POB 592418, Miami, FL 33159.
POB 2058, Milwaukee, WI 53201.
392 Federal Building, Minneapolis, MN 55401.
POB 2128, Mobile, AL 36652.
POB 1158, Newark, NJ 07101.
POB 2058, New Haven, CT 06521.
POB 51930, New Orleans, LA 70151.
POB 1425, New York, NY 10008.
POB 3828, Norfolk, VA 23514.
POB 54511, Oklahoma City, OK 73154.
POB 548, Omaha, NE 68101.
600 Arch St., Philadelphia, PA 19106.
201 E. Indianola, Phoenix, AZ 85012.
POB 1315, Pittsburgh, PA 15230.
POB 709, Portland, OR 97207.
POB 12325, Richmond, VA 23241.
POB 13130, Sacramento, CA 95813.
POB 7251, St. Louis, MO 63177.
125 S. State St., Salt Lake City, UT 84138.
POB 1630, San Antonio, TX 78296.
880 Front St., San Diego, CA 92188.
POB 36015, San Francisco, CA 94102.
POB BT, San Juan, PR 00936.
915 2nd Ave., Seattle, WA 98174.
POB 3646, Springfield, IL 62708.
POB 172177, Tampa, FL 33602.
Washington Field Office, Washington, DC 20535.
Federal Bureau of Investigation Academy, Quantico, VA 22135.
Legal Attaches: (Send c/o the American Embassy for the Cities indicated).
Bern, Switzerland.
Bogota, Colombia (APO, Miami 34038).
Bonn, Germany (Box 310, APO, New York 09080).
Bridgetown, Barbados (Box B, FPO, Miami 34054).
Brussels, Belgium (APO, New York 09667).
Canberra, Australia (APO, San Francisco 96404-0001).
Hong Kong, B.C.C. (FPO, San Francisco 96659-0002).
London, England (Box 2, FPO, New York 09509).
Manila, Philippines (APO, San Francisco 96528).
Mexico City, Mexico (POB 3087, Laredo, TX 78044-3087).
Montevideo, Uruguay (APO, Miami 34035).
Ottawa, Canada.
Panama City, Panama (Box E, APO, Miami 34002).
Paris, France (APO, New York 09777).
Rome, Italy (APO, New York 09794).
Tokyo, Japan (APO, San Francisco 96503).

JUSTICE

SYSTEM NAME:

Bureau Mailing Lists.

SYSTEM LOCATION

Federal Bureau of Investigation, J. Edgar Hoover Bldg. 10th and Pennsylvania Ave., NW., Washington, DC 20535, *56* field divisions and *16* Legal Attaches (see Appendix to 002)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested receipt of Bureau material and who meet established criteria (basically law enforcement or closely related areas). With regard to lists maintained in field divisions or Legal attaches, individuals and organizations who may be in position to furnish assistance to the FBI's law enforcement efforts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address and business affiliation, if appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For mailing of FBI material whenever necessary. For example, various fugitive publications are furnished to local law enforcement agencies.

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would consitute an unwarranted invasion of personal privacy;

To a Member of Congress or staff acting upon the member's behalf when the member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,*

To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized. In field divisions *some* mailing lists are maintained on addressograph.

RETRIEVABILITY:

ID number in computer, alphabetically for addressograph.

SAFEGUARDS:

Computer records are maintained in limited access space of the Technical Services Division.

RETENTION AND DISPOSAL:

Field offices revise the lists as necessary and/or on an annual basis. The records are destroyed when administrative needs are satisfied (Job No. NC1-65-82-4, Part E. 13 i.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, Washington, D.C. 20535

NOTIFICATION PROCEDURE:

Director, FBI, Washington D.C. 20535.

RECORD ACCESS PROCEDURE:

Inquiry addressed to Director, FBI, Washington, D.C. 20535.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

The mailing list information is based either on information supplied by the individual or public source data.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI-004

SYSTEM NAME:

Routine Correspondence Handled By Preprinted Form.

SYSTEM LOCATION:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Ave., NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Routine correspondence from citizens not requiring *an original* response.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence and 3 x 5 index card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal reference use of record of such correspondence.

In addition, information may be released to the news media and the public pursuant 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; to a

Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,* to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filing of original correspondence plus 3 x 5 index card.

RETRIEVABILITY:

Correspondence alphabetically and chronologically; index card alphabetically.

SAFEGUARDS:

Maintained by FBI personnel; locked file cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Original correspondence retained 90 days and destroyed: 3 x 5 index cards maintained one year and destroyed. (GRS #14, Item 3)

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, Washington, DC 20535

NOTIFICATION PROCEDURE:

Director, FBI, Washington, DC 20535

RECORD ACCESS PROCEDURES:

Inquiry directed to Director, FBI, Washington, DC 20535

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Incoming citizen correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI-005

SYSTEM NAME:

Routine Correspondence Prepared Without File *Copy.*

SYSTEM LOCATION:

Federal Bureau of Investigation; J. Edgar Hoover Bldg., 10th and Pennsylvania Ave., NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Citizens who correspond with the FBI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of routine response and *citizen's* original letter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Temporary record of routine inquiries without substantive, historical or record value for which no record is to be made in central FBI files.

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific

information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

To a Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,*

To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders. Pertinent information from correspondence is temporarily stored on magnetic tape and disks.

RETRIEVABILITY:

Paper records are retrieved by name and date of correspondence. Automated records are retrieved by name, locality, and date.

SAFEGUARDS:

Access to all records is limited to FBI personnel. Paper records are maintained in locked file cabinets. Access to automated records is restricted through the use of password.

RETENTION AND DISPOSAL:

Paper records retained 90 days and destroyed through confidential trash disposal (GRS #14, Item 3). A one-year retention period has been established for the automated records. (Job No. N1-65-87-5)

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, Washington, DC 20535.

NOTIFICATION PROCEDURE:

Director, FBI Washington, DC 20535.

RECORD ACCESS PROCEDURE:

Inquiry directed to Director, FBI, Washington, DC 20535.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Incoming citizen correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI 006

SYSTEM NAME:

Electronic Surveillance (Elsur) Indices.

SYSTEM LOCATION:

Federal Bureau of Investigation, J. Edgar Hoover Bldg., 10th and Pennvylvania Ave., NW., Washington, DC 20535. Those field offices which have sought conducted electronic surveillances also maintain an index. See appendix to System 022.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the targets of direct electronic surveillance coverage by FBI in a court order; those whose communications have been monitored/intercepted by an FBI electronic surveillance installation; those who won, lease, or license premises subjected to electronic surveillance coverage sought by the FBI in a court order.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ELSUR Index is comprised of three types of 3 x 5 cards: 1. Principal cards identify, by true name or best known name, all interceptees (targets) identified in an application filed by the FBI in support of an affidavit seeking a court order to conduct an electronic surveillance; 2. Proprietary Interest cards identify entities and/or individuals who own, lease, license or otherwise hold a possessory interest in locations subjected to an electronic surveillance sought by the FBI in a court order; and, 3. Overhear cards identify, by true name or best known name, individuals and/or entities who have been reasonably identified by a first name or initial and a last name a being a party to a communication monitored/intercepted by the FBI.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The ELSUR Index was initiated in October, 1966, at the recommendation of the Department of Justice and relates to electronic surveillances conducted/sought by the FBI since 1/1/60. The authority for the maintenance of these records is Title 5, Section 301, USC, which grants the Attorney General the authority to issue rules and regulations prescribing how Department of Justice information can be employed. Title 18, U.S.C., Section 3504, also sets forth recordkeeeping requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Elsur Indices are utilized: (1) To respond to judicial inquiries about possible electronic surveillance coverage of witnesses, defendants, or attorneys involved in Federal court proceedings, and (2) To enable the Government to certify whether a person regarding whom court-order authority is being sought for electronic coverage has ever been so covered in the past. The actual users of the indices are always employees of the FBI.

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,* to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2908 to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained manually on 3 x 5 cards.

RETRIEVABILITY:

Names/facilities are indexed and filed alphabetically. Telephone numbers and other such serial or identification numbers targeted are indexed and filed numerically. Locations targeted are indexed by address and filed by street name.

SAFEGUARDS:

The index is maintained in a restricted access room at all times. The entrance is equipped with a special locking device and alarm system for off-duty hours when the index is not in use.

RETENTION AND DISPOSAL:

Until advised to the contrary by the Department, the courts or Congress, these indices will be maintained indefinitely. The indices have been declared permanent by NARA. (Job No. NC1-65-82—4, Part E. 2. t.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Inquiry addressed to Director, FB., Washington, D.C. 20535.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Category of Individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (m) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/FBI-007

SYSTEM NAME:

FBI Automated Payroll System.

SYSTEM LOCATION:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current employees of the Federal Bureau of Investigation (FBI), (B) Resigned employees of the FBI are retained in the automated file for the current year for the purpose of clearing all pay actions and providing for any retroactive actions that might be legislated.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains full record for each employee reflecting all elements relative to payroll status, plus accounting records and authorization records through which payrolls are issued and by which payrolls are issued and by which payrolls are audited. For example, this system contains the employees' Social Security Number, time and attendance data, and place assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

System is established and maintained in accordance with Federal pay requirements, and all legislative enactments, Office of Personnel Management regulations, General Accounting Office rulings and decisions. Treasury Department regulation, and Office of Management and Budget regulations relative thereto, Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Biweekly issuance of payroll and related matters. Quarterly issuance of State Tax Report and Federal Insurance Contributions Act Report. Resign and End-of-Year Federal Tax Records (W-2's), Bi-weekly, quarterly, fiscal and annual Budget and Accounting Reports. Appropriate information is made available to the Internal Revenue Service, *Social Security Administration (to compute future entitlement to Social Security payments and Medicare/ Medicaid benefits), Thrift Board (to report Thrift Savings Plan contributions so the Thrift Board can compute future annuities), and state and city tax bureaus.*

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

To a Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,*

To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored electronically on magnetic tapes and disks for use in a computer environment.

RETRIEVABILITY:

Information is retrieved by Social Security Number. (The authority to solicit an employee's Social Security Number is based on Title 26, Code of Federal Regulations, Section 31.6011(b)-2(b).)

SAFEGUARDS:

Information contained in the system is relative to the individual employee's payroll status and is considered confidential to that employee and to official business conducted for that employee's pay and accounting purposes. It is safeguarded and protected in accordance with the FBI's Computer Center's regulations that permit access and use by only authorized personnel.

RETENTION AND DISPOSAL:

Master payroll and accounting records are stored electronically and retained for a period of three years. Federal tax files are retained for four years. Auxiliary files pertinent to main payroll functions are retained for periods varying from three pay periods to three years, depending on support files needed for any retroactive or audit purposes. (GRS # 2; GSA Reg. 3; GSA Bulletin FPMR B-47, "Archives and Records"; and Job No. NC1-65-82-4, Part E. 13 c. (1))

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Ninth and Pennsylvania Avenue, NW., Washington, DC 20535.

NOTIFICATION PROCEDURES:

Same as the above.

RECORD ACCESS PROCEDURES:

A request of access to information may be made by an employee through his supervisor or by a former employee by writing to the Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, DC. 20535, Attention Payroll Office.

CONTESTING RECORD PROCEDURES:

Contest of any information should be set out in detail and a check of all supportive records will be made to determine the factual data in existence, which is predetermined by source documents and accounting procedures governing pay matters.

RECORD SOURCE CATEGORIES:

Source of information is derived from personnel actions, employee authorizations, and time records which are issued and recorded in accordance with regulations governing Federal pay.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/FBI-008

Bureau Personnel Management System (BPMS).

SYSTEM LOCATION:

Federal Bureau of Investigation, J. Edgar Hoover Building, 10th and Pennsylvania Avenue, NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Bureau of Investigation employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains personnel information which includes information

set forth on (1) Standard Form 50—Notification of Personnel Action, (2) SF 176–T–Federal Employee Group Life Insurance Plan, (3) FBI form 12–60 in lieu of SF 1126—Notification of Pay Change, (4) SF 2801 and CSC 1084—Application for and additional information in support of retirement, respectively, (5) SF 2809—Federal Employment Health Benefit Plan and (6) various intra-agency forms and memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to regulations set forth in the Federal Personnel Manual. Title 5, U.S. Code, Section 301 and Title 44; U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The *BPMS* is used (1) to prepare the Notification of Personnel Action, copies of which are furnished to the Office of Personnel Management, (2) to prepare Standard Form 52B—Request for Personnel Action, (3) to generate lists of employees which are used internally by authorized personnel for recordkeeping, planning, and decision making purposes, and (4) as a source for the dissemination of information (A) to federal, state and local agencies and to private organizations pursuant to service record inquiries and (B) pursuant to credit inquiries. In response to proper credit inquiries from credit bureaus and financial institutions, the FBI will verify employment and furnish salary and length of service).

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and*, to the National Archives *and* Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in *BPMS* is stored by disc and magnetic tape.

RETRIEVABILITY:

Information is retrieved (1) on-line through intelligent workstations and terminals by keying the name or Social Security Number of the employee and (2) off-line through data base retrievals.

(It is noted the authority to solicit an employee's Social Security Number is based on Title 26, Code of Federal Regulations, Section 31.6011(b)–2(b).)

SAFEGUARDS:

Areas housing the system and access terminals are located in secure buildings available to authorized FBI personnel and escorted maintenance and repair personnel only. Access terminals are operational only during normal daytime working hours at which time they are constantly attended.

RETENTION AND DISPOSAL:

Electronically stored records for employees and former employees are maintained indefinitely in a vault under the control of a vault supervisor. Pursuant to regulations set forth in the Federal Personnel Manual a copy of the Notification of Personnel Action is made a part of the employees' personnel file.

The automated records are disposable when administrative needs have expired. (Job No. NC1–65–82–4, Part E. 13c. (1)).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, John Edgar Hoover Building, 10th Street and Pennsylvania Avenue, N.W., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name and return address of the requestor. Access requests will be directed to the Director, Federal Bureau of Investigation.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the Director. FBI stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are present and former FBI employees and employee personnel files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT.

None.

JUSTICE/FBI-009

SYSTEM NAME:

Identification Division Records System.

SYSTEM LOCATION:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, DC 20537–9700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals fingerprinted as a result of arrest or incarceration.

B. Persons fingerprinted as a result of Federal employment applications, military service, alien registration and naturalization purposes and individuals desiring to have their fingerprints placed on record with the FBI for personal identification purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Criminal fingerprint cards and related criminal justice information submitted by authorized agencies having criminal justice responsibilities.

B. Civil fingerprint cards submitted by Federal agencies and civil fingerprint cards submitted by persons desiring to have their fingerprints placed on record for personal identification purposes.

C. Identification records sometimes referred to as "rap sheets" which are compilations of criminal history information pertaining to individuals who have criminal fingerprint cards maintained in the system.

D. An alphabetical name index pertaining to all individuals whose fingerprints are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established, maintained and used under authority granted by 28 U.S.C. 534, 15 U.S.C. 78q, 7 U.S.C. 12a, and Pub. L. 92–544 (86 Stat. 1115), and Pub. L. 99–399. The authority is also codified in 28 CFR 0.85 (b) and (j).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI operates the Identification Division Records System to perform identification and criminal history record information functions, for Federal, State, local, and foreign criminal justice agencies, and for noncriminal justice agencies, and other entities where authorized by Federal statute, State statue pursuant to Pub. L.

92-544 (86 Stat. 1115). Presidential executive order, or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian purposes.

Information may be released to the news media and the public *pursuant to* 28 CFR 20.33(a)(4), 20.33(c), and 50.2, *unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;* to a Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,* to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in file cabinets either in its natural state or on microfilm. In addition, some of the information is stored in computerized data storage devices.

RETRIEVABILITY:

(1) Information in the system is retrievable by technical fingerprint classification and positive identification is effected only by comparison of unique identifying characteristics appearing in fingerprint impressions submitted for search against the fingerprint cards maintained within the system.

(2) An auxiliary means of retrieval is through alphabetical name indexes which contain names of the individuals, their birth date, other physical descriptors, and the individuals technical fingerprint classification and FBI numbers, if such have been assigned.

SAFEGUARDS:

Information in the system is unclassified. Disclosure of information from the system is made only to authorized recipients upon authentication and verification of the right to access the system by such persons and agencies. The physical security and maintenance of information within the system is provided by FBI rules, regulations and procedures.

RETENTION AND DISPOSAL:

(1) The Archivist of the United States has approved the destruction of records maintained in the criminal file when the records indicated individuals have *reached* 80 years of age, and the destruction of records maintained in the civil file when the records indicate individuals have reached 75 years of age. (Job. No. NC1-65-76-1 and NN-171-16)

(2) Fingerprint cards and related arrest data in the system are destroyed seven years following notification of the death of an individual whose records is maintained in the system. (Job No. 351-S190)

(3) Fingerprint cards submitted by State and local criminal justice agencies are *removed from the system and* destroyed upon the request of the submitting agencies. The destruction of a fingerprint card under this procedure results in the deletion from the system of all arrest information related to that fingerprint card.

(4) Fingerprint cards and related arrest data are removed from the Identification Division Records System upon receipt of Federal court orders for expunctions when accompanied by necessary identifying information. Recognizing lack of jurisdiction of local and State courts over an entity of the Federal Government, the Identification Division Records System, as a matter of comity, destroys fingerprint cards and related arrest data *submitted by* local and State criminal justice agencies upon receipt of orders of expunction directed to such agencies by local and State courts when accompanied by necessary identifying informations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The Attorney General has exempted the Identification Division Records System from compliance with subsection (d) of the Act. However, pursuant to 28 CFR 16.30-34, and Rules and Regulations promulgated by the Department of Justice on May 20, 1975 at 40 FR 22144 (Section 20.34) for Criminal Justice Information Systems, an individual is permitted access to his identification record maintained in the Identification Division Records System and procedures are furnished for correcting or challenging alleged deficiencies appearing therein.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

See Categories of Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G) and (H), (5) and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/FBI-011

SYSTEM NAME:

Employee Health Records.

SYSTEM LOCATION:

Federal Bureau of Investigation, Administrative Services Division, Health Service, J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue, NW., Washington, DC 20535 and the following field offices: New York, Newark, Philadelphia, Chicago, Los Angeles, San Francisco, and FBI Academy, Quantico, Virginia. Addresses for field offices can be found in the appendix of Field Offices for the Federal Bureau of Investigation in System notice Justice/FBI 002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the FBI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of visits to health facilities relating to sickness, injuries or accidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The head of each agency is responsible, under 5 U.S.C. 7902, for keeping a record of injuries and accidents to its employees and for reducing accidents and health risks. These records are maintained under the general authority of 5 U.S.C. 301 so that the FBI can be kept aware of the health related matters of its employees and more expeditiously identify them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

These records are maintained by the FBI to identify matters relating to the health of its present and former employees. Information is available to employees of the FBI whose job function relates to identifying and resolving

health matters of former and current personnel of the FBI.

In addition, information may be released to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A clinical record is created to maintain an employee health record and SF 510, "Nursing Notes". The information is maintained manually in a file folder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

These records are maintained by FBI personnel during working hours and in locked file cabinets during non-working hours. Security guards further restrict access to the building to authorized personnel.

RETENTION AND DISPOSAL:

Remaining index cards will be destroyed 6 years after date of last entry (GRS #1, Item 19). The folder containing the health record and nursing notes will be maintained in the Health Unit for 5 years after the last entry. Thereafter, the contents of the folder will be transferred to the Employee Medial Folder, an appendage of the Official Personnel Folder.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Written inquiries, including name, address and social security number, to determine whether this system of records contains records about an individual may be addressed to Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, DC 20535, and/or individually to the field offices which maintain similar records.

RECORD ACCESS PROCEDURES:

CONTESTING RECORD PROCEDURES:

Written inquiries, including name, date of birth and social security number, requesting access or contesting the accuracy of records may be addressed to: Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, DC 20535, and the above-mentioned field offices at addresses referred to in system notice Justice/FBI 002.

RECORD SOURCE CATEGORIES:

Employees of the Federal Bureau of Investigation originate their own records. Nursing Notes appear on SF 510.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI-015

SYSTEM NAME:

National Center for the Analysis of Violent Crime (NCAVC).

SYSTEM LOCATION:

Federal Bureau of Investigation, Training Division, FBI Academy, Behavioral Science Unit, Quantico, Virginia 22135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who relate in any manner to official FBI investigations into violent crimes including, but not limited to, subjects, suspects, victims, witnesses, close relatives, medical personnel, and associates who are relevant to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals who are the subject of violent crime research studies including, but not limited to, criminal personality profiles, scholarly journals, and news media references.

CATEGORIES OF RECORDS IN THE SYSTEM:

The National Center for the Analysis of Violent Crime will maintain in both manual and automated formats case investigation reports on all forms of solved and unsolved violent crimes. These violent crimes include, but are not limited to, acts or attempted acts of murder, kidnapping, incendiary arson or bombing, rape, physical torture, sexual trauma, or evidence of violent forms of death. *Less than ten percent of the records which are analyzed may not be directly related to violent activities.*

A. Violent Criminal Apprehension Program (VICAP) case reports submitted to the FBI by a duly constituted Federal, State, county, or municipal law enforcement agency in any violent criminal matter. VICAP reports include but are not limited to, crime scene descriptions, victim and offender descriptive data, laboratory reports, criminal history records, court records, news media references, crime scene photographs, and statements.

B. Violent crime case reports submitted by FBI headquarters or field offices.

C. Violent crime research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to VCAVC personnel.

D. An index of all detected trends, patterns, profiles and methods of operation of known and unknown violent criminals whose records are maintained in the system.

E. An index of the names, addresses, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the FBI's NCAVC operation.

F. An index of public record sources for historical, statistical and demographic data collected by the U.S. Bureau of the Census.

G. An alphabetical name index pertaining to all individuals whose records are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. Section 3101; 41 CFR Subpart 101–11.2 and 28 U.S.C. Section 534.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As currently envisioned, the NCAVC will be administered by the FBI through its Training Division's Behavioral Science Unit Located at the FBI Academy, Quantico, Virginia. Its primary mission is to consolidate research, training, and operational support activities for the express purposes of providing expertise to any legitimate law enforcement agency confronted with unusual, bizarre, and/or particularly vicious or repetitive violent crimes.

Records described above are maintained in this system to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, the information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who need the information to perform their official duties.

Information in this system may be disclosed as a routine use to any Federal, State, local, or foreign government agency directly engaged in the criminal justice process where

access is directly related to a law enforcement function of the recipient agency in connection with the tracking identification, and apprehension of persons believed to be engaged in repeated or exceptionally violent acts of criminal behavior.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employement Opportunity Commission and the Merit System Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding or, if deemed necessary, to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example could be where the activities of an individual are disclosed to a member of the public to elicit his/her assistance in FBI apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest. Examples would include: to obtain public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of violent criminal behavior; to notify the public and/or media of arrests; to protect the public from imminent threat to life or property where necessary; and to disseminate information to the public and/or media to obtain cooperation with violent crime research, evaluation, and statistical programs.

Information in this system may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 to the extent that legislation governing the record permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in locked file cabinets, either in its natural state or on microfilm, at the NCAVC in Quantico, Virginia. The active main files are maintained in hard copy form and some inactive records are maintained on microfilm.

In addition, some of the information is stored in computerized data storage devices at the NCAVC and FBI Computer Center in Washington, DC. Investigative information which is maintained in computerized form may be stored in memory on disk storage on computer tape, or on computer printed listings.

RETRIEVABILITY:

On-line computer access to NCAVC files is achieved by using the following search descriptors:

A. A data base which contains the names of individuals, their birth dates, physical descriptions, and other identification numbers such as FBI numbers, if such have been assigned.

B. Summary variables contained on VICAP reports submitted to the NCAVC as previously described.

C. Key words citations to violent crime research studies, scholarly journal articles, textbooks, training materials, and media references.

SAFEGUARDS:

Records are maintained in restricted areas and accessed only by FBI employees. All FBI employees receive a complete pre-employment background investigation. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years' imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the job.

Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices and to and from FBI Headquarters, is transmitted in encrypted form to prevent interception and interpretation.

Information transmitted in teletype form between the NCAVC in Quantico, Virginia and the FBI Computer Center in Washington, DC, is encrypted prior to transmission at both places to ensure confidentiality and security of the data.

FBI field offices involved in certain complicated, investigative matters may be provided with on-line access to the computerized information which is maintained for them on disc storage in the FBI Computer Center in Washington, DC. This computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

Records are proposed for destruction after 50 years or upon termination of the program, whichever is earlier. The disposition schedule is pending with NARA as Job No. N1-65-88-13.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue, NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORDS ACCESS PROCEDURES:

Requests for access to records in this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." The request must provide the full name, complete address, date of birth, place of birth, and notarized signature of the individual who is the subject of the record requested. The request should also include the general subject matter of the document or its file number—along with any other known information which may assist in making a search of the records. The request must also provide a return addressing for transmitting the information. Access requests should be addressed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. The request should state clearly and concisely (1) the reasons for contesting the information, and (2) the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature of its responsibilities to investigate violations of law within its investigative jurisdiction and ensure the internal security of the United States, collects information from a wide variety of sources. Basically, information is obtained, as a result of investigative efforts, from other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e).

JUSTICE/INS-003

SYSTEM NAME:

Position Accounting/Control System (PACS).

SYSTEM LOCATION:

Central Office, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Immigration and Naturalization Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Position data: Position number; category code; organization code; position title; pay plan; series; grade; description; accounting classification code; active/inactive code; fund control number; amount authorized; hours authorized; new program element code; input control number; input transaction code; SF-52 date; announcement date and number; Entered on Duty (EOD) date; date last classified; date Position Management Committee (PMC) approved; date position last audited or reviewed; date of transaction; position appeal date, if any; union coverage code appealed to code; position freeze code; competitive level code; remarks code.

B. Payroll data; Social Security Account Number (SSAN); pay period number; payroll subobject code; last pay period amount and hours; cumulative amount and hours; accrual amount and hours; prior month YTD amount and hours; payroll current/prior/manual (C/P/M) code.

C. Personnel data; position number; organization code; position title; pay plan; series; grade; description; accounting classification code; incumbent's name, Social Security Account Number, next Quality Step Increase (QSI) date; nature of action; transaction date; FLSA exemption code; and effective date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); Delegation of Authority to Departments (5 U.S.C. 301); Position Management Systems and Employment Ceilings. Bureau of the Budget Circular No. A-64 (June 28, 1965; January 2, 1970).

PURPOSE(S):

Information in this system is used for reports to INS managers of position authorization and cost data by geographic area, organizational unit, program activity, and budget allocation, including the composition of the INS work force (on-board strength and vacancies); status of each vacancy; turnover and occupancy rate statistics: aggregate position data by grade level, organization unit, program activity, type of position, etc.: actual costs for each position and projected position costs for the next fiscal year: and authorization of positions through funds control and periodic review mechanisms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff request the information on behalf of and at the request of the individual who is the subject of the record.

C. To the National Archives and Records Administration and the General Services Administration records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on magnetic disk and tape at the Department of Justice Data Management Service. All other records are maintained as paper documents at the Central Office, 425 I Street NW., Washington, DC. and four regional personnel offices.

RETRIEVABILITY:

Records are retrieved by position number, organization code, accounting classification code, or program element code.

ACCESS CONTROLS:

Access to the system is restricted to employees of the immigration and Naturalization Service responsible for position accounting and management. Biweekly reports are distributed only to authorized INS personnel. Remote terminals for additional access are located in areas restricted to authorized INS personnel.

SAFEGUARDS:

The data in the automated system of records is safeguarded and protected in accordance with Department of Justice and INS rules and procedures. Paper forms are stored in metal file cabinets which are locked outside of normal duty hours.

RETENTION AND DISPOSAL:

Records are deleted from the automated data base within 60 days after termination of the position authorization. Employee personnel information in the automated data base is deleted when the position becomes vacant. The data base is updated biweekly to maintain accurate, current information on position status and characteristics.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner. Management.

NOTIFICATION PROCEDURE:

Inquires should be addressed to the Associate Commissioner, Management, Immigration and Naturalization Service, 425 I Street NW., Washington, DC. 20536.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record shall be in writing, by mail or in person. If request for access is made by mail, the envelope and letter shall be clearly marked "Privacy Access Request." The requester shall include a description of the subject matter and, if known, the relating file number. To identify a record relating to an individual, requester should provide the individual's full name, date and place of birth, employee identification number and, if known, position number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his request to the Associate Commissioner, Management. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Position management data is obtained from official records in INS personnel offices. Payroll data is obtained from the computerized Department of Justice Payroll System (JUSTICE/OMF—003). Personnel management data is obtained from the Department of Justice Personnel System (JUNIPER).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS-006

SYSTEM NAME:

Alien Address Reports.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), Central Office. 425 I Street NW, Washington, DC 20536.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens required to report addresses: nonimmigrants; aliens lawfully admitted for permanent residence; aliens granted political asylum; refugees and other conditional entrants.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index and copies of Form I-53. Alien Address Report Card *for the year 1980. The annual January requirement was terminated effective January 1, 1981.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 103.265 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1305, and 1380).

PURPOSE(S):

The records in this system are used by officers and employees of INS and other components of the Department of Justice in the administration and enforcement of the immigration and nationality laws, including the processing of applications for benefits under those laws, detecting violations of the laws, and referrals for prosecution: and for compilation of reports of statistical and demographic information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law or charged with enforcing or implementing the statute or rule, regulation, or order issued pursuant thereto, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

B. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

C. To other Federal agencies in connection with refugee assistance programs.

D. To one or more private firms for the purpose of entering data, sorting, analyzing, coding, microfilming, or otherwise refining records in the system. Such firms will be required to maintain Privacy Act safeguards with respect to such records.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of the individual who is the subject of the record.

F. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

INS Central Office maintains a microfilm file of 1980 I-53 reports. All I-53's reports received by INS prior to 1980 are filed in the subject's alien file, a system or records entitled "The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), JUSTICE/INS-001."

RETRIEVABILITY:

Records in the system are indexed and retrievable by name of the individual.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. INS offices are located in building, under security guard, and access to premises is by official identification. Access to automated systems is controlled by restricted passwords for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Original input forms are destroyed in accordance with procedures approved by NARA after microfilming and computer data entry is completed, verified, and accepted, or three years after the year of receipt, whichever is earlier. Copies of the index and reports for each year are kept for three years by INS.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Information Sytems, INS, Central Office, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. To enable INS to identify whether the system contains a record relating to an individual, the requester must provide the individual's full name, date of birth: and place of birth; and, if known, the alien registration number.

RECORD ACCESS PROCEDURE:

A person desiring access to a record shall submit his request in writing to the agency official designated under "Notification procedure" above. He must also identify the record by furnishing the information listed under that procedure. If a request to access a record is made by mail, the envelope and letter shall be clearly-marked "Privacy Act Request," and a return address must be provided for transmitting any information to him.

CONTESTING RECORD PROCEDURE:

A person desiring to contest a record shall submit a request in writing to the agency official designated under "Notification procedure" above. The requestor must also identify the record by furnishing the information listed under that caption and clearly state which record(s) is being contested, the reason(s) for contesting, and the proposed amendment(s) to the record(s). If a request to contest a record is made by mail, the envelope and letter shall be clearly marked "Privacy Act Request," and a return address must be provided for transmitting any information.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from requests and petitions filed by the

petitioners: public and private adoption agencies and social workers; and Federal, State, local and foreign government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsection (d) of the Privacy Act. This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(1). Regulations have been promulgated in accordance with the requirements of 5 U.S.C. 553 b), (c) and (e) and have been published in the Federal Register.

JUSTICE/INS-008

SYSTEM NAME:

Bond Accounting and Control System (BACS).

SYSTEM LOCATION:

Immigration and Naturalization Service regional offices: (1) Burlington, Vermont; (2) Fort Snelling, Twin Cities, Minnesota; (3) Dallas, Texas; and (4) *Laguna Niguel*, California. Addresses of offices are listed in JUSTICE/INS-999 as published in the **Federal Register**, or in the telephone directories of the respective cities listed above under the heading "United States Government, Immigration and Naturalization Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have posted a bond with INS and the beneficiaries of posted bonds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information which allows identification of active bonds posted with INS such as: bond number, obligor's name and address, alien beneficiary's name and alien file number, type of bond, location and date bond was posted, and other data related to bonds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 103 (8 U.S.C. 1103) in implementing the authorities set forth in Section 213 (8 U.S.C. 1183) and Section 293 (8 U.S.C. 1353) of the Immigration and Nationality Act.

PURPOSE(S):

Information in this system will be used by employees of INS to control and account for collateral received to support an immigration bond. The system will allow prompt location of related files and other records and will enable INS to make timely responses to inquiries about these records.

The information in the system can be used to generate various documents (such as voucher disbursements) required for normal accounting procedures and to generate statistical and historical reports pertaining to immigration bonds posted, cancelled or breached.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To other Federal, state, or local law enforcement agencies for investigative purposes or collection of breached bonds.

B. To a member of Congress or staff upon the member's behalf when the member or staff acting requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on magnetic disks.

RETRIEVABILITY:

Records may be retrieved by any of the following: Alien's name, alien's file number, obligor's name, bond-receipt control number, breach control number, or location and date bond was posted.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked outside of normal office hours. Access to this automated system is obtained through remote terminals which are located in secured areas and require the use of restricted passwords.

RETENTION AND DISPOSAL:

Records are deleted from magnetic disks one year (or earlier) after the bond is disbursed and the file closed.

SYSTEM MANAGER(S) AND ADDRESS:

The Associate Regional Commissioner, management, at the regional office having jurisdiction over the area in which the beneficiary alien resides. See the caption "System locations."

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the system manager.

RECORD ACCESS PROCEDURE:

In all cases, requests for access to a record shall be in writing. Written requests may be submitted by mail or in person at an INS office. If a request for access is made by mail, the envelope and letter shall be clearly marked "Privacy Access Request." To identify a record relating to an individual, a requester should provide: The individual's full name, alien file number, and location and date bond was posted. The requester shall provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his request to the regional INS office in which he believes the record concerning him may exist. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Information contained in this system or records is supplied on INS forms by individuals who have posted a bond with the INS and by the beneficiaries of posted bonds.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS-009

SYSTEM NAME:

Alien Status Verification Index.

SYSTEM LOCATION:

Central, Regional, District, and other files control offices of the Immigration and Nationalization Service (INS) in the United States as detailed in JUSTICE/INS-999. Remote access terminals will also be located in state employment security offices (SESA's) and other Federal, State, and local agencies nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by provisions of the immigration and nationality laws of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index of aliens and other persons on whom INS has a record as an applicant, petitioner, beneficiary, or possible violator of the Immigration and Nationality Act. Records are limited to index and file locator data including name, alien registration number (or "A-file" number), date and place of birth, social security account number, date, coded

status transaction data *and* immigration status classification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 290, of the Immigration and Nationality Act, as amended (8 U.S.C. 1360).

PURPOSE:

This system of records is used to verify an alien's *immigration* status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To a Federal, State, or local government agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

B. To other Federal, State, or local government agencies for the purpose of verifying information in conjunction with the conduct of a national intelligence and security investigation or for criminal or civil law enforcement purposes.

C. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

D. To a Member of Congress or staff acting upon the Member's behalf when the Member of staff request the information on behalf of and at the request of the individual who is the subject of the record.

E. To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic disk and tape.

RETRIEVABILITY:

Records are indexed and retrievable by name and date and place of birth, or by name and social security account number, by name and A-file number.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. Access is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Centralized index records stored on magnetic disk and tape are updated periodically and maintained for the life of the related record.

SYSTEM MANAGER AND ADDRESS:

The Associate Commissioner, Information Systems, Immigration and Naturalization Service, Central Office, 425 I Street NW., Washington, D.C., is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked "Privacy *Act* Request." The requester shall include the name, date and place of birth of the person whose record is sought and if known, the alien file number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct has request to the System Manager or to the INS office that maintains the life. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is taken from Department of State and INS applications and reports on the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS-012

SYSTEM NAME:

Deportable Alien Control System (DACS).

SYSTEM LOCATION:

Central, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS-999

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens alleged to be deportable by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is a computer data base that contains biographic information about deportable aliens such as name, date and country of birth; United States and foreign addresses; file number, charge, amount of bond, hearing date, case assignment, scheduling date, section(s) of law under which deportability/excludability is alleged; data collected to support the INS position on deportability/excludability, including information on any criminal or subversive activities; date, place, and type of last entry into the United States; attorney/representative's identification number; family data, and other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1251, and 1252.

PURPOSE(S):

The system provides INS with an automated data base which assists in the arrest, deportation, or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system by providing management with information concerning the status and/or disposition of deportable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of Federal courts exercising jurisdiction over the deportable aliens in determining grounds for deportation.

B. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

C. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regulatory in

nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

D. Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general statute within INS jurisdiction or of a regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal in the course of presenting evidence, and to opposing counsel during discovery.

E. Where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

F. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

G. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

H. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a data base on magnetic disks.

RETRIEVABILITY:

These records are retrieved by name and/or date of birth, A-file number, or by alien's Bureau of Prisons number, when applicable.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. Access to terminals is limited to INS employees with user identification numbers. Access to records in this system is by restricted password and is further protected by secondary passwords.

RETENTION AND DISPOSAL:

Deportable alien case control and detention records are *marked closed and retained for statistical purposes through the end of the fiscal year. Closed cases are archived and stored in the database separate from the active cases.* A retention and disposition schedule for the case summary and detention history records is currently being negotiated and will be submitted to the Archivist of the United States for approval.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS Office, or the INS office maintaining the desired records (if known) by using the list of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS-999, published in the **Federal Register**. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information is obtained from "The Immigration and Naturalization Service (INS) Alien File (A File) and Central Index System, (CIS), JUSTICE/INS-001A." Information may also come from the alien, the alien's attorney/representative, INS officials, other Federal, State, local, and foreign agencies and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/DEA-INS-111

SYSTEM NAME:

Automated Intelligence Records System (Pathfinder).

SYSTEM LOCATION:

U.S. Department of Justice, Drug Enforcement Administration, 1405 Eye Street, NW, Washington, D.C. 20537 and El Paso Intelligence Center (EPIC), El Paso, Texas 79902.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Those individuals who are known, suspected, or alleged to be involved in (a) narcotic trafficking, (b) narcotic-arms trafficking, (c) alien smuggling or transporting, (d) illegally procuring, using, selling, counterfeiting, reproducing, or altering identification documents relating to status under the immigration and nationality laws, (e) terrorist activities (narcotic, arms or alien trafficking/smuggling related), (f) crewman desertions and stowaways, (g) arranging or contracting a marriage to defraud the immigration laws; and (h) facilitating the transportation of narcotics proceeds: (2) In addition to the categories of individuals listed above, those individuals who (a) have had citizenship or alien identification documents put to fraudulent use or have reported them as lost or stolen, (b)arrive in the United States from a foreign territory by private aircraft, and (c) are informants or witnesses (including non-implicated persons) who have pertinent knowledge of some circumstances or aspect of a case or suspect may be the subject of a file within this system: and (3) In the course of criminal investigation and intelligence gathering, DEA and INS may detect violation of non-drug or non-alien related laws. In the interests of effective law enforcement, this information is retained in order to establish patterns of criminal activity and to assist other law enforcement agencies that are charged with enforcing other segments of criminal law. Therefore, under certain limited circumstances, individuals known, suspected, or alleged to be involved in non-narcotic or non-alien criminal activity may be the subject of a file maintained within this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, this system contains computerized and manual intelligence information gathered from DEA and INS investigative records and reports. Specifically, intelligence information is gathered and collated from the following DEA and INS records and reports; (1) DEA Reports of Investigation (DEA-6),

(2) DEA and INS Intelligence Reports, (3) INS Air Detail Office Index (I-92A). (4) INS *Operational Activities Special Information System (OASIS).* (5) INS Marine Intelligence Index, (6) INS Fraudulent Document Center Index, (7) INS Terrorist Index, (8) INS Reports of Investigation and Apprehension (I-44, I-213, G-166) and (9) U.S. Coast Guard Vessel 408 file. In addition, data is obtained from commercially available flight plan information concerning individuals known, suspected or alleged to be involved in criminal smuggling activities using private aircraft.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This sytem has been established in order for DEA and INS to carry out their law enforcement, regulatory, and intelligence functions mandated by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236), Reorganization Plan No. 2 of 1973, the Single Convention on Narcotic Drugs, (18 UST 1407), and Sections 103.265, and 290 and Title III of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1305, 1360, 1401 et seq.). Additional authority is derived from Treaties, Statutes, Executive Orders and Presidential Proclamations which DEA and INS have been charged with administering.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system will be used to produce association and link analysis reports and such special reports as required by intelligence analysts of DEA and INS. The system will also be used to provide "real-time" responses to queries from Federal, state, and local agencies charged with border law enforcement responsibilities.

Information from this system will be provided to the following categories of users for law enforcement and intelligence purposes provided a legitimate and lawful "need to know" is demonstrated: (a) Other Federal law enforcement agencies, (b) state and local law enforcement agencies, (c) foreign law enforcement agencies with whom DEA and INS maintain liaison, (d) U.S. intelligence and military intelligence agencies involved in border criminal law enforcement, (e) clerks and judges of courts exercising appropriate jurisdiction over subject matter maintained within this system, and (f) Department of State; (g) various Federal, State, and local enforcement committees and working groups including Congress and senior Administration officials; (h) The Department of Defense and military departments; (i) The United Nations; (j) The International Police Organization (Interpol); (k) to individuals and organizations in the course of investigations to elicit information; (1) to the Office of Management and Budget, upon request, in order to justify the allocation of resources; (m) to respondents and their attorneys for purposes of discovery, formal and informal, in the course of an adjudicatory, rulemaking, or other hearing held pursuant to the Controlled Substances Act of 1970; and (n) in the event there is an indication of a violation or potential violation of law whether civil, criminal, regulatory, or administrative in nature, the relevant information may be referred to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulations, or order issued pursuant thereto.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to the NARA and GSA records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual subsets of the Pathfinder Information System are maintained on standard index cards and manual folders. Standard security formats are employed. *The records are stored on computer at the DOJ computer center, Washington, D.C.*

RETRIEVABILITY:

Access to individual records can be accomplished by reference to either the manual indices or the automated information system. Access is achieved by reference to personal identifiers, other data elements or any combination thereof.

SAFEGUARDS:

The Pathfinder System of Records is protected by both physical security methods and dissemination and access controls. Fundamental in all cases is that access to intelligence information is limited to those persons or agencies with a demonstrated and lawful need to know for the information in order to perform assigned functions.

Physical security when intelligence files are attended is provided by responsible DEA and INS enployees. Physical security when files are unattended is provided by the secure locking of material in approved containers or facilities. The selection of containers or facilities is made in consideration of the sensitivity or National Security Classification as appropriate, of the files, and the extent of security guard and/or surveillance afforded by electronic means.

Protection of the automated information system is provided by physical, procedural, and electronic means. The master file resides in the DEA Office of Intelligence Secured Computer System and is physically attended or safe-guarded on a full time basis. Access or observation to active telecommunications terminals is limited to those with a demonstrated need to know for retrieval information. Surrepititious access to an unattended terminal is precluded by a complex authentication procedure. The procedure is provided only to authorized DEA and INS employees. Transmission from DEA Headquarters to El Paso, Texas is accomplished via a dedicated secured line.

An automated log of queries is maintained for each terminal. Improper procedure results in no access and under certain conditions completely locks out the terminal pending restoration by the master controller at DEA Headquarters after appropriate verification. Unattended terminals are otherwise located in locked facilities after normal working hours.

The dissemination of intelligence information to an individual outside the Department of Justice is made in accordance with the routine uses as described herein and otherwise in accordance with conditions of disclosure prescribed in the Privacy Act. The need to know is determined in both cases by DEA and INS as a prerequisite to the release of information.

RETENTION AND DISPOSAL:

Records maintained within this system are retained for fifty-five (55) years.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Administrator, Office of Intelligence, Drug Enforcement Administration, 1405 Eye Street, NW, Washington, D.C. 20537 and Associate Commissioner, *Enforcement,* Immigration and Naturalization Service, 425 Eye Street, NW, Washington, D.C. 20536.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to Freedom of Information Section, Drug Enforcement Administration, 1405 Eye Street, NW, Washington, D.C. 20537.

RECORD ACCESS PROCEDURE:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Commercially available flight plan information source; Confidential informants; DEA intelligence and investigative records/reports; INS investigative, intelligence and statutory mandated records/reports; records and reports of other Federal, state and local agencies; and reports and records of foreign agencies with whom DEA maintains liaison.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e), (1), (2), and (3), (e)(4)(g), (H) and (I), (e) (5) and (8), (f), (g), and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 90-27384 Filed 11-23-90; 8:45 am]

BILLING CODE 4410-01

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-90-164-C]

Cyprus Minerals Co.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Minerals Company, P.O. Box 3299, Englewood, Colorado 80155, has filed a petition to modify the application of 30 CFR 75.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petition is filed under section 101(c) of the Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fail safe ground check circuit monitor continuously the grounding circuit.

2. As an alternate method, petitioner proposes to use contactors which will open when either the ground or pilot check wire is broken.

3. In support of this request, petitioner states that:

(a) Only pumps and permanent belt drives will be affected by this petition;

(b) Contactors will be built into equipment starters, properly separated and isolated from the other components of the unit, and will be rated for the full load rating of the circuit breaker;

(c) The ground check relays will trip the contactor coil circuit;

(d) A local reset will be provided to be activated for restart after a ground check trip;

(e) Closing of the contactor after a ground check trip will not be automatic but will be under the control of the operator.

4. Petitioner states that the alternate method will at all times provide the same measure of protection for the miners as the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 26, 1990. Copies of the petition are available for inspection at that address.

Dated: November 15, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27602 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-163-C]

Jackson Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Jackson Branch Coal Company, Box 447, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1701-1 (canopies or cabs) to its No. 30 Mine (I.D. No. 15-16194) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that canopies be installed on the mine's electric face equipment at certain heights.

2. Due to changes in the coal seam, the use of canopies would result in a diminution of safety because canopies would:

(a) Dislodge roof support;

(b) Decrease the operator's visibility; and

(c) Create discomfort to the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 26, 1990. Copies of the petition are available for inspection at that address.

Dated: November 15, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27683 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-161-C]

Saginaw Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Saginaw Mining Company, P.O. Box 218, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Saginaw Mine (I.D. No. 33-00941) located in Belmont County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Due to deteriorating roof conditions, the seals in the Main West and 1-South sections of the mine cannot be safety examined. To require weekly examinations of the seals would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish a checkpoint at a specific location where tests from methane and the quantity of air would be measured.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office

of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 26, 1990. Copies of the petition are available for inspection at that address.

Dated: November 15, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27684 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public meeting to be held in the Ashlawn South room, Lower Mezzanine Level of the Washington Vista International, Washington, DC.

DATES: Thursday, December 13, 1990, 8 a.m.-12 p.m.; Friday, December 14, 1990, 8 a.m.-12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, findings received from prior hearings, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 19th day of November.

Carol J. Romero,

Deputy Director, National Commission for Employment Policy.

[FR Doc. 90-27680 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

Date and Time: Monday, December 17, 1990, 9 a.m. to 5:30 p.m., Tuesday, December 18, 1990, 9 a.m. to 5:30 p.m.

Place: Peabody Court Hotel, 612 Cathedral Street, Baltimore, Maryland 21201.

Type of Meeting: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquire Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The Commission will discuss issues relating to HIV disease in African American communities, and receive a technical briefing on health care financing issues.

Interpreting services are available for deaf people. Please call our TDD number (202) 254-3816 to request services no later than December 11, 1990.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-27673 Filed 11-23-90; 8:45 am]

BILLING CODE 6820-CN

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee (WHCAC), Chairs Meeting

Date and Time: Dec. 6th, 1990 (Thursday) 9 a.m. to 9 p.m. Dec. 7th, 1990 (Friday) 9 a.m. to 1 p.m.

Place: Ramada Renaissance Techworld, 999 9th Street, NW., Washington, DC 20001, Ph. 1 202 898-9000.

Status: All meetings are open.

Matters to be Discussed: White House Conference on Library and Information Services (WHCLIS); Chairs Committee Meeting:

Dec. 6, 1990.
9-9:30 a.m.
Introductions; WHCAC Chairman's Report.
9:30-10 a.m.
Review of WHCLIS and WHCAC Issues; WHCAC Chairman Presides.
10 a.m.-1 p.m.
Discussion of Subcommittee Issues.
1-2 p.m.
(Working Lunch).
2-5 p.m.
Discussion of Subcommittee Issues.
7-9 p.m.
(Working Dinner).
Dec. 7, 1990.
9-Noon
Subcommittee Reports.
12-12:30 p.m.
Public Comment Time.
12:30-1 p.m. (Working Lunch).
Future Meeting Dates.
Old and New Business.
1 p.m.
Adjourn.

Persons appearing before, or submitting only written statements to the Advisory Committee, are asked to hand over to the Committee prior to presenting testimony, 25 copies of their prepared statement. This will insure that ample copies are available for the members of the Advisory Committee, the attending press and the observers.

To request further information or to make special arrangements for handicapped individuals, contact Mark Scully (1 202) 254-5100, no later than one week in advance of the meeting.

Dated: November 19, 1990.

Mary Alice Hedge Reszetar,

Designated Federal Official for WHCAC, NCLIS.

[FR Doc. 90-27608 Filed 11-23-90; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL SCIENCE FOUNDATION

Program Solicitation; Private Sector Partnerships To Improve Science and Mathematics Education

This document is one of a series of targeted program solicitations inviting proposals directed toward problems and opportunities of high priority within mathematics, science and technology education. This solicitation is particularly intended to encourage efforts to broaden the content of science and mathematics education by incorporating scientific and

technological inputs from the private sector.

These solicitations are intended to supplement, not supplant, the current guidelines and announcements that describe the broad range of interests of NSF's Division of Teacher Preparation and Enhancement (NSF publication 87-10) and Division of Materials Development, Research, and Informal Science Education (NSF 88-29).

Submission Deadline:

Formal Proposals: February 15, 1991, August 15, 1991.

National Science Foundation
Directorate for Science
and Engineering Education
Division of Teacher Preparation
& Enhancement
Private Sector Partnerships Program

Contact: Dr. Donald E. Snads, Section Head, Networks and Teacher Preparation, (202) 357-7751

Private Sector Partnerships Introduction

The National Science Foundation encourages and supports the participation of private sector organizations and technical personnel in projects to improve science and mathematics education. The Private Sector Partnerships program seeks to focus such private sector resources on the improvement of science and mathematics education through partnerships with schools, school districts, community colleges, four-year colleges and universities, and other educational organizations. The essential feature of this program is the active participation in the educational process of private business and industry and their technically educated people.

Carefully developed partnerships can make industrial technical knowledge and experience available for the enhancement of science education. To encourage technology-based organizations from the private sector, and the scientists, mathematicians, and engineers they employ, to form these partnerships with educational organizations, the National Science Foundation invites proposals for partial funding of partnership projects.

The primary focus of projects proposed under this solicitation must be the blending of the scientific, technical, organizational, and management skills of the non-educational world with the knowledge and pedagogical expertise of educators. Thus full involvement of private sector people and organizations in both planning and executing the proposed project will be required.

Partnerships to improve education have intrinsic value in focusing attention upon the needs of education, securing resources, and mobilizing action. More specifically, practicing scientists, mathematicians, engineers, and researchers can bring to education a view of the demands and opportunities of the workplace of tomorrow. They can impart to teachers and students the utility of science and mathematics. Their insights and enthusiasm can impress students with the wonders of science. Perhaps most important, these practitioners are potential mentors and role models.

In addition to the ideas and skills each partner brings to this program, the private sector is expected to participate through such contributions as direct financial support, materials and equipment, use of facilities and computer resources, and paid internships for teachers.

Scope and Funding of Partnerships

Projects may be targeted toward any aspect of science and mathematics education in the primary, middle, and secondary grades. Of particular interest to this solicitation are those which include significant participation by classroom teachers. Priority will be given to projects that are innovative, that have the potential to be replicated, or that serve the special needs of underrepresented groups. Examples of needs that may be addressed by a proposal are:

- Improving the preparation in science and mathematics of prospective elementary and middle school teachers;
- Improving elementary and middle school science and mathematics teaching;
- Facilitating the entry into teaching careers of undergraduate students majoring in mathematics, science, or engineering;
- Preparing professional mathematicians, scientists, and engineers for new careers in teaching;
- Promoting involvement in science and mathematics of students from population segments traditionally underrepresented in technically-based activities, e.g., females, minorities, and persons with disabilities;
- Intervening with at-risk students to encourage and promote interest in science, and to correct deficiencies;
- Integrating current applications of science and mathematics into course content;
- Enhancing the "hands on" or laboratory component of science education.

Proposals are solicited also for a limited set of activities in post-secondary science and mathematics education. Examples of topics of special interest at this level are:

- Preparing non-baccalaureate-bound students for technical careers;
- Developing science or mathematics "literacy" courses for students in non-technical majors;
- Promoting adult education for the "scientific literacy" needed for responsible citizenship.

Funding may be requested for one to four years. The maximum award over the life of a project will be $400,000, including indirect costs; the average award is expected to be about $200,000.

The program emphasizes the formation of new partnerships that will be self-sustaining; consequently, it generally will not be possible to provide funds for the continuation of previously supported projects. Neither is the program able to provide seed money to for-profit organizations or individuals for the development of commercial products.

Projects funded under this initiative are expected to meet the scientific and pedagogical standards of other NSF programs that might support similar work (with or without the private sector involvement). Examples of such programs are Teacher Enhancement, Teacher Preparation, and Materials Development. If the principal activities of a project fit one of these areas, the proposal might better be submitted directly to that NSF program, even though the project has private sector involvement. A preliminary proposal or a discussion with an NSF program officer can help to determine the most appropriate placement of a proposal.

Proposal Format

Proposals submitted in response to this program solicitation should be prepared and submitted in accordance with the guidelines provided in the NSF brochure, Grants for Research and Education in Science and Engineering (GRESE), NSF 90-77, August 1990.

Number the pages (including forms) beginning with the Table of Contents as Page 1 serially at the bottom; use the headings in the following checklist; single space all typed pages; use photocopies of the forms in the back of this solicitation for all required forms; staple the complete report at upper left corner (do not use plastic or other binders). The copy bearing the official signatures should be printed on only one side of the paper.

1. Information About Principal Investigators/Project Directors

Submit one copy only of NSF Form 1225 with your proposal. Place this on top of the cover page of the copy that bears the original signatures. While

providing the information requested on the form is voluntary, submission of the form is required by NSF.

2. Cover Sheet

Use NSF Form 1207 (3/89). Enter "Private Sector Partnerships" in the box at the upper right. The submitting organizations may be two- or four-year colleges; universities; state, regional, or local governmental agencies (including school systems); professional societies; science museums; research institutes; private foundations; private industry; and other for-profit or non-profit organizations engaged in or concerned about science, mathematics or technology education. The Project Director likewise may be from any such institution.

To gain maximum benefit from the participation of industrial or other private sector scientists, mathematicians, and engineers, they should be involved from the initial planning stage. It would therefore be desirable to have such an individual as an "Additional Project Director" if the Project Director is from an educational institution.

One copy of the cover sheet must be signed by the proposed project director and by an authorized institutional representative.

3. Proposal Data Sheet, Private Sector Partnerships Program

Use NSF Form 1267 (8–90). Provide your best estimates of the information requested. Use the following codes to designate the program content areas:

11 Astronomy
61 Biology
12 Chemistry
31 Computer Science
59 Engineering
49 Environmental Sciences
88 Geography
42 Geological Sciences
69 Life Sciences
21 Mathematics
DB Mathematics Education
13 Physics
79 Psychology
DD Science Education
89 Social Sciences
99 Other (Specify on Form)

4. Table of Contents

Pagination should begin with 1 at the Table of Contents and continue in sequence to the end of the biographies of project directors (Section 11).

5. Project Summary

Describe in 200 words or less what the project is about, what the major activities will be, why, by whom, when, how many will be affected, and the desired outcomes.

6. Narrative

The narrative should include the following components in order. While the number of pages for each item is not fixed, the total narrative *must not* exceed fifteen unreduced single-spaced 8 ½" x 11" pages (exclusive of the project director biographical material and the supplemental information).

Needs

List the project's needs. Widely distributed studies and statistics documenting national science and mathematics education needs should be mentioned only very briefly since they are well known to NSF staff and reviewers, but the basis for determining the local needs that the partnership will address should be described in more detail.

Goals and Objectives

The goals should consist of a few broad statements appropriate to the needs addressed by the proposal. List a number of objectives that will lead to the achievement of each goal.

Project Plan

Describe in detail the activities proposed to achieve each objective. Indicate clearly the roles of the various members of the partnership. Give quantitative data appropriate to the project design, such as the number of participants expected in a workshop, the number and type of teaching materials to be prepared, or the number of teachers to be placed into internships in industry.

To ensure maximum effectiveness for NSF funds, projects should have the potential for broad impact, directly or indirectly. The number of teachers and students affected directly by the project itself is important and should be commensurate with the budget. Also important is the potential for replication of projects activities in other locations. Dissemination plans for project findings, conclusions, and materials should be included.

Any substantial effort devoted to development of teaching materials must be justified by an explanation of why existing materials are not satisfactory. If new materials are to be developed, describe the steps planned to ensure their soundness both pedagogically and in technical content. To attain effective utilization of new materials when completed, teachers and administrators representative of those settings in which they are expected to be used should be involved in their preparation.

Scientific and Educational Merit

Explain briefly the relationship of the scientific, mathematicial, and technical content of the proposed project to the purposes of this solicitation. Also explain briefly why the particular teaching strategies were chosen.

Private Sector Involvement

Describe the intellectual partnership that will be formed, and state explicitly the role of the private sector. Summarize the involvement of scientists, mathematicians, engineers, and other professionals in science-related occupations with students and teachers. Describe the administrative mechanisms that will be used to organize and manage the project. List financial and in-kind support on the "Cost-Sharing Statement" form.

Calendar

Provide a calendar of proposed dates on which major activities of the project will begin and end. Keep in mind that approximately six months are required for NSF review and processing of proposals.

Evaluation

Describe the procedures planned to determine the extent to which the project was successful in meeting its goals and objectives. The means by which internal evaluation of attainment of various goals and objectives will be carried out should be shown.

Documentation and Dissemination

Describe the manner in which the results of the project will be documented and materials prepared for possible dissemination to other persons or groups.

Continuation

Describe clearly how the project and the partnerships will be continued after cessation of NSF support. Specify amounts of money needed and potential sources of support.

7. Budget

Use NSF Form 1030 (1–87). Complete a separate budget sheet for each full year of the project, beginning from the proposed starting date, followed by a cumulative budget for the whole project. Label each sheet "Year— " "Cumulative Budget" at the bottom right corner.

Separate detailed annual and cumulative budgets are needed for any subcontracts included on line G–5.

Attach budget explanation sheets to the form 1030 for each year. These sheets should explain the budget, not repeat it. Show where the numbers came

from. Indicate how many months each person included in the budget will be working on the project. Show how fringe benefit and indirect costs are calculated; be sure to exclude equipment and participant costs from the basis for indirect costs. Explain the derivation of amounts comprising multiple factors (e.g., $60 /day×10 days×50 participants=$30,000).

Private Sector Partnerships proposal budgets should not include more than a very limited amount (generally less than $10,000) for permanent equipment. Equipment needs beyond that should be obtained through members of the partnership or other sources.

The budget should include travel funds to permit the Project Director, or a designee, to attend a two-day meeting of Project Directors each year of the project. The meetings will likely be held in the Washington DC area.

An NSF program officer should be called to determine the current limits that apply to the payment of salaries from grants, consultant rates, and stipends to participants. Indirect costs on Private Sector Partnerships grants may not be charged on equipment purchases or on participant support.

8. Cost Sharing

Use NSF Form 1269 (8–90). The NSF column of this form should derive from NSF Form 1030 for each year and for the cumulative total.

List the financial commitments, either cash or in-kind contributions, from the members of the partnership. The total should at least equal the requested NSF funding. In-kind contributions can include such items as cost of teacher released time, waiver of all or part of otherwise approvable overhead, salary value of time spent on partnership activities, or value of contributed equipment, materials, or services.

On a separate page, provide a brief explanation of the partners' contributions, including whether they are in-kind, cash, or both; if both, specify how much is each.

9. Current and Pending Support

It is important that the NSF staff be able to judge the availability of personnel to carry out the project. Use NSF Form 1239 to show all current and pending externally-funded support to the director or other senior personnel. Both academic year and summer commitments should be shown for each year of the project. Pending Support includes proposals which have been approved, but for which funds have not yet been received, and proposals which have been submitted but not yet acted upon.

10. Summary of Results of Prior NSF Support

Use NSF Form 1268 (11–89). Information must be provided on any project funded by NSF within the last five years on which any Project Director on this proposal was a Project Director. List Project Director, project title, NSF project number, amount of NSF funding, and project duration. Briefly (one page maximum) summarize the project activities, accomplishments, and findings. Use a separate page for each project.

11. Biographies of Project Directors

Provide biographical information (two pages maximum) for each Project Director.

12. Supplemental Information

Although the narrative must be self-contained and make the full case for support, up to fifteen pages of supplemental information may be included in the formal proposal. Examples are letters of support and commitment, institutional information, samples of previously prepared teaching materials, etc. Letters of commitment should be quite explicit, containing such information as nature, breadth and scope, duration, estimated dollar value, etc. All supplemental items should be on 8½" x 11" single sheets; anything of other size should be copied onto standard paper.

Proposal Submission

Fifteen copies of each proposal, including one copy bearing original signatures, should be mailed to: Proposal Processing Unit—room 223, Attention: Private Sector Partnerships, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Only one (1) copy of NSF Form 1225, Information about Principal Investigator/Project Director, should be sent, attached to the original signed proposal.

Processing may be expedited by sending one additional copy (not the official signed copy) of the proposal to Dr. Donald S. Douglas or Dr. Donald E. Sands, Private Sector Partnerships Program, room 504, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Proposals submitted in response to this solicitation must be:

(1) Received by NSF no later than February 15, 1991 or August 15, 1991; or

(2) Postmarked no later than four days prior to the due date; or

(3) Sent via commercial overnight mail no later than two days prior to the due date.

Review and processing require approximately six months.

Proposal Review

All formal proposals will be evaluated according to standard NSF merit review processes by a combination of experts from the private sector, schools, colleges and universities, and various other scientific, governmental, or educational organizations. In the experience of the NSF staff, successful proposals are characterized by clarity. The needs are well established, the activities are described clearly and specifically address the needs. Proposals that are unnecessarily long, that are difficult to follow, or that are couched in specialized jargon generally do not fare well in the review process.

To ensure that the reviewers can compare proposals fairly and meaningfully, the projects should be formulated with the following elements in mind and the proposals should follow the indicated format. The basis of the review will be the following four general criteria:

1. Utility or Relevance of the Project

Needs: Are the needs, problems, or issues the project addresses important? Documented? Specifically related to science, mathematics, engineering, technology, education? Appropriate for this NSF program? Too narrow or too broad? Well-suited to the project personnel's skills and experience? Already solved elsewhere? Rarely should the statement of needs exceed 250 words.

Goals and Objectives: Are the goals and objectives clear and well-defined? Relevant to NSF and the Private Sector Partnerships program? Responsive to the identified needs? Are the objectives measurable?

2. Intrinsic Merit

Scientific and Educational Merit: Is the scientific, technological, and mathematical content appropriate for the target audience? Educational approach sound and reflective of the best current pedagogical research? Planned outcomes of sufficient importance to warrant NSF funding? Project likely to produce significant new techniques, insights, or materials?

3. Performance Competence

Activities: Is the plan of activities clearly described? Logically directed toward the goals and objectives? A rational outgrowth of good planning by a suitable mix of individuals? Well-suited to the target populations of teachers, students, or others? Effectively

laid out for the whole length of the project? Detailed enough to support the proposed budget? Designed to produce definitive and useful models for replication eslewhere? Likely to produce lasting improvements? Sustainable after termination of NSF support? Cognizant of similar projects from which it might draw information?

Evaluation: How will the attainment of goals and objectives be measured? What are the criteria and standards that will be evaluated? Individual activities be assessed for effectiveness? Participant reaction and conclusions be determined and recorded? Objective evaluation of project success be conducted?

Calendar: Are the time periods indicated by the calendar realistic for the activities to be conducted successfully? Does the schedule fit with other local factors, such as academic year calendars? Show evidence that all the partners have committed time to the project?

Project Personnel and Activity Participants: Are the project directors well qualified? Other project personnel suited for their tasks? Expected activity participants (e.g., teachers in in-service programs, students in mentored projects) appropriate for the project? Participant selection procedure defined and logical?

Project Director Involvement: Are the Project Director or Co-Project Directors likely to be overloaded and unable to devote the required time to this project? Will the designated project directors actively lead the project, or are they only nominal?

Budget and Cost Sharing: Is the budget generally commensurate with the project scope and expected outcomes? Carefully planned and presented? Realistic? Properly balanced between NSF funds and other financial contributions, both case and in-kind? Are the commitments of the partners explicit and oriented to the project's objectives?

Supplemental Information: Does the supplemental information confirm statements and plans in the project design? Relate to the project design? Give evidence of the ability and willingness of partners to participate as stated in the project design?

4. Effect on the Infrastructure of Science and Engineering

Documentation and Dissemination: Is provision made for documentation of findings, conclusions and details of successful activities in a way suitable for sharing with others? Are new teaching materials developed to a stage where they can be easily replicated? Will there be effective dissemination of project findings and materials to other persons or groups with similar needs?

Education Improvement: Will the project contribute to better understanding or improvement of the quality, distribution, or effectiveness of the Nation's scientific and engineering education?

Private Sector Involvement: Since the primary purpose of this program is to enlist private sector scientists, engineers, and mathematicians, and other professionals in science-related fields in improving science, technology, and mathematics education, the nature and extent of their involvement in the proposed project is crucial. Are they major elements in the project? Bringing appropriate skills and experiences to the project? Contributing to content? An integral part of planning and execution? In personal contact with teachers or students? Suitable role models for students? Fully committee to their designated roles? What is the frequency and duration of their interactions with students or teachers? Are the interactions well thought out, with opportunities for open-ended exploration of individual interests?

Additional Information

General inquiries should be directed to:

Dr. Donald S. Douglas or Dr. Donald E. Sands, Private Sector Partnerships Program, Directorate for Education and Human Resources, National Science Foundation, 1800 G Street, NW., room 504, Washington, DC 20550, Telephone (202) 357-7751, FAX (202) 357-7009, BITNET ddouglas@nsf.gov or dsands@nsf.gov.

Notification of Action

Notification of final action on these proposals will normally be mailed within six months. Anonymous copies of reviewers' written evaluations of projects will be included with the notification of final action. To allow time for this proposal evaluation process, proposed projects should not be planned to begin earlier than six months after submission of the proposal.

Upon completion of the project a Final Project Report (NSF Form 98A), including the part IV Summary, will be required. Applicants should review this form prior to proposal submission so that appropriate tracking mechanisms are included in the proposal plan to ensure that complete information will be available at the conclusion of the project.

Grant Administration

Grants awarded as a result of this solicitation are administered in accordance with the terms and conditions of NSF GC-1, "Grant General Conditions," or FDP-II, "Federal Demonstration Project General Terms and Conditions," depending on the grantee organization. Copies of these documents are available at no cost from the NSF Forms and Publications Unit, phone (202) 357-7668, or via e-mail (Bitnet:pubs@nsf or Internet:pubs@note.nsf.gov). More comprehensive information is contained in the NSF Grant Policy Manual (NSF 88-47, July 1989), for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

If the submitting institution has never received an NSF award, it is recommended that appropriate administrative officials become familiar with the policies and procedures in the NSF Grant Policy Manual which are applicable to most NSF awards. If a proposal is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are described in chapter II of the NSF Grant Policy Manual.

Donald E. Sands,

Section Head, Networks and Teacher Preparation.

[FR Doc. 90-27597 Filed 11-23-90; 8:45 am]

BILLING CODE 7555-01-M

PATENT AND TRADEMARK OFFICE

[Docket No. 901195-0295]

Extension of Existing Interim Orders

AGENCY: Patent and Trademark Office.

ACTION: Extension of existing interim orders issued under section 914 of the Semiconductor Chip Protection Act of 1984 (SCPA), 17 U.S.C. 914.

SUMMARY: The Assistant Secretary and Commissioner of Patents and Trademarks has determined that the existing interim orders issued under section 914 should be extended.

DATES: All extended orders are hereby extended until July 1, 1991.

ADDRESSES: Address correspondence to Assistant Commissioner for External Affairs, United States Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs,

United States Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Commissioner of Patents and Trademarks has been delegated the task of determining when and under what conditions interim protection in the United States will be extended under section 914 of the SCPA to owners of foreign "mask works," the series of related images representing a three-dimensional pattern in the layers of a semiconductor chip. In international parlance, mask works are also known as "integrated circuit layout designs" or as "topographies." To be eligible for interim mask work protection, it must be established that a foreign government is making good faith efforts and reasonable progress toward establishing a regime of protection substantially similar to that established under the SCPA, and that U.S. mask works are not subject to unauthorized distribution or commercial exploitation in the country concerned.

In November 1987, the Congress extended the President's authority to issue interim orders until July 1, 1991. Public Law No. 100–159 (1987). In doing so, Congress expressed its belief that "this process (under section 914) is promoting the protection of U.S. mask works abroad." H. Rpt. 100–388, 100th Cong., 1st Sess. (1987).

Interim orders have been issued extending protection to 19 States. See 54 FR 50793 (December 11, 1989).

Discussion and Findings of the Commissioner

Representative Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Intellectual Property and the Administration of Justice, has stated that the transitional provisions in section 914 were "intended to encourage the rapid development of a new worldwide regime for the protection of semiconductor chips." 133 Cong. Rec. E1283 (daily ed. April 6, 1987). When the SCPA was enacted in 1984, and when the President's authority under section 914 was extended in 1987, it was contemplated that the then-draft World Intellectual Property Organization (WIPO) "Treaty on Intellectual Property in Respect of Integrated Circuits" would provide the basis for a multilateral regime of protection for semiconductor chip layout designs. *Id.*

When the interim orders were last extended in December 1989, the Commissioner noted that substantial compromises were reached at the May 1989 diplomatic conference for conclusion of the WIPO treaty. The Commissioner stated that these compromises had produced a treaty with levels of protection below the international norms reflected in the laws of the countries that have enacted chip protection legislation.

Separate negotiations to establish a multilateral standard of chip protection are under way within the framework of the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), which is to conclude in December 1990. In negotiations within the Trade Related Aspects of Intellectual Property Rights (TRIPS) sub-group of the Uruguay Round, the United States is seeking to establish a standard providing higher levels of chip protection than those contained in the WIPO treaty.

In the early months of 1991, the Congress must consider whether to extend the President's interim authority under section 914. Congress should take into account the fact that the WIPO treaty does not provide an acceptable multilateral basis for protection for chip layout designs. The results of the TRIPS negotiations, and their implications for the creation of a viable multilateral regime, should also be considered.

The Commissioner set forth his views on extension of section 914 in his July 1990 Report on the Operation of Section 914 of the Semiconductor Chip Protection Act of 1984 (Report), submitted to Congress in consultation with the Register of Copyrights. The Commissioner stated:

> Our continuing experience in the administration of section 914, when coupled with our negotiations on multilateral agreements designed to promote international comity with respect to the protection of mask works, continue to point out the balanced level of protection set in the SCPA. * * * (T)he procedures implemented under section 914 continue to have an important role in the administration of the SCPA and the internationalization of standards for chip protection.

Report at 34.

If Congress decides that extension of section 914 is justified, the duration of such authority must also be considered. In the Report, the Commissioner urged an indefinite extension, stating that "the flexibility of such procedures has helped promote the rapid growth of sound and balanced foreign laws on chip protection that do not create trade problems." *Id.*

In the meantime, the Commissioner has determined that the interim orders for all countries now subject to protection under section 914 should be extended until the expiration of statutory authority to grant such orders; that is, until July 1, 1991. Many of these countries have enacted laws providing protection on a level substantially similar to that of the SCPA, and the Commissioner notes with approval that legislation providing such protection is nearing completion in all other countries subject to section 914 orders.

No evidence has been presented that nationals, domiciliaries or sovereign authorities of any country subject to interim protection orders are engaged in the misappropriation, unauthorized distribution, or unauthorized commercial exploitation of mask works.

Order Extending the Expiration Date for Interim Protection Orders Issued Under Chapter 9 of Title 17, United States Code

In accordance with the authority vested in me by Amendment 2 to Department Organization Order 10–14 regarding 17 U.S.C. 914, I find that the Governments of Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland and the United Kingdom have made and are making good faith efforts toward providing protection for U.S. mask works. I find further that nationals, domiciliaries and sovereign authorities of those countries, and persons controlled by them, are not engaged in the misappropriation, unauthorized distribution or unauthorized commercial exploitation of mask works. I find further that the extension of the expiration dates for interim orders will promote the purposes of the Semiconductor Chip Protection Act of 1984 and international comity with respect to the protection of mask works.

Accordingly, the existing interim orders for all of the aforementioned countries are extended and shall terminate on July 1, 1991.

Dated: November 6, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90–27654 Filed 11–23–90; 8:45 am]

BILLING CODE 3510–16–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 35–25191]

Filings

November 21, 1990.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules

promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 10, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Co. (70-7811)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, CNG Tower, Pittsburgh, Pennsylvania 15222-3199, has filed an amendment to its declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

On November 13, 1990, the Commission issued a notice (HCAR) No. 25189) ("November 13th Notice") of a proposal by Consolidated to issue and sell, through December 31, 1991, up to $250 million principal amount of convertible subordinated debentures ("Debentures") maturing in not more than thirty years. The Debentures would be convertible into shares of Consolidated's common stock $2.75 par value. Consolidated has now amended its declaration to (1) change the Debentures' call provisions from three years to five years or less, and (2) provide the holders of the Debentures the right to have Consolidated, subject to certain conditions, repurchase the Debentures for cash.

The Debentures will be issued under a new closed-end indenture ("Indenture"), not allowing for any further series of debentures thereunder, between Consolidated and a bank, as trustee. The Indenture will contain provisions making the Debentures subordinate to all senior indebtedness of Consolidated, including all currently outstanding and future series of debentures issued or to be issued under the current indentures of Consolidated.

It is anticipated that the Debentures will be offered and sold at par with annual interest rate determined by the market for similar convertible debt. Such interest is anticipated to be approximately 300 to 350 basis points lower than for senior debt of comparable terms but without the conversion feature. The conversion price per share for the Debentures would be set at an initial premium of approximately 20-25% over market.

Consolidated would have the right to call the Debentures at par plus a declining premium beginning five years or less after the date of issue. Beginning in the eleventh year after issuance, the outstanding Debentures would be retired through equal annual sinking fund payments so as to retire 75% of the outstanding issue at maturity. Consolidated will also have the noncumulative option to make additional sinking fund payments equal to the mandatory sinking fund payments. In addition, Consolidated may provide the holders of the Debentures the right to have Consolidated purchase for cash, at par plus accrued interest (if any), such of the Debentures as may be presented to it on the tenth anniversary of the date of the initial issuance.

The proceeds from the sale of the Debentures will be added to the treasury funds of Consolidated and subsequently used to finance, in part, capital expenditures of Consolidated and Consolidated's subsidiaries.

Consolidated requests an exception from the requirements of rule 50 pursuant to subsection 50(a)(5) thereunder for the issuance and sale of the Debentures. Consolidated was authorized in the November 13th Notice to begin negotiations, under an exception from the requirements of rule 50 under subsection 50(a)(5) thereunder, with underwriters for the public offering of the Debentures.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27841 Filed 11-23-90; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, Tn 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Questionnaire and request for inclusion on the list of contractors/dealers participating in the Residential Energy Services Program Heat Pump Option.

Frequency of Use: On occasion.

Type of Affected Public: Businesses or other for-profit, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 50.

Estimated Total Annual Burden Hours: 12.5.

Estimated Average Burden Hours Per Response: .25.

Need For and Use of Information: The information is needed to help determine whether heat pump contractors/dealers may be listed as participating in the

Heat Pump Option of the Residential Energy Services Program.

Louis S. Grande,

Vice President, Information Services Senior Agency Official.

[FR Doc. 90-27590 Filed 11-23-90; 8:45 am]

BILLING CODE 6120-02-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market in the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 90-3-50, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period beginning October 1, 1990, we have projected non-fuel costs based on the year ended June 30, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels, including those for the month of August, as reported to the Department.

These projections register the beginning of the dramatic increase in fuel prices precipitated by the August Mid East crisis. Future SFRL revisions, of course, will capture the additional increases in fuel costs.

By Order 90-11-29 cargo rates may be adjusted by the following adjustment factors over the October 1979 level:

Atlantic	1.2695
Western Hemisphere	1.2608
Pacific	1.5495

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation:

Dated: November 16, 1990.

Jeffrey N. Shane

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-27661 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Fitness Determination of Sea Air Shuttle Corporation d/b/a Virgin Islands Seaplane Shuttle

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 90-11-34, Order to show cause.

SUMMARY: The Department of Transporation is proposing to find that Sea Air Shuttle Corporation d/b/a Virgin Islands Seaplane Shuttle is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act and to receive in transfer the commuter air carrier authority issued to Virgin Islands Seaplane Shuttle, Inc., by Order 82-5-20.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: November 16, 1990

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-27660 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-62-M

Privacy Act of 1974: Systems of Records; Hazardous Materials Incident Telephonic Report System; and Hazardous Materials Incident Written Report System; and Hazardous Materials Information Request System

The Department of Transportation herewith publishes a notice describing three systems of records maintained in connection with the collection and dissemination of information related to the release of hazardous materials during transportation (including transportation by pipeline).

Any person or agency may submit written comments on this notice to the Privacy Act Officer (DRP-6), Research and Special Programs Administrative, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments to be considered must be received by December 17, 1990.

If no comments are received, the proposed notice will become effective on the above-mentioned date. If comments are received, the comments will be considered and, where adopted, the document will be republished with the changes.

Issued in Washington, DC, November 15, 1990.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

DOT/RSPA 09

SYSTEM NAME:

Hazardous Materials Incident Telephonic Report System.

SYSTEM LOCATION:

U.S. Department of Transportation, The John A. Volpe National Transportation Systems Center Kendal Square, Cambridge, MA 02142

CATEGORIES OF THE INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those making telephonic reports, either as a private citizen or as a representative of the company involved, to the National Response Center (NRC) operated by the USCG or to the EPA or to the USCG Office of Marine Safety, Security & Environmental Protection (OMSSEP) of certain releases of hazardous materials. The system may also contain information on individuals affected by reported incidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of telephonic reports of incidents involving the release of hazardous materials or environmental pollutants received by the NRC acting on behalf of the Research and Special Programs Administration (RSPA), the USCG, and/or the EPA, or made by or to the EPA or the OMSSEP (USCG).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and reauthorized by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*); Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*); Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*); Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 *et seq.*); Clean Water Act (33 U.S.C. 1251 *et seq.*); Deepwater Ports Act (33 U.S.C. 1501 *et seq.*); Outer Continental Shelf Land Act (43 U.S.C. 1331 *et seq.*).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose pertinent information to Federal, state, and local governmental agencies responsible for responding to incidents involving the release of hazardous materials to assist in efforts to protect life, health, safety, and environmental conditions; to enforce related Federal, state, and local regulations; or to evaluate or develop regulatory programs.

To disseminate information on the transportation of hazardous materials to industrial, commercial, educational, scientific, research, or private entities to assess trends, risks, consequences, or other potentialities associated with the release of hazardous materials during transportation, or to analyze factors affecting hazardous materials incidents.

To disseminate information to the public media for use in informing the public of issues related to the transportation of hazardous materials. The general routine uses in the prefatory statement apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic media.

RETRIEVABILITY: RECORDS ARE RETRIEVABLE BY ALL ENTERED FIELDS INCLUDING THE NAMES OF INDIVIDUALS INCLUDED IN THE RECORD.

SAFEGUARDS:

Access to all computer files is controlled through user-name/password access procedures. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape.

SYSTEM MANAGER AND ADDRESS:

For records collected by the Office of Hazardous Materials Transportation, RSPA, pursuant to 49 CFR 171.15: Information Systems Manager, Office of Hazardous Materials Transportation (DHM-63), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

For records collected by the Office of Pipeline Safety, RSPA, pursuant to 49 CFR 191.5 or 49 CFR 195.52: Information Resources Manager, Office of Pipeline Safety (DPS-21), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORDS PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individuals covered by this system; companies; Federal, state, and local governmental agencies; and other entities reporting releases of hazardous materials that occurred during transportation or that affect the environment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOT/RSPA 10

SYSTEM NAME:

Hazardous Materials Incident Written Report System.

SYSTEM LOCATIONS:

U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590;

U.S. Department of Transportation, The John A. Volpe National Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those affected by releases of hazardous materials during transportation (including transportation by pipeline) whose names and other personal information may have been included in narrative descriptions of the incident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of incidents involving the release of hazardous materials during transportation (including transportation by pipeline) submitted by the carrier pursuant to 49 CFR 171.16, 191.9, 191.15, 195.54, and 195.58.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*); Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*); Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 *et seq.*).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose pertinent information to Federal, state, and local governmental agencies responsible for oversight of incidents involving the release of hazardous materials to assist in efforts to protect life, health, and safety; to enforce related Federal, state, and local regulations; or to evaluate or develop regulatory programs.

To disseminate information on the transportation of hazardous materials to industrial, commercial, educational, scientific, research, or private entities to assess trends, risks, consequences, or other potentialities associated with the release of hazardous materials during transportation, or to analyze factors affecting hazardous materials incidents.

To disseminate information to the public media for use in informing the public of issues related to the transportation of hazardous materials.

The general routine uses in the prefatory statement apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic disk. Duplicate paper or microfilm copies are also retained by RSPA in file cabinets.

RETRIEVABILITY:

Computer records are retrievable by all entered fields including the name of individuals included in the record. Paper and microfilm copies are not retrievable by individual name or other personal identifier except through use of the search capabilities of the computer records.

SAFEGUARDS:

Access to all computer files is controlled through user-name/password access procedures. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building. Paper and microfilm copies are stored in a room locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape. Paper or microfilm copies are also retained permanently.

SYSTEM MANAGER AND ADDRESS:

For records collected by the Office of Hazardous Materials Transportation, RSPA, pursuant to 49 CFR 171.16: Information Systems Manager, Office of

Hazardous Materials Transportation (DHM-63), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

For records collected by the Office of Pipeline Safety, RSPA, pursuant to 49 CFR 191.9, 191.15, 195.54, or 195.58: Information Resources Manager, Office of Pipeline Safety (DPS-21), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORDS PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by individuals acting on behalf of the carriers that experience releases of hazardous materials during transportation (including transportation by pipeline).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOT/RSPA 11

SYSTEM NAME:

Hazardous Materials Information Requests System.

SYSTEM LOCATIONS:

U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590; U.S. Department of Transportation, The John A. Volpe National Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those requesting information from the Hazardous Materials Information Systems (HMIS) or requesting the Research and Special Programs Administration (RSPA) publication, *Emergency Response Guidebook.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of requests for information from governmental, commercial, or public media entities, or from private citizens.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*); Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*); Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 *et seq.*)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to requests for information maintained on the hazardous Materials Information System; to control the handling of such responses; and to provide statistical information on the offices' responsibility for responding to such requests.

To disseminate information concerning the availability of the *Emergency Response Guidebook* or revisions to it to interested parties in order to ensure that users of the *Guidebook* have the most current available guidance information.

The general routine uses in the prefatory statement apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic disk. Duplicate paper copies of recent reports are retained by RSPA offices in file folders.

RETRIEVABILITY:

Computer records are retrievable by all entered fields including the names of individuals included in the record. Paper copies are not retrievable by individual name or other personal identifier except through use of the search capabilities of the computer records.

SAFEGUARDS:

Access to all computer files is controlled through user-name/password access procedures which limit access to the files to authorized agency personnel and to contract personnel whose duties directly involve the creation and use of these files. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building. Paper copies are stored in a room locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape. Paper copies are retained according to need in a room locked during non-duty hours, and disposed of as appropriate.

SYSTEM MANAGER AND ADDRESS:

For records maintained by the Office of Hazardous Materials Transportation, RSPA: Information Systems Manager, Office of Hazardous Materials Transportation (DHM-63), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

For records maintained by the Office of Pipeline Safety, RSPA: Information Resources Manager, Office of Pipeline Safety (DPS-21), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORDS PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by individuals, companies, and other entities requesting information from the HMIS or copies of the *Emergency Response Guidebook.*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Narrative Statement for the Department of Transportation, Research and Special Programs Administration

The Department of Transportation (DOT), on behalf of the Research and Special Programs Administration (RSPA), proposes to establish under the Privacy Act of 1974 three systems of records, the Hazardous Materials Incident Telephonic Report System, DOT/RSPA 09; the Hazardous Materials Incident Written Report System, DOT/RSPA 10; and the Hazardous Materials Information Requests System, DOT/RSPA 11.

The Hazardous Materials Incident Telephonic Report System, DOT/RSPA 09, contains records maintained by the RSPA pertaining to telephonic reports made to the National Response Center (NRC), pursuant to the requirements of 49 CFR 171.15, 191.5, and 195.52. The NRC, which is operated by the U.S. Coast Guard (USCG), DOT, acts on behalf of the RSPA to receive telephonic reports of certain incidents involving the release of hazardous materials during

transportation, including transportation by pipeline. The telephonic reports are recorded electronically and transmitted daily to the RSPA's computer facilities at the RSPA's John A. Volpe National Transportation Systems Center in Cambridge, Massachusetts. The reports collected and transmitted by the NRC and incorporated into this system of records include reports made to the NRC as required by the U.S. Coast Guard pursuant to Section 306(a) of the Outer Continental Shelf Land Act (43 U.S.C. 1331 *et seq.*) and Section 18(b) of the Deepwater Ports Act of 1974 (33 U.S.C. 1501 *et seq.*) and as required by the Environmental Protection Agency (EPA) pursuant to Section 311(b)(5) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and reauthorized by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*). The reports collected by the NRC are also supplemented by reports made directly to or originating within the EPA regional offices. Additional verification data are collected by EPA regional offices and incorporated into the system of records. The RSPA acts on behalf of itself, the USCG, and the EPA in maintaining a permanent computerized record of reports of hazardous materials releases for use by all of the agencies. The reports are used by Federal, state, and local officials to respond to incidents affecting health, safety, the public well-being, or the environment; to assist in the analysis of hazardous materials incidents; and to assist in regulatory programs. The reports are also used by industry, commercial, public, and private entities to analyze and evaluate safety factors associated with the transportation of hazardous materials. The USCG and the EPA are preparing additional Privacy Act notifications describing systems of records that are partially co-extensive with this system.

Although most persons reporting such incidents will be acting on behalf of a commercial or governmental entity, private citizens can use the reporting system to inform the responsible governmental agencies of hazardous materials incidents. In making such a report, a private citizen will be asked to provide his or her name, address, and telephone number of facilitate further contact if necessary. Some reports may also contain pertinent information about individuals affected by the reported incident as part of a brief narrative description of the incident.

The Hazardous Materials Incident Written Report System, DOT/RSPA 10, contains records maintained by the RSPA pertaining to written reports of incidents involving the release of hazardous materials during transportation, including transportation by pipeline, submitted pursuant to 49 CFR 171.16, 191.9, 191.15, 195.54, and 195.58. The records are maintained on a computer at the John A. Volpe National Transportation System Center in Cambridge, Massachusetts, and on paper or microfilm at the RSPA headquarters office in Washington, DC. The records are used by Federal, state, and local officials to monitor incidents affecting the safety of the general public; to assist in the analysis of hazardous materials incidents; and to assist in regulatory programs. The reports are also used by industry, commercial, public, and private entities to analyze and evaluate safety factors associated with the transportation of hazardous materials.

The reports are submitted by persons acting as representatives of commercial entities. Some reports may contain pertinent information about individuals affected by the reported incident as part of a narrative description of the incident.

The Hazardous Materials Information Requests System, DOT/RSPA 11, contains records maintained by the RSPA pertaining to requests for information contained in the Hazardous Materials Information System, including as a special sub-category requests for the RSPA publication, *Emergency Response Guidebook*. The records are maintained on a computer at the John A. Volpe National Transportation Systems Center in Cambridge, Massachusetts, and on paper at the RSPA headquarters office in Washington, D.C. The records are used by RSPA employees to respond to requests for information or, under particular circumstances, to inform requestors of revised versions of requested materials; to control the responses to such requests for information; and to provide statistical information on the offices' responsibility for responding to such requests.

Although most persons requesting such information will be acting on behalf of a commercial or governmental entity, private citizens can request information from the RSPA and therefore the names, addresses, and telephone numbers of private citizens may be recorded in the record system.

The authority to maintain these three systems of records is contained in 49 U.S.C. 1801 *et seq.*, 49 U.S.C. 1671 *et seq.*, and 49 U.S.C. 2110 *et seq.*

The information in these systems will be used in accordance with the stated routine uses and will not unduly impact individual privacy rights.

Information in these systems will be processed in both hard copy and computerized environments, or, in the case of the Hazardous Materials Incident Telephonic Report Systems, solely in a computerized environment. A description of the steps taken to safeguard these records is given under the appropriate heading in the attached copy of the system notice for each system prepared for publication in the **Federal Register.**

The purpose of this report is to comply with Office of Management and Budget (OMB) Circular A-130, Appendix 1, Federal Agency Responsibilities for Maintaining Records About Individuals, dated December 12, 1985.

[FR Doc. 90-27662 Filed 11-23-90; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Intent To Prepare Environmental Impact Statement for Proposed Development at Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration, Central Region, Kansas City, MO.

ACTION: Notice of intent.

SUMMARY: The Federal Administration is issuing a Notice of Intent that an Environmental Impact Statement will be prepared for the proposed development at Lambert-St. Louis International Airport, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Dr. John L. Tatschl, Federal Aviation Administration, Airports Division, 601 E. 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-6614.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508), the Federal Aviation Administration (FAA) will prepare an Environmental Impact Statement for the proposed development planned for the next 10 to 20 years at Lambert-St. Louis International Airport, St. Louis, Missouri. The proposed development includes, but is not limited to, the following: Construction of four parallel runways, terminal expansion, relocation of the Air Traffic Control Tower, reconstruction and expansion of existing terminal area parking garage, relocation of segments of Lindberg Boulevard and Interstate Highway 70, terminal access roadway relocation and

expansion, and relocation of the Air National Guard, TWA Hangar, General Aviation, and Air Cargo Facilities. The Environmental Impact Statement will address environmental considerations of the proposed actions and of numerous alternatives to the proposed action. The document will address direct and indirect environmental impacts, both beneficial and detrimental to the natural and human environment.

The Federal Aviation Administration will utilize the scoping process as outlined in the CEQ guidelines. This process will determine potentially significant issues related to the proposed airport development. To initiate the formal scoping process, interested individuals, governmental agencies, and private organizations will be invited in the near future to submit information and comments on this proposed action for consideration by the Federal Aviation Administration for incorporation into the Environmental Impact Statement. Concerned individuals and agencies will be asked to express their views either by writing or by participating in a future scoping meeting. Adequate notice will be published in local area newspapers and the local media at a later date to inform interested parties of the exact place and time of any scoping meetings. The purpose of public scoping meetings are: (1) To provide a description of the proposed action, (2) to identify potential impacts and issues that should be included in the Environmental Impact Statement, and (3) to identify other coordination and permit requirements associated with the proposed action. Questions and comments regarding the scope of the environmental analysis should be directed to: Dr. John Tatschl, Federal Aviation Administration, Central Region Office 601 E. 12th Street, Federal Office Building, Kansas City, Missouri, 64106, (816) 426-6614.

George A. Hendon,

Manager, Airports Division.

[FR Doc. 90-27679 Filed 11-23-90; 8:45 am]

BILLING CODE 8960-01-M

Title XIII Standard Premium Insurance Policy; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing notice to advise the public that it is holding a public meeting for all interested parties on the revised title XIII draft premium "insurance policy". The meeting will provide for an exchange of public comments on the standard "insurance policy" in order to explore the range of practical parameters required to assure general industry acceptance.

ADDRESSES: The meeting will be held at the facilities of Air Transport Association of America headquarters, 5th floor at 1709 New York Ave., NW., Washington, DC.

DATES: The meeting will be held on December 7, 1990, at 10 a.m.

SUPPLEMENTARY INFORMATION: Under Title XIII of the Federal Aviation Act, 49 U.S.C. app. 1532, 1302 of the Federal Aviation Act, the Federal Aviation Administration (FAA) provides War Risk hull and liability insurance for commercial air carrier operations when commercial insurance cannot be obtained on reasonable terms should a mission be judged to be in the interest of the United States by the President. Such a Presidential Determination authorized the issuance of FAA War Risk insurance for air carrier operations in the Middle East.

The dramatic increase in insurance rates for the Middle East air service has amplified the need to have a standard FAA premium War Risk insurance policy which most carriers can consistently accept in full and maintain compliance with the insurance requirements of their lenders and lessors. The Office of Aviation Policy and Plans (APO) is developing such a standard "insurance policy" which will be completely independent of any "commercial policy" and provide coverage for any carrier within the scope of title XIII. The standard "insurance policy" shall provide reasonable and adequate alternate coverage during the emergencies for which the title XIII program is intended. Copies of the draft "insurance policy" are available upon request.

FOR FURTHER INFORMATION CONTACT: Requests for the draft "insurance policy" and any comments, observations or questions you may have regarding it before the meeting may be directed to Douglas A. Thieman, at (202) 267-3315.

John M. Rogers,

Director, Office of Aviation Policy and Plans.

[FR Doc. 90-27678 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Noticed is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the "Special Exhibition Celebrating the Opening of the Permanent Korean Gallery in the Asian Art Museum of San Francisco" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asian Art Museum of San Francisco, San Francisco, California, beginning on or about November 26, 1990 to on or about December 20, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: November 20, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-27833 Filed 11-23-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street SW., room 700, Washington, DC 20547.

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, (20A5A), 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 December 26, 1990.

Dated: November 19, 1990.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Monthly Statement of Wages Paid to Trainee.
3. VA Form 28–1917.
4. The form is used by employees who train veterans under the VA Vocational Rehabilitation Program to report wages which these employers paid each veteran during the preceding month. The information is used to determine the correct rate of subsistence allowance which may be paid to a trainee in an established and approved on-the-job training or apprenticeship program.
5. Monthly.
6. Individuals or households; businesses or other for-profit; small businesses or organizations.
7. 3,600 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90–27628 Filed 11–23–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 227
Monday, November 26, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 7, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–27764 Filed 11–20–90; 5:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 14, 1990.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–27765 Filed 11–20–90; 5:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 14, 1990.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–27766 Filed 11–20–90; 5:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 14, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–27767 Filed 11–20–90; 5:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 4, 1990.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Quarterly Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–27868 Filed 11–21–90; 3:44 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, December 4, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90–27869 Filed 11–21–90; 3:44 pm]

BILLING CODE 6351-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 27, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Asarco, Inc.*, Docket No. SE 88–82–RM, etc. (Issues include whether the judge erred in dismissing proceedings because the Secretary of Labor refused to comply with an order requiring production of documents that she asserts are privileged.)

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 (Toll Free).

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90–27786 Filed 11–21–90; 1:12 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 2:30 p.m., Wednesday November 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 amendment to Regulation D (Reserve Requirements of Depository Institutions) to index the low reserve tranche for transactions account, the reserve requirement exemption amount, and the reporting cutoff level of 1990.

Discussion Agenda

2. Proposed 1991 Federal Reserve Board budget.

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: November 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27831 Filed 11-21-90; 1:14 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 3:00 p.m., Wednesday, November 28, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27832 Filed 11-21-90; 1:14 pm]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

United States Parole Commission

TIME AND DATE: 1:00 p.m., Monday, December 3, 1990.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Case Operations, Program Coordinator and Administrative Sections.
3. Discussion regarding clarification of the severity rating for the offense of bribery.
4. Discussion of the U.S. Parole Commission phase down.
5. Presentation by Professor Jonathan Turley regarding the aging prison population.
6. Discussion regarding the expansion of the electronic monitoring.

Consent Agenda

The following matter has been placed on the consent agenda and will be considered at the open meeting only if a Parole Commissioner requests that it be discussed at meeting:

1. Amending the Procedures Manual to define "public information" for routine disclosure and to conform Commission policy to that of the Bureau of Prisons.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission, (301) 492-5962.

Dated: November 20, 1990.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 90-27829 Filed 11-21-90; 1:13 pm]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

United States Parole Commission

TIME AND DATE: 9:00 a.m. to 12:00 p.m., Monday, December 3, 1990.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 9 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analysts, National Appeals Board, United States Parole Commission, (301) 492-5968.

Dated: November 20, 1990.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 90-27830 Filed 11-21-90; 1:13 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 55, No. 227
Monday, November 26, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0022]

RIN 0905-AA06

Weight Control Drug Products for Over-the-Counter Human Use

Correction

In proposed rule document 90-25483 beginning on page 45788 in the issue of Tuesday, October 30, 1990, make the following corrections:

1. On page 45790, in the third column, in the second full paragraph, in the eighth line, "by" should read "but".

2. On page 45792, in the first column, in the ninth full paragraph, in the sixth line, "phenylpropanolamine" was misspelled.

3. On the same page, in the third column, in the third full paragraph, on the first and second lines, "21 CFR 25.24(C)(6)" should read "21 CFR 25.24(c)(6)".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1145

Technical Amendments

Correction

In rule document 90-26687 beginning on page 47337 in the issue of Tuesday, November 13, 1990, make the following correction:

PART 1145--[CORRECTED]

On page 47338, in the second column, in the autority citation for part 1145, in the second line, "1707a" should read "10707a".

BILLING CODE 1505-01-D

Federal Register

Monday
November 26, 1990

Part II

Department of the Interior

Bureau of Indian Affairs

Cancellation of Environmental Impact Statements Within Fort Apache Indian Reservation, AZ, and Goshute Indian Reservation, UT; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cancellation of Environmental Impact Statement for Proposed Construction of Bureau of Indian Affairs Route 48 on Fort Apache Indian Reservation, Navajo County, AZ

AGENCY: Bureau of Indian Affairs (BIA), Department of the Interior.

ACTION: Notice of Cancellation of an Environmental Impact Statement (EIS).

SUMMARY: This notice advises the public that the Bureau of Indian Affairs intends to cancel all work on the EIS for Fort Apache Indian Reservation Route 48 as requested by Tribal Resolution 09-90-210. The EIS was in DRAFT stage. The Notice of Intent was published in the **Federal Register** on January 22, 1990.

DATES: Effective immediately.

ADDRESSES: Comments should be addressed Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, Branch of Roads, P.O. Box 10, Phoenix, Arizona 85002.

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: None.

Dated: November 13, 1990.

Stanley Speaks,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90-27598 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-02-M

Cancellation of Environmental Impact Statement for Proposed Construction of an Industrial and Hazardous Waste Incineration Facility and Greenhouse Complex on Goshute Indian Reservation, Juan County, UT.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Cancellation of an Environmental Impact Statement (EIS).

SUMMARY: This notice advises the public that the Bureau of Indian Affairs intends to cancel all work on the EIS for a 200 acre lease site Indian Reservation for a proposed industrial and hazardous waste incineration facility and greenhouse complex on Goshute Indian Reservation. The Notice of Intent was published in the Federal Register on September 18, 1989.

DATES: Effective immediately.

ADDRESSES: Comments should be addressed to Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, Branch of Roads, P.O. Box 10, Phoenix, Arizona 85002.

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: None.

Dated: November 13, 1990.

Stanley Speaks,

Acting Assistant Secretary—Indian Affairs

[FR Doc. 90-27599 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
November 26, 1990

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 227

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act; Final Rule

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 227
[Docket No. 900387-0292]
RIN 0648-AB13

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: NMFS is listing the Steller (northern) sea lion (*Eumetopias jubatus*) throughout its range as threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA) and is establishing protective measures similar to those contained in the previous emergency rule (April 5, 1990; 55 FR 12645). More comprehensive protective regulations and critical habitat designation are being considered in a separate, forthcoming rulemaking. NMFS adopted this dual rulemaking approach in order to expedite the final listing of the Steller sea lion. This listing decision is based on review and analysis of comments on the proposed listing (July 20, 1990; 55 FR 29793) and at public hearings. It is being taken because of significant declines in the Steller sea lion population. The number of Steller sea lions observed on certain rookeries in Alaska has declined by 63% since 1985 and by 82% since 1960. Declines are occurring in previously stable areas. Significant declines have also occurred on the Kuril Islands, USSR.

EFFECTIVE DATES: December 4, 1990.

ADDRESSES: The complete file for this rule is available for review at the Office of Protected Resources and Habitat Programs (F/PR) NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Kaufman, Protected Species Management Division, Silver Spring, MD, 301-427-2319.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1989, the Environmental Defense Fund and 17 other environmental organizations petitioned NMFS to publish an emergency rule listing the Steller sea lion as an endangered species and to initiate a rulemaking to make the listing permanent. Under section 4 of the ESA, NMFS determined that the petition presented substantial information indicating the action may be warranted and requested comments (February 22, 1990; 55 FR 6301). On April 5, 1990 (55 FR 12645), NMFS issued an emergency interim rule listing the Steller sea lion as threatened and requested comments. The emergency listing is effective for 240 days and expires on December 3, 1990.

In March 1990, NMFS appointed a Steller sea lion recovery team, which held its first meeting on April 27, 1990. The team is responsible for drafting a recovery plan and providing recommendations to NMFS on necessary protective regulations for the Steller sea lion.

NMFS also is conducting several research projects, including populations surveys, assessment of sea lion health and fitness, a stock identification study, analysis of fisheries data, and blood and tissue analyses.

NMFS proposed listing the Steller sea lion as a threatened species under the ESA on July 20, 1990 (55 FR 29793). The proposed rule contained protective regulation similar to those of the emergency rule. On July 20, 1990, NMFS also issued an advanced notice of purposed rulemaking (55 FR 29792), requesting public comments to assist NMFS in its efforts to develop separate, more comprehensive protective regulations and critical habitat designation.

NMFS has taken this dual-track rulemaking approach because it wants to avoid a lapse between the expiration of the emergency interim listing and the final listing. There is not sufficient time to issue a proposed rule with comprehensive protective regulations including a proposed critical habitat designation, solicit public comments, provide an opportunity for public hearings, conduct the required regulatory and economic analyses, and issue a final rule by December 3, 1990. Further, NMFS believes it is preferable to consider the information provided in the recovery plan prior to publishing comprehensive proposed protective regulations. Therefore, the Service is listing the Steller sea lion as a threatened species now with a limited set of protective measures and will propose more comprehensive protective regulations and critical habitat in a separate rulemaking.

Comments on the Proposed Rule

NMFS received 13 comments in response to the July 20, 1990 notice of proposed rulemaking: Four comments were received from environmental groups, four comments were received from state and local governments, two comments were received from Native Alaskan interest groups, one comment was received from a fishing industry group, one comment was received from a private individual, and one comment was received from the Steller Sea Lion Recovery Team. Additional comments were received at public hearings held in Anchorage, Cordova, and Kodiak, Alaska. These comments, which are discussed below, address the following issues: Listing classification, buffer zones, incidental take, shooting prohibition, subsistence, enforcement, exceptions, additional protective measures, research/experimentation, and public hearings.

Listing Classification

Nearly half the commenters addressed the listing classification issue. Several commenters believed that the species should be listed as endangered rather than threatened based on the dramatic and continuing declines in abundance in Alaska. One commenter noted that the Alaska population of Steller sea lions declined by 86 percent over the last 29 years and 63 percent in the last 5 years. This commenter added that the evidence indicates that the decline is continuing and accelerating, resulting in extinction in several years. Another commenter stated that the most recent population data show that the geographic extent of the decline is increasing as well.

NMFS believes that a population decline is a sufficient basis for listing a species as threatened or endangered. In the case of the Steller sea lion, NMFS believes that the available information supports a threatened classification rather than an endangered classification. There is not sufficient information to consider animals in different geographic regions as separate populations; therefore the status of the entire species must be considered.

Total counts of sea lions at rookeries and haulout sites throughout most of Alaska and the USSR in 1989 were about 56,000, indicating a total population size in this area of at least one third more than this number. There are areas where Steller sea lion abundance is stable or not declining significantly. Furthermore, preliminary results from the 1990 Steller sea lion survey show that about 25,000 adult and juvenile sea lions were counted, similar to the 1989 count. These results indicate that the population has not declined further in areas where the decline had been significant, and that the 1989 counts were not anomalous. NMFS does not believe that the species currently is in danger of extinction throughout all or a significant portion of its range (i.e., endangered). NMFS will continue to monitor the Steller sea lion population. If the decline continues at the rate in the past decade and continues to spread,

NMFS will reconsider the listing classification.

Two commenters concurred with the "threatened" listing but stated that this classification should be extended to the entire range of the species, including California populations of the Steller sea lion. One of these commenters referred to the comment on the emergency listing that documented a decline of 90 percent in the species' population in California.

The emergency interim rule applied to the entire range of the Steller sea lion, as does the final rule. Although the California populations are included, specific protective measures for Steller sea lions in California (such as buffer areas) are not. NMFS and the Recovery Team are reviewing the status of the species throughout its range and the need for additional protective measures. In a separate rulemaking, NMFS will propose more comprehensive protective regulations and critical habitat.

One commenter expressed concern about classifying the Steller sea lion as threatened before identifying the reason for the population decline. The commenter suggested that NMFS conduct additional research on the probable causes of the decline prior to reclassification of the species.

The available data support a listing of threatened throughout the range of the Steller sea lion. NMFS believes that a demonstrated decline can justify a listing of species and that precise knowledge of the reasons for the decline is not a prerequisite. Each of the five factors described in section 4(a)(1) of the ESA, which can cause a species to be threatened or endangered, is discussed in detail below. NMFS has determined that the Steller sea lion is a threatened species and that it is likely that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA. NMFS is sponsoring research projects to determine the cause of the population decline. The results of this research will be considered when NMFS proposes comprehensive protective regulations and critical habitat designation.

Buffer Zones

NMFS received eight comments on buffer zones. One commenter concurred with the list of the buffer zones designated in the proposed rule. Six commenters indicated that the buffer zones should be designated in other areas not covered in the emergency rule. Two of these commenters stated that buffer zones should be established around all rookeries in the species' range and that the size should be increased to include surrounding feeding areas (i.e., up to 60 miles (96.6 kilometers) from a rookery). One of these commenters also stated that NMFS should prohibit overflights over all buffer zones. Two other commenters requested that buffer zones be established around major rookeries off the California coast, including Farallon Island National Wildlife Refuge and Ano Nuevo Island. The last two commenters recommended that additional rookeries, not yet showing population declines, be protected by 0.5-nautical mile (0.9 kilometers) buffer zones. One of these commenters recommended that NMFS consider issuing prohibitions or guidelines on aircraft activity near rookeries. Of the six commenters that supported strengthening of the buffer zone provisions, two commenters stated that buffer zones should be established for all haulouts. A third commenter wants NMFS to establish buffer zones for haulouts when Steller sea lions are on them.

NMFS believes that additional buffer zones may be needed to provide adequate protection to the Steller sea lion until more comprehensive regulations are in place. Because the area of major decline continues westward beyond Kiska Island, and includes sea lion rookeries on Buldir, Agattu, and Attu Islands, NMFS adds rookeries located on those islands to the list of locations where 3 mile (4.8 kilometers) (at-sea and 0.5 mile (0.8 kilometers) on-land buffer zones are in effect. Additional modifications to the buffer zone provisions will be considered when NMFS proposes more comprehensive protective regulations and critical habitat after considering the recommendations of the Recovery Team, the Marine Mammal Commission and the public.

One commenter requested that NMFS reduce the size of the buffer zone on Adak Island. This commenter claimed that the rookery is smaller than listed and that small vessels do not have an adverse impact on Steller sea lions even at 1 nautical mile (1.8 kilometers).

The NMFS believes keeping the three nautical mile (5.5 kilometers) buffer zone around the rookery on Adak Island will be necessary to provide protection to the Steller sea lion without having significant effects on marine user groups. If current research indicates that modifications to the listed buffer zones are warranted, NMFS will implement such changes. Individuals may obtain exemptions where an "activity will not have any significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available or acceptable alternative to or site for the activity."

Incidental Takings

Five commenters recommended that the incidental take quota be reduced. Two of the commenters stated that the quota should be based on biological considerations and suggested that the quota be set at 1 percent of the index count of Steller sea lions (not including pups) in a region. One of these commenters recommended that this formula also apply to Alaskan waters east of 141° W longitude and to waters off of Washington, Oregon, and California, regions not covered by the proposed rule. Another commenter, noting that the proposed quota was more than 2.5 times higher than the worst-case estimate of the actual incidental take, stated that the proposed quota was meaningless and should be reduced. This commenter added that the incidental take in non-fishing activities (e.g., oil exploration) should be prohibited. One commenter stated that the incidental take quota should be reduced to zero, that the quota should be apportioned geographically, and that the quota should take into account the age and sex structures of the takes. Two of the commenters suggested that NMFS investigate mechanisms to reduce the incidental take in fisheries.

NOAA scientists currently are evaluating methods for establishing and monitoring incidental take quotas for Steller sea lions. This effort is one component of the long-range management strategy that is anticipated to be implemented when the Marine Mammal Exemption Program expires in 1993. NMFS also will determine whether fishing practices or gear can be used to reduce or eliminate incidental takes associated with fishing. NMFS will address fishing gear and practices in the forthcoming rulemaking dealing with comprehensive protective regulations. As part of the rulemaking process for the comprehensive conservation program, NMFS will consider modifications of the quota including location, age and sex.

Shooting Prohibition

All five commenters that addressed the shooting prohibition concurred with NMFS's proposal. Two of the commenters, however, recommended that the prohibition be extended to harbor seals and California sea lions; one of the commenters recommended that the prohibiton be extended to harbor seals only. The commenters argue that the extension is necessary to prevent inadvertent shooting of Steller

sea lions because the three species are similar in appearance and often swim in the same areas. One of the commenters added that the prohibition would be easier to enforce if it were extended to the other two species.

NMFS agrees that the inadvertent shooting of Steller sea lions is a potential problem and will examine the extension of the shooting prohibition to California sea lions and harbor seals when it proposes comprehensive protective regulations.

One commenter stated that the regulatory language regarding the shooting prohibition was unclear, claiming that "within 100 yards" (91.4 meters) could be interpreted to mean either that the individual firing a weapon could not be within 100 yards (91.4 meters) of a Steller sea lion or that the projectile could land within 100 yards (91.4 meters) of a Steller sea lion.

NMFS believes that the intent of the regulatory language regarding the shooting prohibition is clear. To prevent misinterpretation of the regulation, NMFS issues the following clarification: 50 CFR 227.12(a)(1) prohibits the discharge of a firearm where the projectile will strike or land within 100 yards (91.4 meters) of a Steller sea lion. NMFS believes that this clarification is sufficient and that no change in the regulatory language is required.

Two commenters recommended that NMFS develop non-lethal deterrents and evaluate their effectiveness at reducing damage to fishing catch and gear and their possible impacts on animals.

NMFS agrees with the commenters that non-lethal deterrents should be developed for use by fishery vessel operators and crews. At this time, however, NMFS is not aware of any methods that have been proven to be effective at deterring marine mammals from interacting with fishing activities.

Subsistence

Five commenters addressed the taking of Steller sea lions for subsistence purposes. Two commenters stated that subsistence harvesting is a minimal contributor to the population decline of sea lions. One of these commenters expressed concern that the traditions and livelihood of Native Alaskans would be adversely affected if subsistence harvesting were regulated. One commenter disagreed with the subsistence exception in the proposed rule, recommending that the subsistence take be included in an overall quota that would include incidental takes and that NMFS regulate the subsistence harvest.

NMFS agrees that the subsistence harvest is minimal and probably has not contributed to the population decline of Steller sea lions. Although the actual level of the subsistence harvest is unknown, it is estimated to be fewer than 100 animals annually. Based on the available information NMFS believes that it would be more appropriate to address the regulation of subsistence harvesting when NMFS develops the comprehensive protective regulations.

One commenter expressed concern that the creation of buffer zones could threaten traditional subsistence harvest activities because a number of traditional harvest sites are located within the boundaries of buffer zones. This commenter noted that exemptions could be difficult to obtain and feared that the burden of proof would be placed on Alaskan Natives. The commenter recommends that NMFS establish clear criteria for providing for subsistence harvesting in buffer zones. In the long run, the commenter suggests that NMFS establish a more flexible regulatory structure that provides protection for Steller sea lions without placing undue restrictions on subsistence harvest activities.

NMFS recognizes the possible adverse impacts of the listing on traditional activities that are not contributing to the decline of Steller sea lions. This rule includes an exception to the shooting prohibition for subsistence harvesting and an exemption process for traditional activities in buffer zones. Conflicts between buffer zones and traditional hunting sites will be handled on a case-by-case basis through the exemption process. Because subsistence hunting is a traditional activity, hunters have to demonstrate that no alternative sites are readily available and that the hunting will not adversely affect the rookery. The regulation, however, does not include a blanket exemption for subsistence because NMFS believes that alternative hunting sites may be available in some cases and that it is necessary to minimize avoidable human contact at and near rookeries. NMFS will further consider the interrelationship between buffer zones and subsistence harvesting when it develops comprehensive protective regulations.

Another commenter concurred with the regulatory exception for subsistence harvesting but requested NMFS to examine the subsistence harvest and determine whether the harvest is being conducted in a non-wasteful manner.

NMFS agrees that subsistence harvesting of Steller sea lions should be conducted in a non-wasteful manner. Examination of this issue, however, could not be addressed in the final listing without delaying its publication.

Enforcement

Three commenters expressed concern that enforcement of the provisions in the emergency interim rule was inadequate. Two of these commenters specifically addressed enforcement of the shooting prohibition while the other commenter addressed incidental takes and enforcement of buffer zones. One commenter recommended that intentional kills should be a priority for the observer program. Another commenter suggested that NMFS expand the observer program for incidental takes.

NMFS agrees that enforcement is a critical component of these regulations and retains the expanded observer program established under the emergency listing. Foreign processors and domestic groundfish vessels 125 feet (38 meters) or more in length now carry observers during all of their operations in the Exclusive Economic Zone (EEZ) of the Bering Sea and in the Gulf of Alaska. Groundfish vessels of 60 to 124 feet (18 to 38 meters) in length carry observers during 30 percent of their operations in each quarter. Three additional fisheries in Alaska that are classified as Category I under the MMPA, Prince William Sound set and drift gillnet for salmon and South Unimak (Unimak and False Passes) drift gillnet for salmon, had observer coverage during the 1990 fishing season and are scheduled to have coverage in the 1991 fishing season contingent upon final publication of the Revised List of Fisheries. NMFS also is retaining the observer authority of the emergency rule by allowing the NMFS Alaska Regional Director to place an observer on any fishing vessel. If additional information indicates that the current observer program requires modification, such modification could be implemented under the authority of this rule. NMFS also is evaluating the observer program as part of the development of a long-range management strategy for implementation of the Marine Mammal Protection Act Amendments of 1988.

Exceptions

Three commenters addressed the exceptions provided under the proposed rule. One of these commenters stated that the criteria for several of the exceptions were vague and/or unjustified and that the lack of specificity could pose enforcement problems. The commenter expressed concern over the following exception provisions: Taking for the protection of the animal or public health or the non-lethal removal of a nuisance animal,

entrance into buffer zones by governmental agencies for national defense or the conduct of other legitimate activities, emergency situations, and exemptions. In addition, the commenter recommended that NMFS modify the exemption application procedure to include public comments, to place the burden of proof on the applicant, and increase the stringency of the adverse impact criterion from "will not have a *significant* adverse impact" to "will not have *any* adverse impact."

NMFS believes that the exceptions established in 50 CFR 227.12(b) paragraph (1) through (4) are appropriate, necessary, and well defined. The first provision parallels section 109(h) of the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (MMPA), which, among other things, allows the taking of beached and stranded animals for rehabilitation purposes, an activity that may benefit the species. NMFS believes that local officials need the authority to protect the safety of their citizens when necessary. Only a very small number of animals are likely to be taken for the protection of the public health and welfare or by the non-lethal removal of "nuisance animals," and this provision is not likely to have any affect on the population. NMFS believes the second provision is necessary to allow government functions, such as Coast Guard activities, NOAA's nautical charting responsibilities and wildlife surveys, to continue. None of these activities is expected to significantly affect the sea lion population. Further, Federal agencies must consult under section 7(a)(2) of the ESA on any action that may affect Steller sea lions to ensure that the action is not likely to jeopardize its continued existence.

NMFS believes that the exemption criteria and process established by this rulemaking will adequately protect the designated rookeries. NMFS does not expect many exemptions and believes that exemptions are necessary to account for unforeseen circumstances. Furthermore, the criteria narrowly define conditions under which NMFS can grant an exemption. Since the emergency listing became effective on April 5, 1990, NMFS has acted on two exemption applications. In one case the exemption was granted because the applicant very clearly met all three criteria: The activity has been on-going since 1930, disturbance of the rookery has not been a problem, and there are no reasonable or feasible alternatives to the site. In the other case, in which a tourist lodge's application for entry into the Marmot Island buffer zone to view and photograph Steller sea lions was denied, NMFS ruled that alternative sites and alternative "wilderness experience" activities were available. These examples demonstrate that the exemption procedure is unlikely to reduce the protection afforded by the establishment of buffer zones.

Two commenters expressed concern that vessels would not have access to safe anchorages located in buffer zones during storms.

NMFS shares the commenters' concern that vessels have access to safe anchorage during storms. NMFS notes that both the proposed and final rules contain an exception to the buffer zone entry prohibition in case of emergency situations; 50 CFR 227.12(b)(4) states that approach restrictions into buffer zones does not apply when "compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property." The emergency situation provision would permit a vessel operator to enter a buffer zone for the purpose of securing the vessel at a safe anchorage during a storm.

Additional Protective Measures

Over half of the commenters believed that additional protective regulations are needed and that the interim protective measures under the emergency rule are inadequate. Most of these commenters implicated trawl fisheries as a major contributor to the decline in the Steller sea lion population by depleting the Steller sea lion's prey species. Additional recommendations included limiting trawling to daylight hours, prohibiting the use of gill nets around rookeries, prohibiting fishing for pollock when they are carrying roe, and reducing the overall quota of groundfish. One commenter added that the rapid decline in the Steller sea lion population required immediate action and that NMFS should develop an interim management and conservation plan in the absence of final comprehensive protective regulations.

NMFS agrees with the commenters that more comprehensive protective measures may be required. However, NMFS does not want to delay the listing of the species while proposed protective regulations are being developed and evaluated. NMFS will, therefore, propose more comprehensive protective regulations and critical habitat in a separate rulemaking as indicated in the preamble to the proposed rule. This rule includes the limited protective regulations specified in the proposed rule. NMFS, however, believes that these limited regulations (e.g., buffer zones, shooting prohibition) will be adequate in the near-term.

Research/Experimentation

Six commenters recommended that NMFS sponsor research to determine the cause of the Steller sea lion's population decline and to develop appropriate conservation measures and a management plan. Several of the commenters suggested that NMFS focus on the relationship between fishery practices and the Steller sea lion population. Another commenter supported research to assess the impact of toxic pollutants on the population decline. One commenter recommended that NMFS implement experimental conservation measures that test hypotheses on the causes of the population decline.

NMFS agrees that more information is needed to determine the cause(s) of the decline. NMFS is undertaking research to determine important feeding locations by using satellite monitored tags attached to female sea lions. These studies also should provide information on locations of at-sea mortalities. Studies to determine stock differentiation will continue. Resource surveys on the density of sea lion prey species are proposed. Satellite linked telemetry will be used to determine sea lion feeding areas for comparison to the findings from these surveys. The behavior of sea lions in relation to commercial fishing activities and the association between feeding sea lions and principal fishing areas will be examined. NMFS also will evaluate the impact of the protective measures (i.e., shooting prohibition, buffer zones) established by this rule.

Public Hearings

Two commenters requested that NMFS hold public hearings on the rulemaking. One of the commenters stated that public hearings were necessary because many affected individuals were unlikely to submit written comments in response to the publication of the proposed listing in the **Federal Register**. The other commenter indicated that public hearings were justified given the importance of fisheries to the local economy and the importance of the Steller sea lion to the community.

NMFS agreed with the commenters that the public hearings were appropriate given the importance of the rulemaking to the community. In response, NMFS held three public hearings: One on October 16, 1990 in Anchorage and, on October 18, 1990,

hearings were held in Kodiak and Cordova, Alaska.

Summary of the Status of the Species

The Steller (northern) sea lion, *Eumetopias jubatus*, ranges from Hokkaido, Japan, through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, Gulf of Alaska, southeast Alaska, and south to central California. There is not sufficient information to consider animals in different geographic regions as separate populations. The centers of abundance and distribution are the Gulf of Alaska and Aleutian Islands, respectively. Rookeries (breeding colonies) are found from the central Kuril Islands (46 °N latitude) to Ano Nuevo Island, California (37 °N latitude); most large rookeries are in the Gulf of Alaska and Aleutian Islands. More than 50 Steller sea lion rookeries and a greater number of haulout sites have been identified.

During the 1985 breeding season, 68,000 animals were counted on Alaska rookeries from Kenai Peninsula to Kiska Island, compared to 140,000 counted in 1956–60. A 1988 Status Report concluded that the population size in 1985 was probably below 50 percent of the historic population size in 1956–60 and below the lower bound of its optimum sustainable population level under the MMPA. A comparable survey conducted in 1989 showed that the number observed on rookeries from Kenai to Kiska declined to 25,000 animals. This indicates a decline of about 82 percent from 1956–60 to 1989 in this area. Preliminary results from the 1990 Steller sea lion survey show that about 25,000 adult and juvenile sea lions were counted, similar to the 1989 count. These results indicate that the population has not declined further in areas where the decline had been significant, and that the 1989 counts were not anomalous. The counts are not an estimate of total numbers of animals but include only those animals on the beach (excluding pups) at the time of the survey. As such, they can be used to indicate trends in abundance, rather than to estimate total species abundance. Copies of the 1988 Status Report and a 1989 Update are available (see **ADDRESSES**).

Species abundance estimates during the late 1970's ranged from 245–290,000 adult and juvenile animals. A current total population estimate is not available. However, counts at rookeries and haulout sites throughout most of Alaska and the USSR in 1989, plus estimates from surveys conducted in recent years at locations not counted in 1989, provide a minimum number for the species during 1989. The summaries of these counts and estimates are:

Alaska	53,000
WA, OR and CA	4,000
British Columbia	6,000
USSR	3,000
	66,000

Summary of Factors Affecting the Species

An endangered species is any species in danger of extinction throughout all or a significant portion of its range and a threatened species is any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors as they apply to Steller sea lions are discussed below.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Steller sea lions breed on islands in the North Pacific Ocean, generally far from human habitations. There is no evidence that the availability of rookery space is a limiting factor for this species. As the number of animals continues to decline, rookeries are being abandoned and available rookery space is increasing. However, activities that result in disturbance, prey availability or other factors may be affecting the suitability of the available habitat.

The feeding habitat of Steller sea lions in Alaska may have changed. State of Alaska biologists found that populations in the Gulf of Alaska during the 1980's had slower growth rates, poorer physical fitness (lower weights, smaller girth), and lowered birth rates. Some data show a high negative correlation between the amount of walleye pollock caught and sea lion abundance trends in the eastern Aleutians and central Gulf of Alaska. It is possible that a reduction in availability of pollock, the most important prey species in most areas, is a contributing factor in the decline in the number of Steller sea lions in western and central Alaska.

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Between 1963–72, over 45,000 Steller sea lion pups were commercially harvested in the eastern Aleutian Islands and Gulf of Alaska. This harvest may explain the declines in these areas through the 1970's. The actual level of subsistence harvest of Steller sea lions is unknown, but is probably less than 100 animals annually, primarily at St. Paul Island in the Pribilofs during fall and winter months. This taking is not of sufficient magnitude to contribute to the overall decline. A small number have also been taken for public display and scientific research purposes.

C. *Disease or predation.* Sharks, killer whales and brown bears are known to prey on Steller sea lion pups. Mortality from sharks and bears is not believed to be significant. When sea lion abundance was high, the level of mortality from killer whales was probably not significant, but as sea lion numbers decline, this mortality may exacerbate the decline in certain areas.

Disease resulting in reproductive failure or death could be a source of increased mortality in Steller sea lion populations, but it probably does not explain the massive declines in numbers. Antibodies to two types of pathological bacteria (*Leptospira* and *Chlamydia*), a marine calicivirus (San Miguel Sea Lion Virus), and seal herpesvirus were found in the blood of Steller sea lions in Alaska. Leptospires and San Miguel sea lion viruses may be associated with reproductive failures and deaths in California sea lions and North Pacific fur seals. *Chlamydia* has not been studied previously in sea lions, but is known from studies of Pribilof Island fur seals. None of these agents is thought to be a significant cause of mortality in Steller sea lions.

D. *The inadequacy of existing regulatory mechanisms.* Some protection for the Steller sea lion is provided under the MMPA, which prohibits the taking of Steller sea lions, with certain exceptions, including an interim exemption for commercial fishing. Once 1,350 Steller sea lions have been killed incidental to commercial fishing, section 114 of the MMPA requires NMFS to prescribe emergency regulations to prevent, to the maximum extent practicable, any further taking. Intentional lethal takes are prohbited. In addition, section 114(g) of the MMPA provides that regulations may be prescribed to prevent taking of a marine mammal species in a commercial fishery if it is determined that such taking is having, or is likely to have, a significant adverse impact on that marine mammal population stock.

E. *Other natural or manmade factors affecting its continued existence.* Steller sea lions are taken incidental to commercial fishing operations in the Gulf of Alaska and the Bering Sea. Between 1973 and 1988, U.S. observers on foreign and joint venture vessels operating in these areas reported 3,661 marine mammals taken. Steller sea lions accounted for 90 percent of this observed total. Based on these observed takes and an extrapolation to unobserved fishing, the total number of Steller sea lions incidentally killed by

the foreign and joint venture commercial trawl fisheries during 1973–1988 is estimated at 14,000. Since 1985, however, the level and rate of observed incidental take has decreased to the point where, by itself, it is not sufficient to account for the most recently observed declines.

Observer programs under the MMPA, and for the groundfish fisheries of Alaska under the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Magnuson Act), will assist NMFS in determining whether the incidental take of Steller sea lions during commercial fishing operations or other observable activities are factors in the decline in the number of these animals in Alaska.

There are reports of fishermen and other people shooting adult Steller sea lions at rookeries, haulout sites, and in the water near boats, but the magnitude of this mortality is unknown. These activities also have the potential for disruption of breeding activities and use of rookeries and haulout sites.

Determination

NMFS has determined that the available evidence indicates the Steller sea lion is likely to become an endangered species within the foreseeable future and that the threatened classification is appropriate. Although the precise causes of the decline have not been determined, it is likely that the current condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA.

The number of Steller sea lions observed on certain rookeries in Alaska declined by 63 percent since 1985 and by 82 percent since 1960. The decline has spread from the eastern Aleutian Islands, where it began in the early 1970's, east to the Gulf of Alaska and west to the previously stable central Aleutian Islands. Declines are occurring in previously stable areas and on the Kuril Islands, USSR. Despite this well documented decline, NMFS does not believe that an endangered listing is appropriate at this time. Total counts of sea lions at rookeries and haulout sites throughout most of Alaska and the USSR in 1989 were about 56,000, which would indicate a total population size in this area of at least one-third more than this number. NMFS must consider the status of the entire species, including areas where Steller sea lion abundance is stable or not declining significantly, because there is not sufficient information to consider animals in different geographic regions as separate populations. Furthermore, preliminary results from the 1990 Steller sea lion survey show that about 25,000 adult and juvenile sea lions were counted, similar to the 1989 count. These results indicate that the population has not declined further in areas where the decline had been significant, and that the 1989 counts were not anomalous. Therefore, NMFS does not believe that the species currently is in danger of extinction throughout all or a significant portion of its range (i.e., endangered), and is listing the species as threatened.

Final Protective Regulations

Until more comprehensive regulations are developed, NMFS is adopting protective measures similar to those in the emergency interim rule, as follows:

1. *Prohibit shooting near sea lions.* Although the NMPA prohibits intentional lethal take of Steller sea lions in the course of commercial fishing, fishermen have not been prohibited from harassing sea lions that are interfering with their gear or catch by shooting at or near them. Since these practices may result in inadvertent mortalities, NMFS is prohibiting the discharge of a firearm within 100 yards (91.4 meters) of a Steller sea lion.

Exceptions to the shooting provisions include: For activities authorized by a permit issued in accordance with the endangered species permit provisions of 50 CFR part 222, subpart C; for government officials taking Steller sea lions in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; and for the taking of Steller sea lions for subsistence purposes under section 10(e) of the ESA.

2. *Establish Buffer Zones.* NMFS is establishing a buffer zone of 3 nautical miles (5.5 kilometers) around the principal Steller sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. Rookeries in southeastern Alaska, east of 141° W longitude, have not experienced the declines reported in central and western Alaska and no buffer zones are established for these areas. No vessels will be allowed to operate within the 3-mile (5.5 kilometers) buffer zones, with certain exceptions. Similarly, no person will be allowed to approach on land closer than one-half (½) mile (0.8 kilometers) or within sight of a listed Steller sea lion rookery. On Marmot Island, no person will be allowed to approach on land closer than one and one-half (1½) miles (2.4 kilometers) from the eastern shore. Marmot Island was previously the largest Steller sea lion rookery in Alaska and the eastern beaches are used throughout the year by the sea lions.

The purposes of the buffer zones include: Restricting the opportunities for individuals to shoot at sea lions and facilitating enforcement of this restriction; reducing the likelihood of interactions with sea lions, such as accidents or incidental takings in these areas where concentrations of the animals are expected to be high; minimizing disturbances and interference with sea lion behavior, especially at pupping and breeding sites; and, avoiding or minimizing other related adverse effects.

Exceptions to the buffer zone restrictions include: activities authorized by permits issued in accordance with the endangered species permit provisions of 50 CFR part 222, subpart C; for government officials taking Steller sea lions in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; for government officials conducting activities necessary for national defense or the performance of other legitimate governmental activities; and for emergency situations that present a threat to the health, safety or life of a person or a significant threat to a vessel or property. Further, a mechanism is provided to allow the Director, Alaska Region, NMFS to issue exemptions for traditional or historic activities that do not have a significant adverse effect on sea lions and for which there is no readily available and acceptable alternative. Notice of all such exemptions will be published in the **Federal Register**. There is no overall exception to the buffer zone restrictions for subsistence taking of Steller sea lions; and exemption issued by the Regional Director will be needed.

3. *Establish Incidental Kill Quota.* When the MMPA was amended in 1988 to require emergency regulations once 1,350 Steller sea lions were incidentally killed in any year, the population numbers were based, in part, on 1985 data. In four study areas in Alaska, Steller sea lions declined by an average of 63 percent from 1985 to 1989. Therefore, NMFS is prohibiting the incidental killing of more than 675 Steller sea lions on an annual basis in Alaskan waters and adjacent areas of the EEZ west of 141° W longitude. In association with the emergency rule, NMFS instituted a more efficient monitoring system. Foreign processors and domestic groundfish vessels 125 feet (38 meters) or more in length now carry observers during 100 percent of their operations in the EEZ of the Bering Sea and in the Gulf of Alaska. Groundfish

vessels of 60 to 124 feet (18 to 38 meters) in length carry observers during 30 percent of their operations in each quarter. Three additional fisheries in Alaska that are classified as Categroy I under the MMPA, the Prince William Sound set and drift gillnet fishery for salmon and the South Unimak (Unimak and False Passes) drift gillnet fishery for salmon, had coverage during the 1990 fishing season and are scheduled to have coverage during the 1991 season, if they remain in Category I in the 1991 Revised List of Fisheries. The total incidental take of sea lions will be estimated monthly during the course of the fishing season, based on the in-season observer reports. In order to continue to monitor this quota, NMFS is retaining the observer authority of the emergency rule by allowing the respective Regional Director to place an observer on any fishing vessel. If data indicate that the quota is being approached, the Assistant Administrator for Fisheries, NOAA, will issue emergency rules to close areas to fishing, allocate the remaining quota among fisheries, or take other action to ensure that commercial fishing operations do not exceed the quota.

Critical Habitat

The ESA requires that critical habitat be specified to the maximum extent prudent and determinable at the time the species is proposed for listing. NMFS intends to propose critical habitat at the earliest possible date as a part of the comprehensive protective regulations. NMFS will consider physical and biological factors essential to the conservation of the species that may require special management consideration or protection. These habitat requirements include breeding rookeries, haulout sites, feeding areas and nutritional requirements. In describing critical habitat, NMFS will take into consideration terrestrial habitats adjacent to rookeries and their need for protection from development and other uses, such as logging or mining.

Additional Conservation Measures

In addition to protective regulations, conservation measures for species that are listed as endangered or threatened under the ESA include recognition, recovery actions, designation and protection of critical habitat, and Federal agency consultation. NMFS has established a Recovery Team to assist in developing a Recovery Plan for the Steller sea lion. This plan will help guide the recovery efforts of NMFS and other agencies and organizations.

Section 7(a)(2) of the ESA requires that each Federal agency insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. Federal actions most likely to affect the Steller sea lion include approval and implementation of fishery management plans and regulations under the Magnuson Act; permitted activities on land near rookeries and haulout sites, such as timber, mineral and oil development; and, leasing activities associated with offshore oil and gas exploration and development on the Outer Continental Shelf.

Once the Steller sea lion is listed as threatened, it is, by definition, considered depleted under the MMPA, and additional restrictions apply under that Act, such as a prohibition on taking for public display purposes.

Classification

Section 4(b)(1) of the ESA restricts the information that may be considered when assessing species for listing. Based on this limitation and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all listing actions under the ESA from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413; February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the listing status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

NMFS is waiving part of the 30-day delay between the publication of a final rule and its effective date under 5 U.S.C. 553(d). There will be very few new regulatory requirements applicable to the public as a result of this final rule because it is very similar to the emergency rule which has listed the Steller sea lion as a threatened species since April 10, 1990. Because that emergency rule expires on December 3, 1990, it would be contrary to the public interest to delay the effective date of this final rule beyond December 4; any such delay could be detrimental to the Steller sea lion because it would cause a hiatus in the protection of the species under the ESA. Therefore, NMFS finds there is good cause to waive the 30-day delay in the effective date under section 553(d)(3), and is making this rule effective December 4, 1990.

List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, a new paragraph (f) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(f) Steller (northern) sea lion (*Eumetopias jubatus*).

3. In subpart B, a new section is added to read as follows:

§ 227.12 Steller sea lion.

(a) *Prohibitions*—(1) *No discharge of firearms.* Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) *No approach in buffer areas.* Except as provided in paragraph (b) of this section:

(i) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in paragraph (a)(3) of this section;

(ii) No person may approach on land not privately owned within one-half statutory miles (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater, except on Marmot Island; and

(iii) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

(3) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

TABLE 1. LISTED STELLER SEA LION ROOKERY SITES [1]

Island	From		To		NOAA chart	Notes
	Lat.	Long.	Lat.	Long.		
1. Outer I.	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W	16681	S quadrant.
2. Sugarloaf I.	58°53.0 N	152°02.0 W			16580	Whole island.
3. Marmot I.	58°14.5 N	151°47.5 W	58°10.0 N	151°51.0 W	16580	SE quadrant.
4. Chirikof I.	55°46.5 N	155°39.5 W	55°46.5 N	155°43.0 W	16580	S quadrant.
5. Chowiet I.	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W	16013	S quadrant.
6. Atkins I.	55°03.5 N	159°18.5 W			16540	Whole island.
7. Chernabura I.	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
8. Pinnacle Rock	54°46.0 N	161°46.0 W			16540	Whole island.
9. Clubbing Rks (N)	54°43.0 N	162°26.5 W			16540	Whole island.
Clubbing Rks (S)	54°42.0 N	162°26.5 W			16540	Whole Island.
10. Sea Lion Rks	55°28.0 N	163°12.0 W			16520	Whole island.
11. Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
12. Akun I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W	16520	Billings Head Bight.
13. Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan.
14. Bogoslof I.	53°56.0 N	168°02.0 W			16500	Whole island.
15. Ogchul I.	53°00.0 N	168°24.0 W			16500	Whole island.
16. Adugak I.	52°55.0 N	169°10.5 W			16500	Whole island.
17. Yunaska I.	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
18. Seguam I.	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
19. Agligadak I.	52°06.5 N	172°54.0 W			16480	Whole island.
20. Kasatochi I.	52°10.0 N	175°31.0 W	52°10.5 N	175°29.0 W	16480	N half of island.
21. Adak I.	51°36.5 N	176°58.5 W	51°38.0 N	176°59.5 W	16460	SW point, Lake Point.
22. Gramp rock	51°29.0 N	178°20.5 W			16460	Whole island.
23. Tag I.	51°33.5 N	178°34.5 W			16460	Whole island.
24. Ulak I.	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25. Semisopochnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
Semisopochnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
26. Amchitka I.	51°22.5 N	179°28.0 E	51°22.0 N	179°25.0 E	16440	East Cape.
27. Amchitka I.	51°32.5 N	178°50.0 E			16440	Column Rocks.
28. Ayugadak Pt.	51°45.5 N	178°24.5 E			16440	SE coast of Rat Island.
29. Kiska I.	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E	16440	W central, Lief Cove.
30. Kiska I.	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E	16440	Cape St. Stephen.
31. Walrus I.	57°11.0 N	169°56.0 W			16380	Whole island.
32. Buldir I.	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E	16420	Se point to NW point.
33. Agattu I.	52°24.0 N	173°21.5 E			16420	Gillion Point.
34. Agattu I.	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E	16420	Cape Sabak.
35. Attu I.	52°57.5 N	172°31.5 E	52°54.5 N	172°28.5 E	16420	Cape Wrangell.

[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

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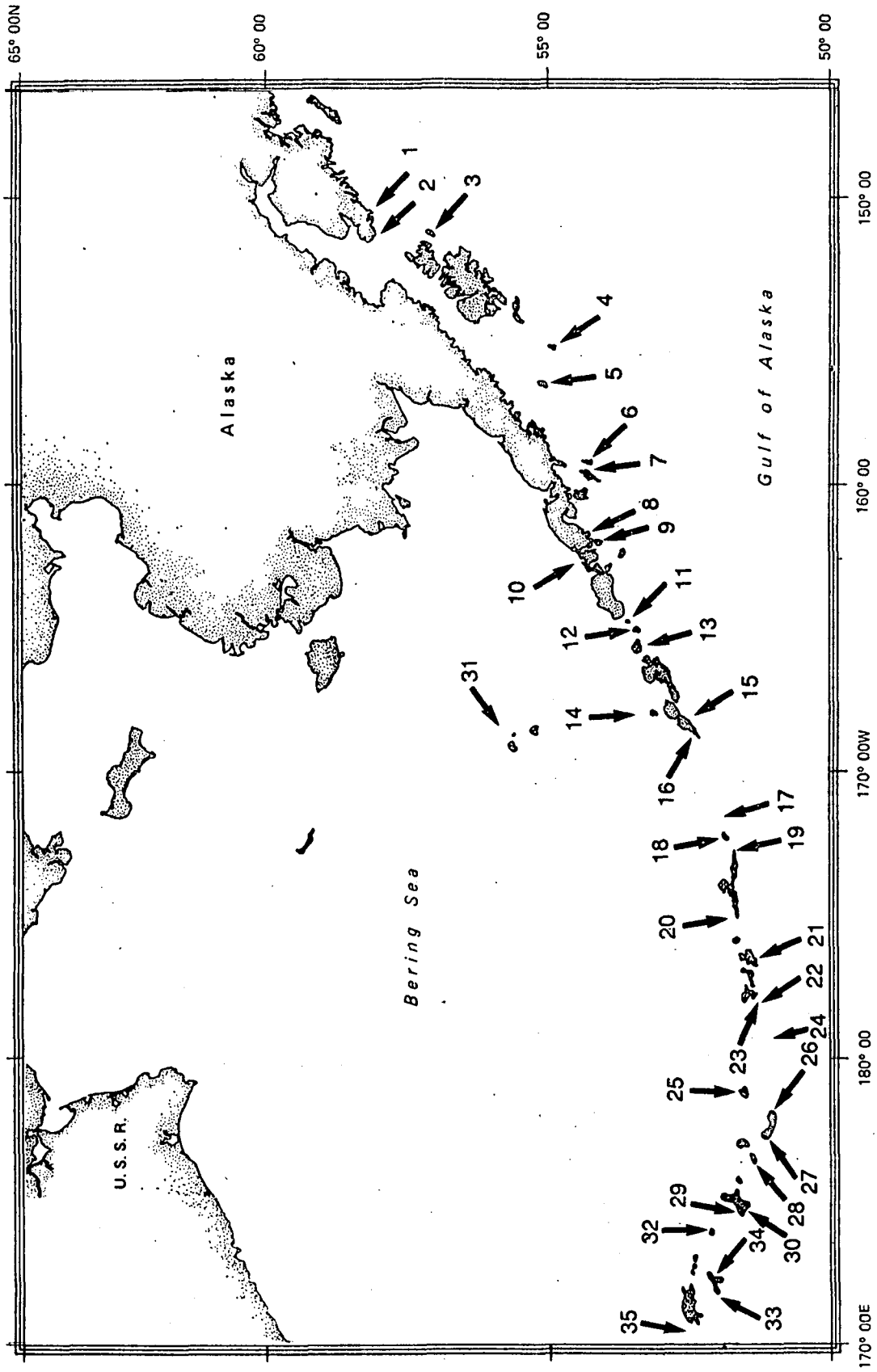
65° 00N
60° 00
55° 00
50° 00
150° 00
160° 00
170° 00W
180° 00
170° 00E
Alaska
Gulf of Alaska
Bering Sea
U.S.S.R.
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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21
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31
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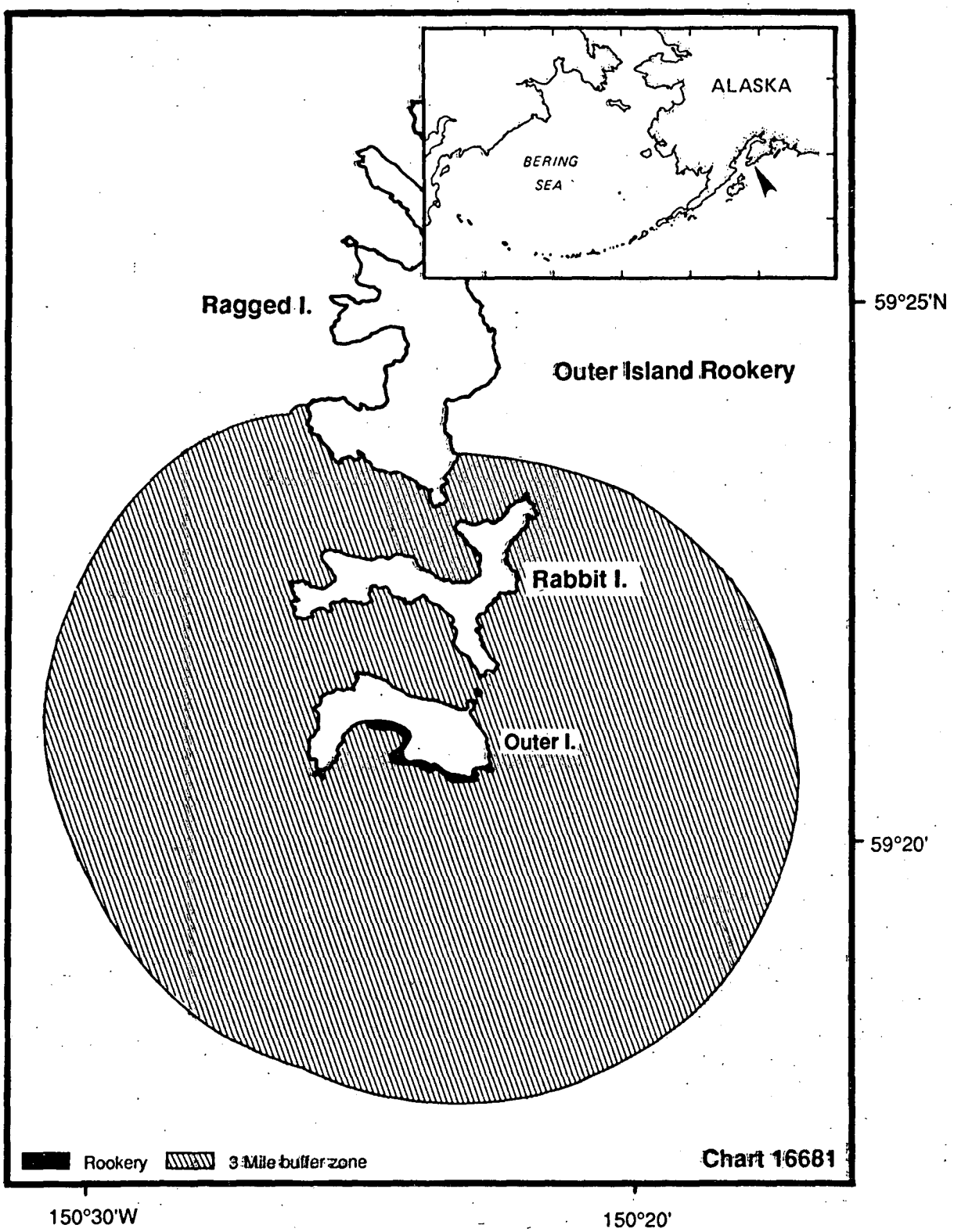
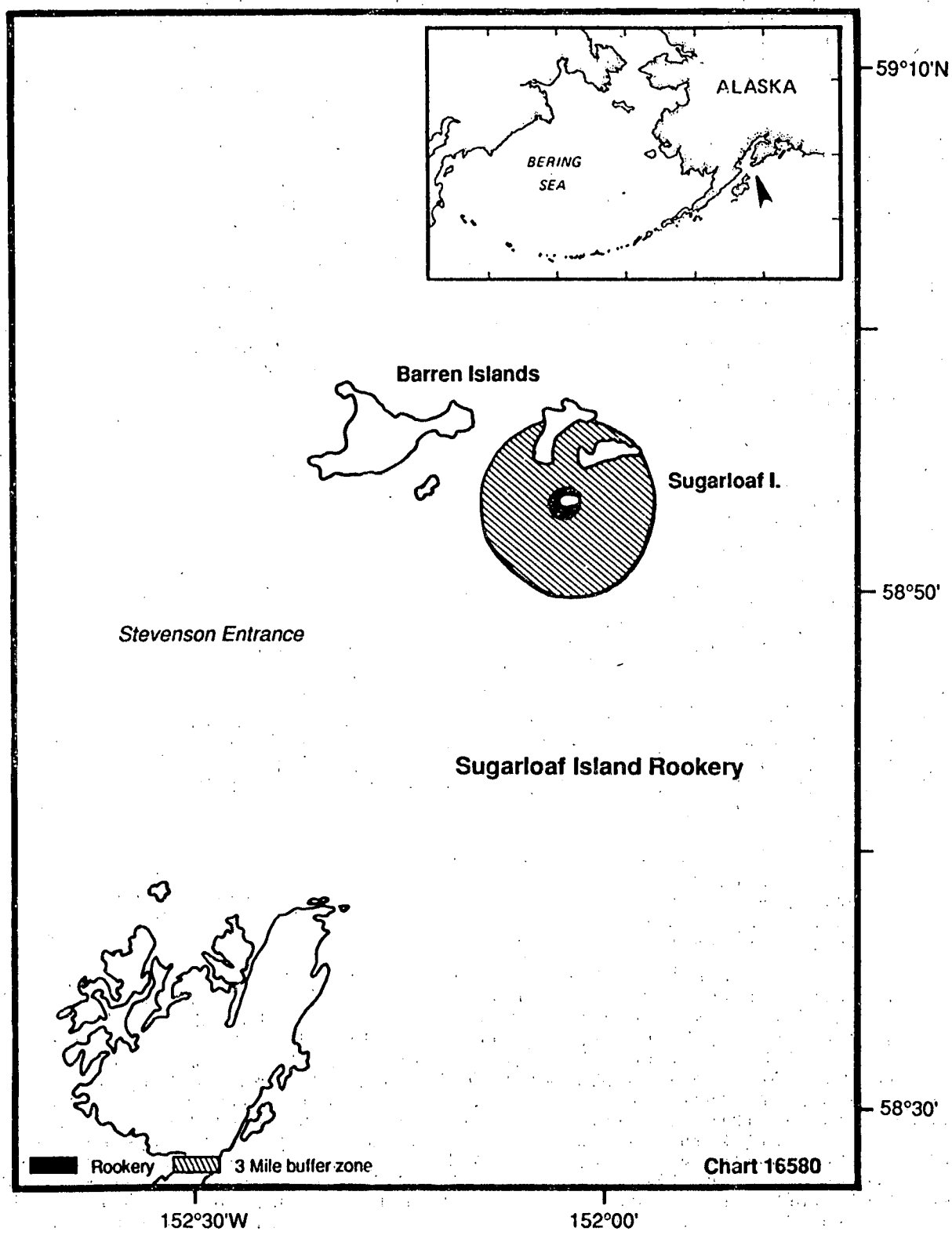
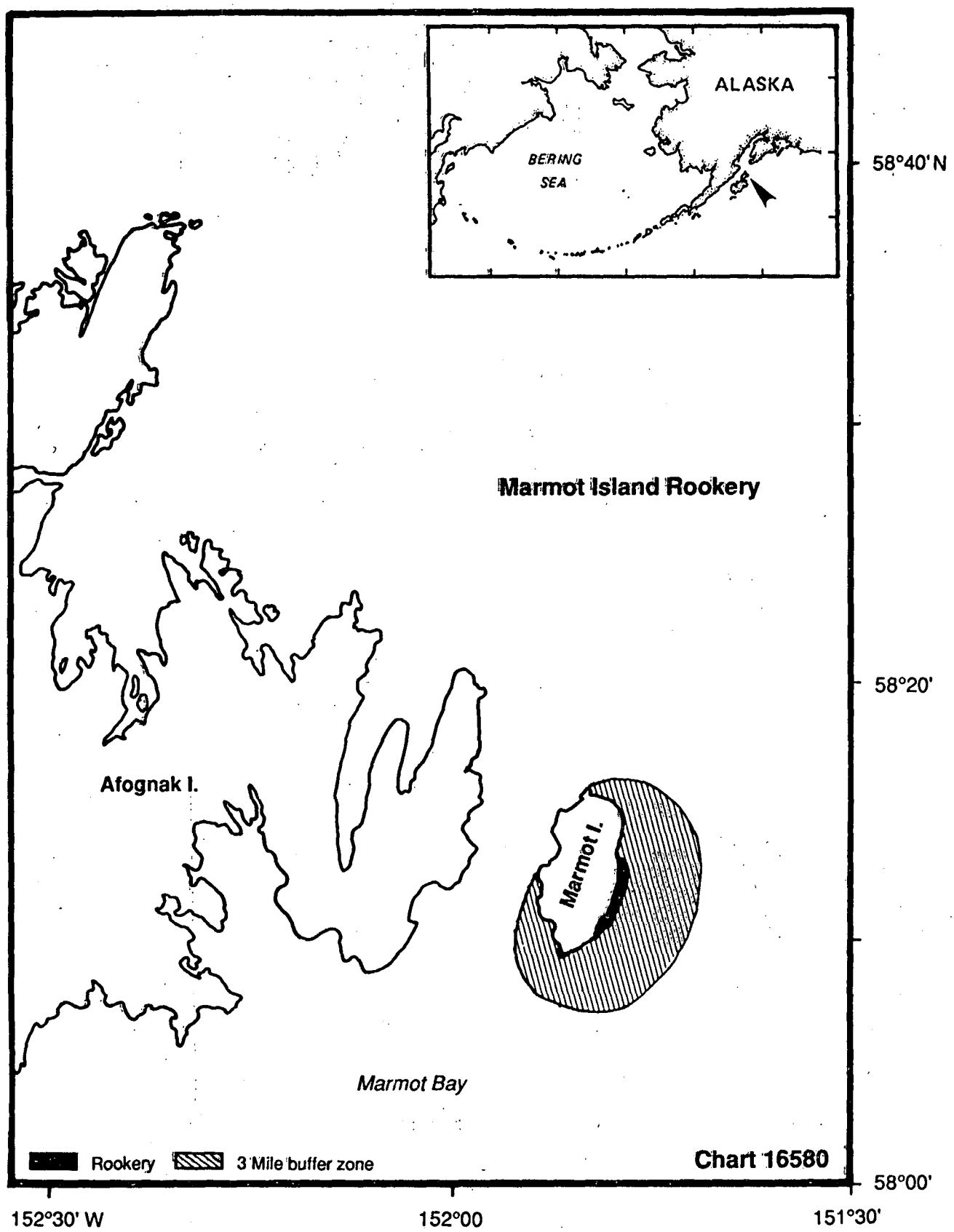
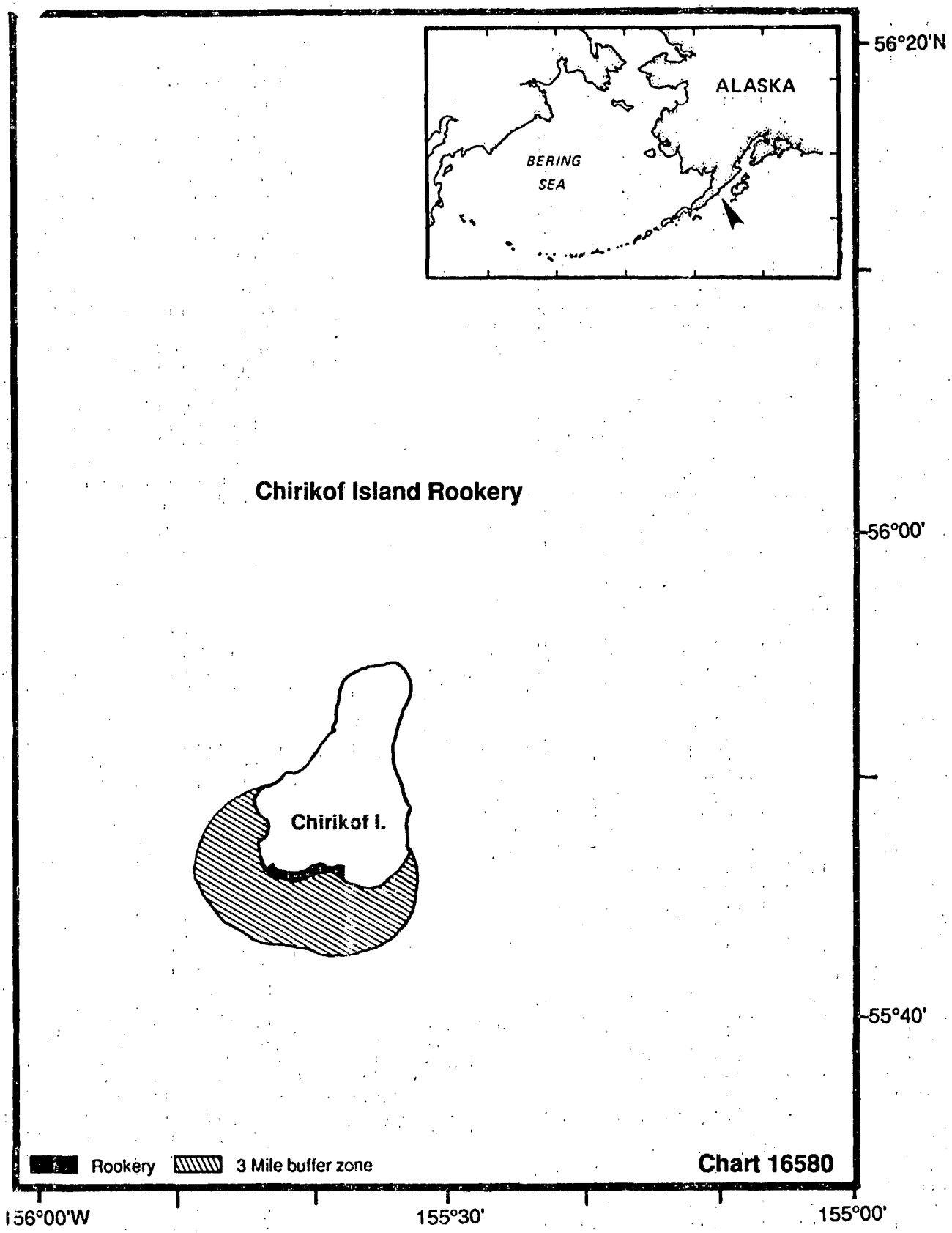
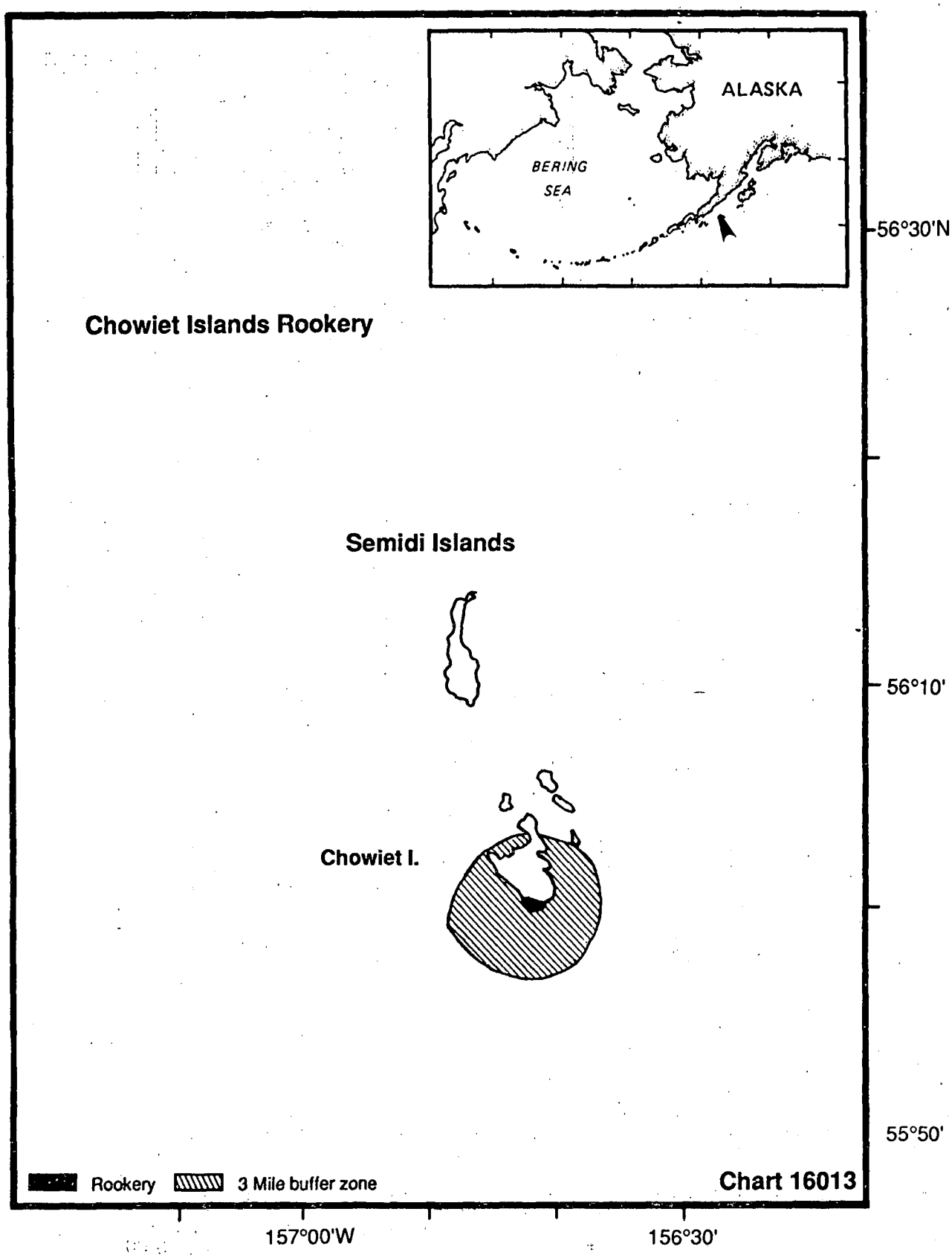
33
34
35

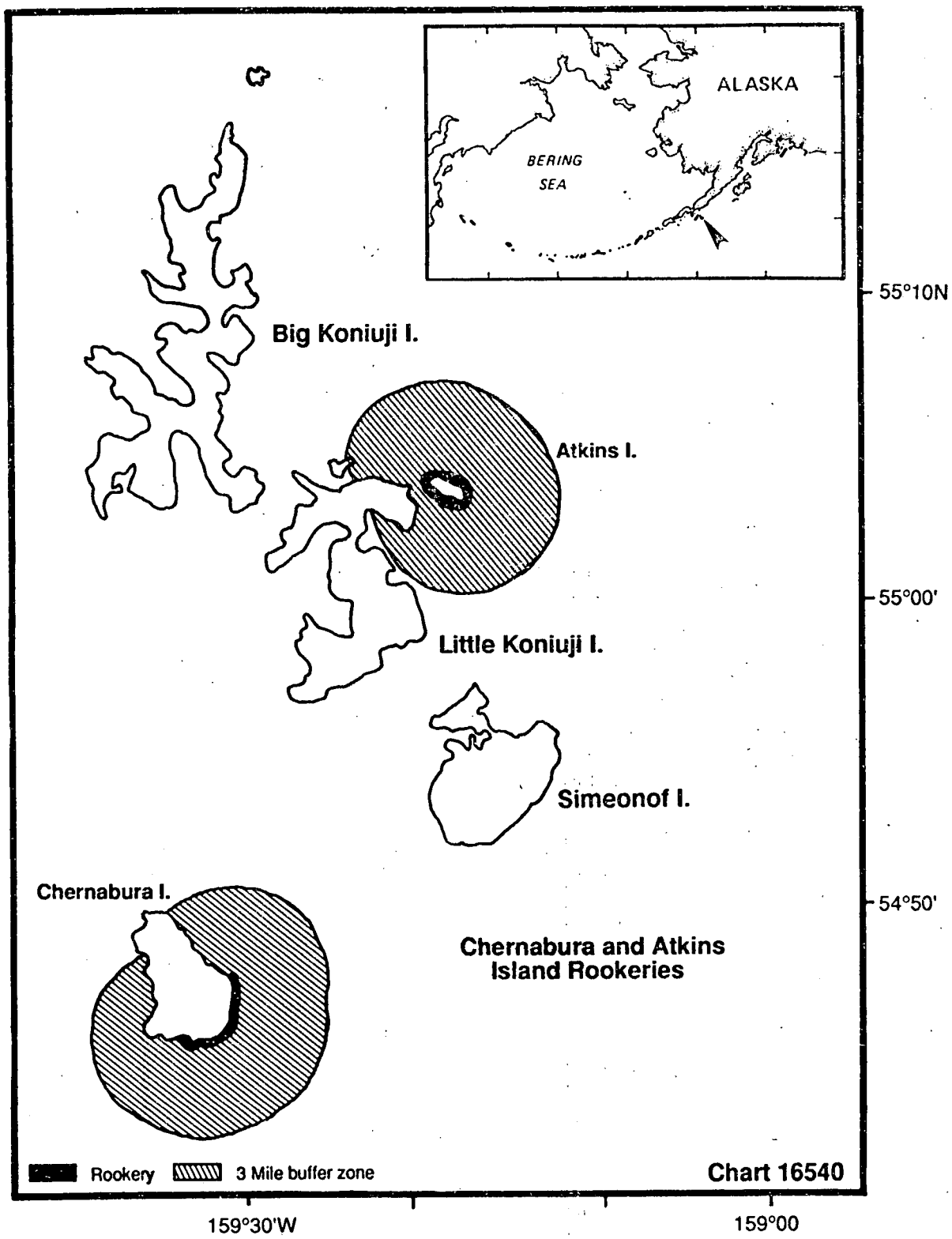

ALASKA
BERING SEA
Ragged I.
Outer Island Rookery
Rabbit I.
Outer I.
59°25'N
59°20'
Rookery
3 Mile buffer zone
Chart 16681
150°30'W
150°20'

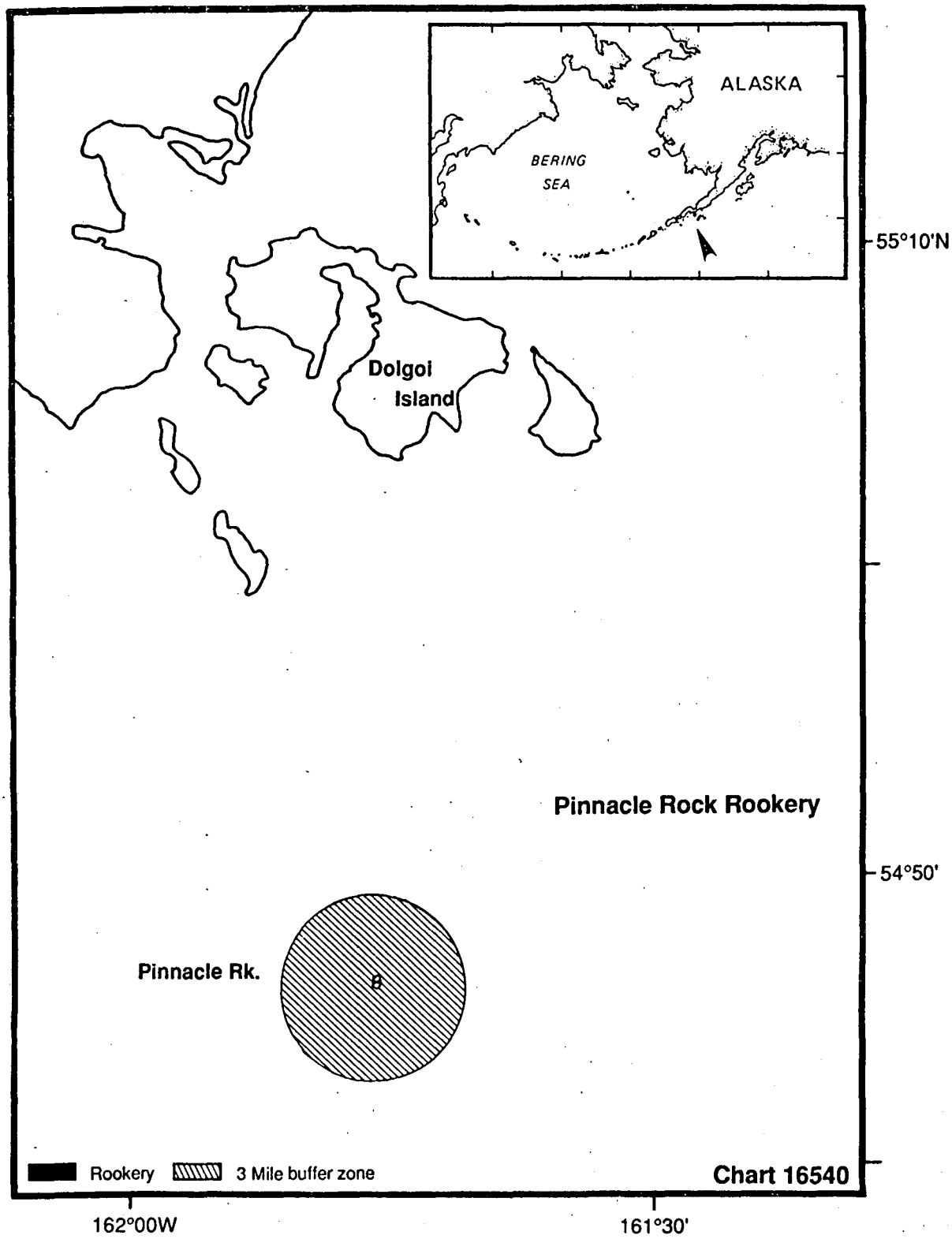

ALASKA
BERING SEA
59°10'N
Barren Islands
Sugarloaf I.
58°50'
Stevenson Entrance
Sugarloaf Island Rookery
58°30'
Rookery
3 Mile buffer zone
Chart 16580
152°30'W
152°00'

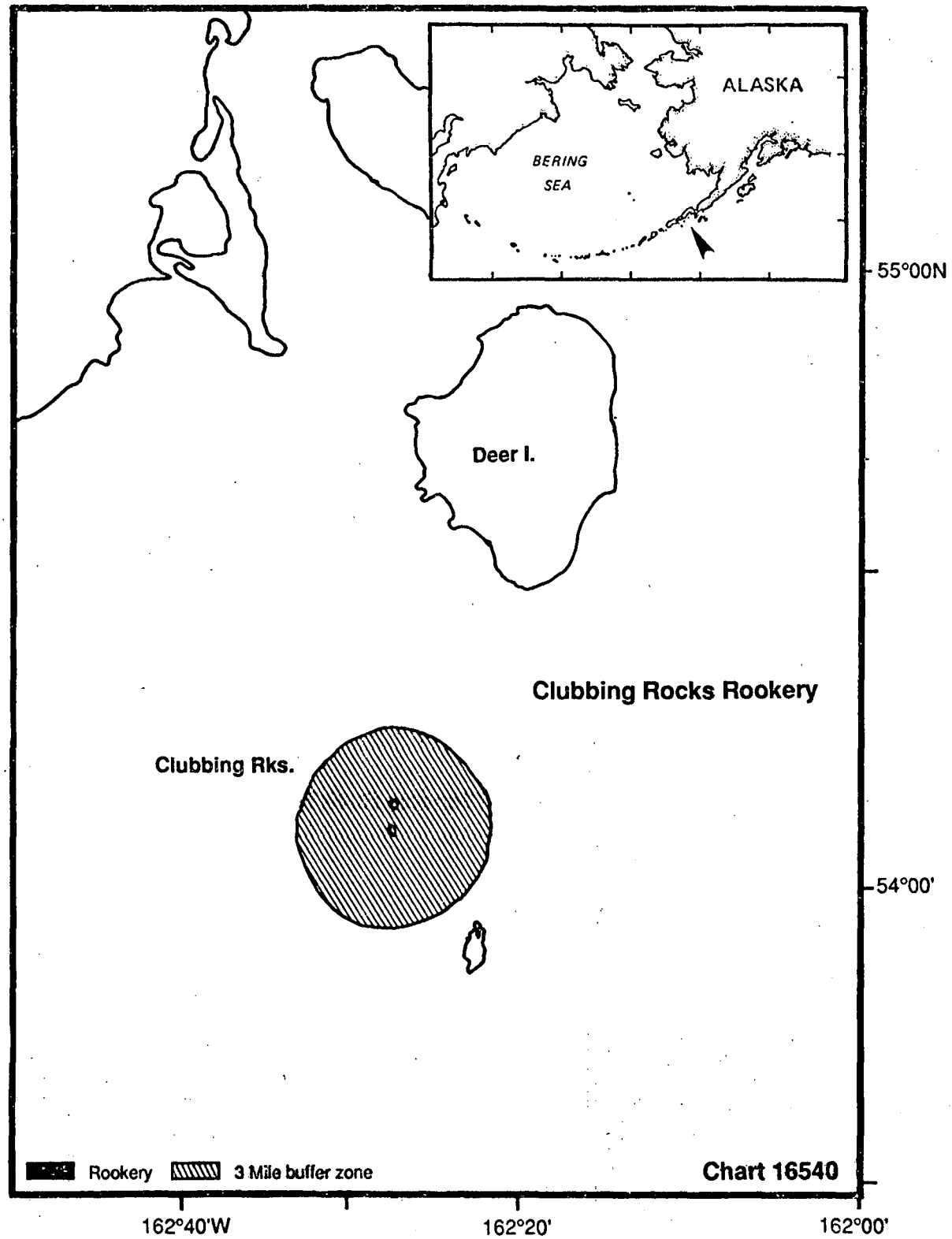

ALASKA
BERING SEA
58°40'N
Marmot Island Rookery
58°20'
Afognak I.
Marmot I.
Marmot Bay
Rookery
3 Mile buffer zone
Chart 16580
58°00'
152°30' W
152°00
151°30'

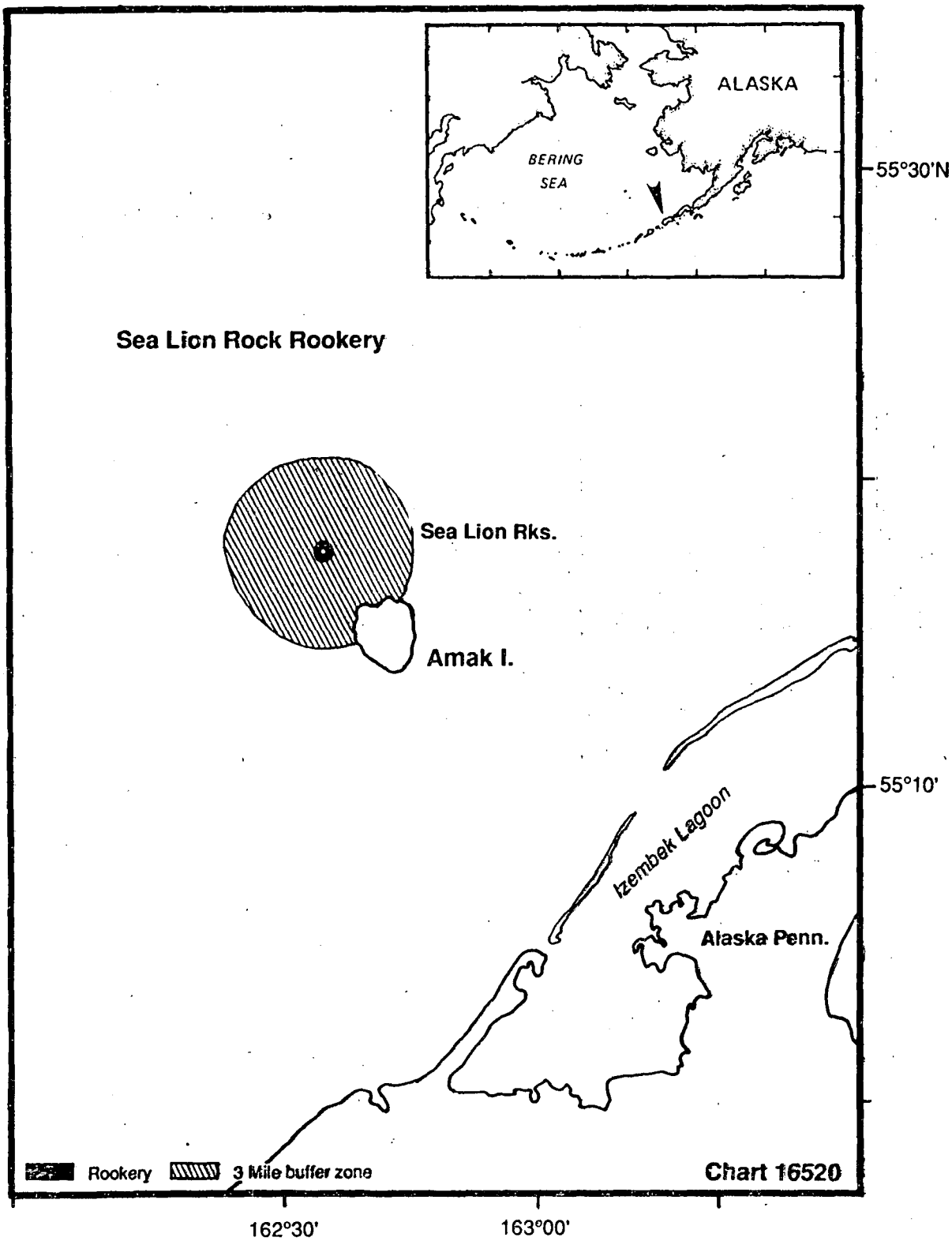

ALASKA
BERING SEA
Chirikof Island Rookery
Chirikof I.
56°20'N
56°00'
55°40'
156°00'W
155°30'
155°00'
Rookery
3 Mile buffer zone
Chart 16580

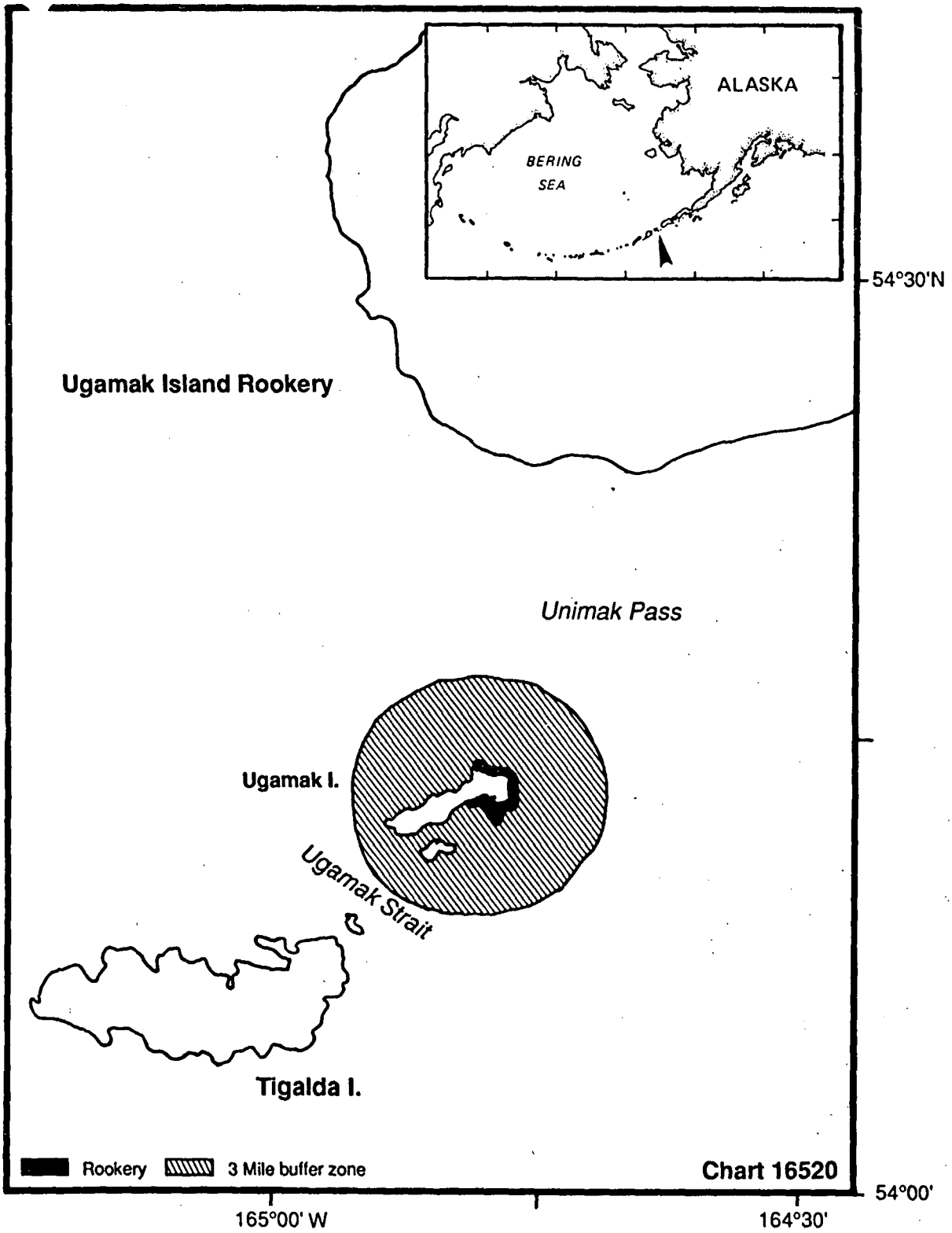

ALASKA
BERING SEA
56°30'N
Chowiet Islands Rookery
Semidi Islands
56°10'
Chowiet I.
55°50'
Rookery
3 Mile buffer zone
Chart 16013
157°00'W
156°30'

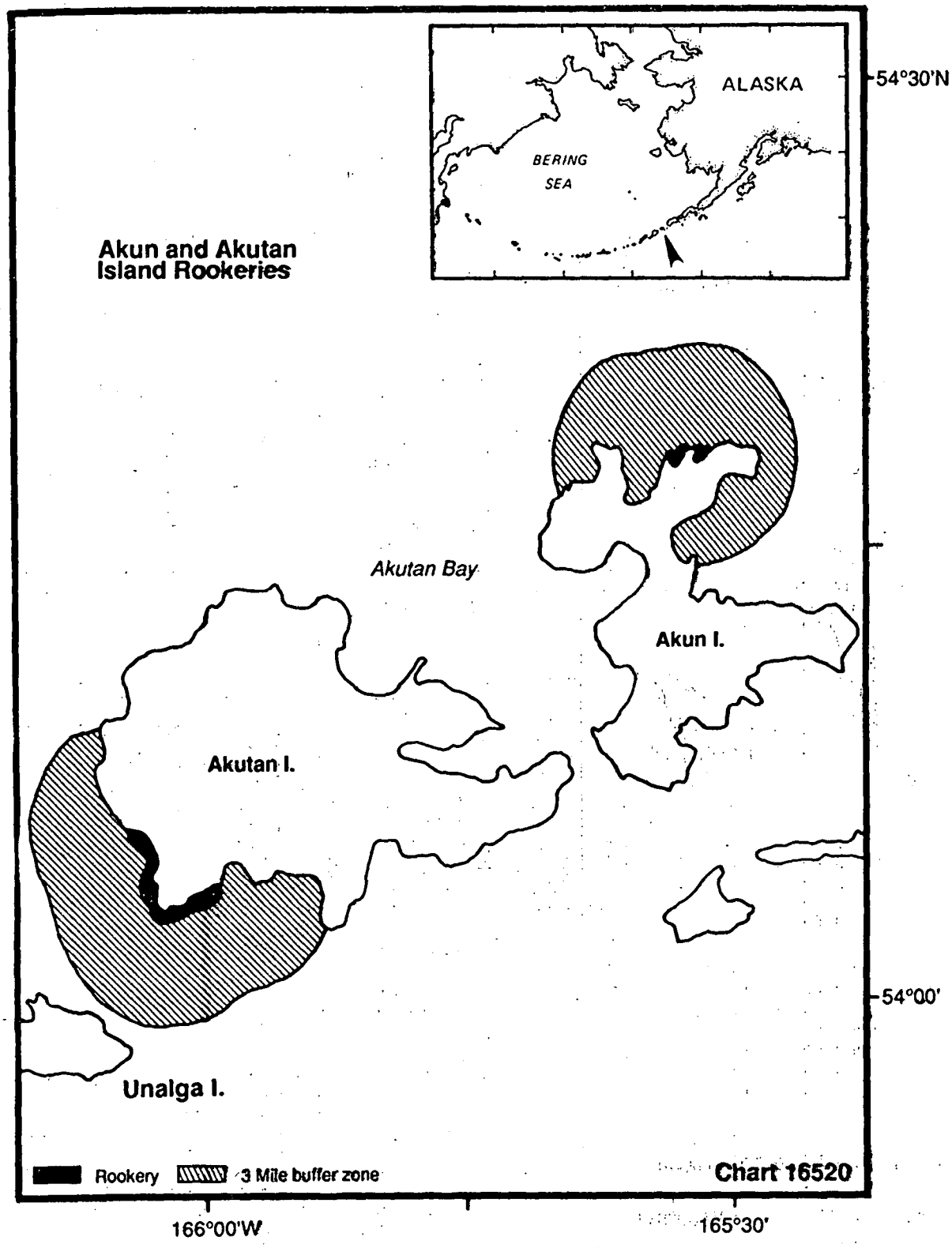

ALASKA
BERING SEA
55°10N
Big Koniuji I.
Atkins I.
55°00'
Little Koniuji I.
Simeonof I.
Chernabura I.
54°50'
Chernabura and Atkins Island Rookeries
Rookery
3 Mile buffer zone
Chart 16540
159°30'W
159°00

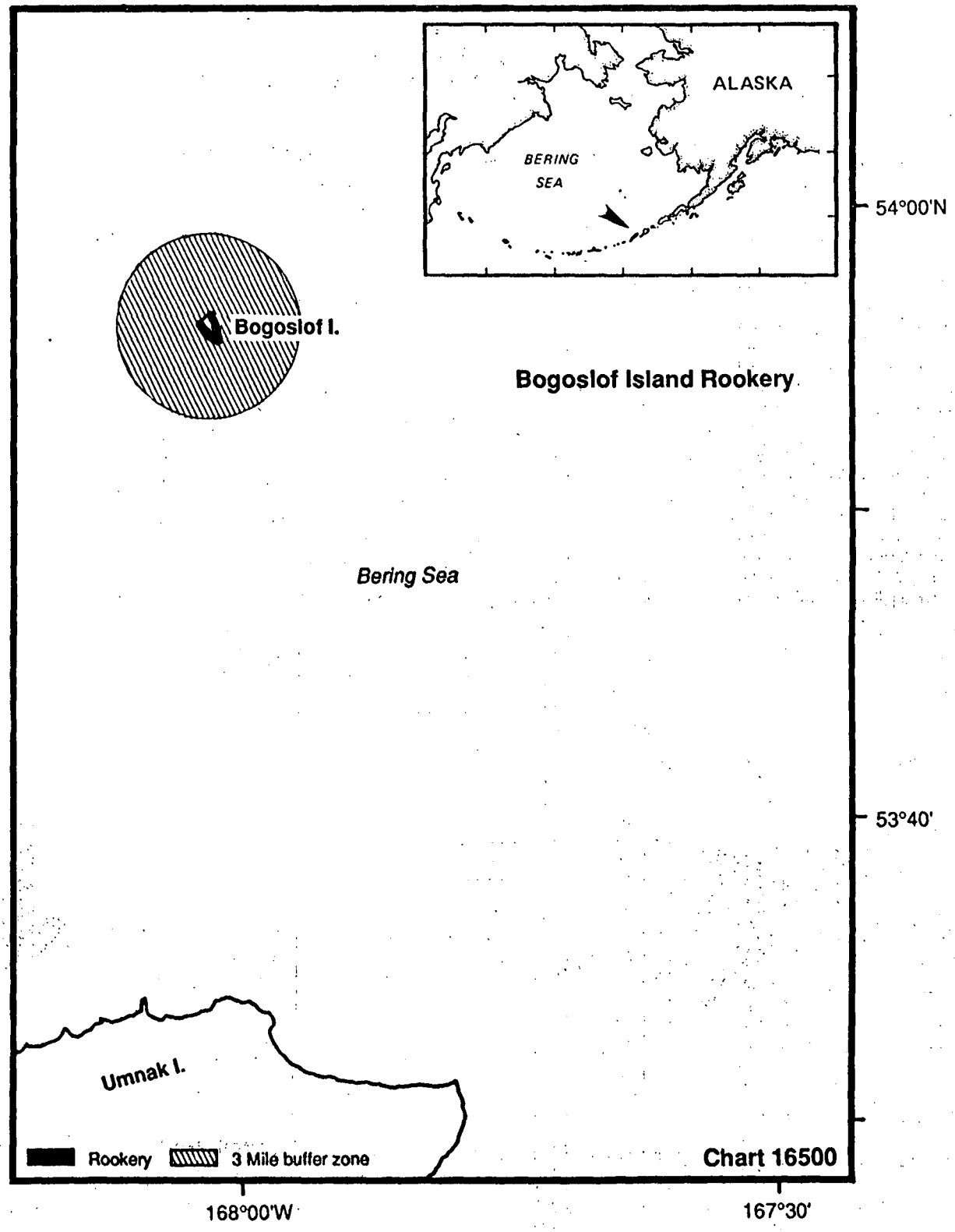

ALASKA
BERING SEA
55°10'N
Dolgoi Island
Pinnacle Rock Rookery
54°50'
Pinnacle Rk.
Rookery
3 Mile buffer zone
Chart 16540
162°00W
161°30'

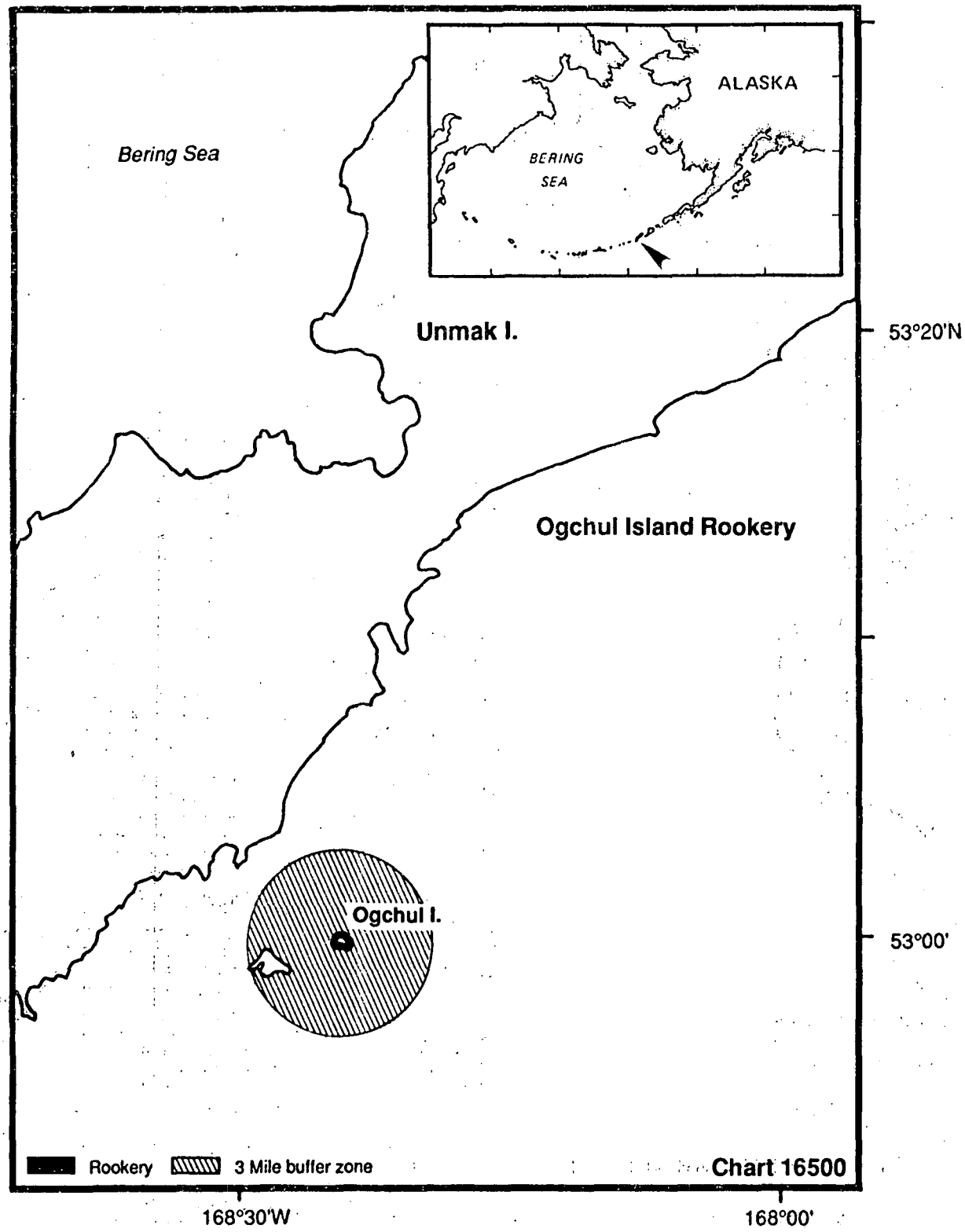

ALASKA
BERING SEA
55°00N
Deer I.
Clubbing Rocks Rookery
Clubbing Rks.
54°00'
Rookery
3 Mile buffer zone
Chart 16540
162°40'W
162°20'
162°00'

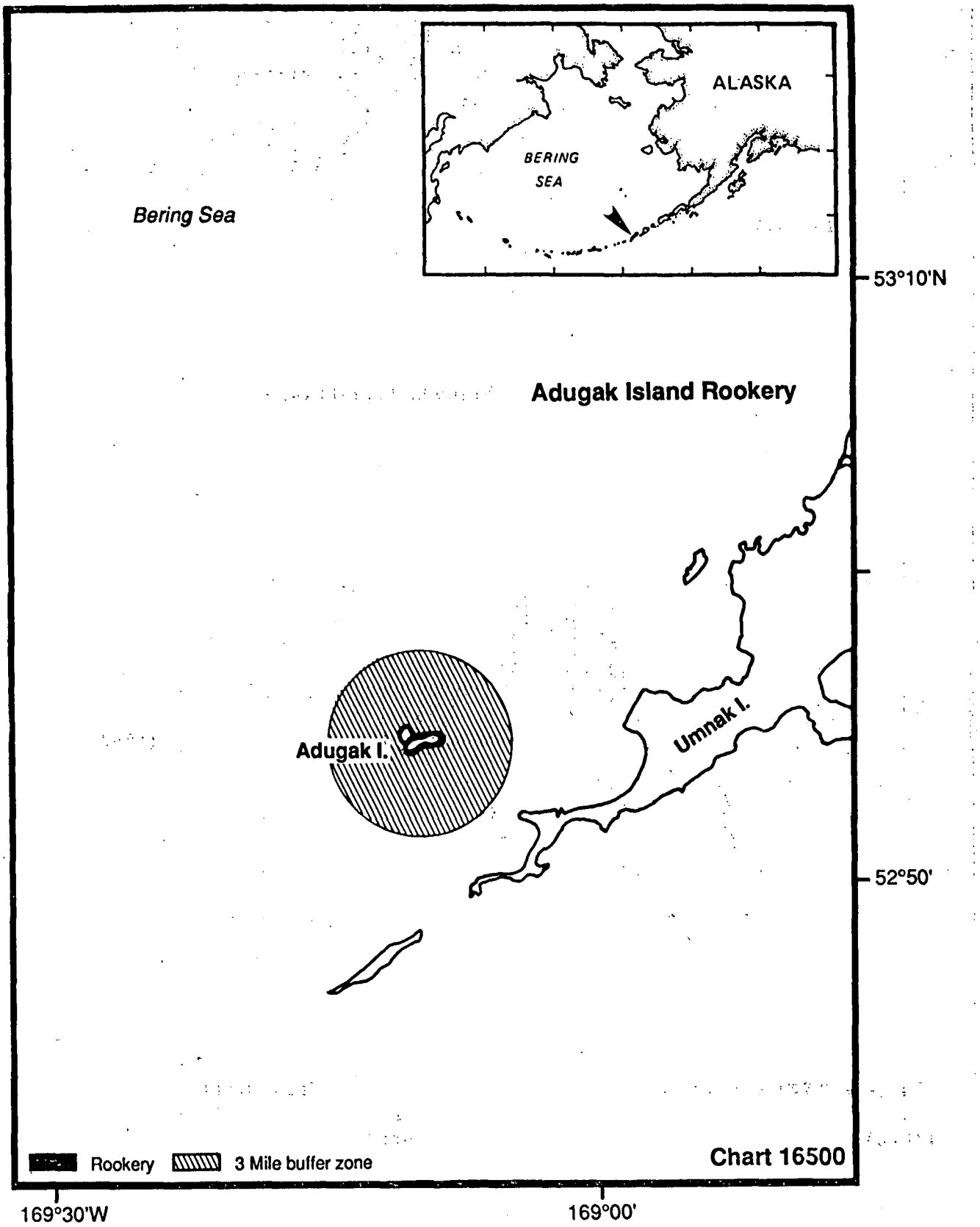

ALASKA
BERING SEA
55°30'N
Sea Lion Rock Rookery
Sea Lion Rks.
Amak I.
55°10'
Izembek Lagoon
Alaska Penn.
Rookery
3 Mile buffer zone
Chart 16520
162°30'
163°00'

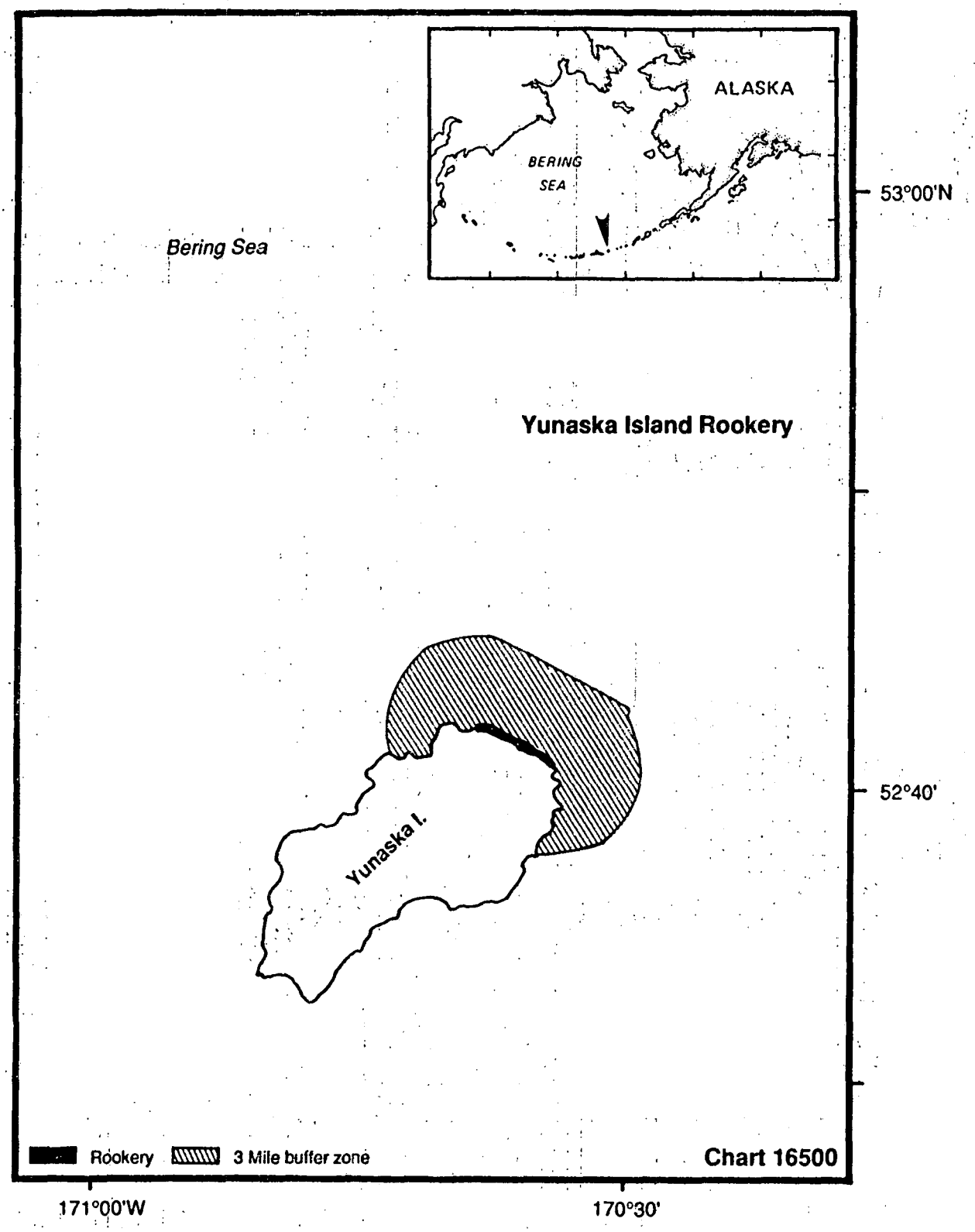

ALASKA
BERING SEA
54°30'N
Ugamak Island Rookery
Unimak Pass
Ugamak I.
Ugamak Strait
Tigalda I.
Rookery
3 Mile buffer zone
Chart 16520
54°00'
165°00' W
164°30'

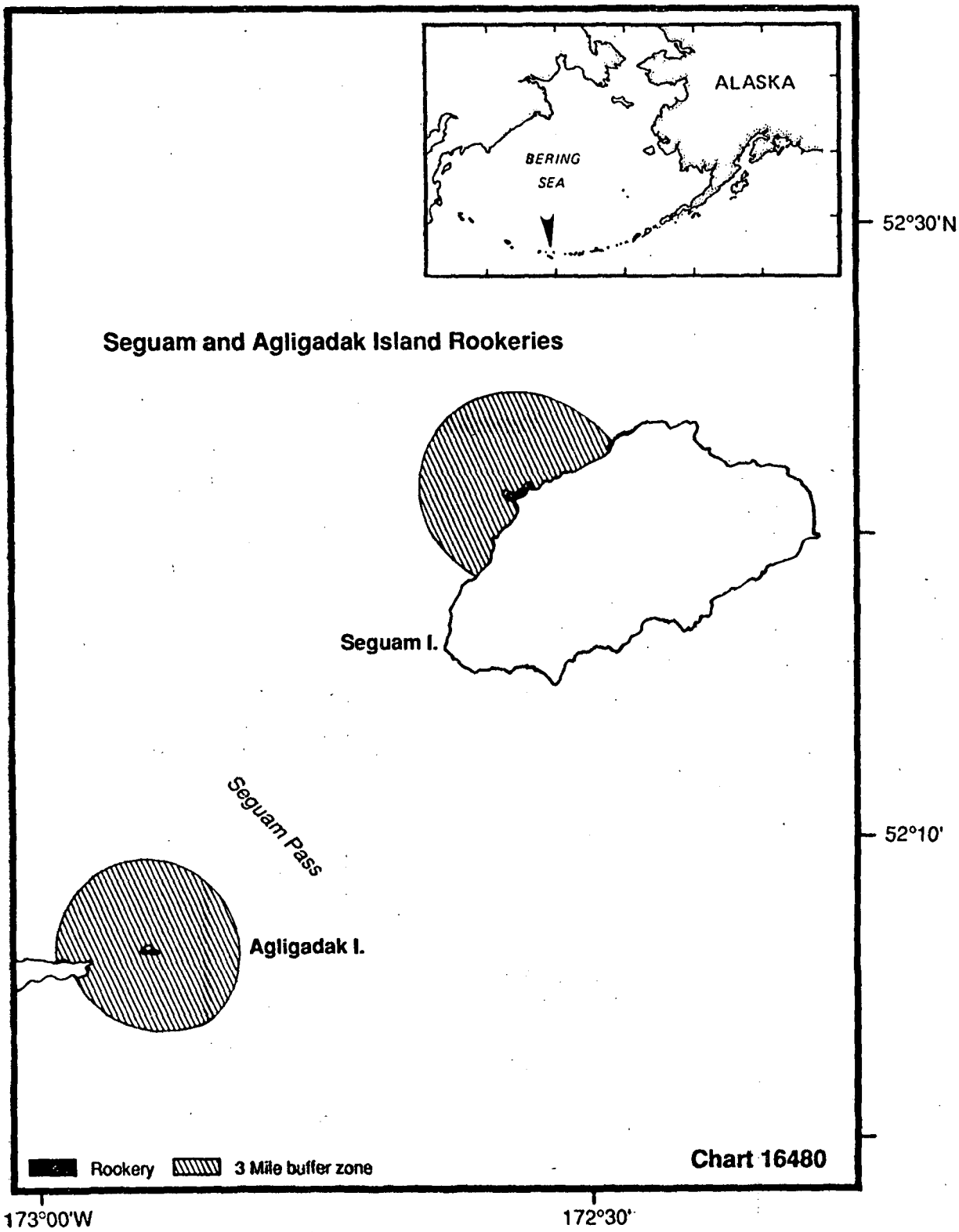

Akun and Akutan Island Rookeries
ALASKA
BERING SEA
54°30'N
Akutan Bay
Akun I.
Akutan I.
54°00'
Unalga I.
Rookery
3 Mile buffer zone
Chart 16520
166°00'W
165°30'

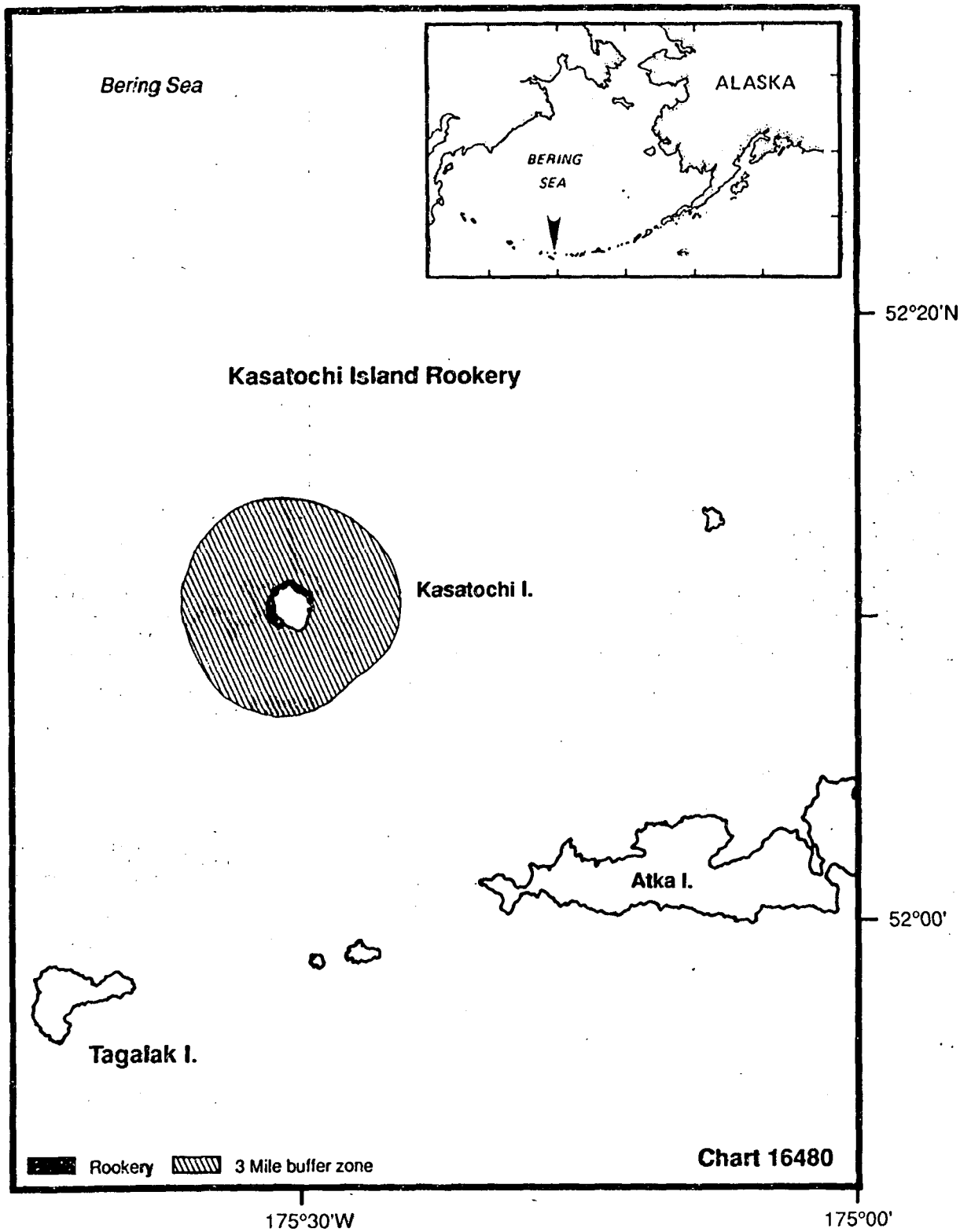

ALASKA
BERING SEA
54°00'N
Bogoslof I.
Bogoslof Island Rookery
Bering Sea
53°40'
Umnak I.
Rookery
3 Mile buffer zone
Chart 16500
168°00'W
167°30'

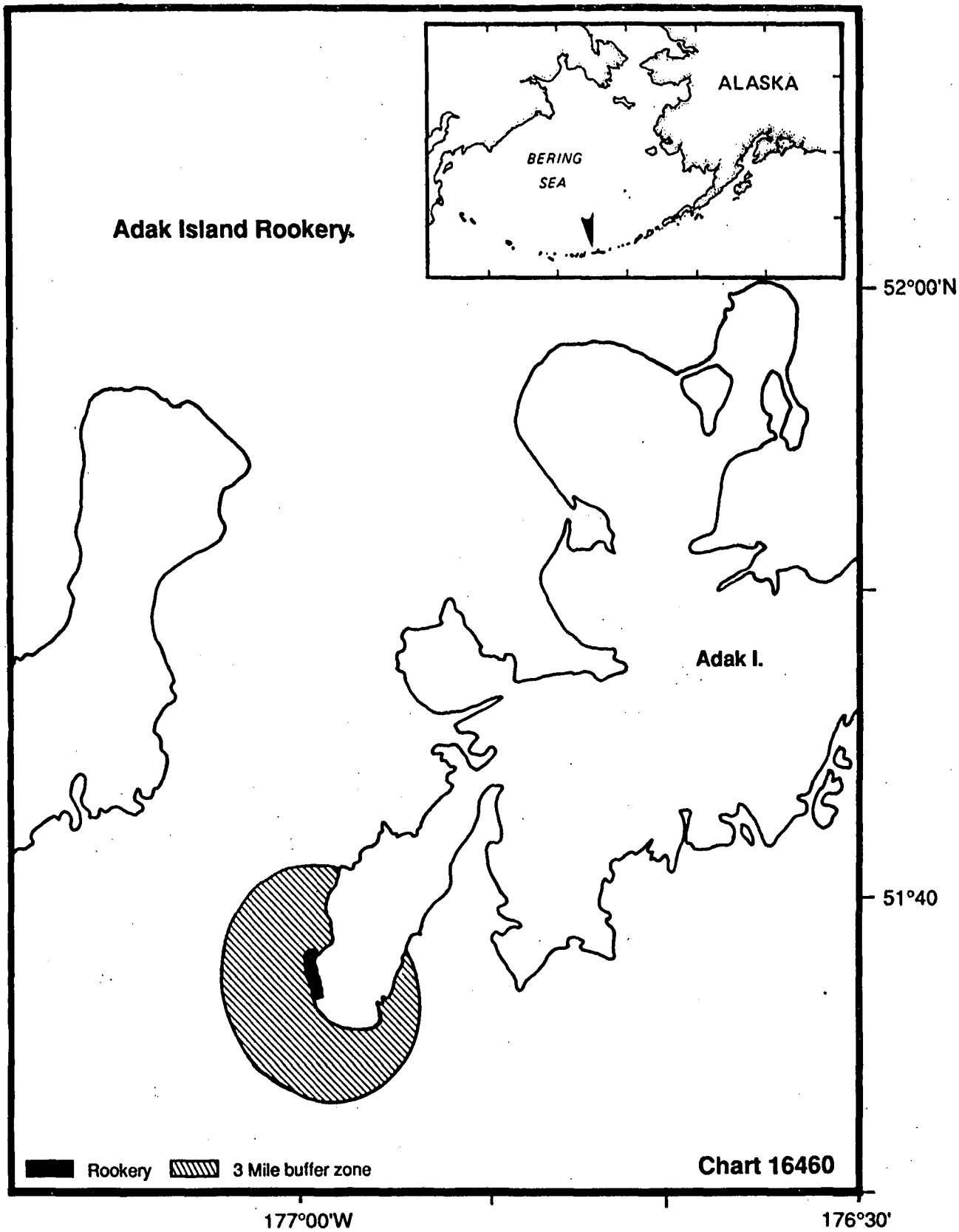

Bering Sea
ALASKA
BERING SEA
Unmak I.
53°20'N
Ogchul Island Rookery
Ogchul I.
53°00'
Rookery
3 Mile buffer zone
Chart 16500
168°30'W
168°00'

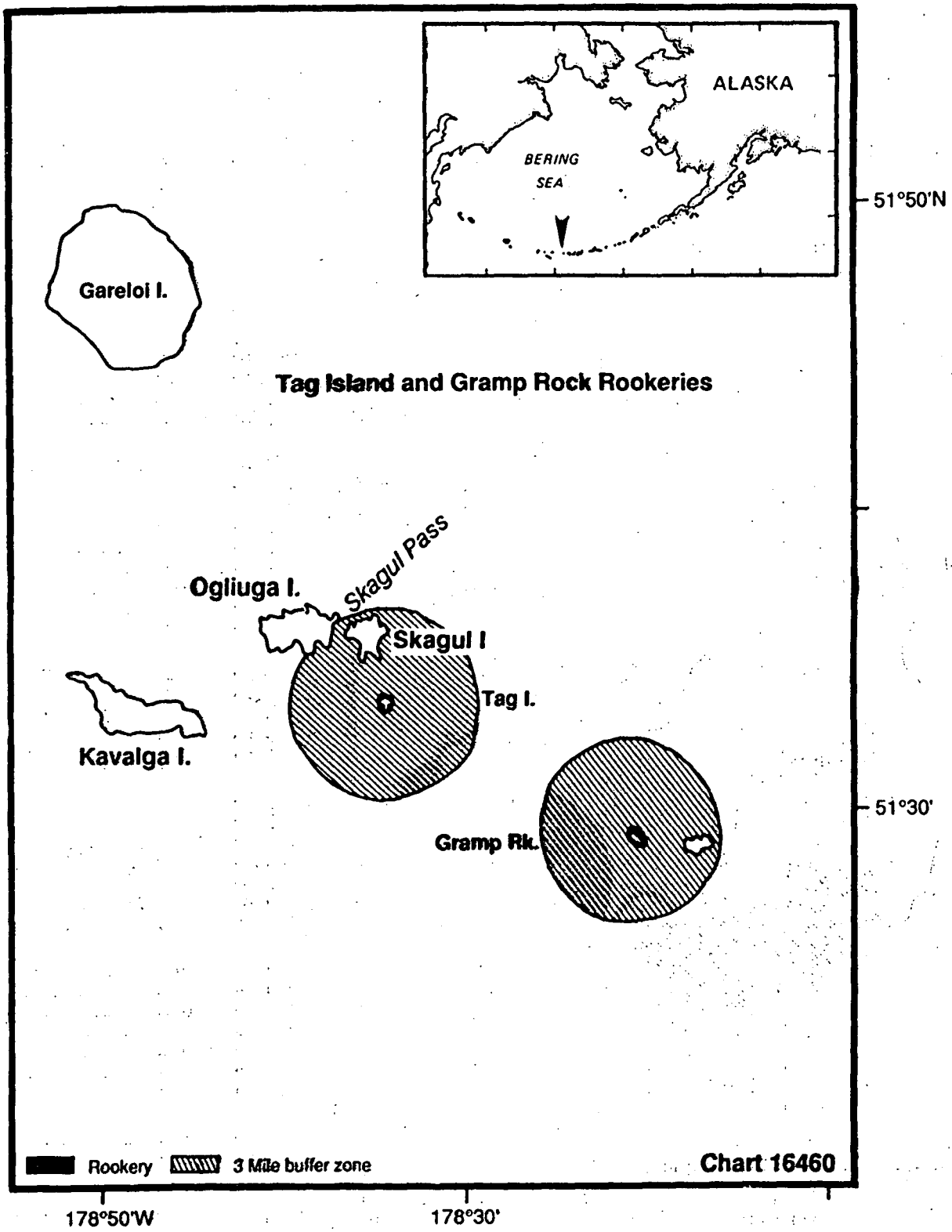

ALASKA
BERING SEA
Bering Sea
53°10'N
Adugak Island Rookery
Adugak I.
Umnak I.
52°50'
Rookery
3 Mile buffer zone
Chart 16500
169°30'W
169°00'

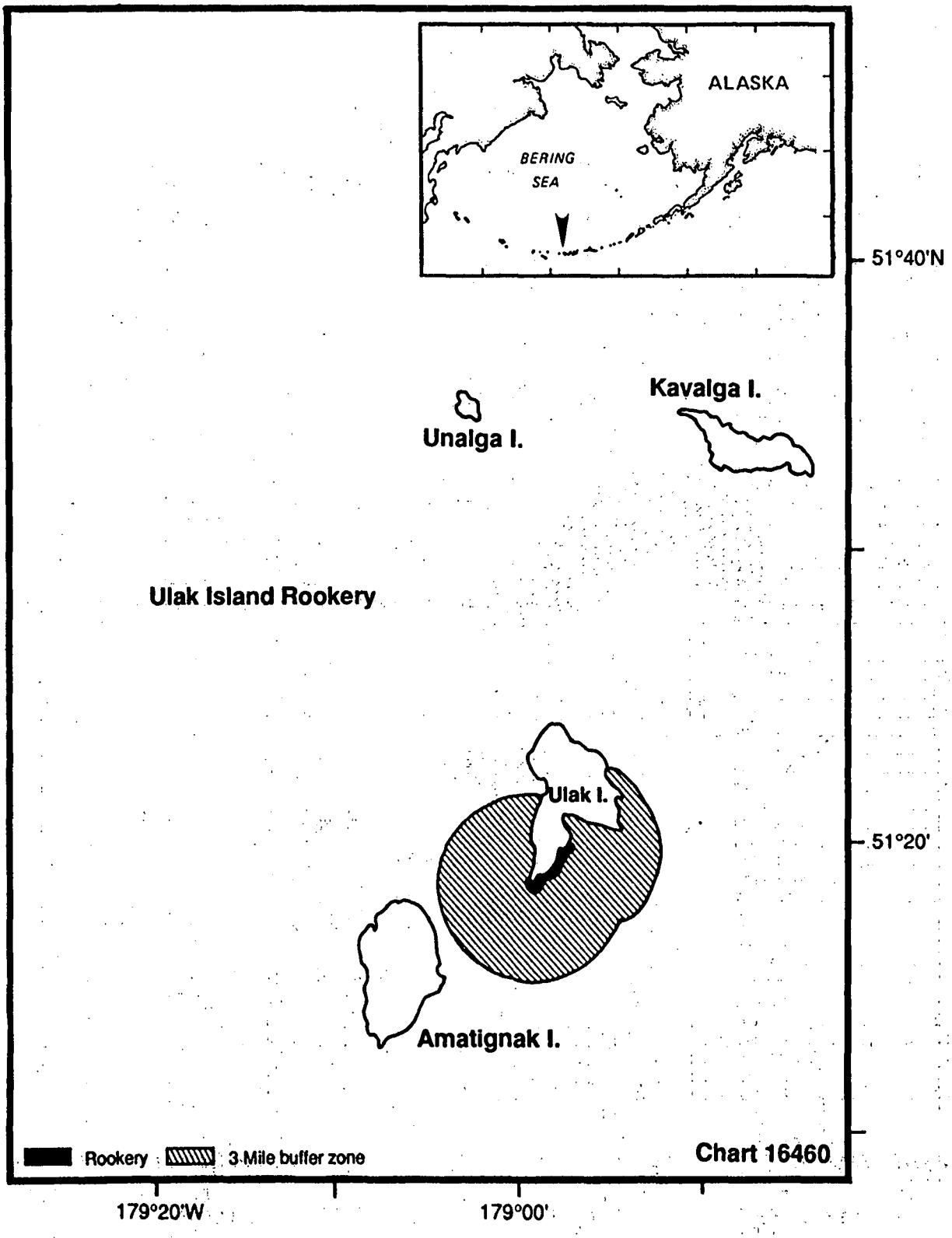

ALASKA
BERING SEA
53°00'N
Bering Sea
Yunaska Island Rookery
52°40'
Yunaska I.
Rookery
3 Mile buffer zone
Chart 16500
171°00'W
170°30'

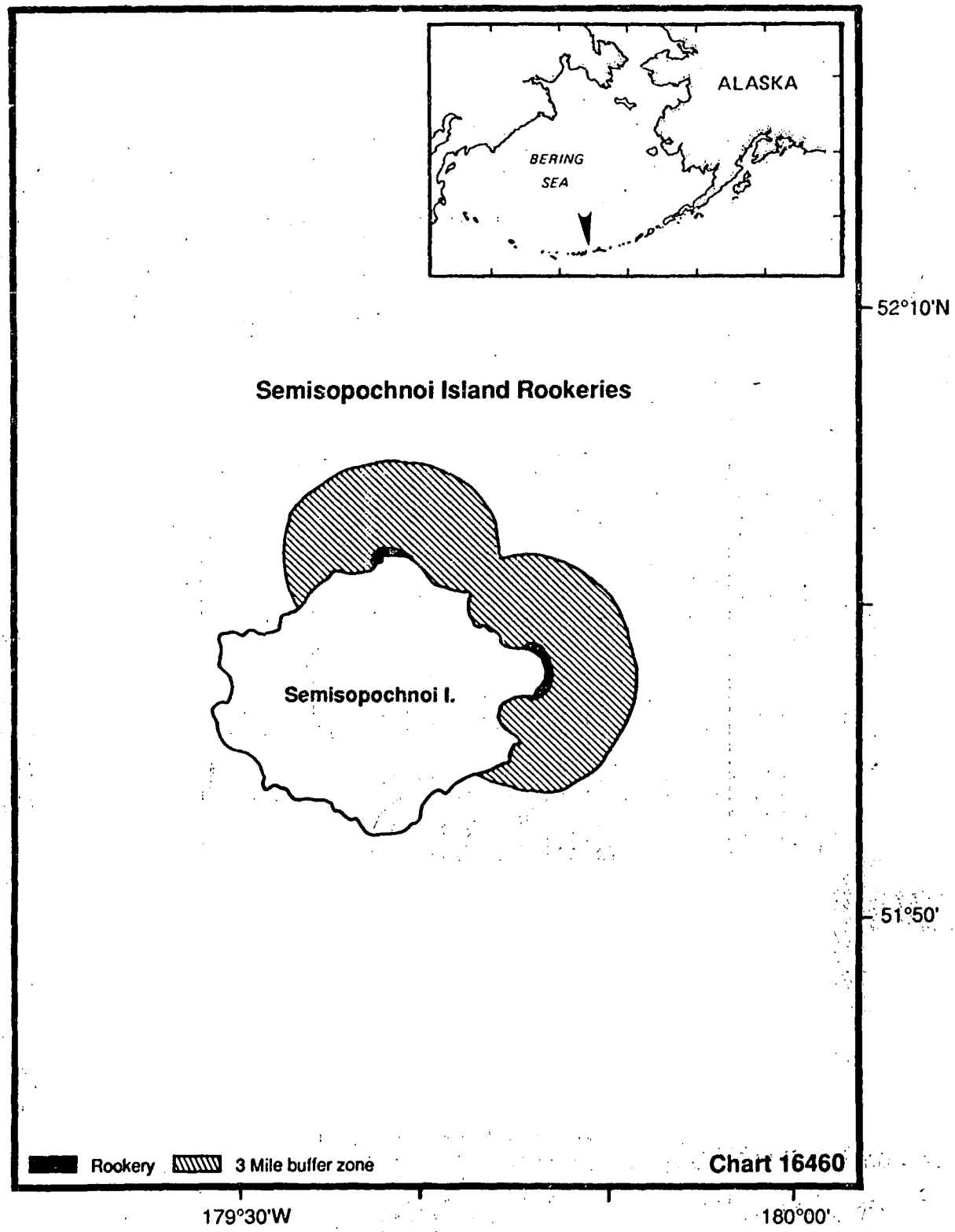

ALASKA
BERING SEA
52°30'N
Seguam and Agligadak Island Rookeries
Seguam I.
Seguam Pass
52°10'
Agligadak I.
Rookery
3 Mile buffer zone
Chart 16480
173°00'W
172°30'

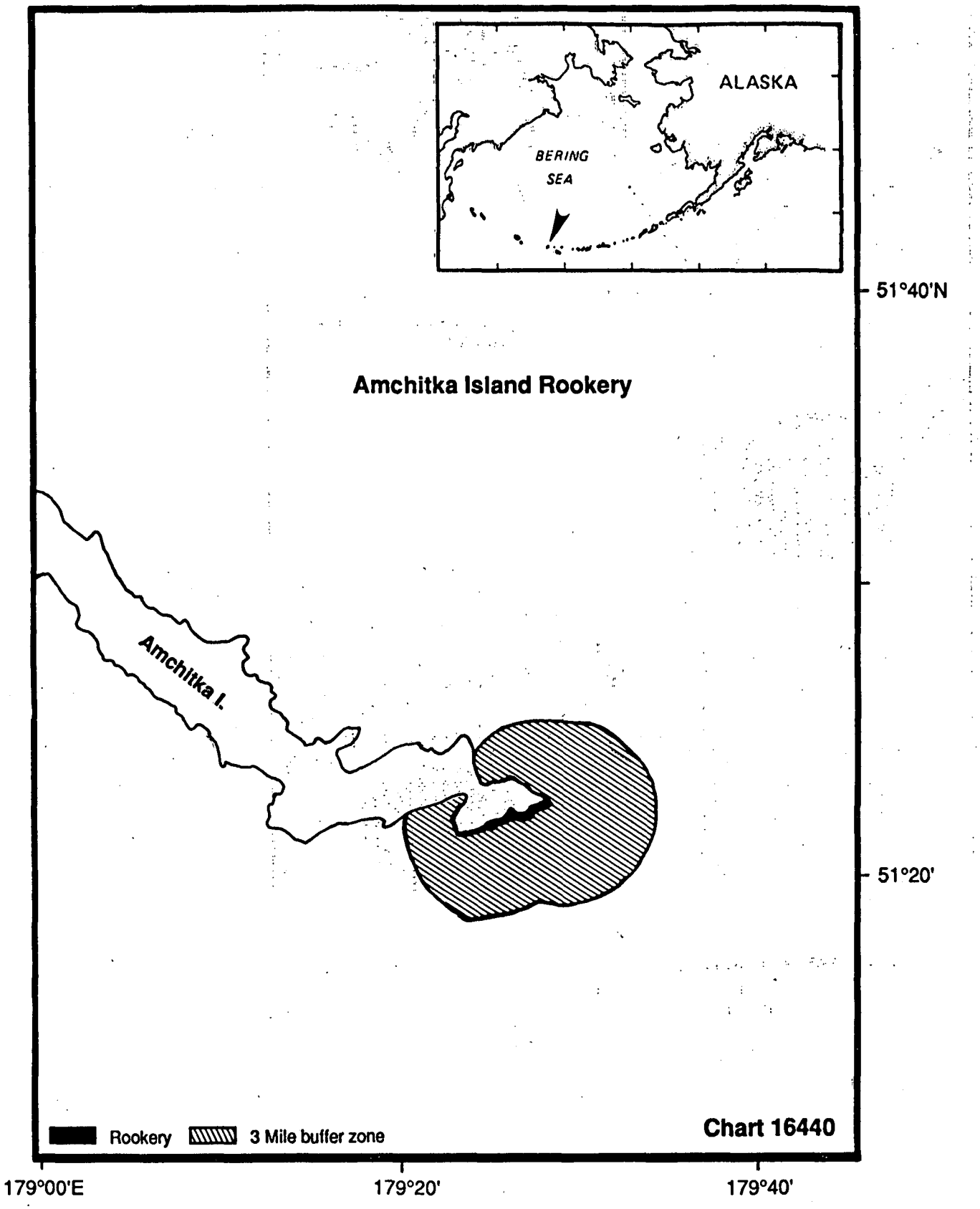

Bering Sea
ALASKA
BERING SEA
52°20'N
Kasatochi Island Rookery
Kasatochi I.
Atka I.
52°00'
Tagalak I.
Rookery
3 Mile buffer zone
Chart 16480
175°30'W
175°00'

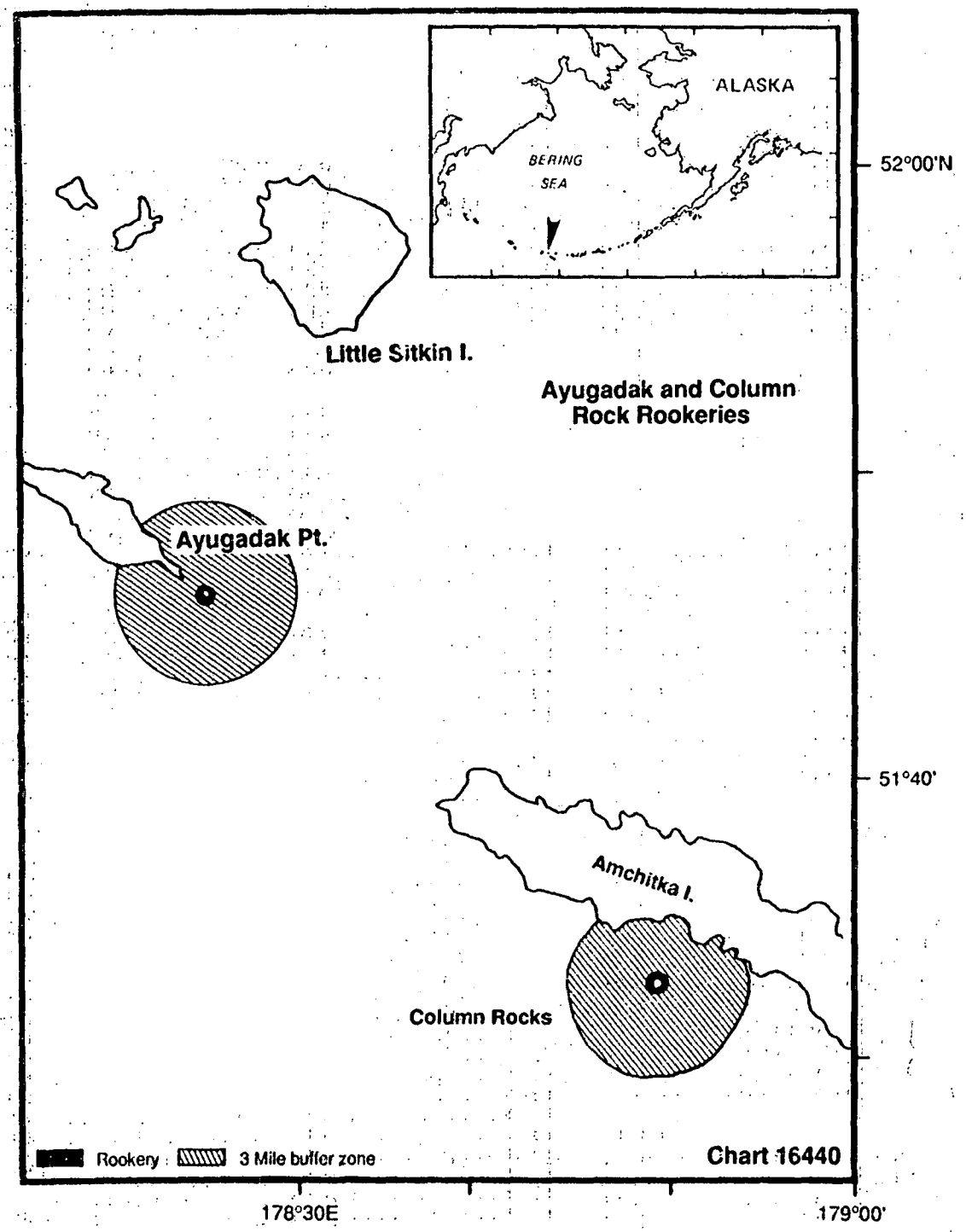

ALASKA
BERING SEA
Adak Island Rookery
52°00'N
Adak I.
51°40
Rookery
3 Mile buffer zone
Chart 16460
177°00'W
176°30'

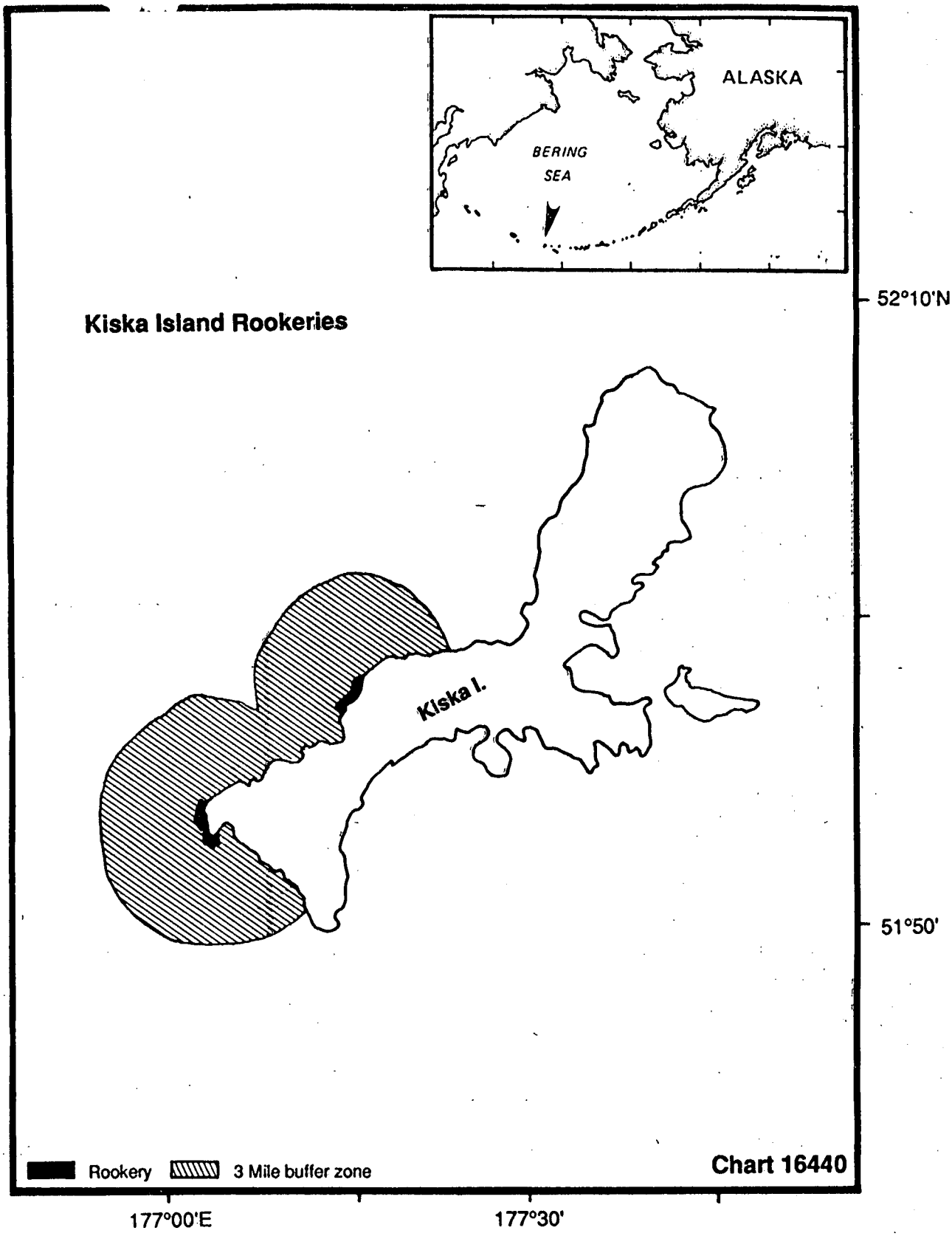

ALASKA
BERING SEA
51°50'N
Gareloi I.
Tag Island and Gramp Rock Rookeries
Skagul Pass
Ogliuga I.
Skagul I
Tag I.
Kavalga I.
51°30'
Gramp Rk.
Rookery
3 Mile buffer zone
Chart 16460
178°50'W
178°30'

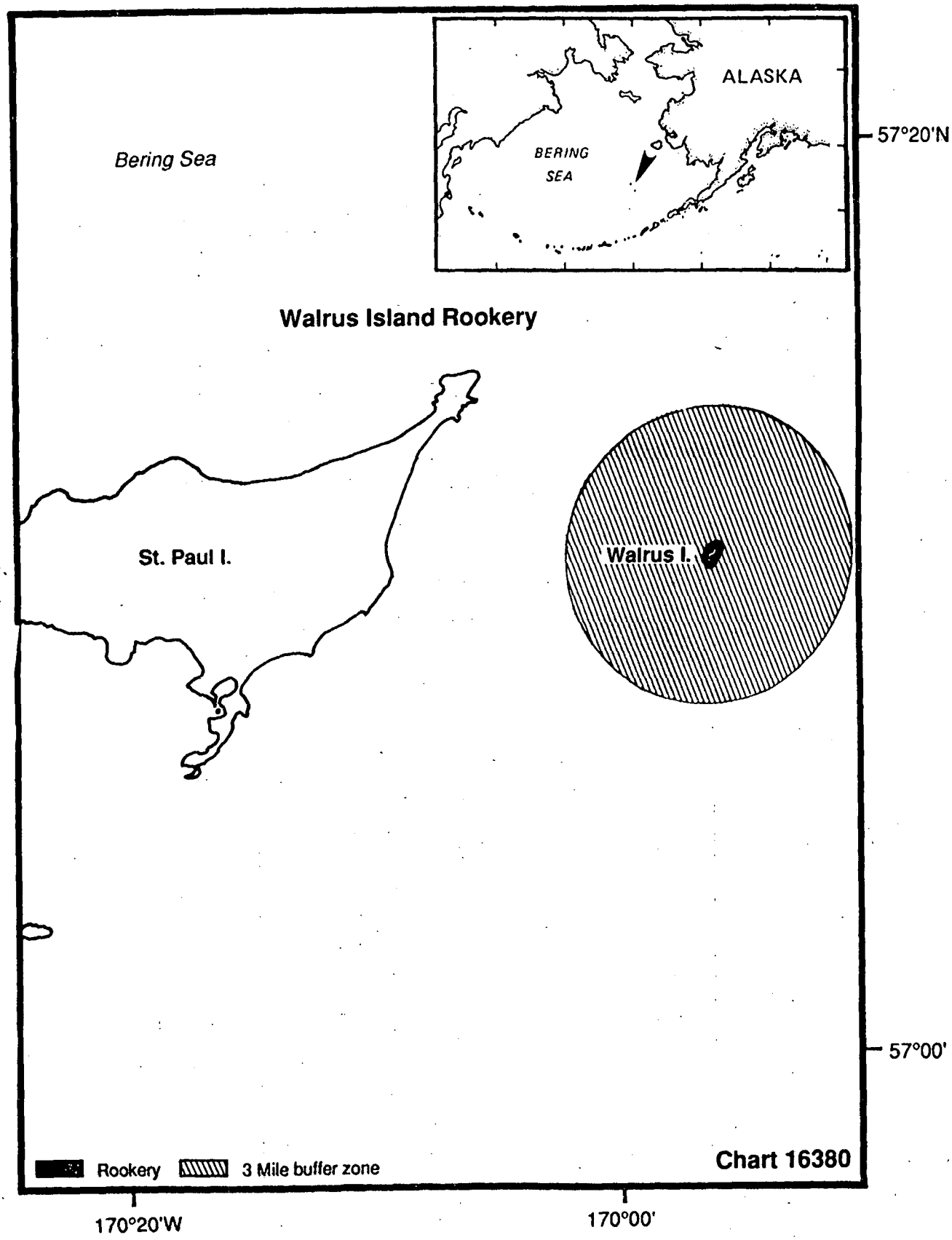

ALASKA
BERING SEA
51°40'N
Kavalga I.
Unalga I.
Ulak Island Rookery
Ulak I.
51°20'
Amatignak I.
Rookery
3 Mile buffer zone
Chart 16460
179°20'W
179°00'

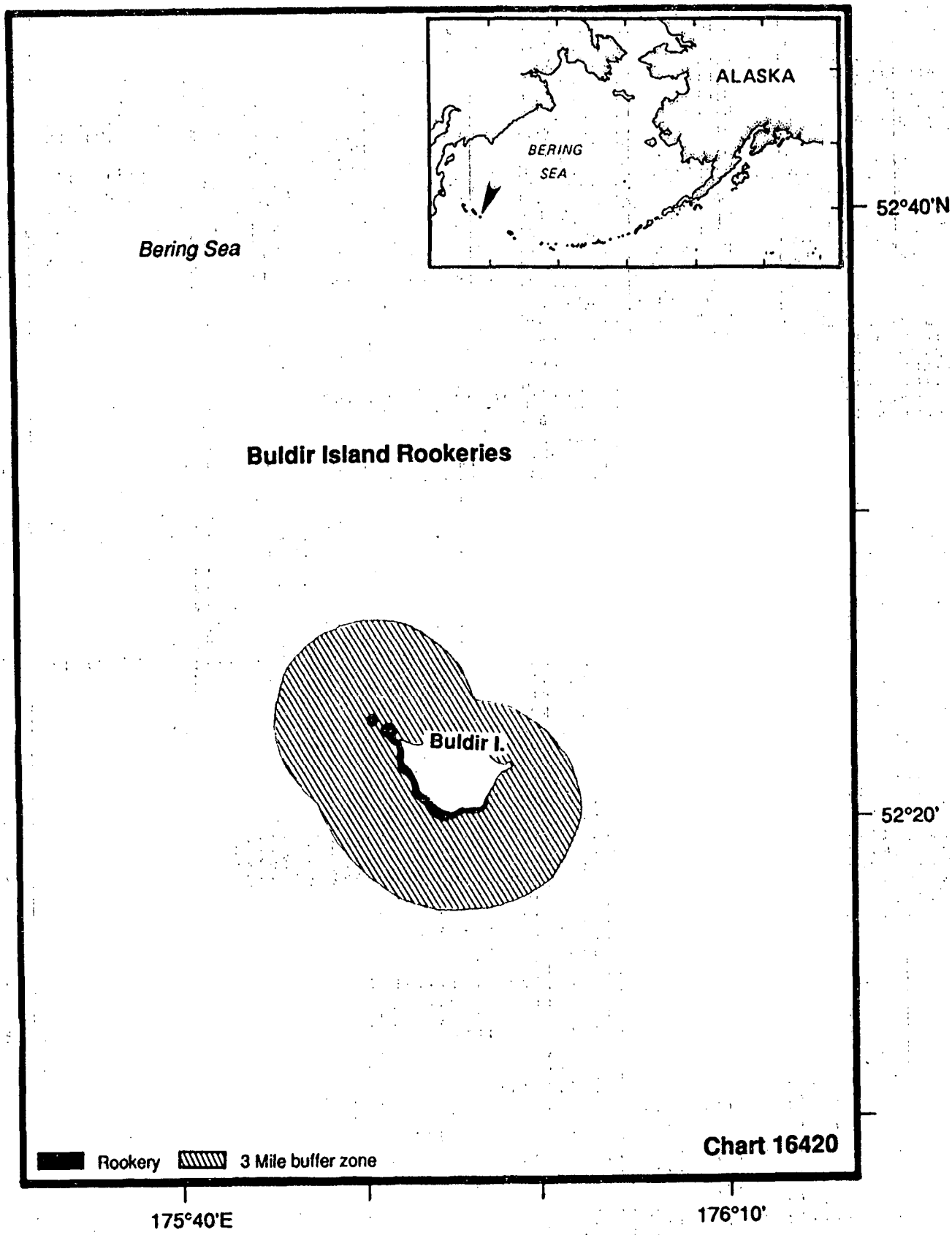

ALASKA
BERING SEA
52°10'N
Semisopochnoi Island Rookeries
Semisopochnoi I.
51°50'
Rookery
3 Mile buffer zone
Chart 16460
179°30'W
180°00'

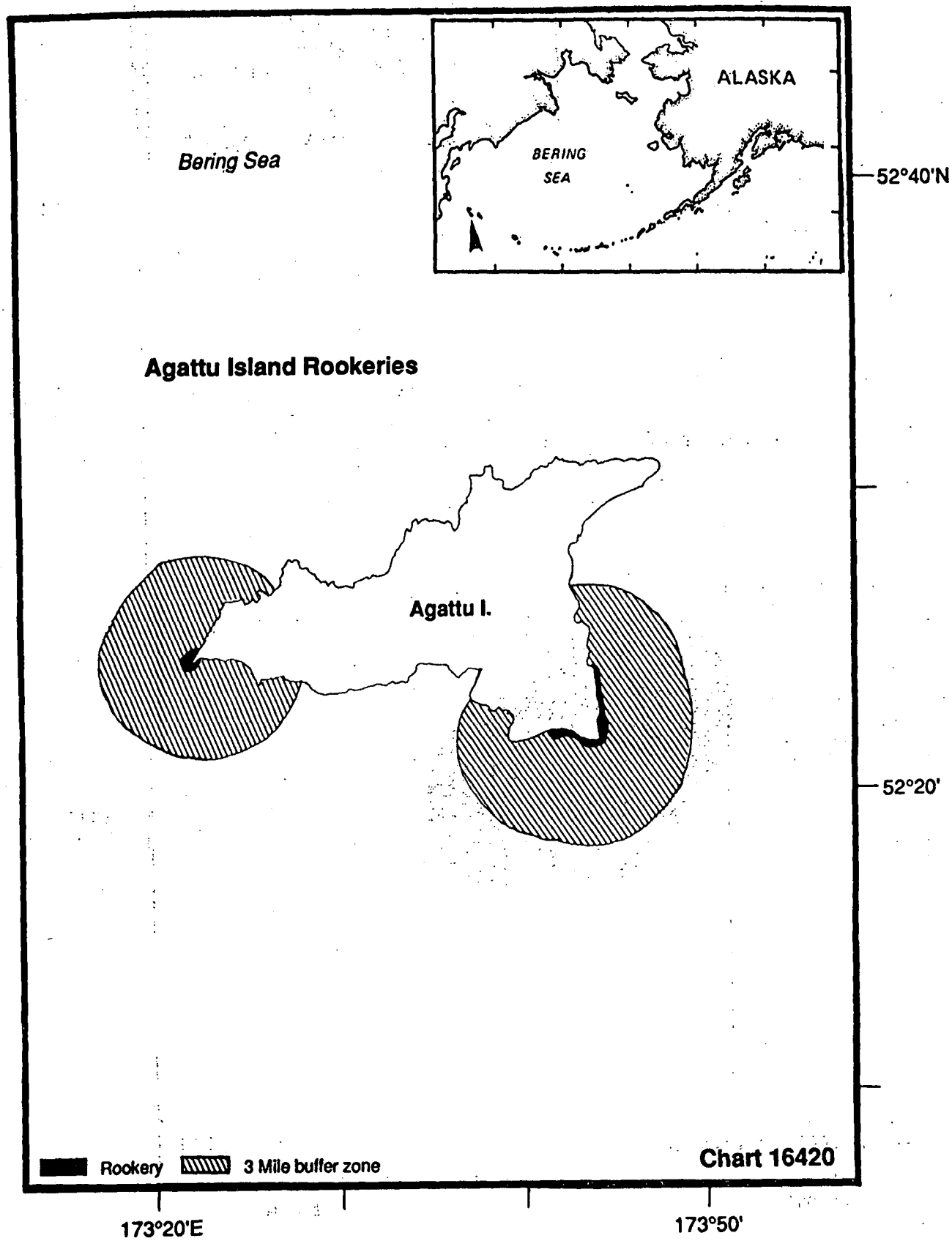

ALASKA
BERING SEA
51°40'N
Amchitka Island Rookery
Amchitka I.
51°20'
Rookery
3 Mile buffer zone
Chart 16440
179°00'E
179°20'
179°40'

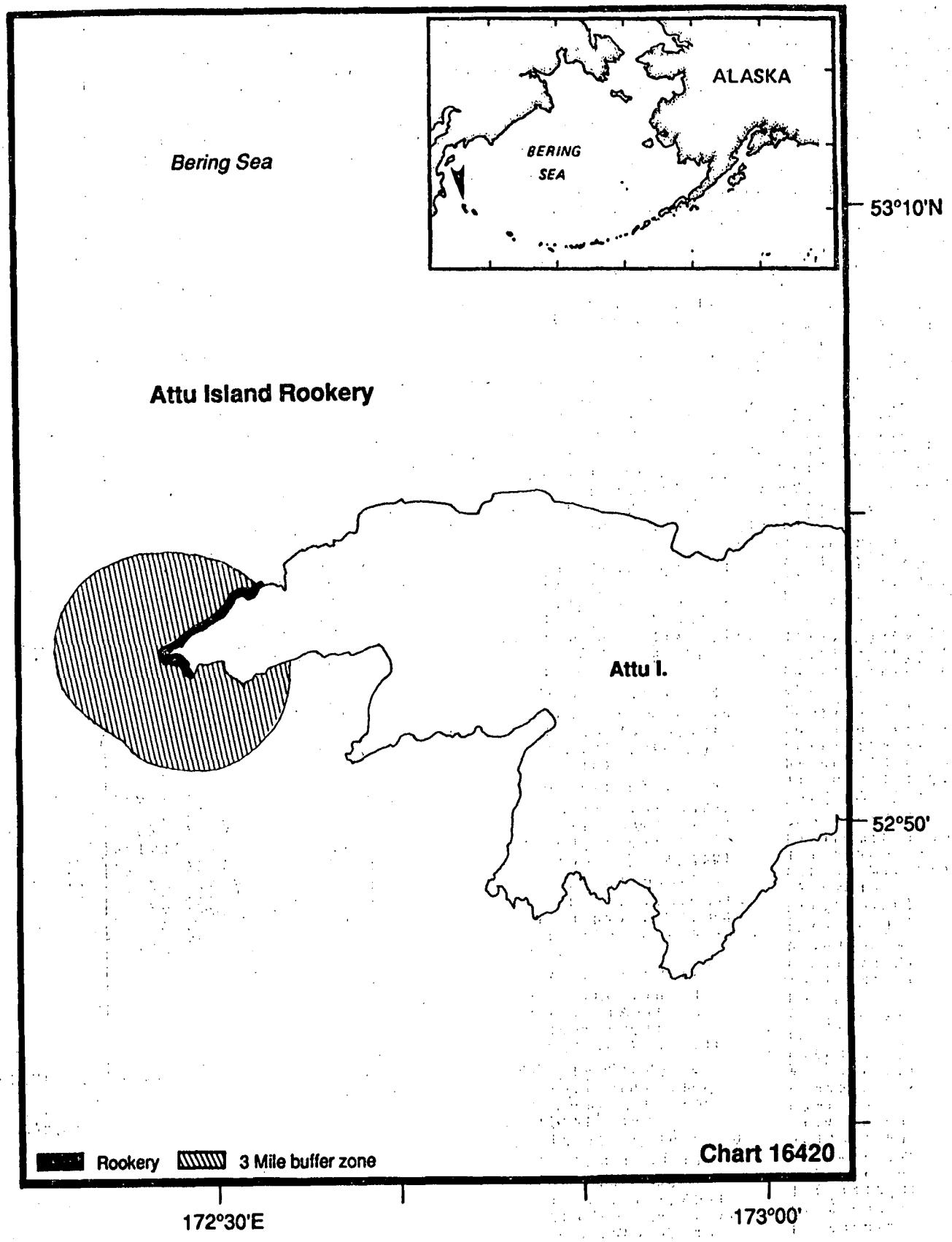

ALASKA
BERING SEA
52°00'N
Little Sitkin I.
Ayugadak and Column Rock Rookeries
Ayugadak Pt.
51°40'
Amchitka I.
Column Rocks
Rookery
3 Mile buffer zone
Chart 16440
178°30E
179°00'


ALASKA
BERING SEA
Kiska Island Rookeries
52°10'N
Kiska I.
51°50'
Rookery
3 Mile buffer zone
Chart 16440
177°00'E
177°30'


ALASKA
BERING SEA
Bering Sea
57°20'N
Walrus Island Rookery
St. Paul I.
Walrus I.
57°00'
Rookery
3 Mile buffer zone
Chart 16380
170°20'W
170°00'


ALASKA
BERING SEA
52°40'N
Bering Sea
Buldir Island Rookeries
Buldir I.
52°20'
Chart 16420
Rookery
3 Mile buffer zone
175°40'E
176°10'


ALASKA
BERING SEA
Bering Sea
52°40'N
Agattu Island Rookeries
Agattu I.
52°20'
Rookery
3 Mile buffer zone
Chart 16420
173°20'E
173°50'



BILLING CODE 3510-22-C

(4) *Quota.* If the Assistant Administrator determines and publishes notice that 675 Steller sea lions have been killed incidentally in the course of commercial fishing operations in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone (EEZ) west of 141° W longitude during any calendar year, then it will be unlawful to kill any additional Steller sea lions in this area. In order to monitor this quota, the Director, Alaska Region, National Marine Fisheries Service, may require the placement of an observer on any fishing vessel. If data indicate that the quota is being approached, the Assistant Administrator will issue emergency rules to establish closed areas, allocate the remaining quota among fisheries, or take other action(s) to ensure that commercial fishing operations do not exceed the quota.

(b) *Exceptions*—(1) *Permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of 50 CFR part 222, subpart C—Endangered Fish or Wildlife Permits.

(2) *Official activities.* Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(i) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(ii) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(3) *Subsistence takings by Alaska natives.* Paragraph (a)(1) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(4) *Emergency situations.* Paragraph (a)(2) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(5) *Exemptions.* Paragraph (a)(2) of this section does not apply to any activity authorized by a prior written exemption from the Director, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the **Federal Register**. An exemption may be granted only if the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(c) *Penalties.* (1) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(2) Any vessel used in violation of this section or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

Dated: November 9, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 90-27600 Filed 11-23-90; 8:45 am]

BILLING CODE 3510-22-M

federal register

Monday
November 26, 1990

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purposes of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Upper Sioux Indian Community and the State of Minnesota executed on 4/6/90.

DATES: This action is effective November 26, 1990.

ADDRESSES: Office of Legislative Affairs, Bureau of Indian Affairs, Department of the Interior, MS–4641, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joel Starr, Bureau of Indian Affairs, Washington, DC (202) 208–5706.

Dated: November 19, 1990.

Stan Speaks,

Assistant Secretary—Indian Affairs.

[FR Doc. 90–27635 Filed 11–23–90; 8:45 am]

BILLING CODE 4310-02-M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It maybe used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 29/Pub. L. 101-588

Antitrust Amendments Act of 1990. (Nov. 16, 1990; 104 Stat. 2879; 2 pages) Price: $1.00

H.R. 996/Pub. L. 101-589

Excellence in Mathematics, Science and Engineering Education Act of 1990. (Nov. 16, 1990; 104 Stat. 2881; 34 pages) Price: $1.25

H.R. 1602/Pub. L. 101-590

Trauma Care Systems Planning and Development Act of 1990. (Nov. 16, 1990; 104 Stat. 2915; 16 pages) Price: $1.00

H.R. 2840/Pub. L. 101-591

Coastal Barrier Improvement Act of 1990. (Nov. 16, 1990; 104 Stat. 2931; 12 pages) Price: $1.00

H.R. 3000/Pub. L. 101-592

Fastener Quality Act. (Nov. 16, 1990; 104 Stat. 2943; 11 pages) Price: $1.00

H.R. 3338/Pub. L. 101-593

To direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes. (Nov. 16, 1990; 104 Stat. 2954; 21 pages) Price: $1.00

H.R. 3977/Pub. L. 101-594

Antarctic Protection Act of 1990. (Nov. 16, 1990; 104 Stat. 2975; 4 pages) Price: $1.00

H.R. 4009/Pub. L. 101-595

Federal Maritime Commission Authorization Act of 1990. (Nov. 16, 1990; 104 Stat. 2979; 21 pages) Price: $1.00

H.R. 4323/Pub. L. 101-596

Great Lakes Critical Programs Act of 1990. (Nov. 16, 1990; 104 Stat. 3000; 13 pages) Price: $1.00

H.R. 4487/Pub. L. 101-597

National Health Service Corps Revitalization Amendments of 1990. (Nov. 16, 1990; 104 Stat. 3013; 24 pages) Price: $1.00

H.R. 4721/Pub. L. 101-598

To designate the Federal building located at 340 North Pleasant Valley Road in

Winchester, Virginia, as the "J. Kenneth Robinson Postal Building". (Nov. 16, 1990; 104 Stat. 3037; 1 page) Price: $1.00

H.R. 4888/Pub. L. 101-599
To improve navigational safety and to reduce the hazards to navigation resulting from vessel collisions with pipelines in the marine environment, and for other purposes. (Nov. 16, 1990; 104 Stat. 3038; 4 pages) Price: $1.00

H.R. 5140/Pub. L. 101-600
School Dropout Prevention and Basic Skills Improvement Act of 1990. (Nov. 16, 1990; 104 Stat. 3042; 6 pages) Price: $1.00

H.R. 5237/Pub. L. 101-601
Native American Graves Protection and Repatriation Act. (Nov. 16, 1990; 104 Stat. 3048; 11 pages) Price: $1.00

H.R. 5308/Pub. L. 101-602
Fort Hall Indian Water Rights Act of 1990. (Nov. 16, 1990; 104 Stat. 3059; 6 pages) Price: $1.00

H.R. 5497/Pub. L. 101-603
To authorize the Secretary of the Interior to acquire certain lands to be added to the Fort Raleigh National Historic Site in North Carolina. (Nov. 16, 1990; 104 Stat. 3065; 1 page) Price: $1.00

H.R. 5732/Pub. L. 101-604
Aviation Security Improvement Act of 1990. (Nov. 16, 1990; 104 Stat. 3066; 23 pages) Price: $1.00

H.R. 5909/Pub. L. 101-605
Florida Keys National Marine Sanctuary and Protection Act. (Nov. 16, 1990; 104 Stat. 3089; 7 pages) Price: $1.00

S. 169/Pub. L. 101-606
Global Change Research Act of 1990. (Nov. 16, 1990; 104 Stat. 3096; 9 pages) Price: $1.00

S. 555/Pub. L. 101-607
De Soto Expedition Trail Commission Act of 1990. (Nov. 16, 1990; 104 Stat. 3105; 5 pages) Price: $1.00

S. 605/Pub. L. 101-608
Consumer Product Safety Improvement Act of 1990. (Nov. 16, 1990; 104 Stat. 3110; 15 pages) Price: $1.00

S. 677/Pub. L. 101-609
To amend the Arctic Research and Policy Act of 1984 to improve and clarify its provisions. (Nov. 16, 1990; 104 Stat. 3125; 2 pages) Price:$1.00

S. 1430/Pub. L. 101-610
National and Community Service Act of 1990. (Nov. 16, 1990; 104 Stat. 3127; 61 pages) Price: $1.75

S. 2287/Pub. L. 101-611
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991. (Nov. 16, 1990; 104 Stat. 3188; 21 pages) Price:$1.00

S. 2566/Pub. L. 101-612
Smith River National Recreation Area Act. (Nov. 16, 1990; 104 Stat. 3209; 15 pages) Price: $1.00

S. 2857/Pub. L. 101-613
National Institutes of Health Amendments of 1990. (Nov. 16, 1990; 104 Stat. 3224; 7 pages) Price: $1.00

S. 2789/Pub. L. 101-614
National Earthquake Hazards Reduction Program Reauthorization Act. (Nov. 16, 1990; 104 Stat. 3231; 13 pages) Price: $1.00

S. 2936/Pub. L. 101-615
Hazardous Materials Transportation Uniform Safety Act of 1990. (Nov. 16, 1990; 104 Stat. 3244; 35 pages) Price: $1.25

S. 2946/Pub. L. 101-616
Transplant Amendments Act of 1990. (Nov. 16, 1990; 104 Stat. 3279; 8 pages) Price: $1.00

S. 3069/Pub. L. 101-617
Environmental Research Geographic Location Information Act. (Nov. 16, 1990; 104 Stat. 3287; 2 pages) Price: $1.00

S. 3084/Pub. L. 101-618
Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990. (Nov. 16, 1990; 104 Stat. 3289; 36 pages) Price: $1.25

S. 3176/Pub. L. 101-619
National Environmental Education Act. (Nov. 16, 1990; 104 Stat. 3325; 15 pages) Price: $1.00

S.J. Res. 206/Pub. L. 101-620
Calling for the United States to encourage immediate negotiations toward a new agreement among Antarctic Treaty Consultative Parties, for the full protection of Antarctica as a global ecological commons. (Nov. 16, 1990; 104 Stat. 3340; 2 pages) Price: $1.00

H.R. 4559/Pub. L. 101-621
Red Rock Canyon National Conservation Area Establishment Act of 1990. (Nov. 16, 1990; 104 Stat. 3342; 5 pages) Price: $1.00

Note: In the List of Public Laws printed in the Federal Register on November 15, 1990, H.R. 4299 was printed incorrectly. It should read as follows:

H.R. 4299/Pub. L. 101-537
To authorize a study of the fishery resources of the Great Lakes, and for other purposes. (Nov. 8, 1990; 104 Stat. 2370; 6 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$11.00	Jan. 1, 1990
3 (1989 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1990
4	16.00	Jan. 1, 1990
5 Parts:		
1-699	15.00	Jan. 1, 1990
700-1199	13.00	Jan. 1, 1990
1200-End, 6 (6 Reserved)	17.00	Jan. 1, 1990
7 Parts:		
0-26	15.00	Jan. 1, 1990
27-45	12.00	Jan. 1, 1990
46-51	17.00	Jan. 1, 1990
52	24.00	Jan. 1, 1990
53-209	19.00	Jan. 1, 1990
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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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