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January 9, 1991

Briefings on How To Use the Federal Register
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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

ATLANTA, GA

WHEN: January 11, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: 1-800-347-1997

WASHINGTON, DC

WHEN: January 24, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Pay Under the General Schedule; Interim Geographic Adjustments

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations on the interim geographic adjustments authorized by section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and Executive Order 12736 of December 12, 1990. The interim regulations establish rules for applying these adjustments to General Schedule employees in the following Consolidated Metropolitan Statistical Areas (CMSAs): New York-Northern New Jersey-Long Island, NY-NJ-CT; San Francisco-Oakland-San Jose, CA; and Los Angeles-Anaheim-Riverside, CA.

DATES: This interim rule is effective on the first day of the first pay period beginning on or after January 1, 1991. Comments must be submitted on or before March 11, 1991.

ADDRESSES: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John P. Cahill, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990) authorized the President, at his discretion, to establish interim geographic adjustments of up to 8 percent of basic pay in one or more consolidated metropolitan statistical areas (CMSAs), primary metropolitan statistical areas (PMSAs), and/or metropolitan statistical areas (MSAs) that meet certain criteria. On December 12, 1990, the President issued Executive Order 12736, establishing interim geographic adjustments of 8 percent in three CMSAs and authorizing OPM to prescribe regulations governing the application of interim geographic adjustments to General Schedule employees, including the determination of what, if any, interim geographic adjustment shall be payable to employees receiving special salary rates.

The three CMSAs in which interim geographic adjustments have been authorized by the President are New York-Northern New Jersey-Long Island, NY-NJ-CT; San Francisco-Oakland-San Jose, CA; and Los Angeles-Anaheim-Riverside, CA. As of the date of publication of these interim regulations, these CMSAs are defined as set forth below.

The *New York-Northern New Jersey-Long Island, NY-NJ-CT CMSA* consists of Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester, Orange, Nassau, and Suffolk counties in New York; Bergen, Passaic, Hudson, Hunterdon, Middlesex, Somerset, Monmouth, Ocean, Essex, Morris, Sussex, and Union Counties in New Jersey; and in Connecticut—(1) The following parts of Fairfield County: the towns of Easton, Fairfield, Monroe, Stratford, Trumbull, Bethel, Brookfield, New Fairfield, Newtown, Redding, Ridgefield, Sherman, Weston, Westport, Wilton, Darien, Greenwich, New Canaan; and the cities of Bridgeport, Shelton, Danbury, Norwalk, and Stamford; (2) the towns of Beacon Falls, Oxford, and Seymour and the cities of Ansonia, Derby, and Milford in New Haven County; and (3) the towns of Bridgewater and New Milford in Litchfield County.

The *San Francisco-Oakland-San Jose, CA CMSA* consists of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma, Napa, and Solano counties.

The *Los Angeles-Anaheim-Riverside, CMSA* consists of Orange, Los Angeles, Ventura, Riverside, and San Bernardino counties.

Under the interim regulations, an employee in one of the three CMSAs paid according to the General Schedule will be entitled to an adjustment of 8 percent. Similarly, an employee in one of the three CMSAs receiving a nationwide or worldwide special salary rate under part 530 of title 5, Code of Federal Regulations, will be entitled to an 8 percent adjustment in addition to the special salary rate.

Nationwide and worldwide special salary rates, unlike local special salary rates, are not established on the basis of local labor market factors. However, local special salary rates are set at a level relative to the local labor market. Therefore, the interim regulations provide that the interim geographic adjustment for an employee in one of the three CMSAs receiving a local special salary rate will be offset by the amount of the special salary rate. In no case, however, will an employee receive less than 8 percent above his or her General Schedule pay rate.

The statute provides that adjusted rates of pay will be considered basic pay for purposes of computing retirement deductions and benefits, life insurance premiums and benefits, and premium pay. The interim regulations provide that the adjusted rates also will be considered basic pay for the purpose of computing an employee's entitlement to severance pay under subpart G of part 550 of title 5, Code of Federal Regulations. Finally, the interim regulations prescribe methods for deriving annual, hourly, biweekly, and daily adjusted rates of basic pay consistent with the requirements for computing rates of basic pay under 5 U.S.C. 5504.

Pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The 30-day delay in the effective date is being waived because the effective date of the adjusted rates of pay was established by the President as the first pay period beginning on or after January 1, 1991.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities

because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Wages, Administrative practice and procedure.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending part 531 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and chapter 54; subpart A issued under section 529 of Pub. L. 101-509 and E.O. 12736; subpart B also issued under 5 U.S.C. 5305(q), 5333(a), 5334(a), 5402, and section 203 of E.O. 11721, as amended; subpart C also issued under 5 U.S.C. 5333(b) and section 404 of E.O. 11721, as amended; subpart D also issued under 5 U.S.C. 5301, 5335, and section 402 of E.O. 11721, as amended; subpart E also issued under 5 U.S.C. 5336 and section 403 of E.O. 11721, as amended.

2. Subpart A is added to read as follows:

Subpart A—Interim Geographic Adjustments

Sec.

531.101 Definitions.
531.102 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.
531.103 Administration of adjusted rates of pay.
531.104 Reports.
531.105 Effect of interim geographic adjustments on retention payments under FBI demonstration project.

Subpart A—Interim Geographic Adjustments

§ 531.101 Definitions.

In this subpart:

Adjusted annual rate of pay means an employee's scheduled annual rate of pay multiplied by 1.08 and rounded to the nearest whole dollar, counting 50 cents and over as a whole dollar.

Employee means an employee in a position to which subchapter III of chapter 53, United States Code, applies, whose official duty station is located in an interim geographic adjustment area, including an employee covered by the Performance Management and Recognition System and an employee in a position authorized by 5 CFR 213.3102(w) whose rate of basic pay is established under the General Schedule.

General Schedule means the basic pay schedule established under 5 U.S.C. 5332, as adjusted by the President.

Interim geographic adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSAs), as defined by the Office of Management and Budget (OMB):

(a) New York-Northern New Jersey-Long Island, NY-NJ-CT;

(b) San Francisco-Oakland-San Jose, CA; or

(c) Los Angeles-Anaheim-Riverside, CA.

Local special salary rate means a special salary rate established under part 530 of this chapter for one or more locations, but not for all locations nationwide or worldwide.

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action.

Scheduled annual rate of pay means—

(a) The General Schedule rate of basic pay (or a nationwide or worldwide special salary rate under part 530 of this chapter, where applicable) for the employee's grade and step, exclusive of additional pay of any kind;

(b) For an employee covered by the Performance Management and Recognition System who is receiving a local special salary rate, the rate of pay resulting from the following computation—

(1) Subtract the dollar amount for step 1 of the employee's grade on the special salary rate schedule from the dollar amount for the employee's special salary rate; and

(2) Add the result of paragraph (b)(1) to the dollar amount for step 1 of the employee's grade on the General Schedule; or

(c) The retained rate of pay under part 536 of this chapter, where applicable, exclusive of additional pay of any kind.

§ 531.102 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

When it is necessary to convert the adjusted annual rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the adjusted annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 531.103 Administration of adjusted rates of pay.

(a) An employee is entitled to be paid the greater of—

(1) The adjusted annual rate of pay; or

(2) His or her rate of basic pay (including a local special salary rate, where applicable), without regard to any adjustment under this section.

(b) An adjusted rate of pay is considered basic pay for purposes of computing—

(1) Retirement deductions and benefits under parts 831, 841, 842, 843, and 844 of this chapter;

(2) Life insurance premiums and benefits under parts 870, 871, 872, and 873 of this chapter;

(3) Premium pay under subparts A and I of part 550 of this chapter (including the computation of limitations on premium pay under 5 U.S.C. 5547, overtime pay under 5 U.S.C. 5542(a), compensatory time off under 5 U.S.C. 5543, and standby duty pay under 5 U.S.C. 5545(c)(1)); and

(4) Severance pay under subpart G of part 550 of this chapter.

(c) When an employee's official duty station is changed from a location not in an interim geographic adjustment area to a location in an interim geographic adjustment area, payment of the adjusted rate of pay begins on the effective date of the change in official duty station.

(d) An adjusted rate of pay is paid only for those hours for which an employee is in a pay status.

(e) An adjusted rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to an adjusted rate of pay under this subpart terminates on the date—

(1) An employee's official duty station is no longer located in an interim geographic adjustment area;

(2) An employee moves to a position not covered by this subpart;

(3) An employee separates from Federal service; or

(4) An employee's local special salary rate exceeds his or her adjusted rate of pay.

(g) In the event of a change in the geographic area covered by a CMSA, the effective date of a change in an employee's entitlement to an adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of a CMSA is made effective.

(h) Payment of, or an increase in, an adjusted rate of pay is not an equivalent increase in pay within the meaning of section 5335 of title 5, United States Code.

(i) An adjusted rate of pay is included in an employee's "total remuneration," as defined in § 551.511(b) of this chapter, and "straight time rate of pay," as defined in § 551.512(b) of this chapter, for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Termination of an adjusted rate of pay under paragraph (f) of this section is not an adverse action for the purpose of subpart D of part 752 of this chapter.

§ 531.104 Reports.

The Office of Personnel Management may require agencies to report pertinent information concerning the administration of payments under this subpart.

§ 531.105 Effect of interim geographic adjustments on retention payments under FBI demonstration project.

As required by section 406 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), a retention payment payable to an employee of the New York Field Division of the Federal Bureau of Investigation under section 601(a)(2) of Public Law 100-453, as amended, shall be reduced by the amount of any interim geographic adjustment payable to that employee under this subpart. For the purpose of applying this section, the amount of the interim geographic adjustment shall be determined by subtracting the employee's scheduled annual rate of pay from his or her adjusted annual rate of pay.

[FR Doc. 91-542 Filed 1-8-91; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 53

[DA 90-28]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Revision of User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is increasing the fees charged for services provided under the dairy grading program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. This action increases the hourly rate to $36.00 per hour for continuous resident services and $41.00 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. These fees represent a $2.00 per hour increase for resident services and a $3.00 per hour increase for nonresident services. The fee for nonresident services between the hours of 6 p.m. and 6 a.m. is $45.00 per hour, which represents an increase of $3.20 per hour.

The purpose of the fee increases is to cover the increase in Federal salaries that becomes effective on January 13, 1991; and to cover severance, unemployment, and relocation costs associated with recent restructuring of the program.

EFFECTIVE DATE: January 13, 1991.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, Marketing Specialist, USDA/AMS/Dairy Division, Dairy Grading Section, Room 2750 South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 382-9381.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that it will not have a significant economic impact on a substantial number of small entities. The changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that overall this rule will yield an additional $242,000 during 1991. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover as nearly as practicable the cost of maintaining the program.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when program costs exceed revenues. Program restructuring has resulted in revenues in closer balance to program obligations. Federal salaries will increase by 4.1 percent on January 13, 1991. Also, nonsalary costs are projected to rise by 5 percent or more during 1991. In addition, the increased fees are needed to cover relocation, severance and unemployment costs associated with recent dairy grading program restructuring. The current fees which became effective on January 28, 1990, will not cover these increased costs.

The operating costs for FY 1991 are projected to exceed revenues by approximately $242,000. An increase of $2.00 per hour for the resident program and a $3.00 per hour increase for the nonresident program should cover the increased costs. We are increasing the resident fee from $34.00 to $36.00 per hour, and the nonresident fees from $38.00 to $41.00 per hour between the hours of 6 a.m. and 6 p.m. and from $41.30 to $45.00 per hour between 6 p.m. and 6 a.m.

Program Changes Adopted in the Final Rule

This document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from $38.00 to $41.00 for services performed between 6 a.m. and 6 p.m. and from $41.80 to $45.00 for services performed between 6 p.m. and 6 a.m.

The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Increases the hourly fee for continuous resident services from $34.00 to $36.00.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round, resident basis.

Response to Industry Comments

A rulemaking document proposing the changes discussed above was published in the **Federal Register** on October 22, 1990 (55 FR 42575). A 30-day comment period was provided so that interested persons could submit comments on the proposed changes. The Agency received one comment from a dairy farmer cooperative on the proposed changes. The commentor expressed concern that the proposed increases are excessive, are unjustified, are not consistent with the need to control costs at all levels of government, and are not consistent with the attitude and policies of the

Department in administering other programs which apply to the dairy industry.

The Agricultural Marketing Service can appreciate the commentor's concern about keeping program costs at a reasonable level. Every effort has been made to do this. However, recognition must be given to the fact that program costs are increasing. It is the intent of the Agricultural Marketing Act of 1946 that fees collected for grading and inspection services, in addition to being reasonable, cover the costs of the services as nearly as may be practicable. Accordingly, the fee increase as proposed, is adopted in this final rule.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the **Federal Register**. A revenue shortfall warrants putting the higher rates into effect on January 13, 1991. The increase in fees is essential for effective management and operation of the program, and to satisfy the intent of the Agricultural Marketing Act of 1946. A proposed rule setting forth the fee increases adopted herein was published in the **Federal Register** on October 22, 1990. Therefore, the provisions of this final rule are known to interested parties.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products.

For the reasons set forth in the preamble, 7 CFR part 58 is amended by revising subpart A to read as follows:

PART 58—[AMENDED]

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in § 58.43 and § § 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $41.00 for service performed between 6 a.m. and 6 p.m., and $45.00 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector and grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in § § 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $36.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Signed at Washington, DC, on January 3, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91–433 Filed 1–8–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California; Termination of Weekly Levels of Volume Regulation for the 1990–91 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule terminates Navel Orange Regulation 720 (55 FR 50157), which established weekly levels of volume regulation for California-Arizona navel oranges for the 1990–91 season. This action is needed because of extreme cold temperatures that have prevailed throughout the production area during the last several days, causing severe freeze damage to the navel orange crop. This action was unanimously recommended by the Navel Orange Administrative Committee (Committee), which locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

EFFECTIVE DATE: January 9, 1991.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION: This action is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,070 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel oranges may be classified as small entities.

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis was expected to contribute to the Act's objectives of orderly marketing and improving producers' returns.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1990–91 season was published in the September 6, 1990, issue of the **Federal Register** (55 FR 36653). That rule provided interested persons the opportunity to comment until October 9, 1990, on the need for regulation during the 1990–91 season, the proposed shipping schedule, and other factors relevant to the implementation of such regulations. A final rule concerning this action was published in the **Federal Register** on December 5, 1990, (55 FR 50157), implementing the shipping schedule, as revised, for the season.

On the night of December 19, sub-freezing temperatures prevailed throughout the production area and continued for several days. On the nights of December 20 and 21, low temperatures of 17 and 18 degrees were reported over much of the San Joaquin Valley of California. Central California appears to have experienced its worst freeze since 1937. The weather pattern of dry air along with low sugar content in the oranges in the San Joaquin Valley seem to ensure very serious or total damage to the current crop of navel oranges.

The Committee met publicly on December 26, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and unanimously recommended suspending volume regulation for California-Arizona navel oranges for the remainder of the 1990–91 season. The Committee reported that this action was necessary because of extreme cold temperatures that have prevailed throughout the production area during the last several days, causing severe damage to the navel orange crop.

The Department reviewed the Committee's recommendation and concluded that because of the anticipated levels of freeze damage to the navel orange crop, suspension of volume regulation for the remainder of the 1990–91 season is appropriate. Thus, this final rule terminates Navel Orange Regulation 720.

Removing limitations on the quantity of navel oranges that may be shipped for the remainder of the 1990–91 season would be consistent with the provisions of the marketing order and in the interest of producers and consumers.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the continued implementation of Navel Orange Regulation 720, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Moreover, pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice on this action, engage in further public procedure with respect to this amendment and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because this action relieves volume restrictions on handlers for the remainder of the 1990–91 season.

In addition, information needed for the formulation of the basis for this action was not available until December 26, 1990. Further, interested persons were given an opportunity to submit information and views on this action at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this action effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 907.1020 [Removed]

2. Section 907.1020 (Navel Orange Regulation 720) is removed.

Dated: January 3, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–432 Filed 1–8–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 907

[Navel Orange Reg. 720, Amdt. 4]

Navel Oranges Grown in Arizona and Designated Part of California; Weekly Levels of Volume Regulation for the 1990–91 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Navel Orange Regulation 720 (55 FR 50157) by suspending volume regulation for California-Arizona navel oranges during the period from December 21 through December 27, 1990. This action is needed because of extreme cold temperatures that have prevailed throughout the production area during that week, causing severe freeze damage to the navel orange crop. This action was recommended by the Navel Orange Administrative Committee (Committee) which locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

EFFECTIVE DATES: Regulation 720, Amendment 4, (7 CFR part 907) is effective for the period from December 21 through December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION: This amendment is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,070 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA)

(13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel oranges may be classified as small entities.

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis is expected to contribute to the Act's objectives of orderly marketing and improving producers' returns.

The Committee conducted a telephone vote on December 24, 1990, to consider the current and prospective conditions of supply and demand and unanimously recommended amending Navel Orange Regulation 720 (55 FR 50157) by suspending volume regulation for the week ending on December 27, 1990. The Committee reported that this action was necessary because of extreme cold temperatures that have prevailed throughout the production area during that week, causing severe damage to the navel orange crop.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy and as previously established in Navel Orange Regulation 720. The Department concluded that because of the anticipated levels of freeze damage to the navel orange crop, suspension of volume regulation for the week ending on December 27, 1990, is appropriate.

During the week ending on December 13, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 2,252,000 cartons compared with 2,290,000 cartons shipped during the week ending on December 14, 1989. Export shipments totaled 220,000 cartons compared with 195,000 cartons shipped during the week ending on December 14, 1989. Processing and other uses accounted for 489,000 cartons compared with 486,000 cartons shipped during the week ending on December 14, 1989.

Fresh domestic shipments to date this season total 9,524,000 cartons compared with 11,007,000 cartons shipped by this time last season. Export shipments total 1,036,000 cartons compared with 1,393,000 cartons shipped by this time last season. Processing and other use shipments total 2,014,000 cartons compared with 2,670,000 cartons shipped by this time last season.

For the week ending on December 13, 1990, regulated shipments of navel oranges to fresh domestic markets were 2,185,000 cartons on an adjusted allotment of 1,981,000 cartons which resulted in net overshipments of 204,000 cartons. Regulated shipments for the period from December 14, through December 20, 1990, are estimated at 1,945,000 cartons on an adjusted allotment of 1,715,000 cartons. Thus, overshipments of 230,000 cartons could be carried forward into the week ending on December 27, 1990.

The average f.o.b. shipping point price for the week ending on December 13, 1990, was $8.58 per carton based on a reported sales volume of 1,454,000 cartons compared with last week's average of $8.73 per carton on a reported sales volume of 1,369,000 cartons. The season average f.o.b. shipping point price to date is $9.24 per carton. The average f.o.b. shipping point prices for the week ending on December 14, 1989, was $7.69 per carton; the season average f.o.b. shipping point price at this time last year was $8.10.

The Department's Market News Service reported that, as of December 21, demand for California-Arizona navel oranges was good and the market was "about steady" for all grades and sizes. Sales for later delivery were being booked on the basis of price at the time of shipment due to concerns over anticipated sub freezing temperatures for the next several nights.

Removing limitations on the quantity of navel oranges that may be shipped during the period from December 21 through December 27, 1990, would be consistent with the provisions of the marketing order and in the interest of producers and consumers.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1990–91 season was published in the September 6, 1990, issue of the **Federal Register** (55 FR 36653). That rule provided interested persons the opportunity to comment until October 9, 1990, on the need for regulation during the 1990–91 season, the proposed shipping schedule, and other factors relevant to the implementation of such regulations. A final rule concerning this action was published in the **Federal Register** on December 5, 1990, (55 FR 50157), implementing the shipping schedule, as revised, for the season. Amendments may be warranted to that final rule throughout the season based on analysis of the prevailing marketing conditions and available data.

Accordingly, this final rule amends Navel Orange Regulation 720 (55 FR 50157) by suspending volume regulation for California-Arizona navel oranges during the period from December 21 through December 27, 1990.

Moreover, pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice on this action, engage in further public procedure with respect to this amendment and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, information needed for the formulation of the basis for this action was not available under December 24, 1990, and this action needs to be effective for the regulatory week which began on December 21, 1990. Handlers have been apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. Section 907.1020 is amended by republishing the introductory text and revising paragraph (c) to read as follows:

§ 907.1020 Navel Orange Regulation 720, Amendment 4.

The shipping schedule below establishes the quantities of navel oranges grown in California and Arizona, by district, which may be handled during the specified weeks as follows:

Week ending	District 1	District 2	District 3	District 4	Total
	cartons/% (000)	cartons/% (000)	cartons/% (000)	cartons/% (000)	cartons (000)
*	*	*	*	*	*
(c) 12-27-90	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited.
*	*	*	*	*	*

Dated: January 3, 1991.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 91-434 Filed 1-8-91; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Marketing Sevice

7 CFR Part 987

[Docket No. FV-91-221]

Temporary Relaxation of Size Requirements for California Deglet Noor Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule temporarily relaxes the size requirements prescribed for Deglet Noor dates for use domestically and in Canada as whole and pitted dates. This action increases the current tolerance for individual Deglet Noor dates weighing less than 6.5 grams (the prescribed minimum) from 10 percent to 15 percent. The relaxation is necessary because Deglet Noor dates from the 1990 crop are significantly smaller in size and weight than normal. The decrease in size/weight is due to a mite infestation this spring which stressed the date palms, resulting in a substantial quantity of Deglet Noor dates failing to meet the current size requirements. The relaxation was unanimously recommended by the California Date Administrative Committee (committee) to make a larger quantity of the 1990 crop available for use as whole or pitted dates domestically and in Canada.

DATES: This interim final rule becomes effective January 3, 1991 and continues until October 31, 1991.

Comments which are received by February 8, 1991 will be considered prior to issuance of a final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 987 [7 CFR part 987], as amended, regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601-674], hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportinately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California dates regulated under the date marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

This interim final rule modifies §§ 987.112a (b)(2) and (c)(2) of Subpart—Administrative Rules (7 CFR 987.101—987.172) to relax the current size requirements for Deglet Noor dates to be used as whole or pitted dates domestically or in Canada. The modification is issued pursuant to § 987.39 of the order.

Section 987.112a prescribes grade, size, and container requirements for each outlet category of dates. More specifically, paragraph (b)(2) of that section prescribes such requirements for "DAC" dates, including an individual size requirement for Deglet Noor dates of 6.5 grams with a tolerance of 10 percent per lot for dates weighing less. DAC dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and applicable identification requirements for handling in the United States and Canada. Paragraph (c)(2) of § 987.112a includes the same requirements for "dates for further processing" (FP dates). FP dates are marketable whole dates acquired by one handler from another handler that are certified as meeting the same grade and size requirements for DAC dates, with the exception of moisture requirements, and applicable identification requirements. FP dates are sold to users desiring to utilize their own processing and packaging facilities.

Due to a mite infestation this spring which stressed the date palms, individual fruit from the current crop is significantly smaller in size and weight than normal. A large portion of early deliveries of Deglet Noor dates have failed to meet the current requirements because more than 10 percent of the individual dates in the lots weighed less than 6.5 grams. The size/weight of the

dates is not expected to improve as the harvest progresses. Therefore, at its October 24, 1990, meeting, the committee unanimously recommended that the size requirements for DAC and FP dates be relaxed through October 31, 1991, by increasing the tolerance for dates weighing less than 6.5 grams from 10 to 15 percent.

This action is intended to permit a greater quantity of Deglet Noor dates which are of good quality but weigh less than 6.5 grams to meet the requirements for DAC and FP dates. The additional five percent tolerance for undersize dates will allow handlers to use approximately three smaller dates per pound so that more of the crop can be utilized as whole or pitted dates domestically and in Canada. The committee estimates marketable 1990 Deglet Noor at approximately 34 million pounds. Making more Deglet Noor dates of satisfactory quality available for use as whole and pitted dates domestically and in Canada will provide for maximum utilization of the 1990 crop, thereby benefiting producers, handlers and consumers.

Based on the available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and unanimous recommendation submitted by the committee, and other available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Compliance with this action will require no special preparation by handlers; (2) it is important that the relaxed size requirements apply to as much of the 1990 crop as possible; (3) this action relieves restrictions on handlers and; (4) the rule provides a 30-day comment period, and any comments received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 987.112a is amended by revising the second sentence of paragraph (b)(2) and revising the second sentence of paragraph (c)(2) to read as follows:

Note: This section will appear in the annual *Code of Federal Regulations.*

§ 987.112a Grade, size and container requirements for each outlet category.

* * * * *

(b) * * *

(2) * * * Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weight at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning January 3, 1991 and ending October 31, 1991, the 10 percent tolerance shall be increased to 15 percent. * * *

* * * * *

(c) * * *

(2) * * * Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning January 3, 1991 and ending October 31, 1991, the 10 percent tolerance shall be increased to 15 percent. * * *

* * * * *

Dated: January 3, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–435 Filed 1–8–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 564

[No. 91-11]

Excerpts From the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions; Correction

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim common rule; correction.

SUMMARY: The Office of Thrift Supervision ("OTS") is making a correction to its portion of the "**ADDRESSES**" paragraph of the interim common rule published on December 31, 1990, Docket No. 90–4000, 55 FR 53610 (December 31, 1990).

The address at which comments relating to the OTS's portion of the interim common rule are available for inspection was misstated and is printed correctly below, under the "**ADDRESSES**" caption.

ADDRESSES: Comments submitted to the Office of Thrift Supervision relating to Docket No. 90–4000 are available for public inspection at: 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Diana Garmus, Executive Assistant, Office of the Director, (202/906–6273), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; Glen M. Sanders, Chief Appraiser and Loan Underwriter, Office of Thrift Supervision, District 11, (714/228–3672), Four Centerpointe Drive, suite 300, La Palma, CA 90623; Kathryn Gearheard, MAI, District Appraiser, (503/242–3851), Office of Thrift Supervision, District 12, 610 SW. Alder, suite 805, Portland, OR 97201; Gregory A. Hoefer, MAI–SRPA, Chief District Appraiser, (206/340–2401), Office of Thrift Supervision, District 12, 1501 Fourth Avenue, 19th floor, Seattle, WA 98101; Ellen J. Sazzman, Attorney, (202/906–7133), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 4, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91–471 Filed 1–8–91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-15-AD; Amdt 39-6842]

Airworthiness Directives; Aerospace Technologies of Australia Nomad Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Aerospace Technologies of Australia Nomad Models N22B, N22S, and N24A airplanes. This action

requires the replacement of stainless steel electrical studs with copper studs and brass nuts, and the installation of larger terminal lugs for the generator cables. Several instances have occurred where electrical loads on the engine-driven generators were increased, which resulted in severe damage to the terminal lugs connected to the generator cables at the wing leading edge engine firewall. The actions required by this AD are intended to prevent overheating and fire by providing increased electrical conductivity.

EFFECTIVE DATE: February 7, 1991.

ADDRESSES: Nomad Alert Service Bulletin ANMD-24-5, Revision 1, dated August 4, 1989, that is applicable to this AD may be obtained from Aerospace Technologies of Australia Pty, Ltd., 226 Lorimer Street, Port Melbourne, Victoria 3207, Australia; Telephone 9-011-61-62-68-4142 or may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul S. Wells, Aerospace Engineer, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425; Telephone (213) 988-5354.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to all Aerospace Technologies of Australia Nomad Models N22B, N22S, and N24A airplanes was published in the Federal Register on May 30, 1990 (55 FR 21883). The proposed AD would require the replacement of stainless steel electrical studs with copper studs and brass nuts, and the installation of larger terminal lugs for the generator cables in accordance with the instructions in part 3 of Nomad Alert Service Bulletin ANMD-24-5, Revision 1, dated August 4, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

It is estimated that 25 airplanes in the U.S. registry are affected by this AD, that it will take approximately ¼ of an hour per airplane to accomplish the required actions at $40 an hour, and that parts cost approximately $65 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,875. The FAA estimated in the NPRM that the total cost impact would be $8,120 for U.S. operators. The FAA now has a better understanding of how much compliance with this AD will cost and it is reflected in a much lower cost.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 AD:

Aerospace Technologies of Australia Pty Ltd.: Amendment 39-6842; Docket No. 90-CE-15-AD.

Applicability: Nomad Models N22B, N22S, and N24A airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent overheating of the terminal lugs connected to the generator cables at the wing leading edge engine firewall, accomplish the following:

(a) Modify the airplane electrical system using Nomad Modification No. N724, in accordance with the instructions in Part 3 of Nomad Alert Service Bulletin ANMD-24-5, Revision 1, dated August 4, 1989.

(b) 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.

(c) An alternate method of compliance or adjustment to the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806-2425. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Aerospace Technologies of Australia Pty, Ltd., 226 Lorimer Street, Port Melbourne, Victoria 3207, Australia; Telephone 9-011-61-62-68-4142; or may examine this document at the FAA Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. This amendment becomes effective on February 7, 1991.

Issued in Kansas City, Missouri, on December 20, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-413 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-69-AD; Amdt. 39-6837]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aircraft) SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting airworthiness directive (AD) 90-24-03, which was previously made effective as to all known U.S. owners and operators of Fairchild SA26, SA226, and SA227 series airplanes by individual letters. The AD requires a one-time inspection

of the rudder trim tab rod assemblies for improper installation, corrosion, and freedom of movement. There have been reports of failures of the rudder trim tab rod assemblies on the affected airplanes. The intended effect of this action is to prevent failure of the rudder trim tab rod assemblies that may result in aerodynamic vibration, structural deformation, and possible loss of control of the airplane.

DATES: Effective January 25, 1991, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90-24-03, issued November 20, 1990, which contained this amendment.

ADDRESSES: Information that is applicable to this AD may be obtained from the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Docket No. 90-CE-69-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Bob D. May, Aerospace Engineer, Airplane Certification Office, Fort Worth, Texas 76193-0150; Telephone (817) 624-5156.

SUPPLEMENTARY INFORMATION: On November 20, 1990, priority letter AD 90-24-03 was issued and made effective immediately as to all known U.S. owners and operators of Fairchild SA26, SA226, and SA227 series airplanes. The AD required a one-time inspection of the rudder trim tab rod assemblies for corrosion and improper assembly and replacement of those assemblies that are found defective. The AD was prompted by three reports of failures of these rudder trim tab rod assemblies (part numbers (P/N) 27-42025-001 through 27-42025-009) that have occurred within the last year. Two of the failures were caused by corrosion and the other by improper installation. Two of the failures occurred while the airplanes were in flight, resulting in severe vibration of the vertical tail.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued November 20, 1990, to all known U.S. owners and operators of Fairchild SA26, SA226, and SA227 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

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 Executive 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). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the 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 AD:

90-24-03 Fairchild Aircraft (Swearingen Aircraft): Amendment 39-6837. Docket No. 90-CE-69-AD.

Applicability: SA26, SA226, and SA227 Series airplanes (all serial numbers), certificated in any catetory. Compliance: Required within the next 15 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent aerodynamic vibration, structural deformation, and possible loss of control of the airplane, accomplish the following:

(a) Visually inspect the rudder trim tab link assemblies (Part Numbers 27-42025-001 through 27-42025-009, as installed) as follows:

(1) Remove the fairing strip between the vertical fin and rudder.

(2) Check each connecting rod end for freedom of movement and corrosion around the bearing as follows:

(i) Move the rudder trim system from full left to full right deflection and check for any indications of corrosion or binding in the rod end fittings.

(ii) If necessary, remove the bolt connecting the actuator and each rod and check the bearings for freedom of movement.

(iii) Check the bolts connecting the rudder actuator to each rod to insure each bolt is oriented vertically.

(3) If either rod end is corroded, prior to further flight replace the affected rod end with a serviceable part.

(4) If the rudder trim mechanism is incorrectly installed, or if either rod end bearing is binding, prior to further flight replace the affected connecting rod and rod end assembly with serviceable parts.

(5) If corrosion or binding is not found, reinstall the fairing strip and return the airplane to service.

Note 1: Fairchild Aircraft Service Notes 26-SN-061, 226-SN-162, and 227-SN-074 pertain to the subject to this AD.

Note 2: Although not required by this AD, the inspections specified in this AD should be included in the regular aircraft maintenance program.

(b) Airplanes may be flown in accordance to FAR 21.197 and 21.199 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, Southwest Region, FAA, Fort Worth, Texas 76193-0150; Telephone (817) 624-5150.

Note 3: The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send to the Manager, Airplane Certification Office, Fort Worth, Texas 76193-0150.

This amendment becomes effective on January 25, 1991, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90-24-03, issued November 20, 1990, which contained this amendment.

Issued in Kansas City, Missouri, on December 21, 1990.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-414 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-68-AD; Amdt. 39-6825]

Airworthiness Directives; Cessna Models 411 and 411A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Cessna Models 411 and 411A airplanes. This action requires pen and ink changes to the takeoff airspeeds and takeoff information listed in the Airplane Flight Manual (AFM) or Owner's Manual (OM). The FAA has determined that the listed takeoff airspeed margins required to maintain control in the event of an engine failure are inadequate. The actions specified in this AD are intended to provide the correct takeoff information to the pilot and reduce the possibility of loss of control of the airplane that could result from an incorrect airspeed.

EFFECTIVE DATE: January 22, 1991.

ADDRESSES: Cessna booklet "Pilot Safety and Warning Supplements", dated October 2, 1985, that provides information related to the subject matter of this AD may be obtained from the Cessna Aircraft Company, P. O. Box 7704, Wichita, Kansas 67277. This booklet may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos L. Blacklock, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION: The FAA has been informed of 15 occurrences, involving Cessna Models 411 and 411A airplanes, wherein engine failure or malfunction has occurred and the pilot was unable to maintain flying speed and/or directional control. In examining these occurrences in conjunction with the manufacturer (Cessna), the FAA has determined that the recommended takeoff airspeeds listed in the AFM or OM are close to or below the single engine minimum control speed. The low takeoff speed can result in an inadequate airspeed margin should a pilot encounter an engine failure or malfunction. Cessna has published a booklet entitled "Pilot Safety and Warning Supplements", dated October 2, 1985, that provides information related to the subject matter of this AD, specifically the subjects "Single Engine Flight Information" and "Aircraft Loading". Based upon the results of the examination and recommendations and information received from Cessna, the FAA has determined that the listed takeoff airspeeds and takeoff distances must be changed.

Since the unsafe condition discussed above is likely to exist or develop in other airplanes of the same type design, the FAA has determined that immediate AD action must be taken requiring changes in the listed takeoff airspeeds and distances for Cessna Models 411 and 411A airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has also determined that there is wide variance in the usage rates for these airplanes. Therefore, to avoid inadvertent grounding of the affected airplanes but assure that the unsafe condition is expeditiously corrected on all airplanes, a compliance time based on calendar days has been established in lieu of a compliance time based on hours time-in-service.

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 Executive 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). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the 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 AD:

Cessna: Amendment 39-6825. Docket No. 90-CE-68-AD.

Applicability: Models 411 and 411A airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished.

To ensure that the correct takeoff performance information is available to the pilot, accomplish the following:

(a) Using pen and ink, modify the Airplane Flight Manual and Owner's Manual as follows:

Note 1: It is recommended that any locally developed pilot's checklists be modified in accordance with the following paragraphs.

(1) Change the liftoff (rotation) airspeed to 108 miles per hour indicated airspeed (MPH IAS) for all weights.

(2) Change the speed used upon reaching a height of 50 feet above the takeoff surface to 114 MPH IAS for all weights.

(3) Increase all listed takeoff distances by 500 feet to account for the higher takeoff airspeeds.

(4) If the Owner's Manual contains charts identified as "Normal Takeoff Distances", "Single Engine Takeoff Performance" or "Accelerate Stop Distance", mark each chart with large letters stating "DO NOT USE".

Note 2: Cessna has published a booklet entitled "Pilot Safety and Warning Supplements", dated October 2, 1985, that provides material related to the subject matter of this AD, specifically the subjects "Single Engine Flight Information" and "Aircraft Loading".

(b) FAR 43.3 notwithstanding, the actions required by this AD may be performed by a pilot and must be recorded in accordance with FAR Section 43.9.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400. The request should be forwarded through an appropriate

FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

This amendment becomes effective on January 22, 1991.

Issued in Kansas City, Missouri, on December 19, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-416 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to approve a proposed amendment to the Oklahoma permanent regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to coal exploration permit applications for operations extracting greater than 250 tons of coal, and the definition of "owned or controlled and owns or controls." In the amendment, Oklahoma adds specificity to its program that is not inconsistent with the Federal standards.

EFFECTIVE DATE: January 9, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program was published in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions on program amendments are identified at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

On March 27 and May 15, 1990, OSM published notices in the **Federal Register** (55 FR 11169 ad 55 FR 20138; Administrative Record Nos. OK-931 and OK-932) announcing the Director of OSM's approval of the May 18, 1988 (as revised and clarified on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989; Administrative Record Nos. OK-847, OK-866, OK-888, OK-890, and OK-903), State-proposed amendment to the rules of the Oklahoma program. The Director approved the amendment on the condition that Oklahoma adopt the rules in a form identical to those submitted to and reviewed by OSM and the public.

On June 21, 1990 (Administrative Record No. OK-933), Oklahoma submitted to OSM copies of the rules that it had promulgated (effective June 22, 1990) subsequent to the Director's approvals. After reviewing the promulgated rules, OSM identified two provisions of the promulgated Oklahoma rules that differed from those approved by the Director. The provisions were (1) at subsection 772.12(b)(12), the permit application map requirements for coal exploration operations extracting greater than 250 tons of coal, and (2) at subsection 773.5(a)(2), the definition of "owned or controlled and owns or controls."

On September 17, 1990, OSM published a notice in the **Federal Register** (55 FR 38084) soliciting public comments on these promulgated rules to determine whether they were no less effective than the Federal regulations and no less stringent than SMCRA. The public comment period ended October 17, 1990.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations.

1. Subsection 772.12(b)(12), Permit Application Map Requirements for Coal Exploration Operation Extracting Greater Than 250 Tons of Coal

On March 27, 1990 (55 FR 11169, 11170, finding No. 1), the Director approved Oklahoma's permit application maps requirements at subsection 772.12(b)(12), for coal exploration operations extracting greater than 250 tons of coal. Subsection 772.12(b)(12) required, in part, "[a] map or maps at a scale of *1:24,000*, or larger showing the areas of land to be disturbed by the proposed exploration and reclamation" (emphasis added). However, on June 22, 1990, Oklahoma promulgated at subsection 772.12(b)(12) the requirement for "[a] map or maps at a scale of *1:200*, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation" (emphasis added). The Federal regulation at 30 CFR 772.12(b)(12) requires "[a] map or maps at a scale of *1:24,000*, or larger showing the areas of land to be disturbed by the proposed exploration and reclamation" (emphasis added). Because maps at a scale of 1:200 provide more detail, clarity, and accuracy than maps at a scale of 1:24,000, the Director finds that Oklahoma's promulgated subsection 772.12(b)(12) is no less effective than the Federal regulation at 30 CFR 772.12(b)(12). Therefore, the Director is approving the promulgated rule.

2. Subsection 773.5(a)(2), Definition of "Owned or Controlled and Owns or Controls"

On March 27, 1990 (55 FR 11169, 11170, finding No. 1), the Director approved Oklahoma's definition of "owned or controlled and owns or controls" at subsection 773.5. Oklahoma's definition of "owned or controlled and owns or controls" at subsection 773.5(a), stated "[o]wned or controlled and owns or controls mean any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition—(a)(1) (b)eing a permittee of a surface coal mining operation; (2) (b)ased on instrument of ownership or voting securities, owning of record in excess of *53%* of an entity; or * * *" (emphasis added). However, on June 22, 1990, Oklahoma promulgated at subsection 773.5(a)(2) the words, "[b]ased on instrument of ownership or voting securities, owning of record in excess of *50%* of an entity" (emphasis added). The Federal regulation at 30 CFR 773.5(a)(2) defines "owned or controlled and owns or controls" as, in part, "[b]ased on instrument of ownership or voting securities, owning of record in excess of *50%* of an entity" (emphasis added). Because Oklahoma's promulgated version of subsection 773.5(a)(2) is identical to the Federal regulation, the Director finds that promulgated subsection 733.5(a)(2) is no less effective than the corresponding Federal regulation at 30 CFR 773.5(a)(2). Therefore, he is approving the promulgated rule.

IV. Public and Agency Comments

Public Comments

The Director solicited public comments and provided opportunity for

a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from various Federal agencies with an actual or potential interest in the Oklahoma program. No comments were received.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

None of the changes that Oklahoma proposed to its rules pertain to air or water quality standards, and therefore EPA's concurrence on them was not necessary. However, by letter dated September 7, 1990 (Administrative Record No. OK-935), OSM solicited comments from EPA. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment as submitted by Oklahoma on June 21, 1990. However, the Director reserves the right to require further revisions to those approved rules in the future as a result of Federal regulatory revisions, court decisions, and OSM's continuing oversight of the Oklahoma program.

The Director is, as explained in findings Nos. 1 and 2, approving Oklahoma's proposed revisions (1) at subsection 772.12(b)(12), the permit application map requirements for coal exploration operations extracting greater than 250 tons of coal, and (2) at subsection 773.5(a)(2), the definition of "owned or controlled and owns or controls."

To implement this decision, the Director is amending the Federal regulations at 30 CFR 936 that codify all decisions concerning the Oklahoma program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 2, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended by adding a new paragraph (l) to read as follows:

§ 936.15 Approval of amendments to State regulatory program.

* * * * *

(1) The following amendment, as submitted on June 21, 1990, is approved effective January 9, 1991: Revisions to the Oklahoma permanent regulatory program rules pertaining to:

(1) Subsection 772.12(b)(12), the permit application map requirements for coal exploration operations extracting greater than 250 tons of coal, and

(2) subsection 773.5(a)(2), the definition of "owned or controlled and owns or controls."

[FR Doc. 91-450 Filed 1-8-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 91-001]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between October 1, 1990 and December 31, 1990 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267-1477 between the hours of 8 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely

publications of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period October 1, 1990 through December 31, 1990 unless otherwise indicated.

Docket no.	Location	Type	Effective date
CGD1-90-152	Quonset Point, RI	Security	20 Aug 90.
CGD1-90-154	Oak Bluff Vineyard, MA	Safety	24 Aug 90.
CGD1-90-155	Narragansett Bay, RI	Security	23 Aug 90.
CGD1-90-166	Lower East Pasage	Safety	15 Sep 90.
CGD1-90-170	Liberty Island Anchorage	Safety	14 Oct 90.
CGD1-90-171	East River, New York	Safety	21 Oct 90.
CGD1-90-174	New York Harbor, NY	Security	20 Sep 90.
CGD1-90-175	New York Harbor, NY	Security	01 Oct 90.
CGD1-90-176	Shooters Island Reach	Safety	27 Sep 90.
CGD1-90-177	Gold Cup Race	Temporary	06 Oct 90.
CGD1-90-178	Ellis Island, NY	Safety	21 Sep 90.
CGD1-90-179	New York Harbor	Security	30 Sep 90.
CGD1-90-180	Bayonne, New Jersey	Security	04 Oct 90.
CGD1-90-182	English Kills, NY	Safety	10 Oct 90.
CGD1-90-186	Bayonne, New Jersey	Security	23 Oct 90.
CGD1-90-187	Kill Van Kull, NY and NJ	Safety	29 Oct 90.
CGD1-90-188	America' Cup Firework	Safety	17 Nov 90.
CGD1-90-193	Upper Bay, NY Harbor	Security	17 Nov 90.
CGD1-90-195	NY and NJ, Arthur Kill	Safety	24 Nov 90.
CGD7-90-84	City of Ft. Lauderdale	Special	03 Oct 90.
CGD7-90-89	1990 Key West APBA Cup	Special	10 Nov 90.
CGD7-90-90	Marathon Offshore	Special	14 Oct 90.
CGD7-90-100	City of Ft. Lauderdale	Special	27 Oct 90.
CGD7-90-105	1990 Offshore Pro. Tour	Special	28 Nov 90.
CGD7-90-106	Lake Monroe, Sanford, Fl.	Special	18 Nov 90.
CGD7-90-108	City of Charleston, SC	Special	01 Dec 90.
CGD7-90-113	City of West Palm Beach	Special	07 Dec 90.
CGD7-90-114	Cities of Ft. Lauderdale and Pompano Beach, FL.	Special	15 Dec 90.
CGD7-90-115	City of Pompano Beach, FL	Special	10 Dec 90.
CGD7-90-116	City of Boca Raton, FL	Special	08 Dec 90.
CGD7-90-117	City of Miami, FL	Special	08 Dec 90.
CGD7-90-118	City of Vero Beach, Fl	Special	08 Dec 90.
CGD7-90-119	City of Stuart, Fl	Special	08 Dec 90.
CGD7-90-120	City of Boynton Beach	Special	15 Dec 90.
CGD7-90-121	City of Coral Gables, Fl	Special	15 Dec 90.
CGD7-90-128	Key Biscayne, Fl	Special	14 Dec 90.
COTP Boston 90-163	Boston Harbor, MA	Safety	06 Oct 90.
COTP Boston 90-203	Gloucester Harbor	Safety	15 Dec 90.
COTP Cleveland 90-03	Cuyahoga River	Security	27 Sep 90.
COTP Detroit 90-01	Saginaw River	Safety	19 Sep 90.
COTP Honolulu 90-02	Honolulu, Hawaii	Safety	01 Sep 90.
COTP Huntington 90-12	Ohio River	Safety	17 Oct 90.
COTP Huntington 90-13	Ohio River	Safety	27 Oct 90.
COTP Huntington 90-14	Ohio River	Safety	10 Nov 90.
COTP Jack'ville 90-98	St. Johns River	Safety	12 Oct 90.
COTP Jack'ville 90-101	Patrick AFB	Safety	03 Nov 90.
COTP Jack'ville 90-112	St. Johns River	Safety	23 Nov 90.
COTP Jack'ville 90-125	St. Johns River	Safety	01 Dec 90.
COTP LA/LB 90-14	Ports of Long Beach	Safety	30 Oct 90.
COTP LA/LB 90-19	Ports of LA/LB	Security	19 Dec 90.
COTP Memphis 90-10	Wolf River Chute	Safety	31 Aug 90.
COTP Miami 90-127	Miami, Florida	Safety	18 Oct 90.
COTP Paducah 90-14	Cumberland River	Safety	06 Oct 90.
COTP Paducah 90-15	Tennessee River	Safety	15 Oct 90.
COTP Portland 90-09	Columbia River	Safety	10 Oct 90.
COTP Portland 90-11	Columbia River Entrance	Safety	17 Oct 90.
COTP Portland 90-12	Columbia River Entrance	Safety	24 Oct 90.
COTP Prince Wm 90-01	Prince William Sound and Port Valdez	Safety	03 Oct 90.
COTP Prince Wm 90-02	Prince William Sound and Port Valdez	Safety	03 Oct 90.
COTP Puget Sound 90-01	Barges Seattle and Sitka	Safety	06 Sep 90.
COTP Puget Sound 90-02	Puget Sound	Security	16 Sep 90.
COTP Puget Sound 90-03	Puget Sound	Safety	16 Sep 90.

Docket no.	Location	Type	Effective date
COTP Puget Sound 90-04	Puget Sound	Security	21 Sep 90.
COTP Puget Sound 90-05	Puget Sound	Safety	21 Sep 90.
COTP San Diego 90-05	San Diego, CA	Safety	05 Oct 90.
COTP San Diego 90-07	San Diego, CA	Safety	06 Oct 90.
COTP SF Bay 90-14	San Francisco Bay	Safety	04 Oct 90.
COTP SF Bay 90-16	San Francisco Bay	Safety	16 Dec 90.
COTP SF Bay 90-17	San Francisco Bay	Security	16 Dec 90.
COTP Tampa 90-99	Vinoy Basin	Security	10 Oct 90.
COTP Wilmington 90-007	Cape Fear River	Safety	06 Oct 90.

Dated: January 1, 1991.

Bruce Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 91-419 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 224

Postal Service Implementation of the Law Governing Selection of Court for Multiple Appeals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service amends its rules to designate the General Counsel as the officer who will receive petitions for court review of agency orders when multiple appellants seek court of appeals review of the same order in more than one circuit. This change is being made in order to comply with Public Law 100-236 (28 U.S.C. 2112(a)), which was enacted to provide a mechanism for selecting which court of appeal will decide the case when there are multiple appeals of an agency order. Under the law, agencies are to publish a rule designating which officer and office will receive petitions for review.

EFFECTIVE DATE: January 9, 1991.

FOR FURTHER INFORMATION CONTACT: Neva R. Watson, (202) 268-2963.

SUPPLEMENTARY INFORMATION: Public Law 100-236 (28 U.S.C. 2112(a)) generally provides that, when two or more petitions for review are received within 10 days after issuance of an agency order, the agency must promptly notify the judicial panel on multidistrict litigation of that fact, and the judicial panel must, by random selection, designate one court where the record is to be filed and issue an order consolidating the petitions for review in that court. The agency must file the record in the court of appeals designated by the judicial panel.

Under former 28 U.S.C. 2112(a) actions would be heard in the circuit under the "first to file" rule. This led to "races to the courthouse" whereby petitioners would rush to file in a circuit which was thought to be sympathetic to the petitioner's position. Public Law 100-236 eliminates this need for a circuit race and provides for a random selection process.

In order to participate in the random selection process, a person must file a petition for review of the agency order and submit a copy of the petition to the agency within 10 days of issuance of the order. The statute requires agencies to designate by rule an office and officer to receive the petition for review. Accordingly, the Postal Service is amending part 224 of its rules to provide that its General Counsel will receive petitions for court review of agency orders.

Under Public Law 100-236 (28 U.S.C. 2112(a)) only those petitions received by the agency within ten days of the date when an agency action becomes final are eligible for consideration in the random selection process. Any other petitions received after the ten day period will be consolidated in the Court of Appeals selected by the Judicial Panel. The rule therefore specifies that all copies of filed petitions shall be delivered by personal service or by certified mail, return receipt requested. Use of either of these two methods will allow the General Counsel to ascertain the day on which the petition was received at the agency and thus determine whether it falls within the ten-day period.

The Postal Service has determined that this rule is a rule of agency organization, procedure, and practice. Accordingly, the Postal Service is not seeking comments on it. Further, this rule is a nondiscretionary action in response to a statutory requirement that agencies designate an officer to receive copies of petitions for review of agency action and does not affect any substantive rights or duties of the public. Consequently, the Postal Service believes that good cause exists for making this rule effective immediately.

Accordingly, the Postal Service amends 39 CFR part 224 as follows:

List of Subjects in 39 CFR Part 224

Organization and functions (Government agencies), Postal Service.

PART 224—ORGANIZATIONS REPORTING DIRECTLY TO THE POSTMASTER GENERAL

1. The authority citation for part 224 is revised to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, and 409; 28 U.S.C. 2112(a).

2. Section 224.4 is amended by redesignating existing paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), respectively, and by adding a new paragraph (b)(5) to read as follows:

§ 224.4 General Counsel.

* * * * *

(b) * * *

(5)(i) Receiving service of petitions for review of a final agency order in an appropriate Federal circuit court of appeals. Any aggrieved person filing a petition for review of a decision of the Governors within 10 days of issuance of the Governors' decision must ensure that a court-stamped copy of the petition for review is received by the General Counsel within that 10-day period in order to qualify for participation in the random selection process established in 28 U.S.C. 2112(a) for determining the appropriate court of appeals to review an agency final order when petitions for review of that order are filed in more than one court of appeals.

(ii) If the General Counsel receives two or more petitions filed in two or more United States Courts of Appeals for review of a decision by the Governors within ten days of the effective date of that action for the purpose of judicial review, the General Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period, in accordance with the applicable rule of the panel.

(iii) For the purpose of determining whether a petition for review has been received within the 10-day period under paragraph (b)(5)(ii) of this section, the petition shall be considered to be received on the date of delivery, if

personally delivered. If the delivery is accomplished by mail, the date of receipt shall be the date noted on the return receipt card.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-350 Filed 1-8-91; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[AA-250-00-4370-02; Circular No. 2631]

RIN 1004-AB81

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Prohibited Acts, Administrative Remedies, and Penalties; Administrative Remedies

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule allows the authorized officer to place in full force and effect decisions to cancel a Private Maintenance and Care Agreement (PMACA) in situations where wild horses or burros subject to such an agreement are found to be abused or mistreated.

DATE: *Effective date:* January 9, 1991. Comments on the interim final rule should be received on or before March 11, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, room 5555, 1849 C St. NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the Bureau of Land Management (250), Premier Building, room 901, U.S. Department of the Interior, 1849 C St. NW., Washington, DC 20240: Telephone (202) 653-9215.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 4770.3, "Any person who is adversely affected by a decision of the authorized officer * * * may file an appeal * * * " Under the regulations of the Bureau of Land Management (BLM) implementing the Administrative Procedure Act, most appealed decisions are stayed pending resolution of the appeal by the Interior Board of Land Appeals (IBLA). The existing rules delay wild horse and burro repossession decisions for up to 2 years pending the IBLA rulings.

The present regulations provide no means for immediate cancellation of a PMACA and repossession of adopted animals when an adopter's abuse or negligence threatens the welfare of a wild horse or burro. The BLM continues to have several cases every year that require immediate removal of an animal from an adopter to prevent severe or long-term damage to the animal's health. The health and welfare of these animals will be benefitted by implementation of this rule upon publication.

The principal author of this interim final rule is Vernon R. Schulze, wild horse and burro program specialist, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

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

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

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. However, an additional paragraph has been added to the Note at the beginning of Group 4700 describing the information collection burden imposed by other regulations in the Group, as required by the Departmental Manual of the Department of the Interior. This Note has no relation to the substantive provisions of this rule.

List of Subjects in 43 CFR Part 4700

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

Under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

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

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

2. The Note at the beginning of Group 4700 is amended by adding a new paragraph at the end thereof to read as follows:

* * * * *

Public reporting burden for this information is estimated to average 0.165 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information Collection Clearance Officer, Division of Information Resources Management, Bureau of Land Management (770), 1849 C Street NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project 1004-0042, Washington, DC 20503.

3. Section 4770.3 is revised to read as follows:

§ 4770.3 Administrative remedies.

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals must be filed within 30 days of receipt of the decision in accordance with 43 CFR part 4, subpart E.

(b) The authorized officer may place in full force and effect decisions to cancel a Private Maintenance and Care Agreement so as to allow repossession of wild horses or burros from adopters to protect the animals' welfare. Appeals and petitions for stay of decisions shall be filed with the Interior Board of Land Appeals as specified in this part.

Dated: November 7, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-438 Filed 1-8-91; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1 and 73

[General Docket 90-264; FCC 90-410]

Comparative Hearing Process for New Broadcast Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revises its rules to expedite the comparative hearing process for new broadcast applicants in order to speed service to the public.

EFFECTIVE DATES: Except as noted below, the rules adopted in this Report and Order will become effective on February 13, 1991. 47 CFR 73.1620(g) will become effective April 9, 1991 or upon approval of that reporting requirement by the Office of Management and Budget, whichever is sooner. A document announcing the effective date will be published in the **Federal Register** at a later date. The modification of the Ruarch policy announced in this Report and Order shall become effective on March 21, 1991.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530.

SUPPLEMENTARY INFORMATION: The following collection of information contained in these new rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW, Washington, DC 20036, (202 452-1422. Persons wishing to comment on the information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information, contact Jerry Cowden, Federal Communications Commission, (202) 632-7413.

OMB number: None.

Title: Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (Report and Order in General Docket 90-264).

Respondents: Businesses.

Estimated annual burden and frequency of response: The information collection burdens will involve the identification of deviations from comparative promises made to the Commission in applications for new broadcast facilities. Any such deviations that occur during the construction phase and the first year of operation of a new station must be reported to the Commission.

10 respondents: 50 hours total annual burden

5 hours average burden per response

Frequency: Upon application for a license to cover a construction permit, if any deviations occur during the construction phase, and upon the first anniversary of the commencement of program test authority, if any deviations occur during that first year of station operation.

Needs and uses: The information will be collected to expedite the Commission's comparative hearing process and to avoid abuses of that process associated with the submission of inflated and/or non-*bona fide* comparative promises. Submission of the required reports will enable the Commission to determine whether the successful applicant was fulfilling its comparative promises concerning divestiture of other media interests, the integration of ownership and management, and the passive role of certain station owners. This is a summary of the Commission's Report and Order, adopted December 13, 1990, FCC 90-410. The full text of this Commission Report and Order is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The full text of this Report and Order may also be purchased from the Commission's copy contractor.

Summary of Report and Order

1. By this Report and Order, the Commission intends to substantially reduce the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities. During the process of selecting among otherwise qualified applicants for new broadcast facilities the public is deprived of a valued service, and the ultimate licensee is deprived of the opportunity to provide that service. After balancing the important goal of selecting the best qualified applicant against the need to eliminate unnecessary delay, we are convinced that the time consumed in the comparative hearing process can be substantially reduced while still preserving the fundamental fairness and public interest benefits of our proceedings.

Encouraging Settlements

2. Settlements can be a significant factor in expediting the new service, and most commenters support the objective of encouraging settlements. Although, in a particular case, a settlement may result in a grant to an applicant that might not be considered "best qualified" under our comparative criteria, the settlement process takes place within the context of the comparative criteria, in that an applicant's evaluation of its own comparative standing, as well as that of its competitors, has an impact on its decision to offer or accept a settlement or to preserve to the end of the process. Thus, any reduction in the comparative merits of an applicant that is granted after settlement, as opposed to one that is granted in a case that is not settled, is likely to be marginal, if it occurs at all. Further, settlements expedite the provision of new broadcast service to the public and permit government resources to be turned to the more expeditious resolution of those cases that remain. In these circumstances, we think the benefit of conducting the hearing is outweighed by the public interest benefits of settlement.

A. The Hearing Fee

3. The Notice observed that the hearing fee may have a salutary effect on settlements that would be enhanced by the earlier payment of the fee. Most commenters addressing the issue agree that the earlier payment of the hearing fee would have a beneficial effect on the comparative hearing process. Thus, we will amend our rules to require payment of the hearing fee before an applicant is designated for hearing, on a date established in the public notice announcing the acceptance of mutually exclusive applications and establishing a deadline for filing petitions to deny those applications. The fee payment date to be announced in that public notice will be approximately 30 days after the petition to deny deadline.

4. Hearing fees paid at that time will, however, be refunded upon request by applicants that are dismissed, voluntarily or involuntarily, before a hearing designation order (HDO) is issued or are granted without being designated for a comparative hearing. After an applicant has been designated for hearing, the hearing fee may also be refunded under the circumstances provided for in § 1.1111(c) of our rules. 47 CFR 1.1111(c).

5. We will make the transition from our current rule (payment of the hearing fee with Notices of Appearance) to the new rule (payment prior to the HDO) in

the following manner. For all commercial broadcast applications that have not been placed on a "B" cut-off list released prior to February 13, 1991 (the effective date of the rule change), the date for making payment of the hearing fee will be established in the public notice setting the "B" cut-off deadline. All commercial broadcast applications that have been placed on a "B" cut-off list released prior to February 13, 1991, will be required to pay their hearing fee by March 15, 1991, unless such applications are designated for hearing before that date. All applicants designated for hearing before March 15, 1991, should pay their hearing fee with their Notices of Appearance.[1]

B. Pre-Designation Settlements

6. The Notice in this proceeding proposed to specify "settlement advocates" to encourage applicants to settle the case before the HDO. It also sought comments on whether the pre-designation settlement process would be enhanced by requiring all pending applicants that have not supplied the additional information on financing and integration proposals now required by FCC Form 301 to provide that information in an amendment to their applications.[2]

To further encourage settlements through mergers, we sought comment on whether we should permit the merged applicant to enjoy the comparative advantages achieved by virtue of the merger.[3] A number of commenters support a voluntary settlement advocate process, but others are concerned that the process would delay action on the HDO. Commenters would also require all pending applicants to provide additional financial and integration information, but most oppose comparative upgrading through mergers.

7. Although the settlement advocate process may result in some increase in the number of cases that are settled before designation, it may also delay the processing of applications that partake of the process. On balance, we do not believe that the anticipated increase in pre-designation settlements offset the possibility of processing delays. We are also persuaded that permitting merged applicants to upgrade their comparative standing by virtue of the merger would only lead to comparative gamesmanship. Finally, the matter of requiring pending applicants to submit additional financial and integration information has been dealt with in *Revision of Application for Construction Permit for Commercial Broadcast Station,* 4 FCC Rcd 3853, recon. denied, FCC Rcd _____ (1990).

C. Settlement Conferences

8. To encourage more settlements after designation but before trial, the Notice proposed that applicants should participate in an off-the-record settlement conference before a "settlement judge." The commenters generally favor this process, although some believe that settlements are more likely if the FCC is not involved in the process. After considering the comments, we have decided to make settlement judges available to applicants on a voluntary, experimental basis.[4] Where all parties believe that a settlement judge might facilitate settlement efforts, a request for the assignment of a settlement judge should be submitted to the presiding judge who will forward it to the Chief Administrative Law Judge. In the Chief ALJ's discretion, a settlement judge will be assigned. After reviewing the applicants' proposals, the settlement judge will meet with the applicants individually and/or in concert to explore a potential settlement of the matter.[5]

9. As with pre-designation mergers, we will not permit comparative upgrading of applications that enter partial settlements through the settlement judge process. While the prospect of such upgrading may encourage participation in the process, it may also encourage comparative gamesmanship and the filing of speculative applications. Similarly, we will not refund all or part of the hearing fee paid by the applicants that participate in the process. To do so would only decrease incentives to settle the case even earlier. In this regard, we believe that the prospect of avoiding the costs and delays of litigation provide adequate incentives to settlements.

D. The Ruarch Policy

10. The Notice sought comment on the possible reversal or modification of our holding in *Ruarch Associates,* 103 FCC 2d 1178 (1986), in which an applicant granted after a settlement was relieved of certain comparative commitments. We also sought comment on appropriate means to ensure the future adherence to promises made in applications for purposes of enhancing an applicant's comparative standing under diversity and integration criteria. The commenters were split on the proposal to reverse or modify Ruarch, but most agreed that the lack of post-grant enforcement of comparative promises has been a contributor to abuses of the Commission's processes.

11. Although the Ruarch policy may encourage inflated comparative commitments, the policy may also provide an added incentive to settle. In striking a balance between these conflicting considerations, we believe there is merit to the proposal in the comments to permit the successful applicant in a "global" settlement to withdraw divestiture and integration proposals where the settlement is entered into early in the hearing process. Thus, where a settlement of the case is entered into and filed with the presiding judge on or before the notice of appearance deadline, the judge may entertain and grant a request to relieve the successful applicant of divestiture and integration proposals.[6] In settlements reached after the notice of appearance deadline, the successful applicant will be expected to fulfill its divestiture and integration proposals.

12. We also agree with the commenters that some oversight of applicant adherence to comparative promises is appropriate, and ensuring at least one full year's compliance with such promises would be sufficient to test the applicant's *bona fides* and to

[1] After publication of this rule change in the **Federal Register**, the Commission will issue a public notice specifying the method for payment of the hearing fee.

[2] The Form 301 was amended to require the additional information for applications filed on or after June 26, 1989. Applications that were pending prior to that date were not required to provide the newly required information. *Revision of Application for Construction Permit for Commercial Broadcast Station,* 4 FCC Rcd 3853, *recon. Denied,* 5 FCC Rcd _____ (1990).

[3] Presently, such comparatrive upgrades are not permitted. *See Daytona Broadcasting Co., Inc.,* 101 FCC 2d 1010, 1012, *recon. granted in part,* 102 FCC 2d 931 (1986).

[4] The settlement judge process is an alternate means of dispute resolution within the meaning of the Administrative Dispute Resolution Act. Pub. L. 101-552 (November 15, 1990). *See* 5 U.S.C. 581(3). The Notice also solicited comments on the potential uses of other alternative dispute resolution techniques in the comparative process. William Ward and Virginia Carson support the use of mediators in the pre-designation settlement process. Section 3 of the Administrative Dispute Resolution Act requires agencies to adopt a policy that addresses alternate means of dispute resolution, and we will take up the question of what other forms of alternative dispute resolution may be efficacious in a separate proceeding commenced under that Act.

[5] The settlement judge shall be a "neutral" as defined in the Administrative Disputes Resolution Act, 5 U.S.C. 581(9) and 583(a-d), and he shall have all the powers conferred by that Act. On December 31, 1992, the Chief ALJ shall submit a report to the Commission reflecting the number of cases in which settlement judges have been assigned and the resolution of those cases.

[6] Under this policy, an applicant could only be relieved of divestiture proposals relating to its comparative standing. Divestiture required by operation of the Commission's ownership restrictions would remain in force.

discourage inflated commitments.[7] Thus, permittees authorized out of the comparative hearing process, including those granted after a settlement, will be required to file a statement with their applications for a license to cover their permits (FCC Form 302), identifying any deviations from the divestiture and/or integration promises contained in their applications, unless they have been relieved of those obligations under the policy enunciated above. A similar statement will be required to be filed on the first anniversary of the commencement of program tests.[8] Program tests generally commence within ten days of the filing of the Form 302. *See* 47 CFR 73.1620(a). The Commission will take appropriate enforcement action in any case in which deviations from these comparative proposals indicate that the proposals, as made to the Commission, constitute a misrepresentation.

Expediting the Hearing Process

A. Discovery

13. We proposed to expedite the conduct of discovery in comparative proceedings. Generally, the commenters view discovery as an essential element of the hearing process, necessary to expose exaggerated or sham proposals, but several agree that the time allowed for discovery can be shortened. As suggested in the comments, we will commence discovery earlier by amending § 1.325 of our rules to incorporate a standardized document production order for use in comparative proceedings, requiring applicants to make the enumerated documents available to their competitors, or interpose an objection based on a claim of privilege, within 20 days after the issuance of the HDO, *i.e.*, concurrently with the filing of their notices of appearance.[9] Any motions to compel the production of documents for which a privilege has been asserted should be filed within 5 working days, and the presiding judge would be expected to dispose of any such motions within 10 calendar days. The HDO will also require applicants to exchange a standardized integration statement on the same date. With the early provision of the information required in the standardized document production order and the uniform integration statement, we would expect that the remainder of the discovery process could be expedited.

14. We are also adopting the suggestion that parties be permitted to request additional documents without making a "good cause" showing and to eliminate the requirement that ALJs rule on unopposed document requests. Parties may request additional relevant documents, not called for in the standardized production order, at any time after the issuance of the HDO, but initial supplemental requests for documents must be filed no later than ten days after the notice of appearance deadline. Any supplemental document requests must be complied with or objected to within ten calendar days. Any motions to compel the production of documents for which a privilege has been asserted should be filed within five working days of the document production date, and the presiding judge would be expected to dispose of any such motions within 10 calendar days.

15. Oral depositions would generally be scheduled after the initial document production. All applicants must be prepared to make their active and passive owners available for such depositions after the notice of appearance deadline, and the 21 day notice provision for depositions will not apply to depositions of these applicant principals. See 47 CFR 1.315. Further, depositions of these principals will be held in Washington, DC or in the proposed community of license, at the deponents' option, unless all parties agree to some other location. In this manner, we believe that discovery in the routing comparative case can be completed within 90 days of the issuance of the HDO. However, we recognize that there will be cases in which more time is needed, and the administrative law judges have the discretion to permit discovery to extend beyond that time limit in unusual cases or when the issues have been enlarged.

16. In order to facilitate discovery on new issues added to a proceeding in response to petitions to enlarge issues, we will amend § 1.229 of our rules to require that a motion to enlarge issues identify those documents the moving party wishes to have produced and any other discovery procedures the movant wishes to employ. If the motion is granted, the ALJ will simultaneously rule on the additional discovery requests.

B. The "Anax" Doctrine

17. In *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981), we allowed applicants to exclude limited partners (and the owners of nonvoting stock) from the calculus by which we determine the comparative credit for integration of ownership and management (as well as for diversity). The Notice recognized that active/passive ownership structures that take advantage of the Anax doctrine had spawned lengthy litigation, and it asked whether the Commission should eliminate or modify that doctrine to curtail such litigation. The commenters were split on the proposed elimination of the Anax doctrine, and several suggest that, if it is eliminated, the change should not apply to pending applications.

18. Upon consideration of the comments, we have decided to not eliminate or alter the Anax doctrine in this proceeding. The underlying premise of that doctrine is that certain passive ownership interests are not cognizable under the Commission's attribution rules, 47 CFR 73.3555 Note 2, and such interests should not dilute the integration credit available to applicants whose organization includes such nonattributable interests. That premise remains viable, and we will not overturn the Anax case or modify the Anax doctrine in this proceeding.[10] However, as suggested by several commenters, we will require successful applicants proposing an active/passive ownership structure to report any deviations from their proposal that active owners retain sole control of the permittee/licensee in applications for a license to cover the construction permit and again on the first anniversary of program test authority. The Commission will take appropriate enforcement action in any case in which deviations from the active/passive ownership structure indicate that the proposal, as made to the Commission, constitutes misrepresentation.

C. Written Cases

19. The Notice proposed to require the use of written cases except in the most unusual circumstances. Parties desiring to present oral testimony or cross examine opponents on their written cases would be required to make a specific showing to the presiding judge

[7] *See* 47 CFR 73.3597.

[8] We believe that FCBA's proposal to select a runner-up, who would displace the winning applicant if it failed to live up to its promises, raises legal and other issues that go far beyond the scope of matters set forth in the Notice. Accordingly, that proposal will not be considered in this proceeding.

[9] As with the notice of appearance, the documents will be served on counsel for all competing applicants. If no counsel is indicated in an applicant's previous filings, the material will be served on the applicant at the address indicated in the application.

[10] This decision should not be taken as an indication of Commission action in adjudicatory cases that involve questions relating to the active/passive ownership structure under the Anax doctrine. As such cases come before us, we will decide them on the basis of the record compiled by the parties.

supporting that request. All of the commenters addressing this proposal oppose limitations on cross examination in hearings. Although our experience indicates that the use of strictly written procedures can expedite the hearing process, we did not propose to preclude ALJ's from taking oral testimony. For some types of issues, it may be necessary to observe the demeanor of the witnesses to assess their creditability, and, in other instances, cross examination may be required. Section 1.248 of our rules empowers ALJs to limit oral testimony, 47 CFR 1.248, and, in the exercise of the discretion granted ALJs by that rule, we will make it clear that ALJs should permit oral testimony and cross examination only where material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings.[11]

D. Time Guidelines

20. The Notice proposed time guidelines that would result in the issuance of an ID in a routine comparative case within seven months of the HDO. However, a number of commenters suggest that our guidelines provide inadequate time to prepare thorough and thoughtful findings and initial decisions, and that our guidelines do not consider the time required to resolve motions to enlarge issues. Such motions must be filed within 30 days of the publication of the HDO in the **Federal Register**, 47 CFR 1.229, but several weeks could be saved if the time ran from the release of the HDO.

21. Based on commenters suggestions, we believe that additional savings are possible, particularly in the routine case that does not involve delays associated with the enlargement of issues. Thus, we have determined that our goal should be the resolution of routine comparative cases by ID within nine months of the HDO. As noted above, the HDO would commence the discovery process by requiring the exchange of documents pursuant to a standardized document production order and the filing of uniform integration statements. The routine discovery phase of the case generally would be terminated 90 days after the issuance of the HDO. Exhibits would be exchanged 30 days after completion of discovery, and the hearing would be scheduled about 15 days thereafter.[12] The record should be closed immediately at the end of whatever hearing is necessary, and 60 days provided for the filing of proposed findings and reply findings. The ALJs should make every effort to prepare and release the ID in these routine cases within 90 days of the last pleading.

Expediting Review

A. Eliminate Intermediate Review

22. The Notice sought comments on whether elimination of the Review Board would expedite the resolution of broadcast comparative cases after the ID. The commenters generally oppose this proposal, opining that the Review Board operates expeditiously and efficiently. On the basis of these comments and the reservations expressed in the Notice, we will not eliminate the intermediate review function.

B. Reorganize the Intermediate Review Function

23. The Notice also solicited comment on the possible reorganization or modification of the two-tiered review system, including a consolidation of the Review Board and its staff with the staff that prepares adjudicatory decisions for the Commission. Moreover, because the purpose of the Review Board is to free the Commission from burdensome review functions, we proposed an amendment to § 0.361(b) of our rules to permit the Commission or any of its members to provide legal and policy guidance and advice to the Board or any of its members. 47 CFR 0.361(b).

24. The commenters addressing reorganization generally opposed our proposals. Some also suggest that permitting Commissioners to discuss the merits of cases with the Board would give the impression that decisions in comparative cases are based on politics rather than reasoned decisionmaking. On the basis of the comments, we have determined that the best course would be to maintain the current organization of the Board and the limitations of § 0.361(b) of our rules restricting communications between the Board and the Commission. To further expedite the intermediate review process, we are amending § 1.277 of our rules to further restrict the permissible length of consolidated briefs and exceptions to 25 double-spaced typewritten pages.

C. Oral Argument

25. To expedite the review process, we proposed to limit oral argument before the Review Board and the Commission to cases involving extraordinary circumstances. The commenters generally oppose restrictions on oral argument, although some agree that the Board should not routinely grant requests for oral argument as it does now. The commenters generally assert that oral argument serves the important function of focusing and defining key appellate issues, and it probably shortens rather than lengthens review time. The Commission and the Board have the discretion not to hear oral argument. See S. Rep. No. 576, 87th Cong., 1st Sess. 15 (1961). Although we recognize that oral argument may, in some cases, provide valuable assistance to the reviewing authority in resolving the issues before it, the scheduling of oral argument also delays the ultimate resolution of the case. Thus, we will amend § 1.277 of the rules to provide that oral argument be allowed only where it is requested by the parties and the Board or Commission finds that it will assist in the resolution of the issues presented on appeal.

D. Time Guidelines

26. The Commission's rules currently require the Review Board to adopt a decision within 180 days after release of an ID, and section 5(d) of the Communications Act requires the Commission to conduct its business with the objective of rendering a decision in hearing cases "within six months from the final date of the hearing * * *." 47 U.S.C. 155(d).[13] The Notice proposed internal guidelines establishing a goal of issuing final agency decisions in these comparative cases within six months of the IDs by issuing Review Board decisions within 3 months and Commission decisions 3 months thereafter. Generally, the commenters focused on the amount of time it takes the Commission to issue a decision in these cases. Some would eliminate the application for review process entirely, others would limit its scope to policy issues, or have the Review Board decision become final if the application

[11] Similarly, the ALJs retain the discretion to permit the submission of rebuttal cases in the form most conducive to the efficient resolution of the case.

[12] We are aware of commenters' observations that hearings are often delayed by the unavailability of hearing rooms. In order to meet this guideline, the Office of Managing Director will ascertain how many, if any, additional hearing rooms are necessary and whether that need can be accommodated by putting existing conference rooms and the Commission meeting room into service as hearing rooms. If these alternatives should prove insufficient and additional space is required, we will undertake to make additional hearing rooms available within the limitations of the Commission's budget.

[13] The provision was enacted in 1952, prior to the authorization of the Review Board. Thus, the policy enunciated in this section did not contemplate the two-stage review process that now exists.

for review is not acted upon within six months.

27. Upon consideration of the comments, we believe that time savings can be achieved in the resolution of these cases by the Review Board. With the elimination of oral argument in appropriate cases, the Review Board should be able to complete its consideration of routine cases within four months of the filing of exceptions, *i.e.*, approximately five and a half months after the issuance of the ID.[14] As to Commission review, the Communications Act provides that parties aggrieved by a decision taken pursuant to delegated authority "may file an application for review" of that decision by the Commission and "every such application shall be passed upon by the Commission." 47 U.S.C. 155(c)(4). Thus, we could not, consistent with the Act, eliminate applications for review or limit their scope. Similarly, it does not appear that a rule providing that applications for review would be deemed denied or automatically denied satisfies the statutory requirement that they be "passed upon by the Commission." 47 U.S.C. 155(c)(4).[15]

28. In any event, we conclude that a commitment to disposing of applications for review within five months is more appropriate than the commenters' proposals.[16] We are amending our rules to include an express statement of this policy and a commitment to either dispose of applications for review within five months of their filing or issue an order indicating that additional time will be required in a particular case.

V. Other Proposals

29. The Notice proposed to give ALJs the authority to impose forfeitures, in addition to denying the application, in cases in which applicants made misrepresentations to the Commission or engaged in other misconduct during the application process. The authority to impose forfeitures on applicants is conferred by the Communications Act. See Omnibus Budget Reconciliation Act of 1989, Public Law No. 101-239, section 3002, 103 Stat. 2106, codified at 47 U.S.C. 503(b)(2)(A). This proposal was not addressed in the comments, and we have therefore determined that our ALJs will have the authority to impose forfeitures up to the statutory maximum amount as proposed. See 47 U.S.C. 503(b)(2)(A) ($25,000 for each violation to a maximum of $250,000 for continuing violations). In any case in which the ALJ, the Review Board or the Commission enlarge the issues to inquire into allegations of such misconduct, the enlarged issues shall include notice that, after hearings on the enlarged issue and upon a finding that the alleged misconduct occurred and warrants such penalty, in addition to or in lieu of denying the application, the applicant may be liable for a forfeiture of up to the maximum statutory amount.[17]

30. A number of commenters submitted proposals to change the policies under which the Commission awards comparative credits and demerits in comparative broadcast proceedings. These proposals were not raised in the Notice, and they are beyond the scope of this proceeding which focuses, for the most part, on the procedures employed in broadcast comparative cases rather than the comparative criteria used to evaluate the applicants.

Conclusion

31. The process of selecting which of otherwise qualified applicants should be granted must remain fair and effective, but undue delay in that process disserves the public by delaying the institution of new service and exacting an economic toll on both the Government and the applicants. Thus, after consideration of the comments filed in this proceeding, we have adopted procedural changes that are designed to reduce significantly the time consumed in resolving these comparative cases. Where cases had been resolved in an average of almost three years, we believe the procedures adopted herein will reduce the duration of routine cases prosecuted from HDO through ID, Review Board decision, and Commission decision to approximately 21 months.

32. The rules adopted herein have been anaylzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3502, and found to impose new or modified requirements or burdens on the public. As such, the new rules are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act and a copy of this Report and Order is being transmitted to the Office of Management and Budget along with a request for approval of these new paperwork requirements.

33. Final Regulatory Flexibility Analysis

I. Reason for the Action

To expedite the resolution of comparative hearings involving applicants for new broadcast facilities.

II. Objective of this Action

To expedite the resolution of comparative hearings involving applicants for new broadcast facilities.

III. Legal Basis

These changes are taken under sections 4(i), 4(j), 5(b), 5(c), 303(r) and 309 of the Communications Act of 1934, as amended.

IV. Number and Type of Small Entities Affected by the Proposed Rule

Applicants for available new broadcast facilities are, for the most part small entities. Presently, the Commission has pending approximately 3,000 such applications that may come under the rules proposed herein.

V. Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule

Successful applicants will be required to report any deviations from the comparative promises made in their applications upon completion of construction of the station and on the first anniversary of the commencement of program tests on the station.

VI. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objective of the Action

Because these changes will expedite the resolution of comparative broadcast hearings for new applicants, it will generally permit the successful applicant to commence operation of the new station at an earlier date. Thus, the applicants, generally small entities, will be benefited by these changes. The Commission has considered, and in some cases adopted, commenters' suggestions to fulfill its goal of expediting the comparative hearing process with a minimum of cost or inconvenience to applicants.

[14] Exceptions to IDs are filed within 30 days of the release of the decision, and oppositions (or replies) are filed 15 days thereafter.

[15] Even if such a rule were permissible under the statutory scheme, an order, "disposing of all applications for review," would be required for the computation of time for judicial review. See 47 U.S.C. 155(c)(7).

[16] Applications for Review must be filed within 30 days of the release of the Board's decision, and oppositions must be filed within 15 days of the Application for Review. Thus, considering this pleading cycle, in the routine case, the Commission will act within approximately six and a half months of the release of the Board decision.

[17] Where such issues are specified in the HDO, that order will contain a similar notice.

34. Accordingly, *it is ordered* that the motions to accept late filed comments filed by the Howard University Small Business Development Center and the Congressional Black Causus *are granted.*

35. *It is further ordered* that parts 0, 1, and 73 of the Commission's rules, 47 CFR parts 0, 1, and 73 *are amended* as set forth below.

36. *It is further ordered* that the rule changes adopted herein shall be effective on February 13, 1991, except that the requirement for the submission of reports by permittees and licensees contained in 47 CFR 73.1620(g) will become effective 90 days from the date of publication of this Report and Order in the **Federal Register** or upon approval of that requirement by the Office of Management and Budget, whichever is sooner. A document announcing the effective date will be published in the **Federal Register** at a later date.

37. *It is further ordered* that the modification of the *Ruarch* policy enunciated herein shall become effective on March 21, 1991, and it shall apply to all requests for approval of agreements filed on that date and thereafter.

38. *It is further ordered* that all commercial broadcast applications that have been the subject of a public notice released prior to February 13, 1991, announcing the acceptance for filing of mutually exclusive applications, shall pay their hearing fee by March 15, 1991, unless an order designating such applications for hearing is released before that date. All applicants designated for hearing in orders released before March 15, 1991, should pay their hearing fee with their Notices of Appearance.

39. *It is further ordered* that the Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

40. This action is taken pursuant to authority contained in sections 4(i), 4(j), 5(b), 5(c), 303(r) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 155(c), 303(r) and 309.

For further information concerning this proceeding, contact Martin Blumenthal, Office of General Counsel (202) 254–6530.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 73

Radio broadcasting and Television broadcasting.

Rule Changes

47 CFR Parts 0, 1, and 73 are amended as follows:

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

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

2. Section 0.251 is amended by adding a new paragraph (f)(12) to read as follows:

§ 0.251 Authority delegated.

* * * * *

(f) * * *

(12) In preparing decisions for Commission consideration on applications for review of routine broadcast comparative cases involving applicants for only new facilities, the General Counsel will make every effort to submit such draft decisions for Commission consideration within four months of the filing of the last responsive pleading. If the Commission is unable to adopt a decision in such cases within five months of the last responsive pleading, it shall issue an order indicating that additional time will be required to resolve the case.

* * * * *

3. Section 0.341 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 0.341 Authority of administrative law judge.

* * * * *

(d) In the conduct of routine broadcast comparative hearings involving applicants for only new facilities, *i.e.*, cases that do not involve numerous applicants and/or motions to enlarge issues, the presiding administrative law judge shall make every effort to conclude the case within nine months of the release of the hearing designation order. In so doing, the presiding judge will make every effort to release an initial decision in such cases within 90 days of the filing of the last responsive pleading.

(e) Upon assignment by the Chief Administrative Law Judge, Administrative Law Judges, including the Chief Judge, will act as settlement judges in appropriate cases. See 47 CFR 1.244 of this chapter.

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

5. Section 1.221 is amended by removing paragraphs (f) and (g) and the Note and by adding a new paragraph (c)(1) to read as follows:

§ 1.221 Notice of hearing; appearances.

* * * * *

(c) * * *

(1) In comparative broadcast proceedings involving applicants for only new facilities, the notice of appearance filed by all applicants in the proceeding shall indicate that service of the notice of appearance on the other parties in the case was accompanied by the materials required to be exchanged pursuant to the Standard Document Production Order (see § 1.325(c)(1) of this part) and the Standardized Integration Statement (see § 1.325(c)(2) of this part). The Standardized Integration Statement should be filed with the presiding Administrative Law Judge, but, unless the presiding Administrative Law Judge rules otherwise, the documents exchanged pursuant to the Standard Document Production Order should not be submitted to the presiding Administrative Law Judge. Failure to serve the required materials on all other parties to the case will be tantamount to a failure to file a notice of appearance.

* * * * *

6. Section 1.229 is amended by revising paragraphs (a) and (b) and adding new paragraphs (e) and (f) to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

(a) A motion to enlarge, change or delete the issues may be filed by any party to a hearing. Except as provided for in paragraph (b) of this section, such motions must be filed within 15 days after the full text or a summary of the order designating the case for hearing has been published in the **Federal Register**.

(b)(1) In comparative broadcast proceedings involving applicants for only new facilities, such motions shall be filed within 30 days of the release of the designation order, except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the **Federal Register**. (*See* § 1.223 of this part).

(2) In comparative broadcast proceedings involving renewal applicants, such motions shall be filed

within 30 days after publication of the full text or a summary of the designation order in the **Federal Register**.

(3) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), and (b)(2), of this section, shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

* * * * *

(e) In comparative broadcast proceedings involving applicants for only new facilities, in addition to the showing with respect to the requested issue modification described in paragraph (d) of this section, the party requesting the enlargement of issues against an applicant in the proceeding shall identify those documents the moving party wishes to have produced and any other discovery procedures the moving party wishes to employ in the event the requested issue is added to the proceeding. In the event the motion to enlarge issues is granted, the Commission or delegated authority acting on the motion will also rule on the additional discovery requests, and, if granted, such additional discovery will be scheduled to be completed within 30 days of the action on the motion unless the persons subject to such additional discovery are not parties to the proceeding. In such case, additional time will be required to afford such persons adequate notice of the discovery procedures being employed.

(f) In any case in which the presiding judge, the Review Board or the Commission grants a motion to enlarge the issues to inquire into allegations that an applicant made misrepresentations to the Commission or engaged in other misconduct during the application process, the enlarged issues include notice that, after hearings on the enlarged issue and upon a finding that the alleged misconduct occurred and warrants such penalty, in addition to or in lieu of denying the application, the applicant may be liable for a forfeiture of up to the maximum statutory amount. See 47 U.S.C. 503(b)(2)(A).

7. A new § 1.244 is added to read as follows:

§ 1.244 Designation of a settlement judge.

(a) In broadcast comparative cases involving applicants for only new facilities, the applicants may request the appointment of a settlement judge to facilitate the resolution of the case by settlement.

(b) Where all applicants in the case agree that such procedures may be beneficial, such requests may be filed with the presiding judge no later than 15 days prior to the date scheduled by the presiding judge for the commencement of hearings. The presiding judge shall suspend the procedural dates in the case and forward the request to the Chief Administrative Law Judge for action.

(c) If, in the discretion of the Chief Administrative Law Judge, it appears that the appointment of a settlement judge will facilitate the settlement of the case, the Chief Judge will appoint a "neutral" as defined in 5 U.S.C. 581 and 583(a) to act as the settlement judge.

(1) The parties may request the appointment of a settlement judge of their own choosing so long as that person is a "neutral" as defined in 5 U.S.C. 581.

(2) The appointment of a settlement judge in a particular case is subject to the approval of all the applicants in the proceeding. See 5 U.S.C. 583(b).

(3) The Commission's Administrative Law Judges are eligible to act as settlement judges, except that an Administrative Law Judge will not be appointed as a settlement judge in any case in which the Administrative Law Judge also acts as the presiding officer.

(4) Other members of the Commission's staff who qualify as neutrals may bve appointed as settlement judges, except that staff members whose duties include drafting, review, and/or recommendations in adjudicatory matters pending before the Review Board or the Commission shall not be appointed as settlement judges.

(d) The settlement judge will have the authority to require applicants to submit their Standardized Integration Statements and/or their written direct cases for review. The settlement judge may also meet with the applicants and/or their counsel, individually and/or at joint conferences, to discuss their cases and the cases of their competitors. All such meetings will be off-the-record, and the settlement judge may express an opinion as to the relative comparative standing of the applicants and recommend possible means to resolve the proceeding by settlement. The proceedings before the settlement judge shall be subject to the confidentiality provisions of 5 U.S.C. 584. Moreover, no statements, offers of settlement, representations or concessions of the parties or opinions expressed by the settlement judge will be admissible as evidence in any Commission licensing proceeding.

8. Section 1.248 is amended by adding a new paragraph (d)(4) to read as follows:

§ 1.248 Prehearing conferences; hearing conferences.

* * * * *

(d) * * *

(4) In broadcast comparative cases involving applicants for only new facilities, oral testimony and cross examination will be permitted only where, in the discretion of the presiding judge, material issues of decisional fact cannot be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings.

* * * * *

9. Section 1.277 is amended by revising paragraph (c) to read as follows:

§ 1.277 Exceptions; oral arguments.

* * * * *

(c) Except by special permission, the consolidated brief and exceptions will not be accepted if the exceptions and argument exceed 25 double-spaced typewritten pages in length. (The table of contents and table of citations are not counted in the 25 page limit; however, all other contents of and attachments to the brief are counted.) Within 10 days, or such other time as the Commission or delegated authority may specify, after the time for filing exceptions has expired, any other party may file a reply brief, which shall not exceed 25 double spaced typewritten pages and shall contain a table of contents and a table of citations. If exceptions have been filed, any party may request oral argument not later than five days after the time for filing replies to the exceptions has expired. The Commission or delegated authority, in its discretion, will grant oral argument by order only in cases where such oral presentations will assist in the resolution of the issues presented. Within five days after release of an order designating an initial decision for oral argument, as provided in paragraph (d) of this section, any party who wishes to participate in oral argument shall file a written notice of intention to appear and participate in oral argument. Failure to file a written notice shall constitute a waiver of the opportunity to participate.

* * * * *

10. Section 1.311 is amended by revising paragraph (c) to read as follows:

§ 1.311 General.

* * * * *

(c) *Schedule for use of the procedures.* (1) In comparative broadcast proceedings involving applicants for only new facilities, discovery commences with the release of the hearing designation order, and, in routine cases, the discovery phase of the proceeding will be conducted in a manner intended to conclude that portion of the case within 90 days of the release of the designation order.

(2) In all other proceedings, except as provided by special order of the presiding officer, discovery may be initiated before or after the prehearing conference provided for in § 1.248 of this part.

(3) In all proceedings, the presiding officer may at any time order the parties or their attorneys to appear at a conference to consider the proper use of these procedures, the time to be allowed for such use, and/or to hear agrument and render a ruling on disputes that arise under these rules.

* * * * *

11. Section 1.313 is amended by revising the introductory paragraph to read as follows:

§ 1.313 Protective orders.

The use of the procedures set forth in §§ 1.311 through 1.325 of this part is subject to control by the presiding officer, who may issue any order consistent with the provisions of those sections which is appropriate and just for the purpose of protecting parties and deponents or of providing for the proper conduct of the proceeding. Whenever doing so would be conducive to the efficient and expeditious conduct of the proceeding, the presiding officer may convene a conference to hear argument and issue a ruling on any disputes that may arise under these rules. The ruling, whether written or delivered on the record at a conference, may specify any measures, including the following to assure proper conduct of the proceeding or to protect any party or deponent from annoyance, expense, embarassment or oppression:

* * * * *

12. Section 1.315 is amended by adding a new paragraph (e) to read as follows:

§ 1.315 Depositions upon oral examination—notice and preliminary procedure.

* * * * *

(e) *Broadcast comparative proceedings involving applicants for only new facilities.* In these cases, the 21-day advance notice provision of paragraph (a) of this section shall be inapplicable to depositions of active and passive owners of applicants in the proceeding. All applicants in such proceedings should be prepared to make their active and passive owners available for depositions during the period commencing with the deadline for filing notices of appearance and ending 90 days after the release of the designation order, if such depositions are requested by a party to the proceeding. All such depositions will be conducted in Washington, DC or in the community of license of the proposed station, at the deponent's option, unless all parties agree to some other location.

13. Section 1.325 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 1.325 Discovery and production of documents and things for inspection, copying, or photographing.

(a) A party to a Commission proceeding may request any other party except the Commission to produce and permit inspection and copying or photographing, by or on behalf of the requesting party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things which constitute or contain evidence within the scope of the examination permitted by § 1.311(b) of this part and which are in his possession, custody, or control or to permit entry upon designated land or other property in his possession or control for purposes of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by § 1.311(b) of this part.

(1) Such requests need not be filed with the presiding officer, but copies of the request shall be served on all other parties to the proceeding.

(2) The party against whom the request was made must, within 10 days, comply with the request or object to the request, claiming a privilege or raising other proper objections. If the request is not complied with in whole or in part, the requesting party may file a motion to compel production of documents or access to property with the presiding officer. A motion to compel must be accompanied by a copy of the original request and the responding party's objection or claim of privilege. Motions to compel must be filed within five business days of the objection or claim of privilege.

(3) In resolving any disputes involving the production of documents or access to property, the presiding officer may direct that the materials objected to be presented to him for *in camera* inspection.

* * * * *

(c) In comparative broadcast proceedings involving applicants for only new facilities, on the date established for filing notices of appearance (see § 1.221 of this part), all applicants will serve the materials listed in the Standard Document Production Order and the Standardized Integration Statement on all other parties in the case.

(1) *Standard document production order.* The following documents must be produced or objected to on grounds of priviledge on the notice of appearance deadline (Unless otherwise directed by the presiding officer, copies of these documents should not be filed with the presiding officer):

(i) All formation and organizational documents, including articles of incorporation, by laws, partnership agreements, voting rights, proxies, and any amendments to the foregoing documents;

(ii) All minutes of meetings relating to the application;

(iii) All documents relating to the rights or plans of persons or entities to purchase an interest in the applicant or of current owners to alineate their interests;

(iv) All documents relating to pledges, mortgages, security interests, or other encumbrances of any kind with respect to the applicant;

(v) All bank letters and other financing documents with the dollar amounts unexpurgated;

(vi) All documents relating to the applicant's proposed transmitter site;

(vii) All documents relating to communications by proposed integrated principals with respect to their proposed participation in the management of the station and the disposition of their current employment;

(viii) All documents relating to prior integration pledges made by principals who propose to be integrated into the management of the station at issue;

(ix) All documents relating to communications by and between principals of the applicant concerning the application, including communications between active and passive principals;

(x) Representative documents relating to enhancement credits and preferences sought by the applicant's principals for local residence, civic participation, past broadcast experience, minority/female status, and the like;

(xi) All documents relating to commitments to divest other media interests; and

(xii) All documents that identify or describe the principals who are responsible for completing the application, arranging financing, obtaining the applicant's transmitter site, publishing the required notices, establishing the local public inspection file, and retaining lawyers, engineers, and other professionals.

(2) *Standardized integration statement.* The following information must be provided by all applicants on the notice of appearance deadline (Copies of this statement should be filed with the presiding officer and served on all parties to the proceeding):

(i) The ownership structure of the applicant, *i.e.,* whether it is a partnership, limited partnership, or a corporation (if a corporation, indicate whether it has voting and non-voting stock);

(ii) The ownership percentage of each owner;

(iii) The identity of the owners who will work at the proposed station, what titles and duties they will have, how many hours they will work per week, and how they will reconcile any current business interests or employment with that commitment to the station;

(iv) All other media interests held by the persons identified under paragraph (c)(2)(ii), of this section;

(v) Whether the integrated owners will claim credit for minority or female ownership and if so, specifically on what basis;

(vi) Whether the integrated owners will claim credit for local residence and civic involvement in the city of license or service area and if so, specifically on what basis (including a detailed chronology of past residence and a description of civic activities and their duration);

(vii) Whether the integrated owners will claim credit for previous broadcast experience and if so, provide a detailed list of the stations they worked at, the titles and duties they had, and the years in which they were so employed; and

(viii) Whether the applicant will claim a daytimer preference and if so, specifically on what basis.

(3) *Supplemental document production.* Parties may request additional relevant documents, not called for in the Standard Document Production Order, at any time after the release of the designation order. Initial supplemental requests for documents must be filed no later than ten days after the notice of appearance deadline. Supplemental document requests will be handled under the procedures established in paragraph (a) of this section. To facilitate the resolution of disputes concerning the production of documents, the presiding officer may convene a pre-hearing conference to hear argument on and dispose of any such disputes.

4. Section 1.1111 is amended by revising paragraph (c) to read as follows:

§ 1.1111 Return or refund of charges.

* * * * *

(c) Broadcast applicants that pay the hearing fee before the release of an order designating them for hearing are entitled to a refund of that fee, upon request therefor, whenever

(1) The application is granted without being designated for hearing;

(2) The application is dismissed, voluntarily or involuntarily, prior to designation for hearing, in the order designating the case for hearing, or for failure to file a Notice of Appearance (see § 1.221 of this part);

(3) The applicant is the only applicant designated in the proceeding that files a Notice of Appearance and that single remaining applicant is immediately grantable or grantable upon deletion of any matters specified in the designation order and requiring resolution (see § 1.229 of this part); or

(4) A settlement agreement filed with the presiding judge by the Notice of Appearance deadline provides for the dismissal of all but one of the applicants, and the single remaining applicant is immediately grantable. However, if the single remaining applicant is not immediately grantable, it is not entitled to a refund of the hearing fee unless all outstanding matters can be deleted (see § 1.229 of this part).

(5) However, under paragraphs, (c) (3) or (4) of this section, hearing fees will be retained by the Commission in any case requiring a decision on the merits of an applicant's post-designation amendment or evidentiary showing, whether by Summary Decision or otherwise. See § § 1.251 and 1.267 of this part.

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

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

16. Section 73.1620 is amended by adding a new paragraph (g) to read as follows:

§ 73.1620 Program tests.

* * * * *

(g) *Reports required.* In their application for a license to cover a construction permit (FCC Form 302) and on the first anniversary of the commencement of program tests, applicants for new broadcast facilities granted as a result of a settlement or other decision in a comparative proceeding must report.

(1) Any deviations from comparative proposals relating to integration of ownership and management and diversification of the media of mass communciation contained in their application for a construction permit at the time such application was granted; and

(2) Any deviations from an active/passive ownership structure proposed in their application for a construction permit at the time such application was granted.

(3) The reports referred to in paragraphs (g)(1) and (2) of this section shall not be required in any case in which the order granting the application relieved the applicant of the obligation to adhere to such proposals.

17. Section 73.3571 is amended by adding new paragraphs (c)(1) and (c)(2) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(c) * * *

(1) In addition to announcing the acceptance of mutually exclusive applications and establishing a date for the filing of petitions to deny such applications, the public notice referred to in paragraph (c) of this section will also announce the date on which all mutually exclusive applicants (including the previously accepted lead applicant) will be required to pay the hearing fee established in part 1 of these rules, 47 CFR 1.1104(2)(c) of this chapter. The date for fee payment shall be at least 30 days after the date established for peitions to deny.

(2) Whenever the public notice announces the acceptance of an application that is mutually exclusive with a renewal application, it shall also announce that the mutually exclusive applicants and the renewal applicant will be required to pay the hearing fee on the date established in the public notice.

* * * * *

18. Section 73.3572 is amended by adding new paragraphs (c)(1) and (c)(2) to read as follows:

§ 73.3572 Processing of TV broadcast low power TV, TV translator and TV booster station applications.

* * * * *

(c) * * *

(1) In addition to announcing the acceptance of mutually exclusive applications and establishing a date for the filing of petitions to deny such applications, the public notice referred

to in paragraph (c) of this section will also announce the date on which all mutually exclusive applicants (including the previously accepted lead applicant) will be required to pay the hearing fee established in part 1 of these rules, 47 CFR 1.1104(1)(c) of this chapter. The date for fee payment shall be at least 30 days after the date established for petitions to deny.

(2) Whenever the public notice announces the acceptance of an application that is mutually exclusive with a renewal application, it shall also announce that the mutually exclusive applicants and the renewal applicant will be required to pay the hearing fee on the date established in the public notice.

* * * * *

19. Section 73.3573 is amended by adding new paragraphs (g)(2)(i) and (g)(2)(ii) to read as follows:

§ 73.3573 Processing FM broadcast and FM translator station applications.

* * * * *

(g) * * *

(2) * * *

(i) In addition to announcing the acceptance of mutually exclusive applications and establishing a date for the filing of petitions to deny such applications, the public notice referred to in paragraph (g)(2) of this section will also announce the date on which all mutually exclusive applicants will be required to pay the hearing fee established in part 1 of these rules, 47 CFR 1.1104(2)(c) of this chapter. The date for fee payment shall be at least 30 days after the date established for petitions to deny.

(ii) Whenever the public notice announces the acceptance of an application that is mutually exclusive with a renewal application, it shall also announce that the mutually exclusive applicants and the renewal applicant will be required to pay the hearing fee on the date established in the public notice.

* * * * *

[FR Doc. 91-225 Filed 1-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-137; RM-7095, RM-7106]

Radio Broadcasting Services; Morris and Pontiac, Illinois

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 229A for Channel 276A at Pontiac, Illinois, and modifies the license of Station WJEZ(FM) to specify operation on the alternate Class A channel, at the request of Livingston County Broadcasters, Inc. In addition, Channel 276A is allotted to Morris, Illinois, at the request of Nelson Enterprises, Inc. *See* 55 FR 11411, March 28, 1990. Channel 229A can be substituted for Channel 276A at Pontiac, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction 2.2 kilometers (1.4 miles) east at Station WJEZ's currently licensed site. Channel 276A can be allotted to Morris, Illinois, in compliance with the Commission minimum distance separation requirements with a site restriction of 8.2 kilometers (5.1 miles) southeast, in order to avoid a short-spacing to Station WVVX(FM), Channel 276A, Highlands, Illinois. The coordinates for Channel 229A at Pontiac are North Latitude 40-52-31 and West Longitude 88-36-11. The coordinates for Channel 276A at Morris are North Latitude 41-18-39 and West Longitude 88-22-08. With this action, this proceeding is terminated.

DATES: Effective February 19, 1991; the window period for filing applications for Morris, Illinois, will open on February 20, 1991, and close on March 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-137, adopted December 12, 1990, and released January 4, 1991. 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.

PART 73—[AMENDED]

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 under Illinois, is amended by adding Channel 276A at Morris, and by removing Channel 276A and adding Channel 229A at Pontiac.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-488 Filed 1-8-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AB25

Addition of Five National Wildlife Refuges to the Lists of Open Areas for Hunting, Three to the List for Sport Fishing, and Pertinent Refuge-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Technical amendment.

SUMMARY: The Fish and Wildlife Service corrects procedural codification errors in the final rule relating to the addition of five national wildlife refuges to the list of open areas for hunting, three to the list for sport fishing, and pertinent refuge-specifc regulation that appeared in the **Federal Register** on September 6, 1990 (55 FR 36647).

EFFECTIVE DATE: This amendment is effective on January 9, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Karges, U.S. Fish and Wildlife Service, Division of Refuges, MS 670-ARLSQ, 1849 C Street, NW., Washington, DC 20240; telephone: 703/358-1744.

SUPPLEMENTARY INFORMATION:

List of Subjects in 50 CFR Part 32

Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.12 [Amended]

2. Section 32.12 is amended by redesignating paragraphs (f)(4) (1) and (2) as paragraphs (f)(4) (i) and (ii).

§ 32.22 [Amended]

3. Section 32.22 is amended by redesignating paragraphs (dd)(4) (1) and

(2) as (dd)(4) (i) and (ii) and paragraph (dd)(5)(1) and (dd)(5)(i).

§ 32.32 [Amended]

4. Section 32.32 is amended by redesignating paragraph (t)(3)(1) as (t)(3)(i) and paragraphs (rr)(4) (1) through (5) as (rr)(4) (i) through (v).

Dated: December 20, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-417 Filed 1-8-91; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife Plants; Endangered Status Determined for the Tulotoma Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the tulotoma snail, *Tulotoma magnifica*, to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. This freshwater snail is currently known from the Coosa River system, Alabama. Habitat modification for navigation and hydropower represent major threats to this species.

EFFECTIVE DATE: February 8, 1991.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Paul D. Hartfield at the above address (telephone 601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Tulotoma magnifica was described from the Alabama River in 1834 as *Paludina magnifica* by T.A. Conrad. An additional three species in the genus *Paludina* were described from the Alabama-Coosa River system between 1834 and 1841. Haldeman erected *Tulotoma* as a subgenus of *Paludina* in 1840 based on shell and opercle characters of the Alabama-Coosa species. All four species of *Tulotoma* were differentiated by only minor differences in shall size, shape and sculpture and the genus is now considered to be monotypic by most authors (Clench 1962, Burch 1982).

Patterson (1965) documented differences in chromosome numbers between two tulotoma populations and suggested that species status of the several forms might be valid. She compared chromosome data on snails from the Coosa River at Wetumpka, Alabama (2N=26) with similar data from an earlier study on specimens from the Coosa River near Wilsonville, Alabama (2N=24). A Service study (Hershler 1989) examined snail chromosome preparations from the Coosa River at Wetumpka, over 50 miles south of Wilsonville, and from Kelly Creek, a tributary of the Coosa River approximately 18 miles north of Wilsonville. For both populations, the chromosome number was 2N=26, suggesting that the earlier study, which was based on a less accurate paraffin section technique, was probably incorrect.

Based on these results and the general consensus of the taxonomic community, the Service considers the genus *Tulotoma* to be monotypic. This species has been previously known by the common name of the Alabama live-bearing snail. This rule uses the common name tulotoma, as recommended by Turgeon et al. (1988), in support of the effort to standardize nomenclature of mollusks.

The historic range of tulotoma was from the Coosa River in St. Clair County, Alabama, to the Alabama River in Clarke and Monroe Counties, Alabama. Historic collecting localities in the Coosa River system included numerous sites on the river as well as the lower reaches of several large tributaries. This snail has only been recorded from two localities in the Alabama River system, the type locality near Claiborne, Monroe County, Alabama, and Chilachee Creek southwest of Selma, Dallas County, Alabama. Other than isolated archaeological relics, the species has never been recorded from the Tombigbee, Black Warrior, Cahaba, or the Tallapoosa drainages. Archaeological records from these drainages are doubtful since tulotoma were Indian food items with shells of ornamental value and were likely to be transported outside of their natural range. Collections from these drainages since the mid-19th century have not verified the presence of this species.

Tulotoma is a gill-breathing, operculate snail in the family Viviparidae. The shell is globular, reaching a size somewhat larger than a golf ball, and typically ornamented with spiral lines of knob-like structures. Its adult size and ornamentation distinguish it from all other freshwater snails in the Coosa-Alabama River system. Tulotoma is also distinguished by its oblique aperture with a concave margin (Burch 1982).

Tulotoma occurs in cool, well-oxygenated, clean, free-flowing waters, with the habitat including both the mainstem river and the lower portions of large tributaries (Hershler 1989). This species is generally found in riffles and shoals and has been collected by Service divers (1989) at depths over five meters (15 feet) with strong currents. The species is strongly associated with boulder/cobble substrates and is generally found during daylight hours clinging tightly to the underside of large rocks. Other aspects of its biology are virtually unknown, apart from the fact that it broods young and filter-feeds, as do other members of the Viviparidae.

The current known range of tulotoma includes four localized populations in the lower, unimpounded portions of Coosa River tributaries: Kelly Creek, St. Clair and Shelby Counties; Weogufka and Hatchet Creeks, Coosa County; and Ohatchee Creek, Calhoun County. A single population continues to survive in the Coosa River between Jordan Dam and Wetumpka, Elmore County. All of these locations, with the exception of Ohatchee Creek, where only a few snails have been observed, appear to have self-sustaining populations. All five populations are separated by large reaches of impounded river and are probably genetically isolated. The snail has apparently been extirpated in the Alabama River.

Decline of tulotoma has been evident for at least 50 years. The snail could no longer be found in the Alabama River at Claiborne by the mid-1930's (Goodrich 1944; Clench 1962), nor has it been found elsewhere in the Alabama River drainage in the past 50 years. Reduction of numbers of all prosobranch snails in the Coosa River was obvious by 1944 (Goodrich 1944). Prior to 1988, the last live collections of tulotoma were those of Athearn (Stein 1976) and Yokley (U.S. Army Corps of Engineers 1981). Athearn located three populations in the upper Coosa River drainage between 1955-1963. Two of those sites, Big Canoe and Choccolocco Creeks, have since been flooded by impoundments. Tulotoma still occur at the third site, Kelly Creek. Yokley found a single live individual in the Coosa River above Lay Reservoir and below Kelly Creek. During a 1988 search of the Lay Reservoir site by Service biologists, neither the species nor suitable habitat was found and it was concluded that the single individual

collected by Yokley had most likely washed in from Kelly Creek. Since publication of the proposed rule, Service biologists have located live tulotoma snails in the Coosa River approximately 0.5 kilometers (0.3 miles) below Kelly Creek. An extensive search of the area found 20 individuals, but very little of the boulder cover tulotoma requires. Due to the limited habitat and low number of snails, it is likely that this short reach of the Coosa River is dependent on Kelly Creek for recruitment, and as such, is considered as a part of the Kelly Creek tulotoma population. Other 1990 searches in the mainstem found neither tulotoma or appropriate habitat.

Tulotoma, *Tulotoma magnifica*, was listed as a category 2 candidate (a taxon for which data in the Service's possession indicate listing is probably appropriate) in the Notice of Review published in the **Federal Register** on January 6, 1989 (54 FR 554). The proposed rule to list the tulotoma snail as an endangered species was published on July 11, 1990 (55 FR 28573).

Summary of Comments and Recommendations

In the 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. A newspaper notice inviting general public comment was published in the *Birmingham News*, Birmingham, Alabama on July 22, 1990, *The Anniston Star*, Anniston, Alabama on July 28, 1990, and in the *Montgomery Advertiser*, Montgomery, Alabama on July 29, 1990. The only comments were from two State agencies, both in support of the proposed rule. Neither provided new information on the status of the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the tulotoma snail (*Tulotoma magnifica*) should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species 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 an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the tulotoma (*Tulotoma magnifica*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, the tulotoma was locally abundant in the main channels of the Coosa and Alabama Rivers and the lower reaches of some of their tributaries from St. Clair/Talledega Counties to Clarke/Monroe Counties, Alabama, a distance of approximately 350 river miles. It has apparently been extirpated from the Alabama River and is now known from approximately three miles of the main channel of the Coosa River and in localized portions of four tributaries. It has apparently been extirpated from three of the seven known historic tributary populations. Of the extant populations, one, Ohatchee Creek, is considered to be marginal or declining due to the low numbers of snails recently observed. This represents at least a 98 percent range reduction in main channel habitat, and an approximately 50 percent reduction in known tributary habitat.

The range reduction of tulotoma can be attributed to extensive channel modifications in the Coosa-Alabama River system for navigation and hydropower. Dredging of the Alabama River channel began in 1878 and continues to the present day. Locks and dams on that river were completed in the 1960's, impounding tulotoma habitat from the lowermost known site near Claiborne, Alabama, to the confluence of the Coosa and Tallapoosa Rivers. The Coosa River has been impounded for hydropower from just above its confluence with the Tallapoosa for approximately 230 river miles by a series of six large dams constructed between 1914 and 1966. Most Alabama and Coosa River tributaries within the historic tulotoma range have been affected in their lower reached by backwater from the impoundments.

Additional impacts on the species include population, siltation and hydropower discharge. Hurd (1974) noted industrial and municipal waste problems in the Coosa drainage as well as the effects of excessive siltation. Service biologists in a 1989 survey noted that tulotoma habitat in the river channel and tributaries affected by reservoir backwater may be limited by siltation.

Hydropower discharge regimes through Jordan Dam may affect the last known main channel tulotoma population. Currently, Jordan Dam discharges 4500 cubic feet per second (cfs) into the Coosa River for only a 2.25-hour period daily Between releases, there is an estimated flow of 188 cfs due to seepage. It has been estimated that less than four percent of the Coosa River's annual discharge is passed into the natural river channel below Jordan Dam (USFWS 1989). The remaining annual flow is discharged to the Coosa River about four miles upstream of its confluence with the Tallapoosa River via a hydropower canal at Walter Bouldin Dam. This bypasses approximately 14 miles of Coosa River natural channel, a portion of which supports a population of tulotoma. Any decrease in discharge will likely lead to the extirpation of tulotoma at this location. Water quality problems, low dissolved oxygen and elevated temperatures have been associated with current Jordan Dam discharge regimes (USFWS 1989) and may be a limiting factor to the tulotoma population.

Each of the five known tulotoma populations may be vulnerable to localized water quality changes due to construction activities. Siltation from bridge and road construction through or above tulotoma habitat could result in adverse impact. There are pending permit applications to the U.S. Army Corps of Engineers to construct two lakes upstream of the Kelly Creek population. Construction of these lakes could potentially affect the species through the sedimentation of downstream habitat during construction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The species is currently not of commercial value; any collecting is likely to be for scienfic purposes. However, the localized populations would be susceptible to over collecting should this orriate snail become important to the commercial pet trade.

C. *Disease or predation.* Unusual levels of disease or predation were not apparent during recent observations of the extant populations.

D. *The inadequacy of existing regulatory mechanisms.* Existing laws are inadequate to protect this species. It is not officially recognized by Alabama as needing any special protection but will be upon Federal listing. The species is not given any special consideration under other environmental laws when project impacts are reviewed.

E. *Other natural or manmade factors affecting its continued existence.* Known tulotoma populations are isolated, localized and restricted. There is little, if any, possibility of genetic exchange between populations. Over time, this isolation may result in genetic drift with each population becoming unique and vulnerable to environmental disturbance. As noted above, the

Ohatchee Creek population is very small and as such is more susceptible to environmental changes. The life history and biology of this species is virtually unknown.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the tulotoma snail as endangered. Endangered status is determined because of the irretrievable loss of over 90 percent of the historic habitat, and the vulnerability and isolation of existing populations. Critical habitat is not determined for reasons discussed below.

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 same time species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species due to the lack of benefit of such designation and the potential for collecting, should this species become commercially important. No additional benefits would accrue from a critical habitat designation that do not already accrue from the listing. All involved parties and the principal landowner have been notified of the location and importance of protecting this species habitat. Precise locality data are available to appropriate agencies through the Service office described in the "**ADDRESSES**" section.

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 Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm 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 its 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.

Federal involvement is expected to include the Environmental Protection Agency through the Clean Water Act's provisions for pesticide registration and waste management actions. The Corps of Engineers will include this species in project planning and operation and during the permit review process. The Federal Energy Regulatory Commission will consider the species when licensing or relicensing hydropower plants. The Federal Highway Administration will consider impacts of bridge and road construction when known habitat may be impacted. Continuing urban development within the drainage basins may involve the Farmers Home Administration and their loan programs.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, delivery, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for prevention of economic hardship.

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).

References Cited

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Author

The primary author of this rule is Paul D. Hartfield (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and 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 § 17.11(h) for animals by adding the following, in alphabetical order under "SNAILS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species								
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
SNAILS:							
* * *	*	*	*	*			
Snail, tulotoma (=Alabama live-bearing).	Tulotoma magnifica	U.S.A. (AL)	NA	E	412	NA	NA
* * *	*	*	*	*			

Dated: December 7, 1990.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 91–484 Filed 1–8–91; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 56, No. 6
Wednesday, January 9, 1991

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

Agricultural Marketing Service

7 CFR Part 53

[No. LS-90-110]

Standards for Grades of Dairy Breeding Cattle (Females)

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule.

SUMMARY: The Department has received recommendations from the cattle industry regarding the promulgation of grade standards for dairy breeding cattle. Industry segments have recommended that grade standards be developed to serve as a marketing tool to enhance international sales. Presently, U.S. export contracts are bid based on local, usually State, grade standards which make comparison of bids virtually impossible. Uniform voluntary U.S. grade standards would be beneficial both domestically and internationally. Therefore, AMS is proposing this rule which contains grade standards for dairy breeding cattle.

DATES: Comments must be received by March 11, 1991.

ADDRESSES: Comments must be submitted in duplicate, signed, include the address of the sender, and should bear reference to the date and page number of this issue of the **Federal Register**. The comments should include definitive information which explains and supports the sender's views. Send comments to Fred L. Williams, Jr.; Standardization Branch; Livestock and Seed Division; AMS-USDA; Room 2603 South Building; P.O. Box 96456, Washington, DC 20090-6456.

Comments will be available for public inspection during regular business hours at the above office in Room 2603 South Building; 14th and Independence Avenue SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fred L. Williams, Jr., Standardization Branch—202/447-4486.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule regarding grade standards for dairy breeding cattle was reviewed pursuant to Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as a non-major rule because: (1) It would not have an annual effect on the economy of $100 million or more, (2) it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and (3) it would not have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

Effect on Small Entities

This proposed action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the RFA because the grade standards are voluntary. In addition, the standards would be of benefit as a communication tool both domestically and internationally.

Background

U.S. dairy cattle out-perform their competition in milk production, conformation, and adaptability to a variety of world environments. Certain exporters of dairy cattle, mainly State Departments of Agriculture, feel that uniform grade standards are needed to continue to maintain the positive image of U.S. dairy cattle in the face of increasing foreign competition. A number of States are involved in the export of dairy cattle to various countries. Uniform grade standards have proven to be a valuable marketing tool when used in relation to other commodities—they have maintained product credibility in the marketplace and have enhanced international sales. Presently, uniform U.S. grade standards for dairy breeding cattle do not exist. Consequently, export contracts are frequently bid based on highly heterogeneous, exporter supplied or State grade standards which make comparison of bids virtually impossible. The National Association of State Departments of Agriculture (NASDA) passed a resolution at its 1984 annual meeting authorizing The National Association of Marketing Officials (NAMO) to form a NAMO/Industry task force to work on grade standards with the Department. This proposal reflects the consensus of the task force which consists of representatives from State Departments of Agriculture, Dairy Breed Associations, the export community, and USDA.

This proposed rule would add grade standards for dairy breeding cattle to 7 CFR part 53. These standards would be contained in new §§ 53.300 through 53.303 which would be entitled "Dairy Cattle". The cattle would be graded on the basis of weight for age, body capacity, feet and legs, dairy character, and mammary development. The grade designations, in descending order of quality, would be Supreme, Approved, Medium, and Common. In developing the proposed grade standards, the task force, made up of industry, State Departments of Agriculture, and USDA representatives, recommended that the Dairy Cow Unified Score Card (DCUSC), copyrighted by the Purebred Dairy Cattle Association, be used as a guide in applying the standards proposed in this rule. The reason for this recommendation is that the breed characteristics and evaluation factors contained on the score card have been used by the industry for many years, and have gained wide acceptance and credibility. In addition, the score card was used in developing these proposed standards. The Purebred Dairy Cattle Association has informed the Department that it has no objection to the use of its score card. A copy of the DCUSC may be obtained by sending a written request to the USDA, Livestock and Seed Division, Standardization Branch, Room 2603 South Building, P.O. Box 96456, Washington, DC 20090-6456. These proposed standards contain weight for age tables which were prepared using figures which were provided to the Department by the various breed associations. The figures

contained in the tables are those which were submitted by the breed associations for each breed of dairy cattle.

Dairy cattle grades (Supreme, Approved, Medium, or Common) would be determined by numerically scoring five grade factors—weight for age, body capacity, feet and legs, dairy character, and mammary development. Each grade factor would be scored for its level of quality on a scale of 1 to 4. The score would be determined in the manner specified in these proposed standards, with 1 being the score given to the highest quality and 4 the lowest. The Dairy Cattle Unified Score Card (DCUSC) was used in developing the scoring system proposed in these standards and would be used in scoring of the grade factors. For example, the DCUSC contains a picture diagram of a dairy cow which points out 45 specific parts or areas of a cow, many of which are referred to throughout the standards and are specific areas of evaluation. The score card also contains specific breed characteristics which would be used in evaluating dairy character. After scoring the five grade factors on the scale of 1–4, the grader would determine the final grade—Supreme, Approved, Medium, Common—by a simple cumulative total of the five scores. Here, the DCUSC would be used in determining whether there exists a degree of discrimination or disqualification which would affect the grade. The DCUSC contains a section listing 30 defects that are classified as to various degrees of discrimination. Some of these defects would limit the grade that a dairy female may qualify for.

List of Subjects in 7 CFR Part 53

Cattle, Grading and certification, Livestock, Sheep, Swine, Vealers.

PART 53—[AMENDED]

Accordingly, 7 CFR Part 53, Subpart B—Standards would be amended as follows:

1. The authority citation for part 53 would continue to read as follows:

Authority: Agricultural Marketing Act of 1946, sec 203, 205, as amended, 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

2. A new undesignated center heading and new §§ 53.300 through 53.303 would be added as follows:

Dairy Cattle

§ 53.300 Dairy breeding cattle (females).

These official standards for dairy breeding cattle (females) provide for four grades. The grades, in descending order of quality and usefulness are: Supreme, Approved, Medium, and Common. The grade is determined by numerically evaluating five general value-determining factors—weight for age, body capacity, feet and legs, dairy character, and mammary development. Each factor is subjectively evaluated and given a numerical score of 1–4 based on its level of quality, as provided in § 53.302, with 1 representing the highest level. The final grade of breeding dairy cattle is then determined by the cumulative total of the five grade factors. The "Dairy Cow Unified Score Card" (DCUSC), published by the Purebred Dairy Cattle Association [1] may be used in evaluating some of the grade factors, and must be used in evaluating dairy character and in determining the degree of discrimination, if any, arriving at the final grade. Additionally, weight for age tables are included in these standards to aid in making weight for age evaluations. Once evaluations of the five factors have been made, a simple cumulative total determines the final grade.

§ 53.301 Dairy breeding cattle (factors and grades).

(a) *Factors.* The grade of dairy breeding cattle is determined by evaluating five general value-determining factors—weight for age, body capacity, feet and legs, dairy character, and mammary development.

(1) Weight for age refers to the animal's skeletal size—its height and body length—in relation to its age. Thus, if condition is kept constant, weight for age evaluations are directly related to differences in mature size. At the same age and degree of condition, heavy cattle will be taller at the withers and longer bodied than light weight cattle.

(2) Body capacity indicates consumptive capacity and ample space for the vital organs. Length and depth of body (fore and rear rib) and, spring of rib (fore and rear rib) should be considered. Large body capacity is indicative of strength and vigor.

(3) Feet and legs relate to the animal's mobility to graze and convert roughage, as well as concentrates, into milk. Bones, including the joints, of ample size and free of coarseness are preferred.

(4) Dairy character refers to the angularity and general openness without weakness or frailty. The animal should show evidence of milking ability as determined by flatness and openness of rib, thinness of hide, length and cleanness of head and neck, and general freedom from coarseness.

(5) Mammary development refers to the udder attachment, balance, shape, teat size and other quality indicating characteristics related to heavy milk production and a long period of usefulness.

(b) *Grades.* The grades of dairy breeding cattle in descending order of quality and usefulness are: Supreme, Approved, Medium, and Common.

§ 53.302 Application of standards for grades of dairy breeding cattle (females).

For the grades of dairy breeding cattle, separate evaluations are made for each value-determining factor—weight for age, capacity, feet and legs, dairy character, and mammary development. Each factor is given a numerical score of 1–4 based on its level of quality, with 1 representing the highest level. The final grade for breeding dairy cattle is then determined by the cumulative total of the five grade factors.

(a) *Weight for Age.* The weight for age portion of the evaluation is determined by an evaluation of an animal's weight in relation to its age. When evaluating registered cattle—cattle with official certificates of registration issued by the appropriate breed association—the animal's age can be obtained from the certificate. When evaluating non-registered cattle, a subjective evaluation of age must be made by the grader. Since age is an important factor in determining the weight for age relationship, careful consideration must be given to its evaluation. For example, two cattle from the same breed and environment with the same weight but differing substantially in age would obviously not be the same weight for age. As cattle mature, their heads appear to increase in relation to the size of their body; their ears decrease in size in relation to the size of their heads; the muzzle becomes proportionately wider; the head becomes longer in relation to its width; the feet become larger in relation to the size of the bone; the tail increases in length and exhibits a more prominent switch; and temporary incisors are replaced with permanent incisors that show increased wear as maturity advances. In subjectively evaluating cattle for weight for age, it must be remembered that breeds differ in the general range of their weight for age and that since these standards apply to all dairy breeds, this variation among breeds must be taken into account. For example, in these standards the heaviest cattle in a breed of small mature size—and the heaviest cattle in the breed of

[1] A copy of the DCUSC may be obtained by sending a written request to the USDA, Livestock and Seed Division, room 2603 South Building, Washington, DC 20090-6456.

large mature size—might differ drastically in weight, but would be in the same weight for age category. It should be remembered when subjectively evaluating cattle for weight for age that degree of condition will contribute to an animal's weight. Unless proper allowance is made for variations in condition, animals carrying considerable condition may be heavier than their true weight for age relationship should be, whereas, those which are in very thin condition may be inherently heavier than their actual weight may indicate at the time of grading. When facilities permit, cattle may be mouthed to aid evaluator's subjective evaluation of age. Females approaching two (2) years of age will show two (2) permanent teeth replacing the central temporary incisors. The first intermediates (one on each side of the two central permanent teeth) erupt at about 2 and one-half years of age. If an animal has a second set of intermediate (lateral pincers) then the animal is older than 36 months of age. When evaluating dairy breeding cattle, the following weight for age relationships by breed should be used. The numerical value for weight for age when grading dairy breeding cattle is as follows: 1=weight designated on chart, or heavier, 2=10% less, 3=15% less, 4=20% less, or lighter.

WEIGHTS OF DAIRY BREEDING CATTLE (FEMALES) AT VARIOUS AGES

Weights of various breeds (in pounds)					Estimating weight from heart girth measurement	
Age (months)	Holstein	Brown Swiss	Guernsey, Ayrshire & Milking Shorthorn	Jersey	Weight (pounds)	Heart girth (inches)
4	270	220	205	190	200	40
6	380	330	300	250	300	46
8	500	450	400	310	400	51
10	600	550	495	400	500	55
12	700	650	575	470	600	59
14	775	725	645	515	700	62
16	850	800	710	560	800	65
18	915	865	765	640	900	68
20	975	925	820	700	1000	71
22	1040	990	870	750	1100	73
24	1100	1050	920	825	1200	75
26	1150	1100	970	850		
28	1175	1125	1025	875		
30	1200	1150	1075	900		
32	1250	1200	1125	915		
34	1300	1250	1175	935		
36	1300	1250	1200	950		
36 mo.-5 yr	1300	1250	1200	975		
Over 5 yr	1500	1450	1250	1000		

(b) *Capacity.* Capacity refers to an animals ability to take in feed in sufficient quantities to assure rapid and efficient growth, efficient body maintenance, and ample space for vital organs. Large body capacity permits utilization of feed and chest capacity is indicative of strength and vigor. Cattle with large capacity have a relatively large chest that is deep, with a wide floor, and well sprung ribs blending into the shoulders. The crops are full. The body is strongly supported, long, deep and wide. The depth and spring of rib tends to increase towards the rear. The flanks are deep and refined. The numerical value for the various levels of capacity when evaluating dairy breeding cattle are as follows: 1 = Very large, very deep and very wide chest floor with very well sprung fore ribs blending into the shoulders. The crops are very full. The body is very strongly supported and is very long, very deep and very wide. Depth and spring of rib tending to increase towards the rear. The flanks are very deep and refined. 2=Large, deep and wide chest floor with well sprung fore ribs blending into the shoulders. The crops are full. The body is strongly supported and is long, deep and wide. Depth and spring of rib tends to increase towards the rear. The flanks are deep and refined. 3=Cattle in this category are beginning to show some tendencies toward lack of capacity. The chest floor does not appear particularly wide or deep. The fore ribs tend to be slightly narrow. The body tends to be somewhat weakly supported and appears neither long, deep, or wide. The flanks are not deep. 4=Cattle in this category lack capacity. The chest floor and fore ribs are narrow. The body is weakly supported and is shallow and narrow. The flanks are shallow.

(c) *Feet and legs.* Feet and legs are related to the animal's longevity and mobility, which enable her, among other things, to graze and convert roughage, as well as concentrates, into milk. The front and rear legs are to be well set and relatively wide apart. Rear legs that have some set (angle) to the hocks when viewed from the side are preferred. The numerical value for the various levels of feet and leg criteria are as follows: 1=Front and rear legs are relatively wide apart. Feet are rounded and deep at the heel with strong pasterns. When walking, the animal shows no evidence of toe-out. There is no evidence of lameness of any kind or any fluid in hocks. The toes are pointed straight ahead. 2=Front and rear legs tend to be set squarely beneath the animal, so as to evenly support her weight. The pasterns are neither weak or too straight. The hocks are fairly straight as fiewed from the rear and there may be some toe-out. Only a slight amount of lameness that is apparently temporary and not affecting normal function will be tolerated. 3=Front and rear legs are not as well set as #2 and hocks tend to be slightly close as viewed from the rear and there is apparent toe-out. Lameness can be tolerated if apparently temporary and can be corrected through good management practices. 4=Front and rear legs are close together and hocks may be straight and close together (sickled). Cattle in this category may be permanently lame and it might interfere with normal function. Pasterns are weak to broken down and there may be evidence of crampy rear legs.

(d) *Dairy character.* Dairy character relates to the angularity and general

openness without weakness, freedom from coarseness, and evidence of milking ability and udder quality, giving due regard to the stage of lactation. The neck should be long, lean, and blending smoothly into the shoulders with a clean throat, dewlap, and brisket. The animal should show evidence of milking ability as determined by flatness and openness of rib, thinness of hide, length and cleanness of head and neck, and general freedom from coarseness. The ribs should be wide apart. The thighs should be convex to flat and wide apart from the rear view, providing ample room for the udder and its rear attachment. The skin should be thin, loose and pliable. The "Dairy Cow Unified Score Card (DCUSC) published by The Purebred Dairy Cattle Association lists specific characteristics by breed. The DCUSC should be used in determining breed character in addition to the general criteria discussed above. The numerical value for the various levels of quality are as follows: 1=Meets all the general criteria and the specific breed characteristics on DCUSC without compromises. 2=Meets all the general criteria except one, and all the specific breed characteristics on DCUSC. 3=Meets all the general criteria and the specific breed characteristics on the DCUSC except two. 4=Expresses less dairy or breed character than 3.

(e) *Mammary development.* Mammary development refers to the balance and shape of the udder as well as teat size, shape and placement. The numerical value for the various levels of quality are as follows: 1=The fore udder is strongly and smoothly attached with moderate length and uniform width from front to rear. The rear udder is strongly attached, high, and wide with uniform width from top to bottom and slightly rounded to udder floor. The udder is carried snugly above the hocks showing a strong suspensory ligament with clearly defined halving. The four teats are of uniform size and medium in length and diameter. The teats are cylindrical, and squarely placed under each quarter, plumb, and well spaced from side and rear views. No overdevelopment or fatty udders in heifer calves and yearlings is allowed. 2=The fore udder tends to be strongly and smoothly attached with modest length and uniform width from front to rear. The rear udder tends to be strongly attached, moderately high, moderately wide and tends to be uniform in width from top to bottom. The udder shows evidence of a strong suspensory ligament with defined halving. The four teats tend to be uniform in size and tend to be medium in length and diameter. The teats are cylindrical and tend to be squarely placed under each quarter, plumb, and tend to be well placed from side and rear views. Udders of heifers may have a slight tendency towards overdevelopment and fatty tissue. 3=Udder shows some evidence of weak udder attachment and lacks well defined halving. One light quarter may be present. Heifer calf and yearling udders may appear overdeveloped and fatty. 4=Udders with less quality than 3 including udders with blind quarters, more than four teats, side leakers, and enlarged quarter(s) giving evidence of having been suckled.

(f) *Other factors.* Other factors such as heredity and management may also affect the development of the grade-determining characteristics in dairy cattle. Although these factors do not lend themselves to description in the standards, the use of factual information of this nature is justifiable in determining the grade of breeding dairy cattle.

§ 53.303 Specifications for official United States grades of dairy breeding cattle. (females)

(a) *Supreme.* Cattle in this grade have a combined numerical value of the five value-determining factors of 7 or less. No cattle, regardless of the combined numerical value, can qualify for the Supreme grade if it has any one value-determining factor inferior to 2 or if it has a factor determined to be a slight discrimination as described in the DCUSC.

(b) *Approved.* Cattle in this grade have a combined numerical value of 8–13. No cattle, regardless of the combined numerical value, can qualify for the Approved grade if any one value-determining factor is determined to be a 4.

(c) *Medium.* Cattle in this grade have a combined numerical value of 14–18.

(d) *Common.* This grade includes cattle which have a combined numerical value of 19 or more or any factor that is determined to be a disqualification on the DCUSC.

Done in Washington, DC on: January 3, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-431 Filed 1-8-91; 8:45 am]

BILLING CODE 3410-02-M

Agriculture Marketing Service

7 CFR Part 998

[Docket No. FV-91-231]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Proposed Increase in Expenses and Assessment Rate for the Peanuts; Administrative Committee for the 1990-91 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorized an increase in expenditures for administration and establish an increased assessment rate under Marketing Agreement 146 for the 1990–91 crop year. The proposal is needed for the Peanut Administrative Committee (committee) to cover higher than anticipated operating expenses and to collect additional funds to pay those expenses during the 1990–91 crop year. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by January 22, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 68 handlers of peanuts covered under the peanut marketing agreement, and approximately 46,950 producers in the 16 states covered under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and a majority of producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of peanuts. They are familiar with the committee's needs and with the costs for goods, services and personnel for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It automatically applies to all assessable peanuts received by handlers from July 1, 1990. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

A final rule establishing administrative expenses in the amount of $910,000 for the committee for the crop year ending June 30, 1991, was published in the **Federal Register** on June 4, 1990 (55 FR 22777). That action also fixed an assessment rate of $0.52 per ton of assessable peanuts received by handler under Marketing Agreement No. 146 during the 1990–91 crop year.

At its December 10, 1990, meeting, the committee voted unanimously to increase its budget of expenses by $365,000 from $910,000 to $1,275,000. The increase is needed to cover the higher than anticipated administrative expenses resulting from the large number of indemnification claims on 1990 crop peanuts. Budget items which would be increased are office supplies and stationery by $16,000 to $30,000, postage and mailing by $21,000 to $30,000, telephone and telegraph by $3,000 to $16,000 and reserve for contingencies by $5,000 to $11,000. The proposed $365,000 increase in authorized expenditures also includes $320,000 for continuing program operations during the first few months of the next fiscal period.

Because of poor weather conditions during the growth season, 1990 crop receipts were lower than anticipated. As a result of the short crop, assessment income at the $0.52 per ton rate will not be sufficient to cover expected expenditures. Therefore, the committee also unanimously recommended that the assessment rate be increased by $0.33 to $0.85 per ton of assessable 1990 crop peanuts. Application of the new assessment rate to the committee's revised estimate of 1.5 million tons of assessable peanuts received by handlers would yield $1,275,000 to cover 1990 administrative expenses. The increased assessment rate would also supply ample funds to allow the committee to continue program operations until it begins to receive assessments on 1991 crop peanuts.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget increase approval and the establishment of the higher assessment rate should be expedited. The committee needs to have sufficient funds to pay the additional administrative expenses as soon as possible.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 998 be amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.403 (55 FR 22777; June 4, 1990) is amended by revising paragraph (a) and paragraph (c) to read as follows:

§ 998.403 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1990, shall be in the amount of $1,275,000 such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

* * * * *

(c) *Rate of assessment.* Each handler shall pay to the committee, in accordance with § 998.48 of the marketing agreement, an assessment rate at the rate of $0.85 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d). All funds generated from this assessment shall be for administrative expenses.

* * * * *

Dated: January 3, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–436 Filed 1–8–91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 91-10]

RIN 1550-AA01

Regulatory Capital: Interest Rate Risk Component; Correction

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On December 31, 1990, the Office of Thrift Supervision published a proposal setting forth a description of proposed methodologies for calculating an interest rate risk component that would be incorporated into its capital regulation. Docket No. 90-1434, 55 FR 53529 (December 31, 1990).

The address at which comments relating to this proposal are available for inspection was misstated and is printed correctly below, under the "**ADDRESSES**" caption.

ADDRESSES: Comments relating to Docket No. 90-1434 will be available for public inspection at: 1776 G Street NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Paralegal Specialist, (202) 906-7135, Regulations and Legislation Division, Office of Chief Counsel, Officer of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

Dated: Jan. 4, 1991

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-470 Filed 1-8-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-91-1]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awarness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 11, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 3, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Indpendence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC., on December 28, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26273

Petitioner: Mr. Ken McKay

Regulations Affected: 14 CFR 91.55 (old § 91.105)

Description of Petition: To amend Part 91.55 to prohibit a person from commencing a flight under visual flight rules during the time period of 1 hour after sunsent until 1 hour before sunrise.

Petitioner's Reason for the Request: The petitioner beleives that to a large degree accidents and deaths that occur from night VFR operations could be avoided if pilots were required to be IFR rated to fly at night. The petitioner believes that a simple modification of the regulations will remedy the problem, and will have no foresseeable negative effects on general aviation as a whole.

Docket No. 26404

Petitioner: Canadair Regional Jet Aircraft Division of Bombardier, Inc.

Regulations Affected: 14 CFR part 93, subpart K

Description of Petition: To amend part 93, subpart K, to continue the eligibility of air carriers to use turbojet aircraft with fewer than 56 seats in commuter slots at the high density traffic airports (JFK, LaGuardia, O'Hare, and Washington National).

Petitioner's Reason for the Request: Petitioner believes that this amendment to part 93, subpart K, would allow it to continue using 50-seat turbojet aircraft in commuter slots. Petitioner also requests that this petition be given simultaneous consideration with the petition to amend part 93, subpart K, filed by American Airlines, which would permit 110-seat turbojet aircraft to operate in commuter slots at O'Hare Airport.

[FR Doc. 91-415 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-242-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-15, -30, -30F, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10-15, -30, -30F, and KC-10A (Military) series airplanes, which currently requires repetitive eddy current inspections to detect cracks in the horizontal and vertical flanges of the engine forward mount truss assembly on pylons 1 and 3. Such cracking, if not corrected, could result in the loss of structural integrity of the wing engine forward mount truss fitting and eventual loss of the wing engine from the airplane. This action would allow optional repair procedures, and would require the replacement of existing engine forward mount truss fittings with an improved part. This proposal is prompted by additional data presented by the manufacturer to substantiate the new repair option, and the development of a new improved truss fitting that, when installed, would terminate the need for repetitive inspections.

DATES: Comments must be received no later than February 26, 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-242-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P. O. Box 1771, Long Beach, California 90846-0001, attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch ANM-120L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

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-242-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 5, 1990, the FAA issued AD 90-13-03, Amendment 39-6634 (54 FR 23894, June 13, 1990), to require repetitive eddy current inspections of four forward horizontal and four vertical flange attaching bolt holes of the engine forward mount truss assembly on pylons 1 and 3, and repair or replacement, if necessary. That action was prompted by reports of fatigue cracks extending from the horizontal and vertical flange attaching bolt holes that were found using an eddy current inspection technique. Such cracking, if not detected and corrected, could result in the loss of structural integrity of the wing engine forward mount truss fitting and eventual loss of the wing engine from the airplane.

Since issuance of that AD, the manufacturer has presented data to substantiate the option of enlarging the diameter of the fastener holes in the horizontal flange to remove cracks; and to continue safe flight with cracks in both horizontal flanges of a single truss assembly, provided both fittings are strapped and the crack growth is monitored at a reduced inspection interval. The manufacturer has also designed an improved replacement part which, if installed, terminates the need for the repetitive inspections required by AD 90-13-03.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A54-99, Revision 2, dated July 17, 1990, which describes procedures for the replacement of the engine forward mount truss assembly.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 90-13-03 with a new AD that would require replacement of the engine forward mount truss fitting on pylons 1 and 3 with the new improved fitting in accordance with the service bulletin previously described. Additionally, this action would require replacement of those engine forward mount truss fittings with repair straps installed. This action would also (1) add the option of enlarging the diameter of the fastener holes in the horizontal flange to remove cracks; (2) provide for flight with cracks in both horizontal flanges, provided both fittings are strapped and crack growth is monitored at prescribed inspection intervals; (3) allow the use of both Rev. A. and B. configurations of the SR10540003-3 and -4 horizontal straps; and (4) add the requirement for inspection of the vertical flanges to coincide with the inspection interval of the uncracked horizontal flanges (the existing AD requires inspection of the vertical flanges only on those fittings with cracked horizontal flanges).

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement of this action is in consonance with that policy decision.

There are approximately 262 Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 54 airplanes of U.S. registry would be affected by this AD, that it would take approximately 300 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. It is estimated that the cost of parts required for the terminating action would cost $236,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators associated with this supersedure is estimated to be $13,392,000.

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 superseding AD 90–13–03, Amendment 39–6634 (54 FR 23894, June 13, 1990), with the following new airworthiness directive:

McDonnell Douglas: Applies to all Model DC–10–15, –30, –30F, and KC–10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of the engine forward mount truss assembly on pylons 1 and 3, accomplish the following:

A. Prior to the accumulation of 9,000 landings or 30,000 flight hours, whichever occurs first, or within 20 days after June 22, 1989 (the effective date of Amendment 39–6235, AD 89–13–01), whichever occurs later, conduct an eddy current inspection of the engine forward mount truss assembly on pylons 1 and 3, in accordance with Paragraph 2, "Accomplishment Instructions," of McDonnell Douglas Alert Service Bulletin No. A54–99, Revision 1, dated March 31, 1989; or Revision 2, dated July 17, 1990 (hereafter referred to as A54–99). Conduct subsequent inspections in accordance with the subparagraph applicable to the condition detected.

1. If no crack indications are found in either horizontal flange, conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 2,000 landings or 6,000 flight hours, whichever occurs first.

2. If a single crack indication in one bolt hole of the horizontal flange is found with no crack indication extending out from under the AUB7013–1 angle, and there are no crack indications in the opposite fitting, accomplish the following:

a. Conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 500 flight hours; and

b. Prior to the accumulation of 500 landings or 2,000 flight hours, whichever occurs first, after the initial detection of a crack, accomplish one of the following:

(1) Install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–501 truss fitting, or install SR10540003–4 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–502 truss fitting, as applicable, in accordance with A54–99. After installation of the strap, conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 1,000 flight hours to monitor crack propagation; or

(2) Enlarge the diameter of the fastener hole to remove the crack indication and install new fasteners in accordance with A54–99.

(a) If the crack indication is eliminated, conduct repetitive eddy current inspections in accordance with A54–99 of the repaired truss fitting for cracks in the forward horizontal flange attaching bolt holes at intervals not to exceed 1,500 landings or 4,500 flight hours, whichever occurs first.

(b) If the crack indication still exists in the truss fitting after enlarging the fastener hole, install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the AUB7000–501 truss fitting, or install SR10540003–4 Rev. A. or B. strap on the AUB7000–502 truss fitting, as applicable, in accordance with A54–99. After installation of the strap, conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 1,000 flight hours to monitor crack propagation.

3. If a single crack indication in one bolt hole is found in the horizontal flange with the crack extending out from under the AUB7013–1 angle, but not beyond the tangent point of the fillet radius to the vertical flange, as shown on Figure 2 (Condition III) of A54–99, and there are no crack indications in the opposite fitting, accomplish the following:

a. Prior to further flight, install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–501 truss fitting, or install SR10540003–4 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–502 truss fitting, as applicable, in accordance with A54–99; and

b. After installation of the strap, conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 250 flight hours to monitor crack propagation.

4. If multiple crack indications in the bolt holes are found in the horizontal flange, with no crack extending out from under the AUB7013–1 angle, and there are no crack indications in the opposite fitting, accomplish one of the following:

a. Prior to further flight, install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–501 truss fitting, or install SR10540003–4 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–502 truss fitting, as applicable. After installation of the strap, conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 1,000 flight hours to monitor crack propagation; or

b. Prior to further flight, enlarge the diameter of the fastener holes to remove the crack indications and install new fasteners in accordance with A54–99.

(1) If the crack indications are eliminated, repetitively inspect the repaired truss fitting for cracks in the forward horizontal flange attaching bolt holes in accordance with A54–99 at intervals not to exceed 1,500 landings or 4,500 flight hours, whichever occurs first.

(2) If the crack indications still exist in the truss fitting after enlarging the fastener holes, install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the AUB7000–501 truss fitting, or install SR10540003–4 Rev. A. or B. strap on the AUB7000–502 truss fitting, as applicable. After installation of the strap, conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 1,000 flight hours to monitor crack propagation.

5. If multiple crack indications in the bolt holes are found in the horizontal flange with a crack extending out from under the AUB7013–1 angle, but not progressing beyond the tangent point of the fillet radius to the vertical flange, as shown in Figure 2 (Condition V) of A54–99, and there are no crack indications in the opposite fitting, accomplish the following:

a. Prior to further flight, install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–501 truss fitting, or install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–501 truss fitting, as applicable, in accordance with A54–99; and

b. After installation of the strap, conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 250 flight hours to monitor crack propagation.

6. If a crack is found to have extended out from under the AUB7013–1 angle in the horizontal flange, through the fillet radius into the vertical flange, as shown in Figure 2 (Condition VI) of A54–99: Prior to further flight, replace the cracked/repaired truss fitting with a new fitting and continue inspections in accordance with this AD.

7. If cracks are found in both horizontal flanges of the AUB7000 truss fittings, accomplish the following:

a. Prior to further flight, replace at least one of the cracked/repaired truss fittings with a new fitting and continue inspections in accordance with the subparagraph applicable to the condition remaining; or

b. Prior to further flight, enlarge the diameter of the fastener holes to remove the crack indications; install new fasteners in accordance with A54–99; and accomplish the following as appropriate:

(1) If the crack indications are eliminated, repetitively inspect the repaired truss fitting for cracks in the forward horizontal flange attaching bolt holes in accordance with A54–99 at intervals not to exceed 1,500 landings or 4,500 flight hours, whichever occurs first.

(2) If the crack indications still exist in a single truss fitting after enlarging the fastener holes, install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the AUB7000–501 truss fitting, or install SR10540003–4 Rev. A. or B. strap on the AUB7000–502 truss fitting, as applicable, in accordance with A54–99. After installation of the strap, conduct repetitive eddy current inspections in accordance with A54–99 at intervals not to exceed 1,000 flight hours to monitor crack propagation.

(3) If crack indications still exist in both fittings after enlarging fastener holes, install SR10540003–3 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–501 truss fitting, and install SR10540003–4 Rev. A. or B. strap on the horizontal flange of the cracked AUB7000–502 truss fitting, in accordance with A54–99;

(a) After installation of the straps, conduct repetitive eddy current inspections in accordance with A54-99 at intervals not to exceed 500 flight hours to monitor crack propagation.

(b) At the later of the times specified below, replace at least one of the truss fittings in accordance with A54-99:

(i) Within 1,200 landings or 3,600 flight hours, whichever occurs first, or

(ii) Within one year after the effective date of this AD.

B. At the time of the next inspection required by paragraph A.I. through A.7. of this AD following the effective date of this AD, conduct an eddy current inspection of the vertical flange of the AUB7000-501 and/or AUB7000-502 truss fitting, as applicable, in accordance with the "Accomplishment Instructions" of McDonnell Douglas Alert Service Bulletin A54-103, dated March 7, 1990 (hereafter referred to as A54-103).

C. As a result of the inspections of the vertical flange required by paragraph B. of this AD, accomplish the following. Conduct subsequent inspections in accordance with the subparagraph applicable to the condition detected.

1. If no cracks are found in the vertical flange, conduct repetitive eddy current inspections of the vertical flange in accordance with A54-103 concurrently with each inspection required by paragraph A.1. through A.7. of this AD.

2. If crack indication(s) are found in the vertical flange, with no crack indication extending through the fillet radius into the horizontal flange and a crack indication exists in the horizontal flange, accomplish the following:

a. Prior to further flight, install SR10540003-3 Rev. A. or B. and SR10540003-5 straps on the cracked AUB7000-501 truss fitting, or install SR10540003-4 Rev. A. or B. and SR10540003-6 on the cracked AUB7000-502 truss fitting, as applicable, in accordance with A54-103; and

b. Conduct repetitive eddy current inspections in accordance with A54-103 at intervals not to exceed 250 flight hours to monitor the crack propagation.

3. If crack indication(s) are found in the vertical flange, with no crack indication extending through the fillet radius into the horizontal flange; and if no crack indication exists in the horizontal flange; accomplish the following:

a. Prior to further flight, install SR10540003-3 Rev. A. or B. and SR10540003-5 straps on the cracked AUB7000-501 truss fitting, or install SR10540003-4 Rev. A. or B. and SR10540003-6 on the cracked AUB7000-502 truss fitting, as applicable, in accordance with A54-103; and

b. Conduct repetitive eddy current inspections in accordance with A54-103 at intervals not to exceed 1,000 flight hours to monitor crack propagation.

4. If a crack in the vertical flange is found to have extended through the fillet radius into the horizontal flange: Prior to further flight, replace the cracked/repaired truss fitting with a new fitting and continue inspections in accordance with this AD.

D. Except as in provided in paragraph A.7, after the installation of a repair strap on the P/N AUB7000-501, or-502 truss fitting, replace the truss fitting in accordance with A54-99 prior to the later of the times specified in subparagraphs D.1. and D.2., below:

1. Prior to the accumulation of 2,400 landings or 7,200 flight hours whichever occurs first; or

2. Within 2 years.

E. Replace the P/Ns AUB7000-501 and -502 truss fittings with P/Ns AUB7000-503 and -504 in accordance with A54-99, at the later of the times specified in subparagraphs E.1. and E.2., below. Such replacement constitutes terminating action for the repetitive eddy current inspections required by the AD.

1. Prior to the accumulation of 9,000 landings or 30,000 flight hours, whichever occurs first; or

2. Within 6 years after the effective date of this AD.

F. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be 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.

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 McDonnell Douglass Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on December 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-410 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-41-AD]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm GmbH (MBB) BO-209 "Monsun" Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that is applicable to MBB BO-209 "Monsun" airplanes. The proposed action would require inspections and modifications of the elevator assembly area. The FAA has received reports of cracks on the spar truss and nose rib of the affected airplanes. The actions specified in this proposal are intended to prevent elevator failure or unbalance, which could result in loss of control of the airplane.

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

ADDRESSES: Technical Note No. 209-1/88 and Coversheet to Repair Instruction Elevator 209-31014RA1, both dated June 22, 1988, that are applicable to this AD may be obtained from Messerschmitt-Bolkow-Blohm GmbH, Post fach 801160, D-8000 Munchen 80, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-41-AD, room 1558, 601 E. 12th street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; telephone (322) 513-38.30, ext 2710; Facsimile (322) 230-68.99; or Mr. Richard F. Yotter, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments invited

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 triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 that summarizes each FAA-public contact concernded with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-41-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfarht-Bundesant (LBA), which is the airworthiness authority of the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on MBB BO-209 "Monsun" airplanes. The LBA advises that there have been reports of cracking of the elevator spar truss and reinforcement angle bar and the mass balance attachment at the elevator nose rib on these airplanes. The LBA also advises that failure to install a spar reinforcement to preclude failure of the spar and nose rib at the mass balance attachment could result in loss of control of the airplane. Messerschmitt-Bolkow-Blohm GmbH (MBB) has issued MBB Technical Note No. 209-1/88 and Coversheet to Repair Instruction Elevator 209-21014RA1, both dated June 22, 1988, which describe inspections of the elevator asembly are for cracks, repairs as necessary, and the reinforcement of the elevator spar and rib. The LBA has classified this Technical Note and Coversheet and the actions recommended therein as mandatory to assure the continued airworthiness of these airplanes in the Federal Republic of Germany. These airplanes are manufactured in the Federal Republic of Germany and are type certificated for operation in the United States. In accordance with the provisions of a bilateral airworthiness agreement, the LBA has shared the above information with the FAA. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design, certificated for operation in the United States. The FAA is proposing an AD that would require a visual inspection and reinforcement of the spar truss and reinforcement of the mass balance attachment ribs on MBB Model BO-209 "Monsun" airplanes in accordance with the instructions in MBB Technical Note No. 209-1/88 and Coversheet to Repair Instruction Elevator 209-31014RA1, both dated June 22, 1988.

It is estimated that 9 airplanes of U.S. registry will be affected by the proposed AD, that it will take approximately 28 hours per airplane to accomplish the proposed actions at $40 an hour, and that the cost of parts to accomplish the proposed maodification is estimated to be $75 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,755.

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.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR11034, 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 regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

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); 14 CFR 11.89.

§ 39.13 [Amended]

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

Messerschmitt-Bolkow-Blohm GMBH:

Docket No. 90-CE-41-AD. Applicability: Models BO-209-150FV, BO-209-150RV, BO-209-160FV, BO-209-160RV, BO-209-150FF "Monsun" airplanes (all serial numbers), certificated in any category. Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the elevator spar truss and mass balance attachment rib, accomplisl the following:

(a) Dye penetrant inspect the elevator spar truss and reinforcement angle bar for cracks in accordance with the instructions in Measure I of MBB Technical Note No. 209-1/88, dated June 22, 1988.

(1) If cracks are found, prior to further flight repair in accordance with the instructions in Measure I, paragraph b) of MBB Technical Note No. 209-1/88, dated June 22, 1988 and then install a doubler in accordance with the instructions in Measure I, paragraph a) of MBB Technical Note No. 209-1/88, dated June 22, 1988.

(2) If cracks are not found, prior to further flight install a doubler in accordance with the instructions in Measure I, paragraph a) of MBB Technical Note No. 209-1/88, dated June 22, 1988.

(b) Visually inspect the mass balance attachment at the elevator nose rib for cracks in accordance with the instructions in Measure II of MBB Technical Note No. 209-1/88, dated June 22, 1988, and prior to further flight replace repair, or modify the rib in accordance with the instructions in Coversheet to Repair Instruction Elevator 209-31014RA1 and Measure II of MBB Technical Note No. 209-1/88, both dated June 22, 1988.

(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.

(d) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manger, Brussels Aircraft Certification Staff.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Messerschmitt-Bolkow-Blohm Gmbh, Post fach 801160, D-8000 Munchen 80, Federal Republic of Germany; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri on December 21, 1990.

J. Robert Ball,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 91-412 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-43-AD]

Airworthiness Directives; O_2 Corporation (Frank McGowan Company) Oxygen Mask Presentation Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that is applicable to certain O_2 Corporation passenger oxygen mask presentation units. The proposed action would require the inspection and replacement of any faulty deployment lanyard pins on these units. A report has been received of a lanyard pin that could not be readily pulled, resulting in an inoperative oxygen supply system. The actions specified in this proposal are intended to prevent a malfunction that could result in an inoperative passenger oxygen system and possible serious physical impairment of passengers during an emergency situation.

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

ADDRESSES: Replacement parts that might be needed to complete the actions of this AD may be obtained from Mr. Burt Parry, O_2 Corporation, 236 N. Pennsylvania, Wichita, Kansas 67214; telephone (316) 265-2659. Information that is applicable to this AD may be obtained from the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 90-CE-43 AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered 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 that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 90-CE-43-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a report from the operator of a Gulfstream Aerospace G-IV airplane that the lanyard pin on an O_2 Corporation passenger oxygen mask presentation unit failed when a passenger attempted to commence the flow of oxygen. In this instance, a flight attendant was able to pull the lanyard to start oxygen flow and thus, averted possible life threatening injury to the passenger because of loss of oxygen.

These release lanyard pins are designed for a maximum 7.5 pound activation pull. The lanyard pin that was utilized in the above incident has a 30-degree ramp angle and a sharp nose. The FAA has determined that this 30-degree ramp angle, the sharp nose, and manufacturing differences between this lanyard pin and other lanyard pins contribute to the possibility of a malfunction. The manufacturer has designed two new pins that have a 20-degree ramp angle and a rounded nose, part numbers (P/N 100-111-2 or 100-111-3. Both of these newly designed pins have been tested at a 7.5 pound pull with both performing satisfactorily. The FAA has examined these new designs and has determined that their usage will preclude a malfunction similar to the above reported occurrence. The FAA is proposing an AD that would require verification that all lanyard pins may be extracted from the oxygen valve with a 7.5 pound or less pull, with subsequent replacement of malfunctioning pins with P/N 100-111-2 or 100-111-3 on all airplanes with O_2 Corporation passenger oxygen mask presentation unit series 121, 150, 151, and 152 installed. The affected units can be identified by a placard that reads either "O_2 Corporation" or "Frank McGowan Co.". The O_2 Corporation was a subsidiary of the Frank McGowan Company before it recently became an independent entity.

The compliance time for the proposed AD has been established in calendar months instead of hours time-in-service (TIS). The FAA has determined that a compliance time that specifies calendar months is required since the condition of the lanyard pins is not directly attributable to the airplane being in service. In addition, the hours TIS of the airplanes with the affected passenger oxygen mask presentation units varies considerably within the fleet. To avoid inadvertent grounding of the affected airplanes and to assure that the unsafe condition is corrected on all airplanes, a compliance time based on calendar months is proposed over hours TIS.

It is estimated that 200 airplanes of the U.S. registry will be affected by this AD, and that it will take approximately 1.5 hours per airplane to accomplish the required actions at $40 per hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,000.

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 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) 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 regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

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 AD:

O_2 Corporation (Frank McGowan Co.): Docket No. 90-CE-43-ADS.

Applicability: The following Mask Presentation Unit Part Numbers that are installed on, but not limited to, British Aerospace 125-800A airplanes; Challenger CL600-1A11, CL600-2816, and CL600-2A12 airplanes; Gulfstream G-1159, G-1159A, G-1159B, and G-IV airplanes; and Falcon 20 airplanes, certificated in any category:

121-040-04 150-002 150-002-01 150-002-02 150-002-03 150-002-04 150-002-05 150-002-08 150-003T 150-003-04T 150-004 150-004-01 150-004-02 150-004-03 150-004-04 150-004-05 150-004-06 150-004-07 150-004-08 150-004-12 150-005 150-006 150-022 151-010 151-010-02 151-010-04 151-020 151-020-02 151-020-04 152-001 152-001-01 152-001-04 152-001-05 152-001-08 152-001-13 152-003 152-004 150-004-05

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent malfunctioning of the lanyard release pin that could prevent the flow of oxygen to a passenger in an emergency situation, accomplish the following:

(a) With the oxygen system activated, perform a test of the lanyard release pins by accomplishing the following:

(1) Open the passenger mask presentation units of the airplane and allow the mask assemblies to drop out.

(2) Make up a 7.5 pound weight with an attached string and hook, (e.g., spring, clip, *etc.*).

(3) Attach the hook to the lanyard attaching point of each actuator pin without dropping the weight and allow the weight to hang from the lanyard attaching point.

(b) If the pin pulls free from the oxygen actuator valve at 7.5 pounds or less of hanging weight, then the pin is satisfactory and the unit may be returned to service.

(c) If the pin does not pull free from the oxygen actuator valve using the test required by paragraph (a) of this AD, prior to further flight accomplish the following:

(1) Replace the pin with either part number 100-111-2 or 100-111-3, which has a 20-degree angle and a rounded nose.

Note 1: The pin is available from the manufacturer by contacting Mr. Burt Parry, O_2 Corporation, 236 N. Pennsylvania, Wichita, Kansas 67214; telephone (316) 265-2659.

(2) Test the replacement pin installation in accordance with the test requirements of paragraph (a) of this AD to assure that the lanyard pin can be removed with a pull of 7.5 pounds or less. If the pin pulls free from the oxygen actuator valve at 7.5 pounds or less of hanging weight, then the pin is satisfactory and the unit may be returned to service.

(d) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; telephone (316) 946-4419. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of any information that is applicable to this AD from the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-43-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Replacement parts that might be needed to complete the actions of this AD may be obtained from Mr. Burt Parry, O_2 Corporation, 236 N. Pennsylvania, Wichita, Kansas 67214; telephone (316) 265-2659.

Issued in Kansas City, Missouri on December 20, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-411, Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 26433]

Notice of Docket Opening: Phaseout and Nonaddition of Stage 2 Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of docket opening.

SUMMARY: This notice announces the opening of a regulatory docket for materials related to the phaseout and nonaddition of Stage 2 airplanes in the United States, as mandated by the Airport Noise and Capacity Act of 1990. Although no regulations have been proposed, the FAA has received information relevant to rulemaking in progress and is making that information available for public inspection by placing it in a public docket.

FOR FURTHER INFORMATION CONTACT: William Albee, Manager, Policy and Regulatory Division, AEE-300, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephine: (202) 267-3553.

SUPPLEMENTARY INFORMATION: On November 5, 1990, Congress enacted the Airport Noise and Capacity Act of 1990, which bans the operation of stage 2 aircraft in the contiguous 48 states after December 31, 1999. The Act directs the Federal Aviation Administration to establish regulations implementing the phaseout of Stage 2 aircraft. The Act also restricts the importation of Stage 2 aircraft after November 5, 1990.

Although regulations regarding these measures have yet to be proposed, the FAA has begun to receive information concerning these issues. In an effort to make this information available to the public at the earliest possible time, the FAA has opened regulatory docket No. 26433, which contains all information submitted on the phaseout and nonaddition topic.

The FAA is not soliciting further information or comment at this time. Opportunity for comment will be given when proposed regulations are published in a formal Notice of Proposed Rulemaking. Information received and placed in the docket may be inspected at the Rules Docket, Federal Aviation Administration, room 915G, 800 Independence Avenue, SW., Washington, DC 20591.

Issued in Washington, DC on January 3, 1991.

James E. Densmore,

Director, Office of Environment and Energy.

[FR Doc. 91-409 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 901226-0326]

Proposed Limit on Duty-Free Insular Watches in Calendar Year 1991

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites public comment on several proposals to amend 15 CFR part 303, which governs duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands.

The insular possessions watch industry provision in section 110 of

Public Law No. 97–446 requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quanity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. This proposed rule would establish the total quantity and territorial shares for calendar year 1991.

DATES: Comments must be received on or before February 8, 1991.

ADDRESSES: Address written comments to Frank Creel, Director, Statutory Import Programs Staff, room 4204, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377–1660, same address as above.

SUPPLEMENTARY INFORMATION: Regulations on the establishment of these quantities and shares are contained in §§ 303.3 and 303.4 of title 15, Code of Federal Regulations (15 CFR 303.3 and 303.4). Section 303.6(h) gives the Secretaries authority to propose changes in § 303.14.

The Departments propose to establish for calendar year 1991 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	4,200,000
Guam	1,000,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	6,200,000

Compared with the total quantity established for 1988, 1989, and 1990 (53 FR 17924; May 19, 1988), this amount would be a decrease of 500,000 units. The proposed Virgin Islands territorial share would be lowered by 500,000. The proposed shares for Guam, American Samoa, and the Northern Mariana Islands would not change.

Our reasons for proposing these amounts are as follows:

1. There are no producers in American Samoa and the Northern Mariana Islands. This proposal would leave these territories' shares at the minimum required by the statute.

2. There is only one producer in Guam, and the amount we propose is consistent with the needs of the existing producer along with a set-aside of 200,000 units for possible allocation to new firms in Guam.

3. We do not expect total Virgin Islands shipments in 1991 to exceed 4 million units. The amount we propose is consistent with the anticipated needs of the existing producers along with a set-aside of 200,000 units for possible allocation to new firms in the Virgin Islands.

Second, the proposed rule would modify § 303.14(b)(3) of the regulations by raising the maximum value of components for watches from $150 to $175. This change would relax the limitation on the value of imported components that may be used on the assembly of duty-free insular watches. The proposed value levels would help offset the effects of a weak dollar and allow the producers wider options in the kinds of watches they assemble.

Third, we propose to change § 303.2(a)(13) to include partial credit for wages paid to assemble some dutiable watches (i.e., those assembled from components exceeding the value limitation). Existing rules give partial wage credit for the repair of non-91/5 watches and watch movements. The change would allow credit for wages paid to assemble dutiable watches and movements which exceed the duty-free value limit and maintain credit for repairs as long as the combined credit did not equal more than 25% of the firm's 91/5 creditable wages. This change would contribute to further diversification of product lines and to the industry's marketing flexibility.

Fourth, we propose changing § 303.14 (a)(1) (i) and (c) by more clearly defining wages to be used in the allocation formula and shipments to be used in the calculation of the production incentive certificate.

Fifth, we propose deleting § 303.12(d) as duplicative of provisions in §§ 303.5 and 303.14. Non-repetitive language is moved to § 303.14.

Finally, we propose changing § 303.13(a) by clarifying that the appeals procedure applies not only to any official decision or action relating to the allocation of duty-exemption but also to the production incentive certificate and duty-refund process.

Classification: Executive Order 12291. In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by Section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

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

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act. This rulemaking does contain information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. The proposed amendments will not significantly increase the information burden on the public.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we propose to amend part 303 as follows:

PART 303—[AMENDED]

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

Authority: Pub. L. 97–446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note)

2. Section 303.2(a)(13) is revised to read as follows:

§ 303.2 Definitions and forms.

(a) * * *

(13) Creditable wages means all wages—up to the amount per person shown in § 303.14(a)(1)(i)—paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement assembly operations, plus any wages paid for the assembly of watches and watch movements the value of components for which exceed the limit set forth in § 303.14(b)(3) or for the repair of non-91/5 watches and watch movements, up to a total amount equal to 25 percent of the firm's other creditable wages. Wages paid for the assembly of watches and watch movements from components exceeding the value limits and for the repair of non-91/5 watches and watch movements are not creditable to the extent that such wages exceed the ratio set forth here. Also excluded are wages paid for special services rendered to the firm by accountants, lawyers, or other professional personnel, and for the assembly of non-91/5 watches and watch movements which are ineligible for other than value-limit reasons.

* * * * *

§ 303.12 [Amended]

3. Section 303.12(d) is removed.

4. Section 303.13(a) is amended by revising the first sentence to read as follows:

§ 303.13 Appeals.

(a) Any official decision or action relating to the allocation of duty-exemptions or to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party.* * *

* * * * *

5. Section 303.14 is amended as follows:

a. Paragraph (a)(l)(i) is revised;

b. Paragraph (b)(3) is amended by removing "$150" and adding "$175" in its place;

c. Paragraph (c) is revised; and

d. Paragraph (e) is amended by removing "4,700,000" and adding "4,200,000" in its place.

§ 303.14 Allocation factors and miscellaneous provisions.

(a) * * *

(1) * * *

(i) Fifty percent of the territorial share shall be allocated on the basis of the net dollar amount of economic contributions to the territory consisting of the dollar amount of creditable wages, up to a maximum of $32,000 per person, paid by each producer to territorial residents, plus the dollar amount of income taxes (excluding penalty and interest payments and deducting any income tax refunds and subsidies paid by the territorial government), and

* * * * *

(c) *Calculation of the value of production incentive certificates.* (1) The value of each producer's certificate shall equal the producer's average creditable wages per unit shipped (including non-91/5 units as provided for in § 303.2(a)(13)) multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 times a factor of 80%; plus

(iv) Incremental shipments up to 750,000 units times a factor of 65%.

(2) The Departments may make adjustments for these data in the manner set forth in § 303.10(c)(2).

(3) Section 303.2(a)(13) provides for certain non-91/5 wages to be creditable up to 25% of other creditable wages. For purposes of paragraph(c)(1) of this section, non-91/5 units shall enter the calculation of a producer's average creditable wages only proportionally with the crediting of wages paid for their assembly. If, for example, 40% of wages paid for the assembly of non-91/5 units is disallowed, 40% of the related units will also be excluded from the calculation.

* * * * *

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 91-266 Filed 1-8-91; 8:45 am]

BILLING CODE 3510-05-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33-6880; 34-28732; International Series Release No. 215; File No. S7-1-91]

RIN 3235-AE11

Stabilizing to Facilitate a Distribution

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is proposing for public comment amendments to Rule 10b-7 under the Securities Exchange Act of 1334, which regulates stabilizing the price of any security for the purpose of facilitating an offering of a security. In general, Rule 10b-7 requires that stabilizing bids or purchases be limited to those necessary to prevent or retard a decline in the open market price of the security being offered; be made at price levels provided for in the rule; and be disclosed to the marketplace and to the purchaser of the security being stabilized.

The proposed amendments would accommodate the increasing internationalization of securities markets by permitting the stabilizing price to reflect the price of the security in the foreign market which is the principal market for such security, if the stabilizing activity otherwise complies with the rule's provisions. The proposals also would permit adjustments of stabilizing bids based on exchange rate fluctuations between the currencies of the markets on which the security is being stabilized. Finally, in connection with an offering of a foreign security in the United States, the amendments would deem foreign stabilizing transactions not to be in violation of Rule 10b-7 where such transactions were made in compliance with comparable foreign regulations and other conditions.

The Commission is also proposing for comment, in a separate release, Rule 3b-10 containing definitions of terms used in the proposed amendments to Rule 10b-7.

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

ADDRESSES: Interested persons should submit three copies of their written data, views, and arguments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549 and should refer to File No. S7-1-91. All submissions will be made available for public inspection and copying at the Commission's Public Reference Section, room 1024, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Selwyn Notelovitz or Sheila Slevin at (202) 272-2848, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulation of Stabilization

Stabilization consists of directly or indirectly bidding for or purchasing a security with a view to maintaining the price, or retarding the decline in price, of the security for the purpose of inducing

the purchase by other persons of the offered security.[1] Stabilization is engaged in by underwriters as a means to facilitate the placement of securities in an orderly manner.[2] In 1948, the Commission published its position that stabilizing for the sole purpose of preventing or retarding a decline in the price of a security did not *per se* violate section 9(a)(2)[3] or any other section of the Securities Exchange Act of 1934 ("Exchange Act"), provided that stabilizing purchases were effected at certain levels.[4] However, stabilization does not contemplate transactions in excess of those required to prevent or retard a decline in the market price, or those which raise the market price of a security, or which create a false or misleading appearance of active trading in a security, or a false or misleading appearance with respect to the market for a security.[5]

Through the adoption of Rule 10b–7 ("Rule") [6] in 1955, the Commission codified guidelines for determining which transactions effected to peg, fix, or stabilize the price of a security in connection with an offering of the security constitute lawful stabilization, and which transactions constitute unlawful manipulation.[7] Rule 10b–7 applies to "any person who, either alone or with one or more other persons, directly or indirectly, stabilizes the price of a security to facilitate an offering of any security." [8] Stabilizing transactions are those involving "the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing or stabilizing the price of any security." [9] The Rule applies to an offering of securities whether or not it is required to be registered under the Securities Act.[10]

To prevent stabilizing activities from improperly affecting the market for a security, Rule 10b–7 prohibits certain specific activities, including bids or purchases not necessary for the purpose of preventing or retarding a decline in the open market price of the security, and stabilizing at a price resulting from unlawful activity.[11] The Rule establishes the price level at which a stabilizing bid may be entered, as well as rules of priority for the execution of independent bids at times when a stabilizing bid has been entered.[12] In addition, the Rule regulates the number of stabilizing bids that an underwriting syndicate may enter in any one market at any one time, and the entry of stabilizing bids on markets other than the principal market for the security being stabilized.[13] The Rule also requires that notice be given that the market be or is being stabilized.[14] Finally, the Rule requires a person affecting stabilizing transactions to keep the information and make the notification required by Rule 17a–2 under the Exchange Act.[15]

B. Extraterritorial Scope of the Rule.

Rule 10b–7 was adopted at a time when offerings by issuers outside their home markets were relatively rare.[16] Today, however, international offerings of foreign securities that include a United States ("U.S.") tranche have become common.[17] Rule 10b–7 by its terms has extraterritorial application. Accordingly, questions have arisen concerning the application of Rule 10b–7 to stabilizing activities during international offerings.

While by its terms Rule 10b–7 applies to stabilizing activities to facilitate *any* offering, the Commission interprets the Rule to apply only to offerings that are made at least in part in the U.S.[18] In the context of such offerings, through the exemption and no-action letter process, the Commission and its staff have attempted to adapt the Rule to accommodate the changing international market environment consistent with the Rule's antimanipulation purposes.[19] The Commission believes that it is appropriate to amend the Rule to codify the positions taken in those letters. Consequently, the Commission is proposing to amend the Rule by adding provisions that would permit stabilizing bids to be initiated based on prices in a foreign market that is the principal market for the securities being offered, and would permit stabilizing bids to be adjusted for currency fluctuations. Moreover, the Commission is proposing an amendment that addresses the application of the Rule during offerings of foreign securities in the U.S. where no stabilizing activities are conducted in the U.S. The Commission believes that the amendments will eliminate uncertainty regarding application of the Rule to international offerings and thereby facilitate such offerings.[20]

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[1] As such, the Commission has recognized that stabilization is a form of manipulation. See Securities Exchange Act Release No. 2446 (March 18, 1940), 11 FR 10967 (September 27, 1946) ("Release 34-2446").

[2] With respect to virtually all firm commitment offerings of equity securities, underwriters disclose that they *may* stabilize security prices in connection with an offering. *Cf.* Rule 502(d)(1) of Regulation S-K under the Securities Act of 1933 ("Securities Act"), 17 CFR 229.502(d)(1). Since stabilizing purchases generally have a negative effect on underwriting profits, the Commission understands that actual stabilization is the exception rather than the rule.

[3] 15 U.S.C. 78i(a)(2).

[4] See Securities Exchange Act Release No. 4163 (Sept. 16, 1948), 13 FR 5510 ("Release 34-4163").

[5] See Securities Exchange Act Release No. 3505 (November 16, 1943), 11 FR 10967 (September 27, 1946) ("Release 34–3505"); Securities Exchange Act Release No. 3506 (November 16, 1943), 11 FR 10967 (September 27, 1946); Securities Exchange Act Release No. 3056 (October 27, 1941), 11 FR 10967 (September 27, 1946).

[6] 17 CFR 240.10b–7.

[7] Rule 10b–7 was adopted together with Rules 10b–6 and 10b–8 under the Exchange Act, 17 CFR 240.10b–6 and 240.10b–8, under Sections 9(a)(6), 10(b), 17(a), and 23(a) of the Exchange Act, 15 U.S.C. 78i(a)(6), 78j(b), 78q(a), and 78w(a). Securities Exchange Act Release No. 5194 (July 5, 1955), 20 FR 5075. See also Securities Exchange Act Release No. 5040 (May 18, 1954), 19 FR 2986 (publishing proposals for comment), and Securities Exchange Act Release No. 5159 (April 19, 1955), 20 FR 2828 (publishing revised proposals for comment). The amendments proposed in this release also would be adopted under Section 30(a)of the Exchange Act, 15 U.S.C. 78dd(a).

[8] Rule 10b–7(a), 17 CFR 240.10b–7(a).

[9] Rule 10b–7(b)(3), 17 CFR 240.10b–7(b)(3). A stabilizing "transaction" is defined to mean a bid or a purchase. Rule 10b–7(b)(2), 17 CFR 240.10b–7(b)(2).

[10] See Section 5 of the Securities Act, 15 U.S.C. 77e. The application of the Rule also does not turn on the attributes of the offerees. See, *e.g., Letter regarding Atlas Copco AB* (May 22, 1990) (offering made solely to qualified institutional buyers).

[11] See 17 CFR 240.10b–7(c) and (f).

[12] See 17 CFR 240.10b–7(i) and (j).

[13] See 17 CFR 240.10b–7(e) and (h).

[14] See 17 CFR 240.10b–7(k). See also 17 CFR 240.10b–7(d).

[15] See 17 CFR 240.10b–7(*l*). Rule 17a–2, 17 CFR 240.17a–2, requires managers of underwriting syndicates to retain certain information concerning stabilizing transactions, furnish syndicate members with such information, and notify syndicate members when stabilizing has been terminated.

[16] For example, the first exemption under Rule 10b–7 in the context of a multinational offering was granted in *Letter regarding Alcan Aluminum Limited* (June 23, 1976), [1976–77 Decisions] Fed. Sec. L. Rep. (CCH) ¶ 80,613 ("Alcan Letter"). Nevertheless, from the time of its adoption in 1955, the Rule has reflected the fact that a security subject to the Rule could be traded on foreign markets. *See* 17 CFR 240.10b–7(h).

[17] See, *e.g.*, Securities Act Release No. 6841 (July 24, 1989), 54 FR 32228, 32228–32229. In the context of this release, an "international offering" refers to an offering of a security made at least in part outside the issuer's home country.

[18] Nevertheless, the general antifraud provisions apply to fraudulent or manipulative activity occurring outside of the U.S. if such activities have an effect in the U.S. *See, e.g., Bersch* v. *Drexel Firestone, Inc.*, 519 F.2d 974, 989 (2d Cir. 1975); *Schoenbaum* v. *Firstbrook*, 405 F.2d 200, 208, *rev'd in part on other grounds*, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert. denied sub nom. Manley* v. *Schoenbaum*, 395 U.S. 906 (1969). This principle would apply to stabilizing transactions during an offering made wholly outside the U.S.

[19] See the letters cited in n.22 *infra*. Codification of positions on stabilization taken in individual offering contexts was recommended by the International Organization of Securities Commissions ("IOSCO"). See IOSCO, *Report on International Equity Offers* 1, 76 (1989) ("IOSCO Report").

[20] The Commission notes that, where appropriate, exemptions will continue to be available pursuant to paragraph (o) of the Rule, 17 CFR 240.10b–7(*o*), for transactions that do not fall within the terms of the proposed amendments.

II. Proposed Amendments

A. Stabilizing Levels in International Offerings

Rule 10b–7(h) provides that if a security is traded in more than one market, stabilizing cannot be initiated at a price which would be unlawful in the principal market for such security in the United States open for trading at the time such stabilizing is initiated. If the principal market for the security in the U.S. is an exchange, then a stabilizing bid may be initiated in any market, including a foreign market, after such exchange closes at a price no higher than that at which stabilizing could have been initiated on such exchange at is close, unless the person stabilizing knows or has reason to know that other persons have offered or sold such security at a lower price after such close.[21]

In the typical international offering of a foreign security with a U.S. tranche, stabilization on foreign markets often will be initiated when the principal U.S. market is closed. Because the Rule currently requires that a stabilizing bid be initiated on a foreign market at a price no higher than that at which it could have been initiated on the principal U.S. exchange, the stabilizing bid placed in the foreign market might be based on stale U.S. closing prices for the security that may reflect only a small portion of worldwide trading in the security. In recognition of this anomaly, the Commission has granted a series of exemptions to permit underwriters in an international offering of a foreign security to initiate a stabilizing bid on foreign markets at a price that otherwise complied with Rule 10b–7 with reference to the price of the security on the foreign exchange that is the principal market for such security, irrespective of the price at which stabilizing could have been initiated on a U.S. exchange.[22] Similarly, the exemptions permitted U.S. underwriters to initiate a stabilizing bid on a U.S. market at a price with reference to the foreign market that was the principal market for the security, irrespective of the price at which stabilizing could have been initiated at the close of the U.S. market.

These exemptions were subject to the condition that, if no stabilizing bid had been entered in the U.S. prior to the opening of trading of the U.S. market on which the foreign security was listed or authorized for quotation,[23] the then-permitted U.S. stabilizing level must be determined with reference to the prices on the relevant U.S. market. This restriction reflects the requirements of paragraph (h) in that, once trading begins in the U.S., stabilizing transactions in the U.S. should reflect the prices in the U.S. market even if there is concurrent trading in a foreign market for the security. Moreover, the exemptions provided that in no event could a stabilizing bid be entered or maintained at a price above the price at which the securities were being distributed in the U.S.[24]

The Commission proposes to revise current paragraph (h) to differentiate between stabilization of a foreign security [25] and a domestic security,[26] and to address stabilization in the context of an international offering of a foreign security.

For a domestic security (generally securities of U.S. issuers), so that stabilizing levels would be required to be set with reference to the principal U.S. market open for trading when the stabilizing bid is placed.[27] The Commission's experience indicates that the principal market [28] for a domestic security rarely will be outside the U.S. Accordingly, the Commission believes that it is appropriate to continue to refer to price levels in the U.S. markets when establishing a stabilizing bid for a domestic security.

For a foreign security, the permitted stabilizing level would be determined with reference to the location of the principal market for the security. If the principal market is located in the U.S., then stabilizing levels would be determined with reference to the U.S. market in the same manner as for a domestic security. If the principal market is outside the U.S. and is a "specified foreign securities market," [29] stabilizing levels would be determined by applying the requirements of Rule 10b–7 to the principal market. If the principal market for a foreign security is not a specified foreign securities market, then stabilizing would be required to be conducted as if the principal market were in the U.S.[30]

As a result, an underwriter of an international offering of a foreign security could place a stabilizing bid in any market based on the price of the security in the principal specified foreign securities market after the principal market for the security in the U.S. had closed. Likewise, the underwriter could place a stabilizing bid in the U.S. before the opening of the U.S.

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[21] However, lower prices resulting from special prices available to any group or class of persons do not limit the stabilizing price.

[22] *See, e.g.*, letters regarding *Philips N.V.* (May 12, 1987), Securities Exchange Act Release No. 24486, [1987 Decisions] Fed. Sec. L. Rep. (CCH) ¶ 78,449 [all subsequent citations in this release to "CCH" refer to the Federal Securities Law Reporter]; *Barclays PLC* (May 19, 1987), Securities Exchange Act Release No. 24487; *Banco Central, S.A.* (June 30, 1987); *Tokio Marine and Fire Insurance Company* (September 30, 1987), [1987–88 Decisions] CCH ¶ 78,519; *Barclays PLC* (April 29, 1988), [1988–89 Decisions] CCH ¶ 78,821; *Norsk Hydro a.s.* (May 5, 1988), [1988–89 Decisions] CCH ¶ 78,804; *Banco de Santander, S.A.* (October 23, 1987 and September 14, 1988), [1987–88 Decisions] CCH ¶ 78,532 and [1988–89 Decisions] CCH ¶ 78,872; *Hong Kong Telecomunications Limited*, [1989 Decisions] CCH ¶ 78,942 (December 2, 1988); *Banco Bilbao Vizcaya, S.A.* (December 6, 1988) [1989 Decisions] CCH ¶ 78,937; *Pacific Dunlop Limited* (May 9, 1989), [1989 Decisions] CCH ¶ 78,973; *Benetton Group S.p.A.* (June 8, 1989); *National Australia Bank Limited* (July 31, 1989); *NOVA Corporation of Alberta* [1990 Decisions] CCH ¶ 79,402 (August 14, 1989); *Cable and Wireless plc* (September 26, 1989); *Rhone-Poulenc S.A.* [1990 Decisions] CCH ¶ 79,485 (November 13, 1989); *PolyGram N.V.* (December 12, 1989 [1990 Decisions] CCH ¶ 79,481; *Banco Central, S.A.* (August 8, 1990).

[23] In the *Tokio Marine* letter, *see* n.22 *supra*, a National Market System ("NMS") security (*see* Rule 11Aa2–1 under the Exchange Act, 17 CFR 240.11Aa2.1) authorized for quotation on the NASDAQ system operated by the National Association of Securities Dealers, Inc. was treated as an exchange-treated security for purposes of the relief granted.

[24] *See* Rule 10b–7(j)(5).

[25] The Commission is proposing Rule 3b–10 under the Exchange Act, which defines certain terms that are pertinent to the stabilization of securities in international offerings. *See* Securities Exchange Act Release No. 28733 (January 3, 1991) ("Rule 3b–10 Release"). In the Rule 3b–10 Release, the Commission proposes to define "foreign security" as a security issued by a "foreign governmetn" or a "foreign private issuer" as those terms are defined in Rule 3b–4 under the Exchange Act, 17 CFR 240.3b–4.

[26] A domestic security would be defined as any security other than a foreign security. See Rule 3b–10 Release.

[27] If the principal U.S. market is an exchange, then stabilizing may be initiated after the close of such exchange at the price at which stabilizing could have been initiated on such echange at the close thereof, unless the stabilizing person knows or has reason to know that other persons have offered or sold the security at a lower price after such close.

[28] "Principal market" is proposed to be defined as the single largest United States market or foreign securities market, as measured by aggregate share trading volume, for the class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation. For the purpose of determining the aggregate trading volume in a security, the trading volume of depositary shares representing such security shall be included, and shall be multiplied by the multiple or fraction of the security represented by the depositary share. See Rule 3b–10 Release.

[29] "Specified foreign securities market" is proposed to be defined as specific foreign markets and other markets so designated by the Commission by rule or regulations. *See* Rule 3b–10 Release. The criteria that would be considered in determining whether a market constitutes a "specified foreign securities market" would include the degree of market liquidity, the transparency of the market, and the extent of regulatory oversight.

[30] An exception to the Rule would be provided for offerings of foreign securities where no stabilizing activity occurred in the U.S., as discussed in Section II.B. *infra*. The Commission also would retain authority to exempt offerings on a case-by-case basis.

market based on the security's price in the principal specified foreign securities market.[31] Nonetheless, paragraph (h) would continue to require that once a security opens for trading in the U.S. market, stabilizing levels must be determined with reference to the price of the security on the principal U.S. market. Consequently, in those situations where trading overlaps between the U.S. and a foreign market and stabilizing has not been initiated in the foreign market prior to the opening of trading in the U.S. market, stabilizing in the foreign market could be initiated only at a price lawful in the principal U.S. market open for trading when such stabilizing is initiated.[32]

The Commission is proposing to add new paragraph (j)(10) providing that, for purposes of Rule 10b–7, stabilization of a depositary share [33] shall be governed by those provisions governing stabilization of the security that such depositary share represents. Paragraph (j)(10) would further provide that when a depositary share represents a multiple or fraction of another security deposited with a depositary, stabilizing levels for depositary shares shall reflect the multiple or fraction of the securities that such depositary share represents.

B. Offerings with No U.S. Stabilizing Activity

In connection with some offerings made at least partly in the U.S., stabilization is conducted only on foreign markets. [34] Because the offering is made in the U.S., stabilizing activities to facilitate the offering nevertheless are subject to Rule 10b–7. In this context, the Commission preliminarily believes that there is less need to require compliance with Rule 10b–7 if the foreign stabilizing activities will be conducted in a manner that provides anti-manipulation protections comparable to the Rule.

1. Proposed Amendment

Therefore, the Commission is proposing to add paragraph (p) providing that stabilization to facilitate an offering of foreign securities in the U.S. shall not be deemed to be in violation of Rule 10b–7 if: (1) No stabilizing transactions are effected in the U.S.; (2) all stabilizing transactions effected outside the U.S. are subject to foreign regulations that are comparable to the provisions of Rule 10b–7, and procedures exist that enable the Commission to obtain information concerning any foreign stabilizing transactions; [35] and (3) no stabilizing transaction is effected at a price above the price at which the securities are currently being distributed in the U.S.[36]

The Commission would be authorized to identify by rule or regulation [37] which foreign regulations are deemed comparable for purposes of this subsection. The criteria that the Commission would use in making a comparability determination would be: (1) The purposes for which stabilizing activity is permitted; (2) the limitations on stabilizing levels; (3) control of stabilizing activity; and (4) adequate disclosure and recordkeeping of stabilizing activity.

2. SIB Stabilization Rules

For purposes of this amendment, the Commission preliminarily believes that the stabilization rules of the United Kingdom ("U.K.") Securities and Investments Board ("SIB") appear to be comparable to the provisions of Rule 10b–7. [38] The SIB Rules permit stabilizing bids or purchases for the purpose of stabilizing or maintaining the market price of the security being offered. Stabilizing bids or purchases must be made at price levels provided for in the SIB Rules. Stabilizing activity is under the control of the stabilizing manager. Disclosure to the marketplace and to the purchaser of the security being stabilized is also required as of a designated period. A stabilizing legend is required for certain documents (*e.g.*, preliminary and final offering prospectuses or circulars). A general warning that stabilization in accordance with the rules may occur in connection with an offering is required for other types of communications (*e.g.*, screen-based statement or press announcement). Records of stabilizing transactions must be maintained.

Rule 10b–7 and the SIB Rules differ, however, in some respects. On a structural level, whereas Rule 10b–7 prohibits stabilizing activity except in accordance with the provisions of the Rule, the SIB Rules provide a "safe harbor" from charges of violations of Section 47(2) of the U.K. Financial Services Act 1986 ("Section 47(2)") [39] if

[31] The first proviso to proposed paragraph (h)(3), which is similar to that included in current paragraph (h), would require that any trading activity in a foreign securities market other than the principal market ("intermediate market"), after the close of the principal market, be taken into account to determine the appropriate level at which a pre-opening stabilizing bid may be placed on a U.S. market. Accordingly, where a security is traded on an intermediate market after the principal market has closed and the highest current independent bid or last independent sale price in the intermediate market is lower than in the principal market, a per-opening stabilizing bid in the U.S. could not exceed the levels in the intermediate market.

Paragraph (j)(5) establishes the highest level at which stabilizing may be conducted as the price at which the security is being distributed. However, the proviso to paragraph (j)(4) requires that any stabilizing bid placed on a market other than the principal market not exceed the stabilizing bid, if any, in the principal market. With respect to a foreign security, paragraphs (j)(4) and (j)(5) would require that a stabilizing bid in an intermediate market or in the U.S. not exceed the lower of the stabilizing bid in the principal market for the security or the price at which the security is being distributed.

[32] The Commission notes that various U.S. markets propose to extend their trading hours, such that they would overlap with trading on a number of foreign markets. *See e.g.*, Securities Exchange Act Release No. 28223 (July 18, 1990), 55 FR 30338 (proposed NASDAQ International Service). It is not anticipated that trading in foreign securities during such extended hours would constitute the primary market for such securities. The Commission preliminarily believes that such extended trading facilities should not be deemed "U.S. markets open for trading" for purposes of the Rule. Comment is requested on this issue.

[33] A depositary share would be defined as a security, evidenced by a depositary receipt, that represents another security or a multiple of or fraction thereof deposited with a depositary. See Rule 3b–10 Release. Foreign securities often are represented in the U.S. by American Depositary Shares and traded in the form of American Depositary Receipts.

[34] See, *e.g.*, *Letter regarding Atlas Copco AB*, n.10 *supra*. See *generally* Greene and Beller, "Rule 144A: Keeping the U.S. Competitive in the International Financial Markets," 4 *INSIGHTS* 3 (June 1990).

[35] The requirement that the Commission have the ability to obtain information concerning foreign stabilizing activities could be satisfied by the existence of (i) appropriate understandings between the Commission and foreign securities authorities in the countries where stabilizing activities are proposed to be conducted; (ii) other agreements between the Commission and the foreign securities authorities; or (iii) written commitments by underwriting syndicate members to provide such information to the Commission upon request.

[36] Stabilizing transactions effected pursuant to this provision would not be deemed to be in violation of the Rule, and therefore would be excepted from the prohibitions of Rule 10b–6 under the Exchange Act. See Rule 10b–6(a)(4) (viii), 17 CFR 240.10b–6(a)(4)(viii). It should be noted, however, that other market activity would continue to be subject to Rule 10b–6. See Section II.B.2. *infra*.

[37] The Commission seeks comment on whether it would be appropriate to provide that such determinations may be made pursuant to Commission order.

[38] See chapter III, part 10 of the SIB Rules, 2 Fin. Serv. Rep. (CCH) pp. 184,314–184,401 ("SIB Rules").

[39] Section 47(2), 2 Fin. Serv. Rep. (CCH) p. 100,453 provides:

Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments in guilty of an offense if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

FSA section 48(7), 2 Fin. Serv. Rep. (CCH) p. 100,502, provides that Section 47(2) shall not be violated if stabilization is done in conformity with rules adopted under Section 48(7). The SIB Rules were adopted pursuant to that authority. SIB Rule 10.01(1), 2 Fin. Serv. Rep. (CCH) p. 184,341.

the stabilizing activities are conducted in compliance with the SIB Rules.

The SIB Rules provide the safe harbor only for the "stabilizing manager," *i.e.*, the person instructed by the issuer of the securities to manage the offering.[40] The other distribution participants are neither protected by nor restricted by the SIB stabilization provisions. As a result, for example, other underwriters in the U.K. syndicate can engage in market making activity during the course of the distribution. Indeed, it is even possible for the stabilizing manager to adjust the stabilizing bid based upon the market making activity of other syndicate members.[41]

The market activities of these underwriters, however, are subject to certain constraints. For example, the underwriters are subject to prosecution under section 47(2) for violation of its provisions.[42] In addition, the activities of the underwriters generally are subject to the provisions of Rule 10b–6 under the Exchange Act,[43] which prohibits persons participating in a distribution from bidding for or purchasing the securities that are the subject of the distribution unless an exception or exemption from that Rule is available.[44] In connection with distributions of U.K. securities occurring at least partially in the U.S., U.K. distribution participants and their "affiliated purchasers" [45] that are market makers on the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited ("ISE") have been granted an exemption to engage in "passive market making" on the ISE during the course of their participation in the distribution.[46] In effect, this means that these market makers may not engage in activity that raises the ISE market price for the security in distribution.

Under Rule 10b–7 and the SIB Rules, a stabilizing bid cannot exceed the offering price. However, the SIB Rules provide greater latitude than does Rule 10b–7 in permitting a stabilizing bid to be adjusted upward. Once an offering has commenced, Rule 10b–7 permits a stabilizing bid to be adjusted upward only in very limited circumstances.[47] By contrast, the SIB Rules generally provide that once the initial stabilizing bid has been entered, a subsequent stabilizing bid may be entered at the lower of the offering price or the initial stabilizing price. If an independent transaction occurs after the initial stabilizing bid is entered, then the stabilizing bid may be raised to the lower of the offering price or the price at which the independent transaction was effected.

The Commission solicits commenters' views on whether its preliminary determination of the comparability of the SIB Rules is appropriate. For example, is the lack of a provision similar to paragraph (d) of Rule 10b–7 (requiring disclosure of a stabilizing bid to the person to whom it is transmitted and that priority be granted to independent bids at the same price as the stabilizing bid) significant? [48] The Commission also solicits commenters' views on whether other foreign stabilization regulations should be deemed comparable to the provisions of Rule 10b–7.[49]

C. Currency Exchange Rates

Paragraph (j) currently prohibits a stabilizing bid from being raised except under certain limited circumstances.[50] In many international offerings, stabilizing bids will be placed on more than one market. Stabilizing bids placed outside the U.S. generally are priced in currencies other than the U.S. dollar. Because currency exchange rates can, and frequently do, fluctuate, the Commission previously has granted relief to permit a stabilizing bid to be raised to the extent necessary to reflect exchange rate fluctuations, subject to certain conditions.[51]

The Commission proposes to codify the substance of the exemptions and no-action positions. New paragraph (j)(9) would permit: (1) A stabilizing bid to be placed in a market at the current exchange rate [52] equivalent of a stabilizing bid maintained on the principal specified foreign securities market open for trading when the bid is placed in the non-principal market,[53] or which was the most recent to close prior to placing the non-principal market bid; and (2) a stabilizing bid in a market other than the principal specified foreign securities market for the security to be adjusted in response to currency fluctuations to the extent necessary to reflect a change in the current exchange rate between the principal specified foreign securities market and the relevant non-principal market currencies in which the security is traded.

The new paragraph also would provide that a stabilizing bid may not be initiated or maintained, or adjusted based upon currency exchange rate fluctuations, at a price exceeding the stabilizing bid placed in the principal market for a security. A stabilizing bid, however, need not be adjusted down unless, without a reduction, it would exceed the stabilizing bid in the principal market by one trading differential in the principal market. Adjustments that would result in stabilizing bids higher than the levels permitted by the Rule would be prohibited.

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[40] SIB Rule 10.07, 2 Fin. Serv. Rep. (CCH) p. 184,373.

[41] See text following note 48 *infra*. The stabilizing manager, however, may not base its stabilizing bid on any market price that was established at its instruction. *See* SIB Rule 10.05 note 1, 2 Fin. Serv. Rep. (CCH) p. 184,371.

[42] See n. 39 *supra*.

[43] 17 CFR 240.10b–6.

[44] Stabilization activity in compliance with Rule 10b–7 is excepted from Rule 10b–6. Rule 10b–6(a)(4)(viii), 17 CFR 240.10b–6(a)(4)(viii).

[45] See Rule 10b–6(c)(6), 17 CFR 240.10b–6(c)(6).

[46] *Letter regarding The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited* (September 29, 1987), [1987–88 Decisions] Fed. Sec. L. Rep. (CCH) ¶ 78,713.

[47] Paragraph (j)(2) provides that if (a) the principal market for a security is a securities exchange, (b) stabilizing is initiated on such exchange at the highest current independent bid price, and (c) the first sale thereafter is at a higher price, then a stabilizing bid for such security may be increased to a price no higher than such independent sale price. However, paragraph (j)(3) permits a stabilizing bid to be increased only if the offering price also is higher than such bid. paragraph (j)(4) provides that if stabilizing purchases are not effected for three consecutive business days, the stabilizing bid may be resumed at the price at which it could then be initiated. A stabilizing bid entered in accordance with such provisions may result in an increase in the stabilizing bid. Paragraph (j)(5) prohibits a person from raising a stabilizing bid to a price higher than the price at which the security is currently being distributed.

[48] The Commission generally seeks comment on whether the disclosure of stabilizing activity in Rule 10b–7 is adequate. See paragraph (k) of the Rule and Item 502(d) of Regulation S–K, 17 CFR 229.502(d). Should additional disclosure be required that stabilizing prices may be based on prices prevailing in foreign markets?

[49] Sections 250–252.1 of the Quebec Securities Act contain provisions that appear to be comparable to Rule 10b–7. However, these provisions do not apply to stabilizing activity undertaken in reliance on the rules of a recognized stock exchange. Because most stabilizing activity in Quebec is undertaken pursuant to Montreal Exchange Rule 6462, which is a rule of a recognized stock exchange, sections 250–252.1 are rarely applicable to an offering. Comment is requested on whether it would be appropriate and useful for the Commission to identify these Quebec rules as comparable.

[50] See n. 47 *supra*.

[51] See, *e.g.*, Philips Letter, n. 22 *supra*.; *Letter regarding Tricentrol Limited* (July 2, 1980); and Alcan Letter, n.16 *supra*.

[52] "Current exchange rate" is proposed to be defined as the current rate of exchange between two currencies, which is obtained from at least one independent commercial bank or foreign bank which regularly maintains currency exchange operations. *See* Rule 3b–10 Release.

[53] See n. 31 *supra*.

III. Conclusion, Request for Comments, and Interim No-Action Position

The Commission believes that U.S. persons should be offered the widest opportunity for investment in foreign securities consistent with maintaining the fundamental antifraud and anti-manipulation protections afforded in the U.S. regulatory system. The Commission preliminarily believes that the proposed amendments represent an appropriate balancing of investor protection and international accommodation considerations at this stage of the developing international securities markets.[54] The Commission views these proposed amendments as the initial step of a complete review of Rule 10b–7 to determine whether additional amendments are necessary or appropriate in light of changes in domestic and foreign market structures and practices since the Rule was adopted.

In order to further facilitate international offerings, from and after the date of this release and until the time that the Commission takes final action on these proposals, the staff of the Commission will not recommend that the Commission take enforcement action under Rules 10b–6 or 10b–7 if stabilizing transactions are effected in conformity with the terms of the proposed amendments. With respect to proposed paragraph (p), the no-action position applies to foreign stabilizing transactions subject to the SIB stabilization rules.

The Commission requests comment on the above proposals. Specifically, the Commission desires views on whether the proposed amendments to Rule 10b–7 appropriately address the identified problems encountered in applying Rule 10b–7 to international offerings, and whether other approaches to these issues would be preferable.

IV. Initial Regulatory Flexibility Act Analysis

Section 3(a) [55] of the Regulatory Flexibility Act requires the Commission to undertake an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[56] To the extent that the proposed amendments to Rule 10b–7, if adopted, would impose any costs on entities subject to the Rule, or have a competitive impact on entities subject to the Rule, these costs are not significant and would not impact a substantial number of small entities. Accordingly, the Chairman has certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

V. Effects on Competition

Section 23(a) of the Exchange Act [57] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the proposed amendments to Rule 10b–7 in light of the standards cited in section 23(a)(2) and preliminarily believes for the reasons stated in this release that adoption would not impose any burden on competition not necessary or appropriate in furthermore of the Exchange Act. However, the Commission solicits commenters' views on whether the proposed amendments would result in any anti-competitive impact.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities, Issuers, Fraud.

Statutory Authority and Text of Proposed Amendments

Pursuant to Sections 9(a)(6), 10 (b), 17(a), 23(a), and 30(a) of the Exchange Act, 15 U.S.C. 78i(a)(6), 78j(b), 78q(a), 78w(a), and 78dd(a), the Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation, and the authority citation following section 10b–7 is removed.

Authority: 15 U.S.C. 78w, as amended, unless otherwise noted. * * * §240.10b–7 also issued under Secs. 9(a)(6), 10(b), 17(a), 23(a), and 30(a) of the Exchange Act, 15 U.S.C. 78i(a)(6), 78j(b), 78q(a), 78w(a), and 78dd(a).

2. By revising paragraph (h) and by adding paragraphs (j)(9), (j)(10), and (p) of § 240.10b–7 to read as follows:

§ 240.10b–7 Stabilizing to facilitate a distribution.

* * * * *

(h) *Stabilizing securities traded in more than one market.*

(1) If a domestic security is traded in more than one market, stabilizing shall not be initiated at any price which would be unlawful in the market which is the principal market for such security in the United States open for trading at the time when such stabilizing is initiated: *Provided, however,* That if the principal market for such security in the United States is a securities exchange, stabilizing may be initiated in any market after the close of such exchange at the price at which stabilizing could have been initiated on such exchange at the close thereof unless the person stabilizing knows or has reason to know that other persons have offered or sold such security at a lower price after such close, except that special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not limit the stabilizing price.

(2) If the principal market for a foreign security is in the United States, stabilizing shall not be initiated at any price which would be unlawful in the market which is the principal market for such security in the United States open for trading at the time when such stabilizing is initiated: *Provided, however,* That if the principal market for such security in the United States is a securities exchange, stabilizing may be initiated in any market after the close of such exchange at the price at which stabilizing could have been initiated on such exchange at the close thereof unless the person stabilizing knows or has reason to know that other persons have offered or sold such security at a lower price after such close, except that special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not limit the stabilizing price.

(3) A stabilizing bid for a foreign security may be initiated or maintained in a market at a price not in excess of the stabilizing bid in the principal specified foreign securities market for such security. Except as provided in paragraph (p) of this section, if the principal market for a foreign security is a specified foreign securities market, stabilizing shall not be initiated at any price which would be unlawful under the provisions of this section in the principal market for such security open for trading at the time such stabilizing is

[54] The Commission recently has taken other initiatives to accommodate foreign regulatory schemes, *e.g.*, Rule 15a–6 under the Exchange Act, 17 CFR 240.15a–6; Securities Exchange Act Release No. 27018 (July 11, 1989), 54 FR 30087 (concept release on foreign broker-dealer regulation); Securities Act Release No. 6841 (July 24, 1989), 54 FR 32226 and Securities Act Release No. 6879 (October 22, 1990) 55 FR 46288 (proposing the Multijurisdictional Disclosure System).

[55] 5 U.S.C. 603(a).

[56] 5 U.S.C. 605(b).

[57] 15 U.S.C. 78w(a)(2).

initiated: *Provided, however,* That if the principal market for such security is closed, stabilizing may be initiated in any market at the price at which stabilizing could have been initiated on such principal market at the close thereof unless the person stabilizing knows or has reason to know that other persons have offered or sold such security at a lower price after such close, except that special prices available to any group or class of persons (including employees or holders of warrants or rights) shall not limit the stabilizing price; *Provided, further,* That if the security opens for trading in the United States before a stabilizing bid is entered in the United States, then no stabilizing bid shall be entered in a United States market or in any other market at a price which would be unlawful in the principal market for such security in the United States open for trading at the time when such stabilizing bid is entered. If the principal market for a foreign security is not a specified foreign securities market, then stabilizing shall be conducted as if the principal market for the securities were in the United States.

* * * * *

(j) * * *

(9)(i) If a stabilizing bid is expressed in a currency other than the currency of the principal specified foreign securities market, such bid may be initiated or maintained reflecting the relevant current exchange rate; *Provided, however,* That a stabilizing bid need not be reduced after a change in such current exchange rate unless, in the absence of a reduction, the bid in such market would exceed a stabilizing bid placed in the principal specified foreign securities market by one trading differential in such principal market.

(ii) A stabilizing bid may be adjusted to the extent necessary to reflect a change in the relevant current exchange rate, *Provided, however,* That no stabilizing bid placed in a market shall be increased to a price above the higher of:

(A) the then current highest independent bid price for such security in such market, or

(B) the last independent sale price for such security in such market if the then current lowest independent asked price for such security is above the last independent sale price in such market.

(iii) If, in entering a bid pursuant to paragraph (j)(9)(i) of this section or adjusting a bid pursuant to paragraph (j)(9)(ii) of this section, it is necessary to round the bid because it would otherwise fall between trading differentials, such bid shall be rounded down.

(10) *Stabilization of depositary shares.* For purposes of this section, stabilization of a depositary share shall be governed by the provisions of this section governing stabilization of the security that such depositary share represents. Stabilizing levels for depositary shares shall reflect the multiple or fraction of the securities that such depositary share represents.

* * * * *

(p) *Offerings with no U.S. stabilizing activities.* (1) Stabilizing transactions effected to facilitate an offering of a foreign security in the United States shall not be deemed to be in violation of this section if all of the following conditions are satisfied:

(i) No stabilizing transactions are effected in the United States;

(ii) All stabilizing transactions effected outside the United States are subject to foreign regulations that the Commission has determined are comparable to the provisions of this section, and procedures exist that enable the Commission to obtain information concerning any foreign stabilizing transactions; and

(iii) No stabilizing transaction is effected at a price above the price at which the securities are concurrently being distributed in the United States.

(2) For purposes of this subsection, the following foreign regulations are deemed to be "comparable' to the provisions of this section: Chapter III, Part 10 of the Rules of the United Kingdom Securities and Investments Board; and other foreign regulations that the Commission by rule or regulation determines to be comparable for purposes of this subsection considering, among other things, whether such foreign regulations specify appropriate purposes for which stabilizing is permitted, provide for disclosure and control of stabilizing activities, place limitations on stabilizing levels, require appropriate recordkeeping, and provide other protections comparable to the provisions of this section.

By the Commission.

Dated: January 3, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-380 Filed 1-8-91; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 33-6881; 34-28733; [International Series Release No. 216;] File No. S7-2-91]

RIN 3235-AE15

Definitions Principally Relating to International Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for public comment Rule 3b-10 under the Securities Exchange Act of 1934, which would define certain terms relevant to the increasing internationalization of world securities markets. The Commission believes that it would be advisable and appropriate to adopt general definitions of terms rather than adopting identical definitions in the context of individual rulemaking proposals.

DATES: Comments to be received on or before February 25, 1991.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7-2-91 and will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Selwyn Notelovitz or Sheila Slevin at (202) 272-2848, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

In connection with current and prospective rulemaking proposals that address the increasing internationalization of world securities markets, the Commission believes that it would be advisable and appropriate to adopt general definitions of terms under the Securities Exchange Act of 1934 ("Exchange Act")[1] rather than adopting identical definitions in the context of individual rulemaking proposals. Accordingly, the Commission is proposing to adopt Rule 3b-10 under the Exchange Act which would define the terms "current exchange rate," "depositary share," "domestic security,"

[1] 15 U.S.C. 78a *et seq.*

"foreign security," "principal market," and "specified foreign securities market." Unless otherwise provided by rule, or the context otherwise requires, the terms defined in Rule 3b–10 would have general application to the rules adopted under the Exchange Act.

The Commission proposes to define "current exchange rate" as the current rate of exchange between two currencies, obtained from at least one independent commercial bank or independent foreign bank [2] which regularly maintains currency exchange operations. "Depositary share" is proposed to be defined as a security that represents another security or a multiple of or fraction thereof deposited with a depositary.[3] A "foreign security" is proposed to be defined as a security issued by a "foreign government" or a "foreign private issuer" as those terms are defined in Rule 3b–4 under the Exchange Act.[4] A "domestic security" is proposed to be defined as any security other than a foreign security. "Principal market" is proposed to be defined as the single securities market with the largest aggregate trading volume for a class of an issuer's securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.[5] For the purpose of determining the aggregate trading volume in a security, the trading volume of depositary shares representing such security shall be included, and shall be multiplied by the multiple or fraction of the security represented by the depositary share.

"Specified foreign securities market" is proposed to be defined as specific foreign markets and other markets so designated by the Commission by rule or regulation.[6] Factors that would be relevant in determining whether to identify a foreign market as a specified foreign securities market would include whether the market: (i) Has an established operating history; (ii) is subject to oversight by a "foreign securities authority," as that term is defined in section 3(a)(50) of the Exchange Act, that has a written understanding with the Commission that provides for cooperation and coordination in regulatory and enforcement matters covering those types of information that the Commission would request in seeking to enforce the rules in which this definition has been incorporated; (iii) requires securities transactions to be reported on a regular basis to a governmental or self-regulatory body; (iv) has a system for public dissemination of price quotations through communications media; (v) has sufficient trading volume to indicate liquidity; and (vi) has adequately capitalized financial intermediaries.

For certain purposes under the Exchange Act, the Commission believes that it will be necessary to identify those foreign securities markets that exhibit the characteristics set forth in the proposed definition.[7] The Commission requests comment on: The criteria that would be considered in determining whether a market is a "specified foreign securities market"; whether the markets proposed to be so designated are appropriate; [8] and whether any other markets should be added to the proposed list.

The Commission solicits views on whether the proposed definitions are appropriate in light of the internationalization of the securities markets.

II. Initial Regulatory Flexibility Act Analysis

Section 3(a) of the Regulatory Flexibility Act requires the Commission to undertake an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities. To the extent that proposed Rule 3b-10, if adopted, would impose any costs on entities subject to the Rule, or have a competitive effect on entities subject to the Rule, these costs are not significant and would not impact a substantial number of small entities. Accordingly, the Chairman has certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

III. Effects on Competition

Section 23(a) of the Exchange Act [9] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered proposed Rule 3b-10 in light of the standards cited in section 23(a)(2) and preliminarily believes for the reasons stated in this release that adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. However, the Commission solicits commenters' views on whether the proposed Rule would result in any anti-competitive impact.

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[2] For purposes of this definition, "foreign bank" means a banking institution incorporated or organized under the laws of a country other than the United States that is: Regulated as such by that country's government or any agency thereof; engaged substantially in commercial banking activity; and not operated for the purpose of evading the provisions of the Act. *Cf.* Rule 6c–9(b)(2) under the Investment Company Act of 1940, 17 CFR 270.6c–9(b)(2).

The Commission seeks comment on whether other major financial institutions that conduct foreign exchange activities should be deemed acceptable sources of current exchange rates.

[3] The term "depositary share" is defined in Rule 405 under the Securities Act of 1933, 17 CFR 230.405, as "a security, evidenced by an American Depositary Receipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depositary."

[4] 17 CFR 240 3b–4. Rule 3b–4(a) defines "foreign government" as "the government of any foreign country or of any political subdivision of a foreign country." Rule 3b–4(c) defines "foreign private issuer" as "any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) More than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States."

[5] Rule 11Ac1–1(a)(19) under the Exchange Act, 17 CFR 240.11Ac1–1(a)(19), defines the "principal market" with respect to an exchange-traded security for purposes of that rule as "the exchange or OTC market maker responsible, during the most recent calendar quarter, for the largest percentage of the aggregate trading volume as reported in the consolidated system."

[6] The Commission requests comment whether it would be appropriate for such determinations also to be made by Commission order.

[7] In the case of the proposed amendments to Rule 10b-7, for example, a stabilizing bid in the United States would be permitted to be initiated based on prices in the specified foreign securities market that is the principal market for the securities being offered. *See, e.g.*, Securities Exchange Act Release No. 28732 (January 3, 1991) (proposing amendments to Rule 10b 7, 17 CFR 240.10b-7, under the Exchange Act). The Commission believes that whether, *inter alia*, a market is supervised by a foreign securities authority, as such term is defined in section 3(a)(50) of the Exchange Act, 15 U.S.C. 78c(a)(50), that has an information sharing agreement with the Commission and has regular reporting of securities transactions, are significant factors to consider in determining whether to permit stabilizing bids entered in the United States to be based on prices in that foreign maket. Accordingly, the Commission has proposed that only "specified foreign securities markets" could provide reference prices for stabilizing bid levels in the United States, unless a specific exemption were available.

The determination of whether a foreign market is a "specified foreign securities market" is separate from whether the market is a "designated offshore securities market" as defined in Rule 902 of Regulation S, 17 CFR 230.902 under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*

[8] *Cf.* United Kingdom Securities and Investments Board ("SIB") chapter III, part 10, Rule 10.01(3), 2 Fin. Serv. Rep. (CCH) p. 184, 341 (listing "Specified Exchanges" for purposes of the SIB's stabilization rules).

[9] 15 U.S.C. 78w(a)(2).

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities, Issuers, Fraud.

Statutory Authority and Text of Rule

Pursuant to sections 2, 3, and 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, and 78w(a), the Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation.

Authority: 15 U.S.C. 78w, as amended, unless otherwise noted. * * * Section 3b-10 also issued under Secs. 2, 3, and 23(a), 15 U.S.C. 78b, 78c, and 78w(a).

2. By adding § 240.3b–10 to read as follows:

§ 240.3b–10 Definitions principally relating to international transactions.

Unless otherwise provided by rule or the context otherwise requires, these terms shall have the following meanings:

(a) *Current exchange rate* means the current rate of exchange between two currencies, which is obtained from at least one independent commercial bank or independent foreign bank which regularly maintains currency exchange operations. For purposes of this definition, "foreign bank" means a banking institution incorporated or organized under the laws of a country other than the United States that is: regulated as such by that country's government or any agency thereof; engaged substantially in commercial banking activity; and not operated for the purpose of evading the provisions of the Act.

(b) *Depositary share* means a security, evidenced by a depositary receipt, that represents another security or a multiple or fraction thereof deposited with a depositary.

(c) *Domestic security* means any security that is not a foreign security.

(d) *Foreign security* means a security issued by a "foreign government" or a "foreign private issuer" as those terms are defined in Rule 3b–4 [17 CFR 240.3b–4].

(e) *Principal market* means the single securities market with the largest aggregate trading volume for the class of securities in the shorter of the preceding year or the period since the issuer's incorporation. For the purpose of determining the aggregate trading volume in a security, the trading volume of depositary shares representing such security shall be included, and shall be multiplied by the multiple or fraction of the security represented by the depositary share.

(f) *Specified foreign securities market* means: (1) The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited; Montreal Exchange; Bourse de Paris; Tokyo Stock Exchange; and Toronto Stock Exchange; and (2) Any other foreign market for trading securities that is designated as a "specified foreign securities market" by the Commission by rule or regulation. Attributes to be considered in determining whether to so designate a foreign securities market, among others, include whether the market:

(i) Has an established operating history;

(ii) Is subject to oversight by a "foreign securities authority," as that term is defined in section 3(a)(50) of the Act, that has a written understanding with the Commission that provides for cooperation and coordination in regulatory and enforcement matters covering those types of information that the Commission would request in seeking to enforce the rules in which this definition has been incorporated;

(iii) Requires securities transactions to be reported on a regular basis to a governmental or self-regulatory body;

(iv) Has a system for exchange of price quotations through common communications media;

(v) Has sufficient trading volume to indicate liquidity; and

(vi) Has adequately capitalized financial intermediaries.

Dated: January 3, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–379 Filed 1–8–91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Board of Review; Office of Administrative Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern proposed changes to the Code of Maryland Administrative Regulations (COMAR) and are intended to incorporate regulatory changes initiated by the State. The proposed amendments would abolish the Board of Review of the Department of Natural Resources and revise the procedures for appeal of adjudicatory hearing decisions to correspond with the procedures implemented for the newly created Office of Administrative Hearings, an independent unit in the Executive Branch.

This notice sets forth the time and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 8, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on February 4, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 24, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532. Telephone: (301) 689–4136

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of the Interior approved the Maryland

program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approved of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Proposed Amemdments

In 1987, the Maryland Executive Office appointed a Task Force on Administrative Hearing Officers to explore the possibility of establishing an independent agency to combine hearing examiners into one office within the Executive Department. Senate Bill (SB) 658, enacted during the 1989 legislative session, created the Office of Administrative Hearings which "organizes the states scattered network of hearing examiners into a centralized corps of professional administrative law judges legally tranined to hear cases in a number of areas." (Administrative Record No. MD–466).

Under current Maryland State Law, there exists within the Department of Natural Resources (DNR) a Board of Review which provides an avenue of administrative appeal for contested cases at the DNR, including the Maryland Bureau of Mines' (MDBOM) surface mine regulatory program. The composition, authority and duties of the DNR Board of Review are defined in the Natural Resources Article, Sections 1–106 and 1–107 of the Annotated Code of Maryland (1989 replacement volume).

Under the authority of SB–658, the duties of the DNR Board of Review now fall within the purview of the Maryland Office of Administrative Hearings. Accordingly, SB–144 of the 1990 legislative session repealed Sections 1–106 and 1–107 of the Natural Resources Article of the Maryland Annotated Code.

Senate Bills 144 and 658 were formally submitted to OSM as an amendment to their surface mine regulatory program on September 28, 1990 (Adminsitrative Record No. MD–469). The proposed amendment was distributed for comment and published in the **Federal Register** on November 16, 1990 (55 FR 47892). On November 21, 1990, with the intent of bringing their surface mine regulatory program into conformance with SB–658 and SB–144, the MDBOM proposed the following regulation changes to Maryland's federally approved program (Administrative Record No. MD–484).

In COMAR 08.13.09.06, the section title is changed from "Permit Applications: Judicial Review" to "Administrative and Judicial Review."

In COMAR 08.13.09.06B, Administrative Appeal is deleted in its entirety and the succeeding COMAR 08.13.09.06c is renumbered as COMAR 08.13.09.06B.

In COMAR 08.13.09.43K(7), reference to appeal of decisions to the Board of Review is deleted and replaced with the requirement that "if the final decision is adverse to a party to the hearing other than the Bureau, the party has a right to appeal in accordance with Article 41, section 244, *et seq.*, Annotated Code of Maryland."

In COMAR 08.13.09.43N(7), reference to appeal to the Board of Review regarding award of costs and expenses in an administrative proceeding under this regulation is deleted and replace with an indication of a right to appeal in accordance with Article 41, section 244, *et seq.*, Annotated Code of Maryland.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.17. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on January 24, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES**." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–449 Filed 1–8–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1 90–125]

Anchorage Grounds; COTP Providence, RI Zone; Buzzards Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to amend the existing anchorage ground regulations in 33 CFR 110.140 for Buzzards Bay near the entrance to the Cleveland Ledge Channel approach to the Cape Cod Canal. The amended regulations will allow the U.S. Coast Guard and the Army Corps of Engineers to provide additional safety measures for vessel movement within this immediate area, especially during times of limited visibility and/or temporary Cape Cod Canal closure.

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

ADDRESSES: Comments should be mailed to Marine Safety Office

Providence, John O. Pastore Federal Building, Providence, RI., 02903–1790. The comments and other materials referenced in this notice will be available for inspection and copying at MSO Providence, RI., suite 217. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Scott Graham at (401) 528–5335.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD1 90–125, and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT Scott Graham, Port Operations Officer for the Captain of the Port, and LT John Gately, project attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The circumstances considered for this proposal, to add requirements to the existing anchorage ground regulations in 33 CFR 110.140, involve the safety hazards associated with large vessels waiting for clearance into the Cape Cod Canal, including Cleveland Ledge Channel, especially during closure of the canal due to limited visibility. Based upon the danger associated with vessel movement through these pilot waters and the fact that many vessels must anchor during limited visibility prior to entering Cleveland Ledge Channel a potential safety and environmental hazard to the Bay and vessels is created. This is due to the potential for groundings and/or collision and resulting injury to persons, sinking of vessels and possible oil and chemical spills. The below listed regulations will better equip the U.S. Coast Guard and the Army Corps of Engineers for providing alternatives to vessels delayed by poor visibility from entering the channel. Consultation with, and comments from, vessel agents and masters is sought and will be appreciated. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The added requirements are for notification purposes and therefore add a minimal cost, if any, to the shipping industry or other persons involved. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federal Assessment

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

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46; and 33 CFR 1.05(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.140 is amended by adding paragraphs (b)(3), and (b)(4) to read as follows:

§ 110.140 Buzzards Bay, Nantucket Sound, and adjacent waters, Mass.

* * * * *

(b) * * *

(3) Anchorage (to be designed)—(East side is preferred). The waters bounded by a line connecting the following points:

41–34–44 N/70–42–42 W to
41–35–16 N/70–43–23 W to
41–32–50 N/70–45–22 W to
41–33–22 N/70–46–02 W and thence to beginning

(4) Anchorage (to be designated)—(west side). The waters bounded by a line connecting the following points:

41–35–35 N/70–44–47 W to
41–36–24 N/70–45–53 W to
41–34–12 N/70–46–47 W to
41–35–00 N/70–47–53 W and thence to the beginning.

(i) No vessel may anchor unless it notifies the traffic controller for Cape Cod Canal when it anchors, of the vessel's name, length, draft, cargo, and its position in the anchorage.

(ii) Each vessel anchored must notify the traffic controller for Cape Cod Canal when it weighs anchor.

(iii) No vessel may anchor unless it maintains a bridge watch, guards and answers Channel 16 FM, and maintains an accurate position plot.

(iv) When risk of collision exists, both vessels must communicate with each other and the traffic controller for Cape Cod Canal.

(v) No vessel may anchor unless it maintains the capability to get underway within 30 minutes; except with prior approval of the Coast Guard Captain of the Port, Providence.

(vi) No vessel may anchor in a "dead ship" status (propulsion or control unavailable for normal operations) without the prior approval of the Coast Guard Captain of the Port, Providence.

(vii) Each vessel in a "dead ship" status must engage an adequate number of tugs alongside during tide changes. A tug alongside may assume the Channel 16 FM radio guard for the vessel after it notifies Coast Guard Group Woods Hole or the traffic controller for Cape Cod Canal.

(viii) No vessel may conduct lightering operations within these anchorages.

* * * * *

Dated: December 10, 1990.

R.I. Rybacki,

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

[FR Doc. 91–201 Filed 1–8–91; 8:45 am]

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33 CFR Part 151

[CGD 90–054]

RIN 2115–AD64

Pollution-Prevention Requirements of Annex V of MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the rules that implement Annex V of the International Convention for the Prevention of Pollution From Ships

(MARPOL 73/78). This rulemaking is necessary because two amendments to the Annex will take international effect February 18, 1991. This rulemaking would, as those amendments will, designate the North Sea as a Special Area under the Annex and eliminate the current exemption under the Annex for the loss of synthetic material incidental to the repair of fishing nets.

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

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-054), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander David W. Jones, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identity this rulemaking (CGD 90-054) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" If it determines that an opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander David W. Jones, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Background and Purpose

The United States has adopted Annex V of MARPOL 73/78 through passage of the Act to Prevent Pollution From Ships, as amended (33 U.S.C. 1901-1912) (the Act). The Act directs the Secretary of the Department in which the Coast Guard is operating to prescribe any necessary or desired regulations to carry out the provisions of MARPOL 73/78. The Coast Guard published a final rule in the **Federal Register** on September 4, 1990 (55 FR 35986). With related rules, that rule implements the Annex for foreign ships operating in U.S. waters and for U.S. ships operating in any waters. The several rules establish, for ships, requirements on garbage discharge and, for facilities, requirements on garbage reception.

Two amendments to Annex V take international effect on February 18, 1991. These amendments were adopted by the International Maritime Organization (IMO), and the U.S. delegation to IMO fully participated in the deliberative process for the amendments. The amendments will: (1) Designate the North Sea as a Special Area under the Annex, and (2) eliminate the current exemption under the Annex for the loss of synthetic material incidental to the repair of fishing nets.

Designation as a Special Area brings to bear stricter discharge restrictions for the waters so designated. The current rules designate the following waters Special Areas for purposes of Annex V: (1) The Mediterranean Sea area, (2) the Baltic Sea area, (3) the Black Sea area, (4) the Red Sea area, and (5) the Gulfs area, which includes portions of the Persian Gulf.

Previously, the loss of synthetic material incidental to the repair of fishing nets was not a violation of Annex V if all reasonable precautions had been taken to prevent this loss. The elimination of the exemption for this loss will further reduce the amount of plastic and other synthetic materials entering the water. This will lessen the harmful effects of these materials on marine wildlife and aid efforts to reduce the amount of debris that collects on the nation's shorelines and beaches.

The current rules implement Annex V as it stands. This proposal would conform them to the Annex as the two amendments will modify it.

Discussion of Proposed Amendments

This proposal would add text to the prefatory language of 33 CFR 151.53, add a new paragraph (f), and add text to Note 2 to Appendix A to 151.51 through 151.77; these would, respectively, list, define, and emphasize the North Sea as a Special Area for Annex V. It would also delete the text in § 151.77(c) exempting the loss of synthetic material incidental to the repair of fishing nets, though it would leave the text exempting the accidental loss of synthetic fishing nets themselves.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

A Final Regulatory Evaluation was prepared for the final rule imnplementing Annex V. A copy of the Regulatory Evaluation is available in the docket for inspection or copying where indicated under "**ADDRESSES.**" The Coast Guard expects the economic impact of this proposal to be so minimal that a new Regulatory Evaluation is unnecessary. This proposal would make only minor changes to the rules previously evaluated and adopted. It would affect only U.S.-flag ships that were operating in the North Sea and those few instances where, despite exercising all reasonable precautions, fishing vessels lose synthetic material during the repair of fishing nets.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and tha otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard prepared a Final Regulatory Evaluation for the final rule implementing Annex V. The Coast Guard conducted, as a part of this evaluation, a regulatory flexibility analysis, which certified that the final rule would not have a significant economic impact on a substantial number of small entities. This proposal would make only minor changes to the current rules. Because it expects the

impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed ths proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and has concluded that preparation of an Environmental Impact Statement is not necessary. The Coast Guard conducted an Environmental Assessment for the final rule implementing Annex V; this led to a Finding of No Significant Impact. This proposal would make only minor changes to that rule. Both documents are available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

TITLE 33

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, AND MUNICIPAL OR COMMERCIAL WASTE

1. The citation of authority for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 COMP., p. 793; 49 CFR 1.46.

2. Section 151.53 is amended by revising the introductory text and adding a new paragraph (f) before the note, to read as follows:

§ 151.53 [Amended]

For the purposes of §§ 151.51 through 151.77, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the Gulf area, and the North Sea area, which are defined as follows:

* * * * *

(f) The North Sea area means the North Sea proper, including seas within—

(1) The North Sea southwards of latitude 62° N and eastwards of longitude 4° W;

(2) The Skagerrak, the southern limit of which is determined east of the Skaw by latitude 57°44′ N. and

(3) The English Channel and its approaches eastwards of longitude 5° W.

(4) Each party to MARPOL 73/78 whose coastline borders the North Sea area has certified that reception facilities are available, and the IMO has established an effective date of February 18, 1991, for the discharge restrictions in § 151.71 governing the area.

* * * * *

3. Section 151.77 is amended by revising paragraph (c), to read as follows:

§ 151.77 [Amended]

* * * * *

(c) The accidental loss of synthetic fishing nets, provided all reasonable precautions have been taken to prevent such loss.

4. Appendix A to §§ 151.51 through 151.77 is amended by revising Note 2, to read as follows:

Appendix A to §§ 151.51 through 151.77 [Amended]

* * * * *

Note 2: Special areas for Annex V are the Mediterranean, Baltic, Black, Red, and North Seas areas and the Gulfs area. (33 CFR 151.53)

* * * * *

Dated: December 10, 1990.

D.H. Whitten,

Captain, U.S. Coast Guard; Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–422 Filed 1–8–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3895–5]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa and Pima Nonattainment Areas; Carbon Monoxide Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice.

SUMMARY: EPA in this notice is announcing its interpretation of the effect of the recently enacted Clean Air Act Amendments of 1990 (Pub. L. 101–549) on the rulemaking that EPA commenced October 10, 1990 (55 F.R. 414204) to promulgate a Federal implementation plan (FIP) for carbon monoxide (CO) under section 110(c) of the Clean Air Act (CAA) for the Maricopa (Phoenix) and Pima (Tucson) CO nonattainment areas. EPA proposed that action to comply with the Ninth Circuit Court of Appeals order in *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990). That court order, as amended on November 21, 1990, currently requires EPA to disapprove the Arizona CO SIP and promulgate a FIP by January 28, 1991 that utilizes all "available" measures to attain the National Ambient Air Quality Standards (NAAQS) for CO "as soon as possible" and that contains conformity and contingency plans in accordance with EPA guidelines. EPA believes that the Clean Air Act Amendments removed EPA's authority to promulgate such FIPs. EPA will shortly request that the court vacate its order in light of these amendments.

ADDRESSES: Docket No. 90–AZ–MAPI–1 contains material relevant to this action including the transcript of the public hearing and all written comments received by EPA on the proposed rulemaking.

Technical Evalaution Section, A–2–1, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105

Public Information Reference Unit, PM–211D, room M–2904, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Julia I. Barrow, Chief, Technical Evaluation Section, A–2–1, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105.

Phone Number: Before January 14, 1991: (415) 556–5154; FTS: 556–5154

After January 14, 1991: (415) 744–1230; FTS: 484–1230

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Proposal

EPA's October 10, 1990 notice of proposed rulemaking (55 FR. 41204) set forth the background on EPA's proposed FIP for the two Arizona areas. As discussed in this notice, in setting aside EPA's 1988 approval of the Maricopa

and Pima County CO SIPs, the Ninth Circuit *Delaney* determined that the Agency's action did not comply with the Clean Air Act as amended in 1977, specifically, section 172(a), 42 U.S.C. 7502(a). EPA has agreed that for a plan created after the 1982 (or 1987) attainment deadline in that section of the statute, the deadline could be extended to a date that was as expeditious as practicable but as late as three years from the date EPA approved the plan. In response, the court found the 1982 and 1987 deadlines of the version of section 172(a) in the 1977 amendments to be absolute:

> We believe that the only reasonable interpretation of the 1977 amendments is that if the 1982 deadline that Congress specified is not met, the national ambient air quality standards must be attained as soon as possible with every available control measure, including those that the EPA identified in its criteria for approving 1982 plans. 898 F.2d at 691.

In its opinion, the court stated that "[w]e, and the EPA, are bound by the statutory scheme *until Congress alters that scheme.*" (Emphasis added). 898 F. 2d at 691. The court then concluded:

> We direct EPA to disapprove [the Maricopa and Pima County Co SIPS] and to promulgate federal implementation plans consistent with this opinion within six months. To summarize, the new plans must utilize all available control measures to attain the carbon monoxide ambient air quality standard as soon as possible. The new plans must contain contingency and conformity plans in accordance with EPA guidelines and must be based on the most recent traffic projections currently available. 898 F.2d. at 695.

Under an extention that the Court granted on November 21, 1990, EPA must comply with the Court order by January 28, 1991.

On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990 Public Law No. 101–549. That legislation comprehensively revises the Clean Air Act based, in part, on the widespread failure of the states to meet the Act's attainment requirements. As discussed in detail below, EPA believes that, as a result of the 1990 Amendments to the CAA, Congress removed EPA's authority to promulgate the FIP required by the *Delaney* court order under the pre-Amendments Act.

II. The Clean Air Act Amendments of 1990

The 1990 Amendments repeal the provisions of section 172 requiring SIPs to demonstrate attainment by no later than 1982 or, if an extension has been approved, by 1987. Amended section 172 establishes requirements for nonattainment areas in general. The section authorizes the Administrator to classify areas for purposes of establishing an attainment date, provides that attainment should be achieved as expeditiously as practicable but no later than five years from nonattainment designation, and allows the Administrator to extend that date up to ten years considering the severity of the nonattainment problem and the availability of control measures. The section specifically states, however, that these attainment dates do not apply with respect to areas for which attainment dates are otherwise provided in the amended Act. Section 172(a)(2)(D).

In addition, the amended Act contains new subpart 3 of part D (of title I of the amended Act), which establishes additional provisions for CO nonattainment areas. New section 187 classifies CO nonattainment areas according to the severity of the nonattainment problem and requires attainment "as expeditiously as practicable" but no later than either December 31, 1995, or December 31, 2000, depending on their classification. New section 187 also establishes various planning requirements for the different classifications, with associated plan submission deadlines (generally about two years after enactment). Areas with relatively minor nonattainment problems are relieved from the obligation to submit demonstrations of attainment by the 1995 deadline if they make all of the required submissions under this section. Section 187(a). Areas with more serious nonattainment problems must submit within two years of enactment demonstrations of attainment by the applicable attainment date. Section 187(a)(7).

Beyond that, all nonattanment areas must submit procedures and criteria for assessing the conformity of any activity to the SIP, within two years of enactment. Section 176(c)(4)(C). Finally, all nonattainment areas must also submit contingency measures to be undertaken if the area fails to make reasonable further progress towards attainment or to attain any standard by the applicable attainment date, on a schedule to be established by the Administrator. Section 172(c)(9).

Furthermore, the 1990 Amendments repeal the provisions of section 110(c) requiring EPA to promulgate a FIP within, initially, six months of state failure to submit or revise a plan, or EPA's disapproval of a plan. Amended section 110(c) requires EPA to promulgate a FIP within two years of a state failure to make any submission required under the amended Act, submission of a plan that does not meet the new minimum requirements for plan submission, or EPA disapproval of a newly required plan, unless the state corrects such deficiency and EPA approves the corrected plan within that time.

Read in conjunction with the provision of section 187 establishing requirements for plan submission, section 110(c) as amended does not even allow EPA to promulgate a FIP until, at the earliest, EPA has first found that a state has failed to make any of the plan submissions required under the amended Act, which for CO areas are generally not due until two years after enactment. Further, under section 304(a)(2) of the Act, EPA could not be subject to a court order to promulgate a FIP until the end of the period allowed for FIP promulgation—two years after the EPA finding of the state failure that gave rise to the FIP duty. At the earliest for CO SIPSs, this equates to approximately four years after enactment of the 1990 amendments.

III. Impact of 1990 Amendments on Delaney Order

The Ninth Circuit's order, issued under the Clean Air Act as amended in 1977, requires EPA to disapprove the Arizona SIPs for failure to demonstrate timely attainment under section 172 of the pre-1990-Amendments Act, and to promulgate FIPs for the areas under the previous version of section 110(c). As discussed above, provisions of both section 172 concerning attainment dates and section 110 concerning FIPs have been repealed by the Clean Air Act Amendments of 1990. Those sections have been replaced with new provisions establishing new attainment dates for CO nonattainment areas, new planning periods for submittal of SIPs demonstrating timely attainment, and new provisions concerning the timing of EPA's obligations to promulgate FIPs.

Thus, the premise underlying the Ninth Circuit's determination that the Arizona SIPs did not provide for timely attainment—that the SIPs failed to meet the Act's requirements because they failed to demonstrate attainment by 1982, or 1987, or as soon as possible after 1987—no longer applies under the amended Act.

Section 193 of the 1990 amendments does include a savings clause which provides, in pertinent part:

> No control requirement * * * required to be adopted by an order, settlement agreement, or plan in effect before the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment

area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

EPA interprets this provision of the savings clause as preserving only obligations to impose specified control measures and non obligations to prolulgate complete plans. The provision refers only to "control requirement(s)". A control requirement, although not speicifically defined in the Act, would by its ordinary meaning be a discrete regulation directed at a source of pollution. By contrast, a federal implementation plan is far broader than any such "control requirement." Indeed, it is a comprehensive strategy that contains emissions inventories, modelling, control requirements, timetables, schedules, maintenance, provisions, enforcement provisions, and a complex demonstration of attainment. Thus a plan is a far more involved and demanding exercise than any cotnrol requirement or specific group of requirements. Indeed, the principal purpose of the elaborate amendments to title I of the CAA is to provide a framework for the orderly development by the states, over several years, of completely new plans to attain the ambient standards.

If Congress had intended to speak to federal plans, as opposed to specific control requirements, it would have done so, as it did elsewhere, by using that term. In the CAA, and in the Amendments, when Congress meant to refer to plans, it used that word. See, e.g., amended section 110(c) (in section 102(h) of the Amendments), which sets forth requirements for "Federal implementation plans." Indeed, in the very sentence in which "control requirement" appears in the savings clause, Congress speaks of a "control requirement * * * required to be adopted by an order, settlement agreement, or *plan* in effect * * * ." (Emphasis added). Thus, Congress itself contrasted "control requirement" with "plan," in the very sentence containing this savings clause.

This interpretation of the savings provision's narrow role is confirmed by the Senate debates. 136 Cong. Rec. S 17237 (daily ed. Oct. 26, 1990). Expressing concern about California's flexibility to develop its own plan to meet the new requirements of the Act in light of EPA's notice of proposed FIP rulemaking for the South Coast area, Senator Wilson engaged in a colloquy with Senator Chafee, the ranking minority member of the Senate Committee on Environment and Public Works, on the effect of the savings provision on EPA's obligation to take final action promulgating federal plans for the South Coast. In response to a question from Senator Wilson specifically concerning that FIP, Senator Chafee assured him that it would not be preserved by the savings clause. Senator Chafee stated that:

[t]he savings provision was intended to ensure that there is no backsliding on the implementation of adopted and currently feasible measures that EPA has approved as part of a State implementation plan in the past, or that EPA has added to State plans on its own initiative or pursuant to a court order or settlement. * * * . If EPA were to promulgate complete new plans based on requirements of the old act, the areas subject to those Federal plans would be deprived of the opportunity to utilize the significantly revised and clearly more workable requirements of the revised act. This would be unreasonable, and clearly not our intent.

Id. See also H.R. Rep. 101–490, part 1, 101st Cong., 2d Sess. 273 (1990) (describing provisions as "anti-backsliding language").

Beyond the language of the amendments and this express language in the legislative history, the central purposes of the 1990 Amendments support the conclusion that Congress would not have intended EPA to be forced now to promulgate federal plans ordered under the old Act. Read as a whole, the 1990 amendments evince a clear legislative intent to provide all nonattainment areas with an additional planning period in which to develop a series of new control requirements designed to bring areas into attainment as expeditiously as practicable while allowing states the flexibility to tailor such measures to their individual needs. It would run directly counter to this intent and create severe inequality of treatment among nonattainment areas to interpret the savings clause in any manner more broadly than decribed above. The few senators who focused on this issue clearly felt that the narrow reading of the savings clause was appropriate, as evidence by the statement of Senator Chafee quoted above.

The Ninth Circuit in *Delaney* ordered EPA to promulgate FIPs consistent with its opinion. If further required that those FIPs "utilize all available control measures to attain the carbon monoxide ambient air quality standard as soon as possible." 898 F.2d at 695. The Ninth Circuit did not by this order require EPA to promulgate every availabale control requirement in the abstract, but only those measures necessary to attain the standard as soon as possible.

Thus, the *Delaney* order is not an order to promulgate any specific control requirements with associated identifiable emission reductions levels, such as an oxygenated fuels regulation with a prescribed minimum oxygen content or similar prescribed measures. Rather, the *Delaney* order contemplates a full attainment plan including whatever control measures EPA found necessary to support a demonstration of attainment by the applicable attainment date, which the court viewed to be as soon as possible. Since the savings clause preserves obligations to promulgate only specific measures with identifiable emission reductions against which to measure the equivalency of any proposed substitution, EPA interprets it not to preserve the FIP obligation in the *Delaney* order.

IV. Pending Court Action

In its Notice of Proposed Rulemaking, EPA discussed at length the legal history through September 20, 1990, of *Delaney* v. *EPA* in the Ninth Circuit. See 55 FR 41204, 41205–41206 (October 10, 1990).

On October 29, 1990, EPA filed a motion in the Ninth Circuit for a partial stay of that court's judgment. EPA requested that the protion of the judgment imposing a six month deadline for promulgation of a FIP be stayed for at least two months. EPA requested the two month stay primarily in order to adequately respond to comments on the NPRM, prepare a final FIP, and undertake intra- and inter-agency review of the FIP before the notice must be signed by the Administrator. A declaration attached to that motion demonstrated that EPA could not promulgate a defensible FIP adequately responding to comments before January 28, 1991. On November 21, 1990, the Ninth Circuit granted that motion.

EPA now intends to move the court to amend its order to remand this case to the Agency in light of the Clean Air Act Amendments of 1990. Should the court grant this motion, EPA would not proceed to final action on the proposed Arizona FIPs. Should the court deny that motion, EPA will take final action promulgating FIPs for Arizona, giving full consideration to all of the comments submitted at the public hearing and during the comment period, by January 28, 1991.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et. seq.

Dated: December 21, 1990.

William K. Reilly,

Administrator.

[FR Doc. 91-238 Filed 1-8-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 26, and 162

[CGD 74-284]

RIN 2115-AA08

Fixed Fire-Extinguishing Systems for Pleasure Craft and Other Uninspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard seeks to establish standards and procedures for approving gaseous-type fixed fire-extinguishing systems for pleasure craft and other uninspected vessels. Its current rules do allow certain fixed systems, but the ones they allow are too complex and expensive for most uninspected vessels. The rule proposed here will allow a greater variety of fixed systems, including several that are simple and inexpensive, and will therefore increase the convenience and economy of running most uninspected vessels.

DATES: Comments must arrive on or before March 11, 1991.

ADDRESSES: Mail or deliver comments to Commandant (G-LRA-2, 3406) (CGD 74-284), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. They will be available for inspection and copying at the Office of the Marine Safety Council (G-LRA-2), room 3406, at that address between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Klaus Wahle, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1444.

SUPPLEMENTARY INFORMATION:

Request For Comments

Interested persons may participate by submitting written data, views, or arguments on this Supplemental Notice of Proposed Rulemaking (SNPRM). Each comment should include its author's name and address, identify this rulemaking (CGD 74-284) and the specific section or paragraph of this SNPRM to which it applies, and state its reason. Any person wishing acknowledgement of receipt of a comment should enclose a stamped self-addressed postcard or envelope. The Coast Guard will consider all coments received by the end of the comment period before it acts further on this proposal, and it may change this rule in light of the comments. It plans no public hearing; but it might hold one, at a time and place announced by a later notice in the **Federal Register**, if it determines that the opportunity for oral presentations will aid this rulemaking

Prior NPRM

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on april 19, 1982 (47 FR 16648), which contained proposed standards and procedures for approving certain systems. Seventeen organizations and individuals provided comments in response to the NPRM. The respondents included the National Transportation Safety Board, fire-equipment manufacturers, boat builders, independent testing-laboratories, manufacturers' associations, voluntary standards-writing organizations, and interested individuals. The comments received in response to the NPRM are addressed under "**Discussions**", below.

Drafters

The drafters of this SNPRM are Mr. Klaus Wahle, Project Manager, Office of Merchant Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Background and Purpose

Subpart 25.30 of title 46, Code of Federal Regulations (CFR), requires the carriage of approved portable fire extinguishers on pleasure craft and other uninspected vessels. It does not require the installation of fixed systems. However, it does provide that, if a vessel has a fixed system installed in the engine compartment, the vessel may carry one fewer portable fire extinguisher. A fixed system in lieu of a portable fire extinguisher must meet the standards for carbon-dioxide (CO_2) systems for large passenger vessels, which are inspected under subpart 76.15 of title 46, CFR. These CO_2 systems, required for large passenger vessels, are complex installations normally designed to protect large, occupied machinery spaces. They are not well-suited to protect small, normally unoccupied engine compartments on uninspected vessels, and their cost may be prohibitive on many uninspected vessels.

The Coast Guard received several requests from boat manufacturers and others to publish standards and procedures for approval of small, inexpensive fire-fighting systems intended to protect normally unoccupied engine compartments on pleasure craft and certain other uninspected vessels. Although it never contemplated making fixed systems mandatory for uninspected vessels except such vessels engaged in commercial fishing, the Coast Guard agreed to propose specifications that would promote fire safety. Consequently, the Coast Guard published an NPRM (see "**Prior NPRM**", above), also under docket number CGD 74-284, which contained proposed standards and procedures for approval of certain systems.

The NPRM contained not only standards of design and performance but procedures for approval of fixed fire-extinguishing systems on uninspected vessels. It also provided for the listing and labeling of the systems by an independent testing-laboratory accepted under the procedures in subpart 159.010, for quality-control inspections and tests by the systems' manufacturers, and for follow-up inspection and testing, again by the independent laboratory.

The National Boating Safety Advisory Council heard and considered the NPRM in several public meetings. The Council did not object to it.

Some comments received in response to the NPRM addressed technical details, which are addressed below, while others questioned the need for elaborate Federal specifications. Authors of the latter asked that the Coast Guard incorporate by reference consensus standards, instead of promulgate detailed standards, or that it have private industry or voluntary standards-writing organizations prepare standards for it.

When the NPRM was published there were no consensus standards in private industry for gaseous-type fixed fire-extinguishing systems. Because of comments received in response to the NPRM, the Coast Guard decided not to publish a final rule. Rather, staff of the Coast Guard participated in the writing of standards by Underwriters Laboratories, Inc. (UL), the American Boat and Yacht Council (ABYC), and the National Fire Protection Association (NFPA) that would be suitable for adoption and use by the Coast Guard. The joint efforts resulted in the publication of ANSI/UL 1058, entitled "Halogenated Agent Extinguishing System Units"; a revised chapter of the ABYC Safety Standards for Small Craft (Project A-4), entitled "Recommended Practices and Standards Covering Fire-Fighting Equipment"; and a revised

section of NFPA 302, entitled "Pleasure and Commercial Motor Craft" (Chapter 9).

This regulatory project (OGD 74–284) went on inactive status in 1982, pending completion of consensus standards. Project priorities and staffing levels of the Coast Guard prevented reactivation of this regulatory project until 1989.

Before the reactivation of this regulatory project, Congress passed the Commercial Fishing Industry Vessel Safety Act of 1988 (Pub. L. 100–424). Before the reactivation had gone far, and in response to that Act, the Coast Guard published an NPRM under docket number CGD 88–079 on April 19, 1990 (55 FR 14924), proposing safety rules for uninspected vessels engaged in commercial fishing. In that NPRM it contemplated requirements for carrying fixed gaseous-type fire-extinguishing systems on such vessels of more than 79 feet in length, built or converted after the effective date of the rules.

This SNPRM differs from the NPRM of 1982 (again, see "**Prior NPRM**", above) in that, while none of these voluntary standards are in a form that enables their adoption complete, the SNPRM incorporates applicable sections from them. Most of the approval tests and manufacturers' quality-control tests come from ANSI/UL 1058. Some installation and safety-warning requirements come from ABYC Project A–4, and from NFPA 302. Still other tests and requirements come from the Coast Guard itself, which had gained experience in approving small fixed systems already installed on uninspected vessels.

This SNPRM, like the NPRM, requires fixed systems to have been tested and listed by an independent laboratory. Fixed systems already approved have been so tested and listed.

The proposed standards apply only to fixed carbon dioxide, Halon 1211, Halon 1301, and mixtures of Halon 1211 and 1301 (the net weight of systems with Halon 1211 not exceeding 10 pounds). These agents quench fires in flammable liquids (Class-B hazards) and in energized electrical equipment (Class-C hazards). The systems are for use only in engine spaces (including communicating bilge-spaces) on recreational boats and other uninspected vessels and, even there, are for use only in normally unoccupied spaces not exceeding 2000 cubic feet (ft^3). Fixed systems in larger normally unoccupied spaces, or in any spaces intended for human occupancy, must be specifically designed for each space being protected; the latter systems must include both limits on the halon concentration and added safety equipment such as predischarge alarms and discharge-delay mechanisms. Fixed systems installed in spaces over 1000 ft^3 must have remote manual mechanical actuators in addition to automatic actuators. A separate standard covering fixed gaseous-type fire-extinguishing systems for spaces larger than 2000 ft^3 is under study.

The volume of the engine compartment protected must be the gross volume: the length times the width times the depth of the compartment. The volume of equipment installed in the compartment, such as engine blocks and built-in fuel tanks, does not diminish the volume of the compartment.

Discussion of Comments

Seventeen organizations and individuals provided comments in response to the NPRM of 1982 (again, see "**Prior NPRM**", above). The National Transportation Safety Board suggested that the Coast Guard inform the public about the advantages of fixed fire-fighting systems over portable fire-extinguishers, and encourage their installation.

The Coast Guard considered the technical comments received in response to the NPRM when it prepared this SNPRM. It has adopted and incorporated into the SNPRM the comments received, except for the following:

(1) Several commenters stated that the proposed requirement in paragraph (e) of § 162.029–11, requiring test samples not to show any signs of incipient corrosion during and after the test, is too severe. The commenters recommended that corrosion that does not impede the operation of the system be permitted. The Coast Guard rejected the recommendation, since any signs of corrosion during or after the ten-day exposure-period of the test indicates a short life-span for the equipment in a marine environment.

(2) Three commenters asked that the use of a pressure gauge to determine whether a container is fully charged not be permitted, because this can be misleading for a liquefied compressed gas. The Coast Guard agrees in principle, and requires that a discharge indicator be provided to alert the operator that the system has discharged. However, it still requires a pressure gauge for those containers that, along with halon fire-extinguishing agent, are pressurized with nitrogen to achieve desirable discharge characteristics; for those, the pressure gauge need only show the degree of nitrogen pressurization (it need not determine halon leakage).

(3) Several commenters questioned the use of Halon 1211 in enclosed areas, because of the toxic products of decomposition of Halon 1211. Since systems covered by subpart 162.029 are intended for normally unoccupied spaces only, the use of Halon 1211 is consistent with the recommendations of NFPA Standard 12B, which permits the use of this agent for the total flooding of normally unoccupied spaces. Furthermore, as far as the Coast Guard knows, the use of Halon 1211 in portable fire extinguishers, where personnel are likelier to be exposed to the products of decomposition of this extinguishing-agent, has not resulted in any casualties; No problems have been reported for systems installed and maintained in accordance with their instruction manuals.

(4) One commenter questioned the use of CO_2, because of its potential hazard at concentrations great enough for extinguishment. Since marine, and shoreside industrial, experience has shown that normally unoccupied spaces can be safely as well as successfully protected with CO_2 systems, the Coast Guard proposes to continue approving CO_2 as well as halon systems for uninspected vessels, to provide a choice of extinguishing-agents to the public.

(5) Several commenters asked that manual actuation to augment automatic actuation be made mandatory. Their idea is to enable anyone recognizing the danger to actuate the system, without waiting for the heat of the fire to actuate it automatically. Since automatic actuation should be quick for the small systems typically installed in small spaces, the Coast Guard will accept systems with only automatic actuation in spaces not exceeding 1000 ft^3, though it will insist on systems with both kinds of actuation in larger spaces.

(6) One commenter suggested that the specification recognize a dual-purpose configuation, of a portable fire extinguisher attached to fixed discharge-piping so as to enable removal of the extinguisher from the piping for use as a portable fire extinguisher. The Coast Guard will not recognize such a configuation, since there can be no assurance that any portable component of a fixed system will be handy and workable when needed.

(7) One commenter stated that ventilation and engine shutdown need to be explored in greater detail because of safety. However, the commenter neither identified a particular problem nor suggested an exact solution. The Coast Guard is willing to consider at any time any data submitted by the boat-building

industry and others that enlighten it on this subject.

(8) One commenter suggested that high air-flow in engine compartments needs to be thought out more thoroughly. The rules proposed here assume natural ventilation of one change of air a minute. No information has been submitted to the Coast Guard that would indicate that engine compartments with only natural ventilation have air changes greater than one a minute. Compartments with high air-flow conditions are normally equipped with powered ventilation. The rules require a means of automatically shutting down powered ventilation when the fire-fighting systems actuate. No manufacturer has yet submitted to the Coast Guard either a design or a system intended for an engine compartment with natural ventilation greater than one change of air a minute.

(9) One commenter asked that the rules require automatic shutdown of all diesel engines. The rules proposed here do not require such shutdown when the system discharges. Such shutdown will remain optional because there may be instances where immediate maneuverability of vessels is more important than immediate extinguishment of fires. Vessel owners weigh these values and buy systems accordingly. (Several manufacturers already offer systems with such shutdown.) If such shutdown is installed, the system must also enable the vessel operator to quickly restart the engine or engines from his position. (The rules proposed in the NPRM published on April 19, 1990 (55 FR 14924), which concerns uninspected vessels engaged in commercial fishing, do require such shutdown. These vessels usually operate farther from traffic and farther from assistance than other uninspected vessels; so the disadvantages of such shutdown are lesser for them, and the advantages greater.)

(10) Commenters expressed various views on the largest allowable engine compartment to be protected by systems approved under subpart 162.029. One commenter suggested increasing the allowable volume of 4000 ft^3. Another commenter suggested decreasing it to 700 ft^3. Large engine spaces are likelier to be manned or at least temporarily occupied than small engine spaces. These spaces are best protected by custom-engineered systems incorporating features for safety of personnel, such as predischarge alarms and discharge delays. Since the Coast Guard holds no data favoring any specific volume, it has proposed limiting systems of the type contemplated by this subpart to 2000 ft^3.

(11) Another commenter suggested limiting Halon 1211 systems, if permitted at all, to spaces not exceeding 150 ft^3 because of the possibility of inadvertently mixing gases, presumably Halon 1301 with Halon 1211. The Coast Guard declines this because it considers remote any possibility of switching containers of halon by mistake. The rules proposed here do require the marking of all containers in the system to identify the agents they contain. The instruction manuals provided by the systems' manufacturers require the recharging of all rechargable systems by a professional organization using specialized equipment.

(12) One commenter suggested allowing only rechargable systems, to ensure the timely maintenance of systems. Most of the systems approved by the Coast Guard to date are nonrechargable systems. The Coast Guard has no reason to believe that greater frequency of either maintenance or replacement renders either system inferior. All systems require a certain amount of periodic maintenance as stated in the instruction manuals provided by their manufacturers.

Source of Proposed Rule

The cross-reference table below relates the rule proposed by this SNPRM to that proposed by the NPRM of 1982 and to voluntary standards. The references are not complete; rather, they cite the principal provision from which each proposed regulation came in whole or in part. (Some proposed regulations have more than one reference. For example, the references for proposed § 162.029-1(a) are "(25.30-15, New)." These notations indicate that the proposal came in part from two sources—that part was derived from proposed 46 CFR 25.30-15 and that part of it is new.)

Section numbers refer to 46 CFR unless noted otherwise. Section numbers in parentheses refer to regulations proposed by the NPRM of 1982. "NVIC" means "Coast Guard Navigation and Vessel Inspection Circular".

Proposed rules	References
25.30-15(a)(1)	(25.30-15(a)(1)).
25.30-15(a)(2)	(25.30-15(a)(2)).
25.30-15(a)(3)	(NFPA 302, Section 9-2.3.3; ABYC Standard A-4.7(j).
25.30-15(b)	(25.30-15(b)).
25.30-15(c)	(25.30-15(c)).
25.30-15(d)	(25.30-15(d)).
25.30-15(e)	New.
25.30-15(f)	ABYC Standard A-4.7(h)(1).
25.30-15(g)	ABYC Standard A-4.7(h)(2).
25.30-15(h)	NFPA 302, Section 9-3.1.1.
25.30-15(i)	ABYC Standard A-4.7(h)(4).
25.30-15(j)	ABYC Standard A-4.7(h)(3).
25.30-15(k)	ABYC Standard A-4.7(h)(5). NFPA 302, Section 9-3.2.1.
25.30-15(l)	New.
25.30-15(m)	New; NFPA 13, Section 16-6.1.
25.30-15(n)	ABYC Standard A-4.7(i)(6).
25.30-15(o)	NFPA 302, Section 9-3.2.2.
25.30-15(p)	ABYC Standard A-4.7(h)(6).
26.03-20(a)	(26.02-20(a)).
26.03-20(b)	(26.03-20(b)).
26.03-20(c)	ABYC Standard A-4.7.f.
26.03-20(d)	ABYC Standards A-4.7.d(2), A-4.7.d(3).
26.03-20(e)	ABYC Standard A-4.7.d(1).
26.03-20(f)	New.
26.03-20(g)	ABYC Standards A-4.7.d(2)(b), A-4.7.d(3)(a)(i).
26.03-20(h)	ABYC Standard A-4.7.d(3)(c).
162.029-1(a)	(25.30-15), New.
162.029-1(b)	New.
162.029-1(c)	ABYC, A-4.7(b); NFPA 302, Section 9-2.3.1.
162.029-1(d)	(162.029-1(b), New.
162.029-1(e)	New.
162.029-1(f)	New.
162.029-2	(162.029-2).
162.029-3(a)	(162.029-3(a)).
162.029-3(b)	(162.029-3(b)).
162.029-3(c)	New.
162.029-3(d)	ANSI/UL 1058, Section 11.1.
162.029-3(e)	ANSI/UL 1058, Section 16.1.
162.029-3(f)	(162.029-5(f)(2)).
162.029-3(g)	(162.029-3(c)).
162.029-3(h)	New.
162.029-3(i)	ANSI/UL 1058, Section 12.1.
162.029-5(a)	147.65.
162.029-5(b)	ANSI/UL 1058, Section 10.
162.029-5(c)(1)	162.039-3(b).
162.029-5(c)(2)	New.
162.029-5(c)(3)	New.
162.029-5(c)(4)	(162.029-5(b)(4)).
162.029-5(c)(5)	New.
162.029-5(c)(6)	New.
162.029-5(d)	(162.029-5(d)).
162.029-5(e)	ABYC Standards A-4.7.d(2)(a), A-4.7.d(3)(a)(ii), A-4.7.d(3)(b)(ii).
162.029-5(f)	(162.029-5(f)(1)).
162.029-5(g)	(162.029-5(g)).
162.029-7	(162.029-7).
162.029-9(a)	(162.029-9(a)).
162.029-9(b)	ANSI/UL 1058 Sections 4 and 6.
162.029-9(c)	New.
162.029-9(d)	New.
162.029-9(e)	New.
162.029-9(f)	(162.029-9(a)).
162.029-11(a)	(162.029-11(a)).
162.029-11(b)	(162.029-11(b)); ANSI/UL 1058 Section 21.
162.029-11(c)	ANSI/UL 1058 Section 22.
162.029-11(d)(1)	(162.029-11(d)).
162.029-11(d)(2)	New.
162.029-11(d)(3)	ANSI/UL 1058 Section 23.6.
162.029-11(e)(1)	(162.029-11(c)(1)); ANSI/UL 1058 Sections 26 and S6.
162.029-11(e)(2)	New.
162.029-11(f)	(162.029-11(e)); ANSI/UL 1058 Section 27.
162.029-11(g)(1)	NVIC 6-72, Change I.
162.029-11(g)(2)	NVIC 6-72, Change I.
162.029-11(h)	(162.029.11(f)); ANSI/UL 1058 Section S7.
162.029-11(i)	(162.029-11(g)); ANSI/UL 1058.
162.029-11(j)	ANSI/UL 1058 Section 24.
162.029-11(k)	New.
162.029-11(l)	ANSI/UL 1058 Section 25.
162.029-11(m)	ANSI/UL 1058 Section 30.

Proposed rules	References
162.029-11(n)	ANSI/UL 1058 Section 11 and 46.
162.029-11(o)	(162.029-11(h)); ANSI/UL 1058, New.
162.029-11(p)	ANSI/UL 1058 Section 31.
162.029-11(q)	ANSI/UL 1058 Sections 48-51.
162.029-11(r)	New.
162.029-13(a)(1)	(162.029-13(a)).
162.029-13(a)(2)	New.
162.029-13(b)(1)(i)	162.028-6(b).
162.029-13(b)(1)(ii)	162.028-6(b).
162.029-13(b)(1)(iii)	162.028-6(d).
162.029-13(b)(1)(iv)	162.028-6(d).
162.029-13(b)(1)(v)	(162.029-13(b)).
162.029-13(b)(1)(vi)	(162.029-13(c)).
162.029-13(b)(1)(vi)	(162.029-13(c)).
162.029-13(b)(2)(i)	(162.029-13(e)).
162.029-13(b)(2)(ii)	(162.029-13(e)).
162.029-13(b)(2)(iii)	(162.029-13(e)).
162.029-13(b)(2)(iv)	(162.029-13(e)).
162.029-15	(162.029-15); ANSI/UL 1058 Sections 53 and S10.
162.029-17(a)	(162.029-17(a)).
162.029-17(b)	(162.029-17(b)).
162.029-17(c)	New.
162.029-17(d)	(162.029-17(c)).
162.029-17(e)	New.
162.029-19	(162.029-19).

Draft Regulatory Evaluation

The rule proposed here is not major under Executive Order 12291 and not significant under the Regulatory Policies and Procedures of the Department of Transportation published on February 26, 1979 (44 FR 11034). The approval process requires testing of prototypes and supervision of the manufacturer's quality-control program by an independent laboratory. When this cost is distributed over the number of systems likely to be sold (a number large yet indefinite), the part of the price attributable to the approval cost is not significant. The economic impact of the proposed rule should therefore be minimal.

The price to a boat owner chosing to install a fixed system would vary between $100 and $2,000, depending upon the size of the engine compartment and the optional features selected (automatic engine shut-down, additional actuators, additional alarms, etc.). The part of this price attributable to the manufacturer's obtaining Coast Guard approval cannot be estimated since it will be distributed over the number of systems likely to be produced (again, a number large yet indefinite).

The one-time cost to the manufacturer for initial laboratory testing of each type of fixed system is estimated to be $10,000, and the annual cost to the manufacturer for the quality control inspections conducted by the independent laboratory is estimated to be $500. The cost for laboratory testing of larger and elaborate systems would be greater. Usually, just part of this cost is attributable to gaining Coast Guard approval; usually, manufacturers submit to independent laboratory testing for commercial reasons even when not seeking Coast Guard approval.

Neither the proposed rule nor current rules of the Coast Guard require pleasure craft or other uninspected vessels to carry fixed fire-extinguishing systems; the rule just specifies features of such systems if carried. Accordingly, the Coast Guard certifies that the proposal, if enacted, will not have a significant impact on a substantial number of small entities.

A draft Regulatory Evaluation is in the public docket, and is available for inspection and copying at the address above under "**ADDRESSES.**" Copies are available from the person named above under "**FOR FURTHER INFORMATION CONTACT.**"

Federalism

The Coast Guard has analyzed the rule proposed here in accordance with the principles and criteria contained in Executive Order 12612. The rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The proposed rule requires equipment manufacturers to submit drawings, specifications, and test reports and to retain these records for the approval period. The submission of manufacturers' drawings, specifications, and test reports, and the retention of records by the manufacturers, received approval-number 2115-0141 from the Office of Management and Budget.

Environment Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.6 of Commandant's Instruction M16475.1B, this proposal will not significantly affect the quality of the human environment. A draft Finding of No Significant Impact is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

Halon 1211 and 1301 and CO_2 are being used as extinguishing media for the fixed systems allowed by the rule proposed here. Halon 1211 and 1301 deplete stratospheric ozone, and after 1991 the Montreal Protocol will keep their production to levels of 1986. Research is going forward to find other compounds, with suitable fire-fighting capabilities but without the adverse environmental effects. However that research may fare, the rule proposed here does require both that all nonrefillable systems containing Halon 1211 or 1301 carry warnings against halon's discharge into the atmosphere and that the full containers go back to the manufacturers or the manufacturers' authorized agents for environmentally safe disposal of the halon.

The rule proposed here requires neither the carriage of fixed extinguishing-systems nor the selection of halon as the extinguishing-agent. It merely presents established approval requirements in published form. Discharge is not routine; it will occur only during actual emergency, and in that case the benefit—saving of lives—will outweigh the harm due to release of the small amount of halon at issue here. Whether or not its publication promotes halon usage in the short run, it will serve as a framework for the development of marine systems using potential halon substitutes in the long run.

List of Subjects

46 CFR Part 25

Fire prevention, Fishing vessels, Hazardous-materials transportation, Marine safety, Passenger vessels, Uninspected vessels.

46 CFR Part 26

Marine safety, Fishing vessels, Passenger vessels, Navigation (water), Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 162

Fire prevention, Marine safety, Approved equipment.

In consideration of the foregoing, the Coast Guard proposes to amend 46 CFR parts 25, 26, and 162 as follows:

PART 25—REQUIREMENTS

1. The citation of authority for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4104, 4302; 49 FR 1.46.

2. Section 25.30-15 is revised to read as follows:

§ 25.30-15 Fixed fire-extinguishing systems.

(a) If a vessel has a fixed fire-extinguishing system, the system must be—

(1) A carbon-dioxide system issued a certificate of approval in series 162 038;

(2) A Halon-1301 system issued a certificate of approval in series 162.035; or

(3) A system using carbon dioxide, Halon 1211, Halon 1301, or a mixture of Halon 1211 and 1301 approved under subpart 162.029 of this chapter.

(b) The space protected by a system approved under subpart 162.029 of this chapter must not be larger than the largest space that the system is designed to protect. The size of that space is the gross volume of the space. The presence in that space of engine blocks, tanks, and other equipment does not reduce the gross volume.

(c) A fixed fire-extinguishing system approved under subpart 162.029 of this chapter may be installed only in a space that is normally unoccupied and that personnel can leave within 10 seconds after the system is actuated.

(d) A fixed fire-extinguishing system may not be installed in a space with a powered ventilating system unless the fire-extinguishing system has an automatic device to shut down the ventilating system when the fire-extinguishing system is actuated.

(e) A fixed fire-extinguishing system approved under subpart 162.029 of this chapter and installed in a space larger than 1000 cubic feet must have a manual actuator as well as any automatic actuators.

(f) A fixed fire-extinguishing system must be protected from the weather and from mechanical damage.

(g) A fixed fire-extinguishing system must be located so that it will not be subjected to temperatures outside its designed range of operating-temperature.

(h) A fixed fire-extinguishing system approved under subpart 162.029 of this chapter must have mounting-brackets available and used for their purpose.

(i) A fixed fire-extinguishing system must have its cylinder or cylinders mounted so that they are accessible for weighing, inspection, and removal for maintenance.

(j) A fixed fire-extinguishing system must have its cylinder or cylinders, and any installed piping, securely fastened and mounted as specified in the manufacturer's instruction-manual.

(k) A fixed fire-extinguishing system must have its container or containers of extinguishing-agent and its associated equipment installed at least two inches above any wet or moist floor or deck to reduce the danger of corrosion.

(l) A fixed fire-extinguishing system approved under subpart 162.029 of this chapter must have at least one discharge-indicator installed for each position from which any operator of the vessel may operate the vessel. At least one such indicator must be easily visible from each such position.

(m) A fixed fire-extinguishing system approved under subpart 162.029 of this chapter must have an automatic-discharge mechanism whose fusible element has a temperature-rating at least 50 degrees F. above the highest expected ambient temperature in the protected space.

(n) Not more than one fixed fire-extinguishing system approved under subpart 162.029 of this chapter may be installed in the protected space unless each system is designed to protect the space independently.

(o) The manual controls of a fixed fire-extinguishing system approved under subpart 162.029 of this chapter must be situated so that they are operable from outside the protected space.

(p) The electrical wiring of a fixed fire-extinguishing system approved under subpart 162.029 of this chapter must be mineral-insulated.

PART 26—OPERATIONS

3. The citation of authority for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

4. A new § 26.03–20 is added to read as follows:

§ 26.03–20 Fixed fire-extinguishing systems.

(a) Each fixed fire-extinguishing system approved under subpart 162.029 of this chapter must be installed, operated, and maintained in accordance with its instruction manual.

(b) Each pressure vessel and associated discharge-hose and flexible connection in a fixed fire-extinguishing system approved under subpart 162.029 of this chapter must be tested, marked, and, if rechargeable, recharged in accordance with the requirements of § 147.65 of this chapter.

(c) A placard must be posted at the entrance to each space protected by a fixed fire-extinguishing system approved under subpart 162.029 of this chapter, or at each position from which any operator of a vessel with such a system installed may operate the vessel. The placard must convey in ¼-inch or larger block letters at least the following information: Machinery space is protected by a fixed fire-extinguishing system. If discharge occurs ventilate before entering.

(d) A placard must be posted at each position from which any operator of a vessel with an automatic fixed fire-extinguishing system approved under subpart 162.029 of this chapter installed may operate the vessel. The placard must convey in ¼-inch or larger block letters at least the following information: If fixed fire-extinguishing system discharges, shut down engines, generators, and blowers.

(e) A placard must be posted at each position from which any operator of a vessel with a manually only actuated fixed fire-extinguishing system approved under subpart 162.029 of this chapter installed may operate the vessel. The placard must convey in ¼-inch or larger block letters at least the following information: Shut down engines, generators, and blowers before actuating system

(f) A placard must be posted at the manual actuator and must provide instructions for operating the actuator in ¼-inch or larger block letters.

(g) A light indicating actuation of a fixed fire-extinguishing system approved under subpart 162.029 of this chapter must be installed at each position from which any operator of the vessel may operate the vessel.

(h) Means to permit quick restart of the engine or engines must be located at the position of each vessel operator if a fixed fire-extinguishing system approved under subpart 162.029 of this chapter is installed and has automatic shutdown of the engine.

PART 162—ENGINEERING EQUIPMENT

5. The citation of authority for part 162 is corrected to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. A new subpart 162.029 is added to read as follows:

Subpart 162.029—Fixed Fire-Extinguishing Systems for Uninspected Vessels and Recreational Boats

Sec.
162.029–1 Scope.
162.029–2 Incorporation by reference.
162.029–3 Materials.
162.029–5 Construction.
162.029–7 Performance.
162.029–9 Instruction manual for installation, operation, and maintenance.
162.029–11 Tests for approval.
162.029–13 Inspections at production.
162.029–15 Marking.
162.029–17 Procedures for approval.
162.029–19 Independent laboratories.

§ 162.029–1 Scope.

(a) This specification applies to each fixed fire-extinguishing system, using as an agent either carbon dioxide or halon,

intended for installation in a normally unoccupied engine compartment and in any communicating bilge-space on a pleasure craft or other uninspected vessel.

(b) Each system must be intended only for protection against fires in both flammable liquids (Class-B hazards) and energized electrical equipment (Class-C hazards).

(c) Each system may be actuated automatically, manually, or both. The cylinder or cylinders of each one actuated only manually must be installed outside the protected space.

(d) Each system designed for an occupied space or for a space larger than 2000 cubic feet must be an engineered system approved by Commandant (G–MVI–3).

(e) Each system designed for installation in a space larger than 1000 cubic feet must have a manual actuator in addition to any automatic actuators.

(f) Each system must meet the requirements of this subpart, be approved by one of the independent laboratories listed in § 162.029–19, bear the mark of the laboratory, and be approved by the Coast Guard.

§ 162.029–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than those specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and with the U.S. Coast Guard, Merchant Vessel Inspection Division (G–MVI–3), 2100 Second Street SW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subpart, and the sections affected, are:

ASTM

1916 Race St., Philadelphia, PA 19103

ASTM B117, Method of Salt-Spray (Fog) Testing, 1979. 162.029–11

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269–9101

NFPA 12, Carbon Dioxide Fire Extinguishing Systems, 1985 Edition. 162.029–3

NFPA 12B, Halon 1211 Fire Extinguishing Systems, 1985 Edition. 162.029–3

NFPA 12A, Halon 1301 Fire Extinguishing Systems, 1989 Edition. 162.029–3

Underwriters Laboratories, Inc. (UL)

333 Pfingsten Road, Northbrook, IL 60062

ANSI/UL 1058, Halogenated Agent Extinguishing System Units, Second Edition, October 6, 1989. 162.029–3; 162.029–5; 162.029–9; 162.029–11; 162.029–13; 162.029–15

§ 162.029–3 Materials.

(a) *Corrosion-resistance.* Each metal component of a fixed fire-extinguishing system must be corrosion-resistant or treated to be corrosion-resistant.

(b) *Dissimilar metals.* Each metal component of a fixed fire-extinguishing system must be galvanically compatible with each adjoining metal component. Galvanically incompatible materials must be separated by a bushing, o-ring, gasket, or similar device.

(c) *Nonmetallic materials.* Except for bushings, o-rings, gaskets, and siphon tubes, each component must be made of metal.

(d) *O-rings and gaskets.* Each o-ring and gasket must satisfy section 11 of ANSI/UL 1058.

(e) *Nonmetallic siphon tubes.* Each nonmetallic siphon tube must satisfy section 47 of ANSI/UL 1058.

(f) *Pressure gauges.* Each pressure gauge must satisfy sections 40 through 45 of ANSI/UL 1058.

(g) *Halon extinguishing-agents.* Each halon extinguishing-agent used in a fixed fire-extinguishing system approved under this subpart must be Halon 1211, Halon 1301, or a mixture of these two.

(h) *Quality of agents.* Carbon dioxide must satisfy 1–9.2 through 1–9.2.3 of NFPH 12. Halon 1211 must satisfy 1–9.2 of NFPA 12B. Halon 1301 must satisfy 1–9.2 of NFPA 12A. .

(i) *Fill-densities.* The fill-density for carbon dioxide must not exceed 68 pounds a cubic foot. That for Halon 1211 must not exceed 85 pounds a cubic foot. That for Halon 1301 must not exceed 70 pounds a cubic foot. That of a mixture of Halon 1211 and Halon 1301 must not exceed a number of pounds a cubic foot equal to the sum of (1) The percentage of Halon 1211 multiplied by 85 plus (2) the percentage of Halon 1301 multiplied by 70.

§ 162.029–5 Construction.

(a) Each pressure vessel in a fixed fire-extinguishing system must satisfy §§ 147.60(a)(1) through (3) of this chapter.

(b) Each pressure vessel not required by title 49, Code of Federal Regulations, to meet specific cylinder requirements must satisfy section 10 of ANSI/UL 1058.

(c)(1) Each system must contain all the extinguishing-agent and expellant-energy it needs for its operation.

(2) Manual actuation must be mechanical.

(3) Automatic actuation must be by a fusible element or must be pneumatic.

(4) Each manual actuator must be designed for operation from outside the space protected by the system.

(5) Each system intended for installation in the protected space must use automatic actuation.

(6) Each system intended for installation in the protected space must employ a suitable pressure-relief device, unless covered by an exemption from the Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

(d) Each system designed to shut down the engine automatically upon systems actuation must also have means, operable from the position of the vessel operator, to permit quick restart of the engine.

(e)(1) The manufacturer of each automatic halon system that does not have an automatic device to shut down the engine shall provide a warning-label for posting at the position of the vessel operator. The label must convey in ¼-inch or larger block letters the following information: If Fixed fire-extinguishing system discharges, shut down engines, generators, and blowers.

(2) The manufacturer of each manual-only halon system that does not have an automatic device to shut down the engine shall provide a warning label for posting at the position of the vessel operator. The label must convey in ¼-inch or larger block letters the following information: Shut down engines, generators, and blowers before activating system.

(f) Each container charged with nitrogen as well as with a halon extinguishing-agent must have a pressure gauge.

(g) Each system must have an indicator that shows whether the system has discharged. The instruction manual for installation, operation, and maintenance must state that an indicator must be located at each position from which any operator of the vessel may operate the vessel.

§ 162.029–7 Performance.

Each system must be designed to pass the tests for approval set out in § 162.029–11.

§162.029–9 Instruction manual for installation, operation, and maintenance.

(a) The manufacturer of each system shall prepare for each system an instruction manual for installation, operation, and maintenance.

(b) The manual must furnish the information required in section 4 of ANSI/UL 1058.

(c) The manual for each halon system must contain a statement indicating that

Halon 1211 and 1301 deplete stratospheric ozone, that no such system may be discharged into the atmosphere except for fighting fires, and that each such system must be returned to the manufacturer, its authorized agent, or other authorized person, for the recycling of the halon.

(d) The manual must show the approval number issued by the Coast Guard for the system.

(e) The manual itself must undergo review and approval by the independent laboratory and by the Coast Guard.

(f) The manufacturer of each system shall ship one copy of the appropriate manual with each system.

§ 162.029-11 Tests for approval.

(a) *General.* Each system whose manufacturer seeks its approval must pass tests by an independent laboratory as prescribed in this section. If a system fails a test, and if changes in design therefore occur, both the failed test and all passed ones affected by the changes must recur until the system passes.

(b) *Discharge test.* Each system must satisfy section 21 of ANSI/UL 1058, except that the conditioning-period must be 24 hours. The longest permissible discharge, of 10 seconds at 70 degrees F., is that of the liquid part of the discharge, as determined by a decided change in the audibility and the pattern of the discharge.

(c) *Test of leakage for cylinder valves.* The discharge valve of each cylinder must satisfy section 22 of ANSI/UL 1058.

(d) *Hydrostatic-pressure test.* (1) Twelve pressure-vessels of each size and type not required by title 49, Code of Federal Regulations, to bear DOT cylinder specification markings must satisfy section 23 of ANSI/UL 1058.

(2) Two pressure-vessels of each size and type required by title 49, Code of Federal Regulations, to bear DOT cylinder specification markings must satisfy section 23 of ANSI/UL 1058.

(3) Each discharge-valve assembly and each other pressure-retaining device must satisfy subsection 23.6 of ANSI/UL 1058.

(e) *Corrosion-resistance test.* The corrosion-resistance of the system must meet the following requirements:

(1) Each system, fully charged and complete with mounting-brackets, must satisfy sections 26 and S6 of ANSI/UL 1058; in the alternative, it must satisfy sections 26 and S6 of ANSI/UL 1058 using a 5-percent saline solution instead of the 20-percent saline solution, and a 500-hour salt-spray exposure instead of a 240 hour salt-spray exposure.

(2) No system may leak during the test, and each must be normally dischargeable after the test.

(f) *Test of operation at 500 cycles.* Each discharge-valve assembly must satisfy section 27 of ANSI/UL 1058.

(g) *Manual-actuator-operation test.* (1) No manual actuator may require a force greater than 40 pounds to actuate the system.

(2) No manual actuator operator by a pull cable may require a movement of the cable greater than 14 inches.

(h) *Vibration-resistance test.* Each fully charged system, except piping, must satisfy sections $7.2 through $7.7 of ANSI/UL 1058.

(i) *Shock-resistance test.* Each fully charged system must satisfy subsections $7.8 through $7.10 of ANSI/UL 1058.

(j) *Elevated-temperature test for 30 days.* Each fully charged system must satisfy section 24 of ANSI/UL 1058.

(k) *High-temperature test for 7 days.* Each fully charged system must be conditioned for 7 days at 175 degrees F. It may rupture during or after the test. It need not be capable of operation after the test. No system having a cylinder valve with a fusible plug that melts below 175 degrees F., or containing a rupture-disc or other relief device, need be subjected to this test.

(l) *Temperature-cycling test.* Each fully charged system must satisfy section 25 of ANSI/UL 1058.

(m) *Test of leakage for 1 year.* Twelve fully charged systems of each configuration of cyclinders and valves must satisfy section 30 of ANSI/UL 1058.

(n) *Test of o-rings and gaskets.* Each o-ring gasket, or other device must satisfy section 46 of ANSI/UL 1058. Each of these used to provide a seal in a carbon-dioxide system must satisfy section 46 of ANSI/UL 1058, except that carbon dioxide must be substituted for halon in subsubsection 46.1.C.

(o) *Fire test ("Area Coverage Test").* Each halon system must satisfy sections 32 and S8 of ANSI/UL 1058. In accordance with subsection 32.6 of ANSI/UL 1058, the fire must be extinguished using a concentration of 3.4 percent in each enclosure for which the design concentration is not less than 5 percent. The dimensions of each enclosure must equal or exceed those of the largest space the system is intended to protect. The position of the automatic actuator must be such as to simulate the worst possible position for system actuation. The preburn of the test fuel must be 60 seconds. The size of the baffle must be determined by the laboratory, but may not be less than 20 percent of the length or width of the test enclosure, whichever is applicable.

(p) *Test of mounting-bracket.* Each mounting-bracket for a system must satisfy section 31 of ANSI/UL 1058.

(q) *Test of exposure, adhesion, abrasion, and removal of nameplate.* Each nameplate on a system must satisfy sections 48 through 50 of ANSI/UL 1058.

(r) *Further tests.* Commandant (G-MVI-3) may prescribe further tests, if necessary, to approve unique or novel designs.

§ 162.029-13 Inspections at production.

(a)(1) Each inspection of a fixed fire-extinguishing system must be conducted in accordance with this section and subpart 159.007 of this chapter.

(2) Commandant (G-MVI-3) may prescribe such further inspections as it deems necessary to maintain control of quality and to ensure compliance with the requirements in this subpart.

(b) Each manufacturer and each inspector from an independent laboratory shall meet, beyond the responsibilities set out in Part 159 of this chapter, the following as applicable:

(1) *Manufacturer.* Each manufacturer shall—

(i) Perform all tests and inspections on each lot of extinguishing-systems required of it before the inspector performs those required of him;

(ii) Institute procedures to maintain control over the materials used, over the manufacturing of the systems, and over the finished systems;

(iii) Admit the inspector and any representative of the Coast Guard to any place where work is being done on systems, and any place where complete systems are stored;

(iv) Allow the inspector and any representative of the Coast Guard to take samples of systems for tests prescribed by this subpart;

(v) Conduct a hydrostatic-pressure test on each non-DOT pressure-vessel in accordance with subsections 52.2 through 52.4 of ANSI/UL 1058. No pressure-vessel that fails this test may be used in an approved system. This test is not necessary if the manufacturer of the pressure-vessel proves that a test of the pressure-vessel was previously conducted under these standards and that the pressure-vessel passed this test. The manufacturer must retain documentation and other tangible proof with the records required by § 159.007-13 of this chapter; and

(vi) Conduct a test of leakage on each system in accordance with subsections 52.7 and 52.8 of ANSI/UL 1058, except that the leakage rate from each carbon-dioxide system must not exceed the equivalent rate of one ounce a year. No system that fails this test may be sold as approved by the Coast Guard until it passes.

(2) *Independent laboratory.* Each inspector shall—

(i) During each inspection, check for noncompliance with manufacturer's procedure for quality control;

(ii) At least once every calendar quarter, conduct or supervise a test of leakage on selected systems from inventory in compliance with paragraph (b)(1)(vi) of this section;

(iii) At least once every calendar quarter, conduct or supervise a hydrostatic-pressure test of one non-DOT pressure-vessel chosen at random from inventory for compliance with paragraph (b)(1)(v) of this section; and

(iv) At least once every six months, choose one system and forward it to the laboratory for corrosion tests under salt-spray exposure in accordance with paragraph (e) of § 162.029–11 of this part. If the system fails this test, the inspector may select two more systems, revised to correct the problem, for tests at the independent laboratory. If either of these system fails any of these tests, none of the systems in inventory may be sold as approved by the Coast Guard.

§ 162.029–15 Marking.

Each approved system must bear the following markings on its assembly of cylinders and valves:

(a) Number issued by the Coast Guard showing approval.

(b) Carbon dioxide, or type of halon.

(c) Operating-pressure of the unit at 70 degrees F.

(d) Range of temperature allowable for storage.

(e) Volume of the largest space the system is designed to protect.

(f) Factory-test pressure of the cylinder.

(g) Reference to the appropriate NFPA maintenance standard.

(h) Reference to the manufacturer's instruction manual for installation, operation, and maintenance.

(i) Weight of charge and gross weight of charged assembly of cylinders and valves.

(j) If non-rechargeable, a statement such as "Non-refillable," or equivalent.

(k) Basic instructions for periodic inspections, including the loss of weight and, if applicable, of gauge-pressure, beyond which the system needs servicing.

(l) If a system containing carbon dioxide, a warning that carbon dioxide in concentrations high enough to extinguish fires will suffocate people.

(m) If a system containing halon, a warning that by-products of decomposing halon are toxic.

(n) Manufacturer's name, and identifying-number of part or model.

(o) Markings required by subsections 53.4 and 53.5 of ANSI/UL 1058.

§ 162.029–17 Procedures for approval.

(a) Subpart 159.005 of this chapter contains procedures for approval. Each manufacturer shall follow them except as modified by this section.

(b) Each manufacturer shall submit to Commandant (G–MVI–3), with the application for preapproval review, two sets of plans containing a bill of materials.

(c) Each manufacturer shall submit to Commandant (G–MVI–3), with the application for preapproval review, two copies of a draft of the instruction manual for installation, operation, and maintenance.

(d) The plans submitted with the recognized laboratory's test report must include the items listed in paragraphs (a)(1) and (a)(4) of § 159.005–12 of this chapter and must include a bill of materials.

(e) When asked by Commandant (G–MVI–3), each manufacturer shall submit a sample system for preapproval review.

§ 162.029–19 Independent laboratories.

The Coast Guard has accepted the following independent laboratories for conducting the tests and examinations required by this subchapter:

(a) Underwriters Laboratories, Inc., of 333 Pfingstein Road, Northbrook, Illinois 60062.

(b) Factory Mutual Research Corporation, of 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062.

(c) Underwriters Laboratories of Canada, of 7 Crouse Road, Scarborough, Ontario, MIR 3A9, Canada.

Dated: October 3, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–420 Filed 1–8–91;8:45am]

BILLING CODE 4910–14

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

RIN 0648–AC85

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

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

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Pacific Fishery Management Council has submitted Amendment 10 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP) for review by the Secretary of Commerce. Written comments are invited from the public. Copies of the amendment may be obtained from the address below.

DATES: Comments will be accepted until February 27, 1991.

ADDRESSES: Comments should be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Copies of Amendment 10 are available from the Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201–5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206–526–6140; Rodney R. McInnis (Southwest Region, NMFS) 213–514–6199; or Lawrence D. Six (Pacific Fishery Management Council), 503–221–6352.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), requires that a Regional Fishery Management Council submit any amendment to a fishery management plan it has prepared to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receipt of the amendment, immediately publish a notice stating that the amendment is available for public review and comment. The Secretary will consider the comments received from the public during the review and before deciding whether to approve the amendment for implementation.

Amendment 10 to the FMP proposes to: (1) Modify the method for inseason reallocation of coho salmon south of Cape Falcon, Oregon, to help assure achievement of the Council's recreational season duration objectives and still allow the commercial fishery an opportunity to harvest any available reallocation; (2) modify and clarify the criteria which guide ocean harvest allocation for the non-treaty commercial and recreational fisheries north of Cape Falcon, including inseason and geographic deviations from the allocation schedule; and (3) define overfishing based on the spawning

escapement goals for chinook and coho salmon stocks specified in the FMP. The inclusion of an overfishing definition is required by 50 CFR part 602 (Guidelines for Fishery Management Plans) as revised July 24, 1989 (54 FR 30826).

An environmental assessment (required under the National Environmental Policy Act) and a regulatory impact review/initial regulatory flexibility analysis (required under Executive Order 12291 and the Regulatory Flexibility Act) are incorporated in Amendment 10. All are available for public review as noted above.

The receipt date for Amendment 10 was December 29, 1990. Proposed regulations to implement Amendment 10 are scheduled to be filed with the Office of the Federal Register within 15 days after the receipt date.

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

Dated: January 3, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-453 Filed 1-4-91; 1:03 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 6
Wednesday, January 9, 1991

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.

ACTION

Drug Alliance; Fund Availability and Demonstration Grants

ACTION: Notice of availability of funds.

ACTION, the federal domestic volunteer agency, announces the availability of funds during fiscal year 1991 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113, Title 1, part C; 42 U.S.C. 4992).

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to confront the crisis of illegal drug use by youth by supporting innovative prevention programs that use volunteer resources at the local level to respond to this crisis. Volunteers of all ages and from every segment of the community can make vital contributions to illegal drug use prevention and awareness-raising programs. Therefore, ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against illegal drugs.

The best strategy to combat illegal drug use by youth is to prevent it from starting. Effective prevention requires the involvement of every segment of the community in delivering and reinforcing clear and consistent "no use" messages. Because no single approach will work in every locale, ACTION has supported and promoted a wide range of models using volunteers of all ages to stop the use of illegal drugs by youth. The search continues for new approaches or models, as well as for strategies to adapt existing models to individual communities. There is particular need for such programming in many inner city neighborhoods and rural low-income communities. The needs in such communities that may be met through voluntary service are great, and the youth who live in these areas are generally considered at extremely high risk of becoming involved with illegal drugs.

Local community and youth serving organizations are in a unique leadership position to provide meaningful structured volunteer programs which focus on preventing illegal drug use among youth. Such local organizations have demonstrated in the past that they are best able to address community problems such as drug use among youth because they are closest to the problem and have the greatest stake in solving it. Also, they are most able to include parents and youth in the planning and implementation of programs to combat illegal drug use by youth—a strategy increasingly recognized as critical to a project's ultimate effectiveness.

There is growing recognition of the importance of involving youth in illegal drug use prevention activities. In particular, youth volunteers, in either cross-age or peer support projects, have demonstrated that they are able to positively effect the lives and actions of at-risk youth. In addition to being of value to the community, however, the volunteers themselves receive significant benefits from providing service to others. This new sense of involvement and accomplishment can result in significant personal development.

In summary, America's youth, who are often confronted by peer pressure and other encouragement to use illegal drugs, constitute the most important target for anti-drug programming. Drug-free youth also constitute a tremendous resource for a community's drug prevention educational effort. There is a critical need for communities to develop programs which will tap this resource and provide opportunities for drug-free youth to become leaders and role models to help counter peer pressure to use illegal drugs. And, their impact must be evaluated for potential replication by others. This announcement solicits innovative proposals which respond to this need.

A. Eligible Strategy

Local community and youth serving organizations are encouraged to submit proposals to implement the following strategy by: (a) Expanding an existing program, or (b) developing a new program.

Strategy. The ideal program will establish structured non-stipended volunteer opportunities, including summertime activities, that provide illegal drug use prevention education and activities for youth program participants. It will involve parents, make extensive use of non-stipended volunteers in its operation, and target youth at high risk of becoming involved in the use of illegal drugs, especially youth from low-income communities in both inner city neighborhoods and rural settings. There should be special emphasis on the recruitment of volunteers who live in the community being served by the project.

The program must include a specific curriculum which describes the harmful consequences of illegal drug use and teaches peer pressure resistance and refusal skills. This curriculum should be structured with a specific number of hours of illegal drug use prevention education provided on a regular schedule for program participants. The involvement of other drug prevention educational resources from the community is encouraged.

Finally, ACTION is required to provide for the evaluation of Drug Alliance grants which exceed $10,000. Adequate evaluation and documentation of "lessons learned" will facilitate replication and adaptation of effective strategies in other communities and will add to the body of knowledge about drug prevention.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies will be considered. Such organizations may include, but are not limited to, local coalitions or councils dedicated to the prevention of illegal drug use, volunteer groups, religious organizations, local government agencies, fraternities, sororities and youth serving organizations. Priority will be given to applicants that have not previously received Drug Alliance funds.

Any applicant that does not adhere to a strict policy of the non-use of illegal drugs will not be eligible for consideration. Furthermore, an application will be deemed ineligible if it refers to philosophy, proposed activities, training or educational materials that advocate the tolerance of the initial or responsible use of any illegal drug, and/or the illegal use of any

legal drug. This issue must be addressed in the application.

C. Available Funds and Scope of the Grant

The amount of a grant may not be larger than $40,000. A 50% non-federal match of salaries and fringe benefits is mandatory. Other evidence of local, public and private sector support (financial and in-kind) is also encouraged and will be considered in the decision making process.

Applicants should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a detailed budget narrative listing the source of that support and the formula used to compute those costs.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for these grants. Projects funded under this announcement may receive funds for a grant period not to exceed 12 months.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and evaluated based on the criteria outlined below. They must also conform to the instructions included in the application. Grant applicants with demonstrated competence in conducting youth volunteer programs will be given preference.

1. Clear statement of need that includes both an analysis of the type and extent of the problem to be addressed by the project and an overview of the applicant's qualifications to meet that need.
2. Ability and plans to develop or expand an illegal drug use prevention program for high-risk youth that includes information about the harmful consequences to health resulting from such use.
3. Ability and plans to involve at-risk youth and parents in developing and implementing a prevention program, including involvement in developing the application.
4. Thoroughness and feasibility of plans for recruiting and training volunteers.
5. Realistic plans to continue project activities beyond the end of the ACTION grant.
6. Thoroughness and feasibility of plans to work with other local agencies and organizations and existing drug prevention coalitions to implement the program. At least three current letters from local organizations or individuals evidencing intent to cooperate with applicant in developing and/or implementing project must be submitted.
7. Carefully formulated time-phased Work Plan (using form in application) that provides measurable objectives and appropriate activities for achieving objectives, including continuation of the project.
8. Evidence of public and private sector support (financial and in-kind). The amount and type of matching support will be considered in the decision-making process.
9. Detailed description of methods to be used in evaluating the impact of the program on the illegal drug abuse problem in the community. Failure to address this criteria will result in rejection of the application.

E. The Associate Director of Domestic and Anti-Poverty Operations may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Applicant's access to alternate resources,
3. Allocation of Drug Alliance resources in relation to other ACTION funds;

F. Application Review Process

Applications submitted under this announcement will be reviewed and evaluated by respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

G. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office no later than 5 p.m. local standard time on Monday, February 25, 1991. Only those applications that include a-g listed below, and h-j (if required), and are received at the appropriate ACTION State Office by 5 p.m. local standard time on this date will be eligible. Incomplete applications will not be considered for funding.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form A-1036) with narrative budget justification, a need statement, a narrative of project goals and objectives, a detailed Work Plan and Assurances.

b. Signed and dated: Certification Regarding Drug-Free Workplace Requirements.

c. Signed and dated: Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.

d. Current resume of the candidate for the position of project director, if available, or the current resume of the director of the applicant agency or project.

e. Organization chart of the applicant organization showing how the project is related to the organization and how participating affiliates are related to the organization.

f. List of the current board of directors showing their names, addresses and organizational and professional affiliations.

g. Three current letters of support from local community organizations or individuals attesting to the applicant's ability to meet the criteria contained in Section D and evidencing intent to cooperate with applicant in the development and implementation of the project.

i. Articles of Incorporation, including the state seal and signature of approving official.

j. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

Items h, i and j above are not required for public agencies of state and local government.

To receive an application kit, please contact the appropriate ACTION State Program Office. Below is an address list of ACTION Regional Offices, along with the addresses and telephone numbers of the ACTION State Program Office under their jurisdiction.

Region I

ACTION Regional Office, 10 Causeway Street, Room 473, Boston, MA 02222-1039, 617/565-7001

ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., Rm. 524, Hartford, CT 06103-3002, 203/240-3237

Maine

ACTION State Office, U.S. Court House, Rm. 305, 76 Pearl Street, Portland, ME 04101-4188, 207/780-3414

Massachusetts

ACTION State Office, 10 Causeway Street, Room 473, Boston, MA 02222-1039, 617/565-7018

New Hampshire/Vermont

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm. 223, Concord, NH 03301-3939, 603/225-1450

Rhode Island

ACTION State Office, John O. Pastore, Federal Building, Two Exchange Terrace, Room 232, Providence, RI 02903-1758, 401/528-5424

Region II

ACTION Regional Office, 6 World Trade Center, Room 758, New York, NY 10048-0206, 212/466-3481
ACTION State Office, 402 East State St., Room 426, Trenton, NJ 08608-1507, 609/989-2243
Metropolitan New York
ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048-0206, 212/466-4471
Upstate New York
ACTION State Office, U.S. Courthouse & Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207-2923, 518/472-3664
Puerto Rico/Virgin Islands
ACTION State Office, Frederico DeGetau Federal Office Bldg., Carlos Chardon Avenue, Suite G49, Hato Rey, PR 00917-2241, 809/766-5314

Region III

ACTION Regional Office, U.S. Customs House, 2nd & Chestnut St., Rm. 108, Philadelphia, PA 19106-2912, 215/597-9972
ACTION State Office, Federal Building, Room 372-D, 600 Federal Place, Louisville, KY 40202-2230, 502/582-6384
Delaware/Maryland
ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201-2814, 301/962-4443
Ohio
ACTION State Office, Leveque Tower, Room 304A, 50 W. Broad Street, Columbus, OH 43215, 614/469-7441
Pennsylvania
ACTION State Office, US Customs House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106-2998, 215/597-3543
Virginia/Dist. of Columbia
ACTION State Office, 400 North 8th St., Rm. 1119, P.O. Box 10066, Richmond, VA 23240-1832, 804/771-2197
West Virginia
ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301-1409, 304/347-5246

Region IV

ACTION Regional Office, 101 Marietta St., NW., Suite 1003, Atlanta, GA 30323-2301, 404/331-2859
ACTION State Office, Beacon Ridge Tower, Room 770, 600 Beacon Parkway West, Birmingham, AL 35209-3120, 205/731-1908
Florida
ACTION State Office, 3165 McCrory Street, Suite 115, Orlando, FL 32803-3750, 407/648-6117
Georgia
ACTION State Office, 75 Piedmont Ave. NE., Suite 412, Atlanta, GA 30303-2587, 404/331-4646
Mississippi
ACTION State Office, Federal Building, Rm. 1005-A, 100 West Capital Street, Jackson, MS 39269-1092, 601/965-5664
North Carolina
ACTION State Office, Federal Building, P.O. Century Station, 300 Fayetteville Street Mall, Rm. 131, Raleigh, NC 27601-1739, 919/856-4731
South Carolina
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201-2430, 803/765-5771
Tennessee
ACTION State Office, 265 Cumberland Bend Drive, Nashville, TN 37228, 615/736-5561

Region V

ACTION Regional Office, 175 West Jackson Blvd., Suite 1207, Chicago, IL 60604-3964, 312/353-5107
ACTION State Office, 175 West Jackson Blvd., Suite 1207, Chicago, IL 60604-3964, 312/353-3622
Indiana
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204-1922, 317/226-6724
Iowa
ACTION State Office, Federal Building, Rm. 722, 210 Walnut, Des Moines, IA 50309-2195, 515/284-4816
Michigan
ACTION State Office, Federal Building, Room 658, 231 West Lafayette Blvd., Detroit, MI 48226-2799, 313/226-7848
Minnesota
ACTION State Office, 431 South 7th Street, Room 2480, Minneapolis, MN 55415, 612/334-4083
Wisconsin
ACTION State Office, 517 East Wisconsin Ave., Room 601, Milwaukee, WI 53202-4507, 414/291-1118

Region VI

ACTION Regional Office, 1100 Commerce, Rm. 6B11, Dallas, TX 75242-0696, 214/767-9494
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201-3291, 501/378-5234
Kansas
ACTION State Office, Federal Building, Room 248, 444 S.E. Quincy, Topeka, KS 66603-3501, 913/295-2540
Louisiana
ACTION State Office, 626 Main Street, Suite 102, Baton Rouge, LA 70801-1910, 504/389-0471
Missouri
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106-2009, 816/426-5256
New Mexico
ACTION State Office, First Interstate Plaza, 125 Lincoln Avenue, Suite 214-B, Santa Fe, NM 87501, 505/988-6577
Oklahoma
ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102-6093, 405/231-5201
Texas
ACTION State Office, 611 East Sixth Street, Suite 404, Austin, TX 78701-3747, 512/482-5671

Region VIII

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Suite 2930, Denver, CO 80202-2349, 303/844-2671
ACTION State Office, Columbia Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203-1167, 303/866-1070
Wyoming
ACTION State Office, Federal Building, Room 8009, 2120 Capitol Avenue, Cheyenne, WY 82001-3649, 307/772-2385
Montana
ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Rm. 192, Helena, MT 59626-0101, 406/449-5404
Nebraska
ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508-3896, 402/437-5493
North & South Dakota
ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501-2452, 605/224-5996
Utah
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101-2198, 801/524-5411

Region IX

ACTION Regional Office, 211 Main Street, Rm. 530, San Francisco, CA 94105-1914, 415/744-3013
ACTION State Office, 522 North Central, Room 205-A, Phoenix, AZ 85004-2190, 602/379-4825
California
ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105-1914, 415/744-3015

ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024-3671, 213/575-7421

Hawaii/Guam/America Samoa

ACTION State Office, Federal Building, Room 6326, 300 Ala Moana Boulevard, P.O. Box 50024, Honolulu, HI 96850-0001, 808/541-2832

Nevada

ACTION State Office, 4600 Kietzke Lane, Suite E-141, Reno, NV 89502-5033, 702/784-5314

Region X

ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174-1103, 206/442-4520

ACTION State Office, 304 North 8th Street, Room 344, Boise, ID 83702, 208/334-1707

Alaska

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174-1103, 206/442-1558

Oregon

ACTION State Office, Federal Bldg., Room 647, 511 NW Broadway, Portland, OR 97209-3416, 503/326-2261

Washington

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174-1103, 206/442-4975

Signed at Washington, DC, this 3rd day of January 1991.

Jane A. Kenny,

Director.

[FR Doc. 91-474 Filed 1-8-91; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Modification of Tariff-Rate Quota Amount For Certain Imported Sugars, Syrups, and Molasses

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice increases from 1,725,000 metric tons, raw value, to 2,100,000 metric tons, raw value, the total amount of sugars, syrups and molasses that may be entered, or withdrawn from warehouse, for consumption under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the Harmonized Tariff Schedule of the United States (HTS), during the period October 1, 1990 through September 30, 1991.

EFFECTIVE DATE: January 8, 1991.

FOR FURTHER INFORMATION CONTACT: Cleveland Marsh (Team Leader, Import Quota Programs), (202) 447-2916.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture (Secretary), by notice dated October 19, 1990 (55 FR 43392), established a tariff-rate quota amount of up to 1,725,000 metric tons, raw value, of certain sugars, syrups and molasses which may be entered or withdrawn from warehouse for consumption during the period October 1, 1990 through September 30, 1991. This quota amount was established pursuant to the authority vested in the Secretary by paragraph (a) of additional U.S. note 3 to chapter 17 of the HTS, as modified by Presidential Proclamation No. 6179 of September 13, 1990 (55 FR 38293) (Paragraph 3(a)).

Paragraph 3(a) provides, in relevant part, as follows: (i) The total amount of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11, during such period as shall be established by the Secretary of Agriculture (hereinafter referred to as "the Secretary"), shall not exceed in the aggregate an amount (expressed in terms of raw value) as shall be established by the Secretary. The Secretary shall determine such total amount as will give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Such total amount shall consist of (1) a base quota amount, and (2) an amount reserved for the importation of specialty sugars as defined by the United States Trade Representative, to be allocated by the United States Trade Representative in accordance with paragraph (b)(i) of this note.

(ii) The Secretary may modify any quantitative limitations (including the time period for which such limitation are applicable) which have previously been established under this paragraph, if the Secretary determines that such action or actions are appropriate to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties of the General Agreement on Tariffs and Trade.

The provisions of Paragraph 3(a)(ii) authorize the Secretary to modify the tariff-rate quota amount of 1,725,000 metric tons, raw value, previously established under Paragraph 3(a)(i) for the period October 1, 1990 through September 30, 1991, if he determines that such action is appropriate to give due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT).

Notice

Notice is hereby given that I have determined, in accordance with paragraph (a) of additional U.S. Note 3 to chapter 17 of the HTS, that the tariff-rate quota amount established by the notice of October 19, 1990 shoud be modified and that a total amount of up to 2,100,000 metric tons, raw value, of sugars, syrups, and molasses described in subheadings 1701.11.01, 1701.12.01, 1701.91.21, 1701.99.01, 1702.90.31, 1806.10.41, and 2106.90.11 of the HTS may be entered, or withdrawn from warehouse, for consumption during the period from October 1, 1990 through September 30, 1991. I have further determined that the base quota amount is 2,031,000 metric tons, raw value; the amount reserved for the importation of specialty sugars is 1,815 metric tons, raw value; and 4,877 metric tons, raw value, are reserved as a quota adjustment amount to be allocated by the United States Trade Representative.

I have also determined that such total amount will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Signed at Washington, DC on January 3, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 91-429 Filed 1-8-91; 8:45 am]

BILLING CODE 3410-10-M

Cooperative State Research Service

Joint Council on Food and Agricultural Sciences; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Joint Council on Food and Agricultural Sciences.

Date: January 23-25, 1991.

Time:

1 p.m.—5 p.m., January 23, 1991.

8 a.m.—5 p.m., January 24, 1991.

8 a.m.—12 noon, January 25, 1991.

Place: Omni Shoreham Hotel, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The purposes of the meeting are to: Discuss, select, and rank priorities for the mandated Joint Council Report, Fiscal Year 1993 Priorities for Research, Extension, and Higher Education; become familiar with the Food Animal Production Medicine Consortium: An Interinstitutional Species-Specific Food Animal Production Medicine Program; learn about specific rural community and rural development research being conducted via the Ford Foundation and the Aspen Institute; exchange information with Council constituent group representatives concerning recent activities; delve further into the issues of intellectual property, patenting, and the impacts upon information and knowledge flow; update Council knowledge of activities resulting from the National Research Council's recommendations pertaining to forestry research, and on forestry research pertaining to global climate change.

Contact Person for Agenda and More Information: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, room 302, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250-2200. Telephone (202) 401-4662.

Done in Washington, DC this 21st day of December 1990.

John Patrick Jordan,

Administrator.

[FR Doc. 91-430 Filed 1-8-91; 8:45 am]

BILLING CODE 3410-22-M

Forest Service; South Fork of the Trinity Wild and Scenic River Management Plan, Shasta-Trinity and Six Rivers National Forests

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement for the South Fork of the Trinity Wild and Scenic River Management Plan. The South Fork of the Trinity is located on the Shasta-Trinity and Six Rivers National Forests, in Humboldt and Trinity Counties, California. This is a State of California designated Wild and Scenic River that was included in the Federal Wild and Scenic River System by order of the Secretary of Interior. The proposed plan will address the management of National Forest System lands within designated sections of the South Fork. The Forest Service invites written comments and suggestions on the scope of the analysis. In addition, this notice provides an overview of the full environmental analysis and decision-making proces that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be submitted by February 28, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Karyn Wood, District Ranger, Hayfork Ranger District, P.O. Box 159, Hayfork, CA 96041, FAX 916-628-5212.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Bob Hawkins, Resource Officer, Hayfork Ranger District, P.O. Box 159, Hayfork, CA 96041, phone 916-628-5227, FAX 916-628-5212.

SUPPLEMENTARY INFORMATION: The South Fork of the Trinity River was designated as a component of the California State Wild and Scenic Rivers System in 1972. In 1989, the Governor of California petitioned the Secretary of the Interior to add the South Fork and other rivers in the State System to the National Wild and Scenic Rivers System. After public review and environmental analysis, the Secretary of Interior designated the South Fork of the Trinity, as well as other rivers, as a National Wild and Scenic River pursuant to his authority granted by Section 2 of the Wild and Scenic Rivers Act.

Inclusion of these State designated rivers in the National Wild and Scenic River System has two major effects: (1) Federal participation and assistance for water development projects that would adversely effect the values for which the rivers have been designated is prohibited, and (2) management of adjacent Federal lands must conform to the intent of Wild and Scenic River designation. However, as a river designated under section 2(a)(ii) of the Wild and Scenic Rivers Act, the South Fork "* * * shall be administered by the State * * * without expense to the United States other than for administration and management of federally owned lands."

The Forest Service proposes to develop a Management Plan to guide the administration of National Forest System land within designated sections of the South Fork of the Trinity River. A range of management alternatives will be considered during this planning process.

Federal, State, and local agencies; property owners along the river; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include: (1) Identification of potential issues, (2) Identification of issues to be analyzed in depth, (3) Elimination of insignificant issues or those that have been covered by a previous environmental review, and (4) Determination of potential cooperating agencies.

The Hayfork District Ranger will hold a public meeting to discuss the scoping process at 7 p.m., January 15, 1991, at the Trinity County Fairgrounds in Hayfork, California.

Ronald E. Stewart, Regional Forester, Pacific Southwest Region, is the responsible official for the Management Plan and EIS. If the Land and Resource Management Plans for the Six Rivers and Shasta-Trinity National Forests are approved before the river plan is completed, the Forest Supervisors for the two National Forests will become the responsible officials. Notice will be published in the **Federal Register** if this change occurs.

The analysis is expected to take 15 months. The Draft Environmental Impact Statement is expected to be available for review and comment by October, 1991. The Final Environmental Impact Statement is scheduled to be completed by March, 1992.

Agencies, individuals, and organizations will have the opportunity to comment throughout the process. Comments regarding the scope of the proposed analysis should be received by February 28, 1991 to be effectively included in the planning process.

Dated: December 24, 1990.

Ronald E. Stewart,

Regional Forester.

[FR Doc. 91-418 Filed 1-8-91; 8:45 am]

BILLING CODE 3401-11-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on Saturday, January 19, 1991, at the Comite de Bienestar, 10455 "B" Street,

San Luis, Arizona 85349 (602) 627-8559. The purpose of the meeting is to obtain information on voting rights in Yuma County.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Manuel Pena or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Western Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, January 3, 1991.

Wilfred J. Gonzalez,

Staff Director.

[FR Doc. 91-364 Filed 1-8-91; 8:45 am]

BILLING CODE 6335-01-M

Idaho Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on January 18, 1991, at the Guadalupe Center, 630 Falls Avenue, Twin Falls, Idaho 83303. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Gladys Esquibel, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated Washington, DC, January 3, 1991

Wilfredo J. Gonzalez,

Staff Director

[FR Doc 91-365 Filed 1-8-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Biotechnology Technical Advisory Committee; Partially Closed Meeting

Federal Register citation of previous announcement: pp. 52205-6, December 20, 1990.

Previously cited date for issuance of Notice of Determination to close meeting or portion of meetings dealing with the classified materials listed in 5 U.S.C., 552b(c)(1): December 14, 1990.

Corrected date for issuance of Notice of Determination: December 28, 1990.

Dated: January 3, 1991.

Ruth Fitts,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 91-401 Filed 1-8-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[Application No. 88-3A017]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Secretary of Commerce has issued an amended Export Trade Certificate of Review to the Construction Industry Manufacturers Association ("CIMA") on January 3, 1991. The original Certificate was issued on May 26, 1989 (54 FR 24932, June 12, 1989) and previously amended April 16, 1990 (55 FR 14100).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CIMA's Export Trade Certificate of Review has been amended to:

1. Add the following companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): LaBounty Manufacturing, Inc., Two Harbors, Minnesota, and Gehl Company, West Bend, Wisconsin;

2. Delete Caterpillar Inc. and J.I. Case Company as "Members" of the Certificate; and

3. Delete restrictions in paragraph 7 of the "Export Trade Activities and Methods of Operation" from the Certificate that apply to Caterpillar Inc. and/or J.I. Case Company.

Pursuant to section 304(a)(2) of the ETC Act, 15 U.S.C. § 4014(a)(2), and 15 CFR 325.7, the amended Certificate is effective from October 5, 1990, the date on which the application for an amendment was deemed submitted.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: January 4, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-476 Filed 1-8-91; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology, et al.

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89-288R.

Applicant: National Institute of Standards and Technology, Gaithersburg, MD 20899.

Instrument: Pulse Dye Laser.

Manufacturer: Lambda Physik, Inc., United Kingdom.

Intended Use: See notice at 55 FR 2861, January 29, 1990.

Reasons: The foreign instrument can be pumped with an excimer laser and provides: (1) Beam divergence of less than 0.5 milliradians, (2) an ASE less than 10^{-2} and (3) modular dye changing.

Docket Number: 90-003R.

Applicant: University of Alaska-Fairbanks, Fairbanks, AK 99775-0800.

Instrument: Fixed Frequency HF Radar System.

Manufacturer: Department of Physics, University of Adelaide, Australia.

Intended Use: See notice at 55 FR 3439, February 1, 1990.

Reasons: The foreign instrument provides continuous wind measurements at mesopause heights (60 to 100 Km) with 2.0 km height resolution and time resolution to 3.0 minutes.

Docket number: 90-040R.

Applicant: Pennsylvania State University, University Park, PA 16802.

Instrument: Two (2) Copper Lasers, Model CU15-A.

Manufacturer: Oxford Lasers, Ltd., United Kingdom.

Intended Use: See notice at 55 FR 10481, March 21, 1990.

Reasons: The foreign instrument provides air cooling, low weight (400 lbs) and low power consumption (<3.0 kVA) for airborne operation with an output of 15W.

Docket Number: 90-160.

Applicant: Solar Energy Research Institute, Golden, CO 80401.

Instrument: Ultrasonic Anemometer, Model DAT-310.

Manufacturer: Kaijo-Denki, Co., Ltd., Japan.

Intended Use: See notice at 55 FR 41739, October 15, 1990.

Reasons. The foreign instrument can measure the 3-D structure of atmospheric turbulence with (1) A maximum wind speed of 60 m/s, (2) a frequency response of 10 Hz and (3) a resolution of 0.005 m/s.

Docket Number: 90-162.

Applicant: University of California, Santa Barbara, CA 93106.

Instrument: ICP Mass Spectrometer, Model Plasma Quad PQ2.

Manufacturer: VG Elemental, United Kingdom.

Intended Use: See notice at 55 FR 41739, October 15, 1990.

Reasons: The foreign instrument provides a multi-channel analyzer for rapid acquisition of data from very small samples.

Docket Number: 90-179.

Applicant: University of Illinois at Urbana-Champaign, Urbana, IL 61801.

Instrument: FTI Spectrometer System, Model DA 8.12.

Manufacturer: Bomem, Canada.

Intended Use: See notice at 55 FR 41737, October 15, 1990.

Reasons: The foreign instrument provides an unapodized resolution of 0.026 cm^{-1} and a range of wavelength from 450 to 4000 cm^{-1}.

Docket Number: 90-181.

Applicant: University of North Dakota, Grand Forks, ND 58202.

Instrument: NO_2 Analyzer and O_3 Ozone Monitor, Model LMH-3.

Manufacturer: Scintrex Inc., Canada.

Intended Use: See notice at 55 FR 41738, October 15, 1990.

Reasons: The foreign instrument provides in situ measurement of NO_2 in concentrations below one ppb with a response time less than 1s.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-475 Filed 1-8-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Amended Meeting Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda for the public meeting of the Mid-Atlantic Fishery Management Council, on January 22-24, 1991, previously published at 55 FR 5320 on December 28, 1990, has been changed. All other information as originally published remains unchanged.

The Council will review the sea scallop biology and stock condition and discuss paralytic shellfish poisoning. There will be a presentation on fishing vessel safety and a discussion of a control date for new entrants for the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan. As deemed necessary, there also will be a discussion of other fishery management matters. The Council may hold a closed session (not open to the public), to discuss personnel and/or national security matters.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: January 3, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-424 Filed 1-8-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirements 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 232, Contract Financing, and related clauses in section 252.232

Type of Request: Existing collection in use without an OMB Control Number.

Average Burden Hours/Minutes Per Response: .5 hours.

Responses Per Respondent: 24.

Number of Respondents: 1,488.

Annual Responses: 2,976.

Needs and Uses: The Arms Export Control Act (Pub. L. 90-629, section 22), normally requires that purchases of equipment for foreign governments under the Foreign Military Sales (FMS) program be made with foreign funds and without charge to appropriated funds. In order to comply with this requirement, the U.S. Government needs to know how much to charge each country as progress payments are made for its FMS purchases. This information can only be provided by the contractor preparing the progress payment request. The Defense FAR Supplement at part 232 and the clause at 252.232-7002, entitled Progress Payments for Foreign Military Sales Acquisitions, requires contractors whose contracts include foreign military sales requirements to submit a separate progress payment request, with a supporting schedule for each progress payment rate, which clearly distinguishes the contract's foreign military sales requirements from U.S. contract requirements. This information is used to obtain funds from the foreign

country's trust fund for payment to the contractor.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: Monthly.

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: January 4, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 91-440 Filed 1-8-91; 8:45 am]

BILLING CODE 3810-01-M

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: Navy Advertising Effectiveness Study (NAES), OMB Control Number 0703-0032.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 30 minutes.

Responses Per Respondent: Two.

Number of Respondents: 1,000.

Annual Burden Hours: 1,000.

Annual Responses: 2,000.

Needs and Uses: The Navy Advertising Effectiveness Survey measures recruiting advertising effectiveness and provides data for strategies to be used in advertising.

Affected Public: Individuals or households.

Frequency: Semiannually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Sprehe 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: January 4, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-441 Filed 1-8-91; 8:45 am]

BILLING CODE 3810-01-M

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 205, Publicizing Contract Actions, and a related clause in section 252.205, OMB Control Number 0704-0286.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 13.5 minutes.

Responses Per Respondent: 11.83.

Number of Respondents: 3,000.

Annual Burden Hours: 8,000.

Annual Responses: 35,500.

Needs and Uses: DoD FAR Supplement part 205 and the clause at 252.205-7000, Release of Information to Cooperative Agreement Holders, requires defense contractors, awarded a contract in excess of $50,000, to provide entities holding Cooperative Agreements with the Defense Logistics Agency (DLA), upon request, a list of appropriate employees, their business address, telephone number, and area of responsibility, who have responsibility for awarding subcontracts under defense contracts. This coverage implements section 957 of Public Law 99-500.

Affected Public: Businesses or other for-profit; 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: January 4, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-442 Filed 1-8-91; 8:45 am]

BILLING CODE 3810-01-M

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: Procurement Technical Assistance Cooperative Agreement Performance Data Report.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 4 hours.

Responses Per Respondent: 4.

Number of Respondents: 85.

Annual Burden Hours: 5,040.

Annual Responses: 340.

Needs and Uses: The report data is used primarily as a performance indicator. It is also used to track budget expenditures; to monitor prime and subcontract awards to small, small disadvantaged and woman-owned businesses; to highlight potential problem recipients; and as a source of data for an annual report.

Affected Public: State or local governments, Businesses or other for-profit, and Non-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Sprehe 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: January 4, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-443 Filed 1-8-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Review of the A-12 Aircraft Meeting Cancellation

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Review of the A-12 Aircraft scheduled for 19 and 20 December, 1990, as published in the **Federal Register** (Vol. 55, No. 237, Page 50757, Monday, December 10, 1990, FR Doc. 90-28796) has been cancelled.

Dated: January 4, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-444 Filed 1-8-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of meeting: 30 January 1991.

Time: 0800-1400.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) C31 Issue Group will meet to review the Terms of Reference (TOR) and discuss the upcoming study on the follow-on radio to SINCGARS. The group will lay out milestones for the study and assign individual responsibilities for completion of the project. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-472 Filed 1-7-91; 8:56 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 23-24 January 1991.

Time: 0900-1630.

Place: SDC Conference Room, Crystal City.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Tactical Space Systems will hold their initial meeting. The Army user community will brief them regarding space system requirement, and the technology development community will describe the current status of the planned tactical satellite demonstrations. The subgroup will also review the findings of previous space utilization studies (Defense Science Board and Army Science Board). This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-473 Filed 1-7-91; 8:56 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intention To Prepare a Supplemental Environmental Impact Statement/ Environmental Impact Report (SEIS/ EIR) for the Merced County Streams Project, California

AGENCY: U.S. Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of intent to prepare supplemental EIS/EIR.

SUMMARY: The proposed action is the final design and construction and operation of flood control facilities in the vicinity of the city of Merced, Merced County, California. Facilities include the enlargement of Bear Dam on Bear Creek; the construction of Haystack Dam on Black Rascal Creek; and levee and channel improvements on Bear, Black Rascal, Fahrens and Cottonwood Creeks and El Capitan Canal. The action is being sponsored by the Corps and The Reclamation Board.

FOR FURTHER INFORMATION CONTACT: Written suggestions on the scope of environmental impact evaluations and related information should be provided to the District Engineer, U.S. Army Corps of Engineers, Sacramento District, 650 Capitol Mall. ATTN: CESPK-PD-R, Sacramento, California 95814-4794. Questions may be addressed to Mr. Rod Hall at (916) 551-1859. Questions specifically related to the California Environmental Quality Act requirements of the SEIS/EIR may be directed to Mr. John Squires, The Reclamation Board, 1416 9th Street, room 738-F, Sacramento, California 95814, (916) 322-3741.

SUPPLEMENTARY INFORMATION: The Merced County Streams Project was authorized by section 201 of the Flood Control Act of December 31, 1970 (Pub. L. 91-611, Sec. 201, Stat. 1824). The final environmental impact statement was issued by the Corps on March 1980.

After authorization, the project was separated into phases at the request of the local sponsor. Phase I includes the construction of Castle Dam and appurtenances on Canal Creek about eight miles northwest of Merced and the construction of a check structure on the main canal at Edendale Creek. The environmental impacts for phase I are discussed in the original environmental impact statement and an environmental assessment to be issued by the Corps in January 1991. Mitigation for Phase I is largely reflected in the final plans and specifications for Castle Dam. Construction of Phase I is scheduled to begin in the spring of 1991.

1. Proposed Action

Phase II, the subject of this SEIS/EIR, includes the construction of Haystack Dam and appurtenances on Black Rascal Creek about 8 miles north of Merced, and downstream channel and levee improvements on Cottonwood, Fahrens, Black Rascal, and Bear Creeks, Black Rascal Slough, and El Capitan Canal. Proposed Channel and levee improvements extend from about six miles north and east of Merced downstream to where Bert Crane Road crosses Bear Creek. The U.S. Fish and Wildlife Service is currently acquiring conservation easements for lands adjacent to Bear Creek from Bert Crane Road to the East Side Bypass, thereby eliminating the need for flood protection in this reach. A control structure needed on Bear Creek at the East Side Bypass would be designed to facilitate seasonal flooding of these lands. The Corps has determined sufficient new information is

available to require the preparation of a SEIS for this phase of the project. The SEIS will describe the cumulative environmental impacts of the project including Castle Dam and appurtenances.

Phase three includes the remaining features of the authorized project, which are deferred indefinitely, at the request of the local sponsor. These features are the construction of Marguerite Dam on Deadman-Dutch Creeks, enlargement of Owens Dam on Owens Creek and Mariposa Dam on Mariposa Creek and improvement of about 18 miles of channel.

2. Alternatives

Alternatives being considered include no action and design features that would minimize the environmental impacts of the project, would restore fish and wildlife habitat, and would provide additional benefits for recreation.

3. Scoping Process

a. Close coordination will be maintained with Federal, State, local agencies, environmental organizations, concerned citizens, and other interested groups. This will be accomplished through public meetings and interagency coordination. A scoping notice will be mailed to the public in December 1990. A public workshop to identify issues of concern is scheduled for February 6, 1991.

b. The Reclamation Board is the non-Federal sponsor for this project. They are participating with the Corps in the project's design and environmental impact studies, and they will cost share in any facilities constructed.

c. Significant review and consultation to be conducted during the preparation of the SEIS/EIR include coordination with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act and Endangered Species Act, consultation with the California Department of Fish and Game, consultation with the State Historic Preservation Officer and Advisory Council on Historic Preservation under the National Historic Preservation Act, and coordination with the California Water Control Board and Environmental Protection Agency on water Quality issues under Section 404 of the Clean Water Act.

4. Meeting Schedule

A public meeting will be held on February 6, 1991 at 7:00 p.m. at the Merced County Extension Classroom, 2139 West Wordarbe Avenue, Merced, California. At the meeting, the Corps will explain the project to the public, agency and group representatives, as well as solicit their input about the content of the SEIS/EIR. The meeting will be conducted as an informal workshop; any formal presentations should be in writing, and mailed to the address for the Corps listed earlier in this notice.

5. Availability

The draft SEIS/EIR is expected to be available for public review and comment by early 1992.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-355 Filed 1-8-91; 8:45 am]

BILLING CODE 3710-EH-M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Symposium and Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming symposium and partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming Symposium on Studies, Surveys and Analyses and a formal Advisory Committee meeting. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

DATES AND TIME: The symposium will be held on January 23, 1991, beginning at 9 a.m. and ending at 5 p.m.; the Advisory Committee will meet on January 24, 1991, beginning at 9 a.m. and ending at 5 p.m. and January 25, 1991, beginning at 9 a.m. and ending at 2 p.m.; and will be closed from 12 noon to 1 p.m. on January 25, 1991.

ADDRESSES: The George Washington University, Marvin Center, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB-3, 7th & D Streets, SW., Washington, DC 20202-7582 (202) 708-7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing extensive knowledge and understanding of the Federal, state, and institutional programs of postsecondary student assistance, technical expertise with regard to systems of need analysis and application forms, and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students. The Congress has also directed the Advisory Committee to provide assistance in preparing for the reauthorization of the Higher Education Act. The Symposium on Studies, Surveys and Analyses, the third in a series of activities related to reauthorization, will examine the relationship between policy analysis and policy formulation surrounding the student aid programs, and will be held on January 23 from 9 a.m. to 5 p.m. Following the symposium, the Advisory Committee will meet on January 24 from 9 a.m. to 5 p.m. and on January 25 from 9 a.m. to 2 p.m. on January 25. The meeting will be closed to the public from 12 noon to 1 p.m. on January 25 to elect a new Chairman and discuss other personnel matters. The election and ensuing discussion will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session, and are protected by exemption (6) of section 552(c) of title 5 U.S.C. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. appendix 2) and under exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409).

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda of the Symposium on January 23 includes discussion sessions on the following issues: (a) Access for Low-Income Disadvantaged Students; (b) Simplification and Integration of Student Aid Delivery; (c) Early Outreach and Information Dissemination Programs; and (d) Long-Run Stability and Integrity of the Student Aid Programs.

The proposed agenda of the open portions of the Advisory Committee meeting includes: (a) Formulating

recommendations for reauthorization of the Higher Education Act in the areas of information, resources, services and programs and (b) a discussion of general findings and issues for further analyses. The Committee also will discuss other issues related to reauthorization as well as future Advisory Committee activities.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets, SW., Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: January 4, 1991.

Dr. Brian K. Fitzgerald, Staff Director,

Advisory Committee on Student Financial Assistance.

[FR Doc. 91-485 Filed 1-8-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[Docket Nos. PP-49, PP-68, PP-68EA, PP-79, PP-79SC, and E-7545]

Application to Assume Presidential Permits and Electricity Export Authorizations

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application by Southern California Edison Company and San Diego Gas & Electric Company to amend and transfer Presidential permits and electricity export authorization.

SUMMARY: Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E) are currently seeking Federal Energy Regulatory Commission and California Public Utility Commission approvals of a proposed merger of SDG&E with and into Edison. On November 8, 1990, the two companies jointly filed applications with the Department of Energy to permit Edison to assume Presidential permits and electricity export authorizations issued to SDG&E under Docket numbers PP-49, PP-68, PP-68EA, PP-79, PP-79SC, and E-7545.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9624.

Lise Courtney M. Howe, Office of General Counsel (GC-32), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2900.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exporting electricity from the United States to a foreign country is also regulated and requires authorization under section 202(e) of the Federal Power Act.

Edison and SDG&E are currently seeking approvals from the Federal Energy Regulatory Commission (FERC) and the California Public Utility Commission (CPUC) of a proposed merger of SDG&E with and into Edison. Following the merger, Edison will hold title to facilities previously owned by SDG&E, and SDG&E would cease to exist as an independent entity. On November 8, 1990, Edison and SDG&E jointly applied to the Office of Fuels Programs to permit Edison to assume Presidential permits PP-49, PP-68, and PP-79 in order that Edison may continue to permanently operate the electric transmission facilities for which SDG&E had been granted Presidential permits.

Facilities included in this request are as follows:

Docket PP-49. A 69 kV transmission line extending from the San Ysidro-Otay substations to the international border, and connecting with the Comision Federal de Electricidad (CFE) transmission system. CFE's point of origination is its Tijuana Substation.

Docket PP-68. A 230 kV transmission line extending from the Miguel Substation to the international border, and connecting with the CFE transmission system. CFE's point or origination is its Tijuana Substation.

Docket PP-79. A 230 kV transmission line extending from the Imperial Valley Substation to the international border and connecting with the CFE transmission system. CFE's point of origination is its La Rosita Substation.

Electricity export authorizations previously were issued to SDG&E for transmission of electrical energy from the United States to Mexico utilizing the transmission facilities for which the above Presidential permits were issued. Edison has requested that upon completion of the merger of SDG&E into Edison, the export authorization PP-79SC issued to Edison on May 1, 1984, be amended to additionally authorize transmission of electricity to Mexico via the San Ysidro-Otay-Tijuana 69 kV interconnection. This amendment would permit the export of previously authorized levels of electric energy over all of the international transmission facilities thereby transferred to Edison. Further requested that export authorization PP-79SC also be amended to correct ownership of the previously authorized Miguel-Tijuana and the Imperial Valley-La Rosita interconnections if and when the SDG&E/Edison merger is completed.

SDG&E has also requested that export authorizations E-7545, PP-68EA, and PP-79EA be rescinded when the merger into Edison becomes effective.

Procedural Matters

The regulations implementing the export authorizations and Presidential permit programs (10 CFR 205) do not provide for the transfer or assignment of existing orders. However, the rules do provide for a temporary continuance of the existing orders upon notice to the Department of Energy. Therefore, during the pendency of this proceeding, should the merger of SDG&E with and into Edison be completed and approved by both the Federal Energy Regulatory Commission and the California Public Utility Cmmission, the Presidential permits and export authorizations covered by this notice will temporarily remain effective for use by Edison.

At the conclusion of these proceedings, if DOE determines to grant the SDG&E/ Edison requests as set forth in their joint application, DOE will revoke the permits and orders issued to SDG&E (PP-49, PP-68, PP-68EA, PP-79SC, and E-7545) and issue new permits and orders to Edison granting the same rights and privileges provided in the permits and orders previously issued to SDG&E.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Office of Fuels Programs, Fossil Energy, room 3H-087, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before February 8, 1991. Additional copies of such petitions to intervene or protests also should be filed directly with: Robert Dietch, Vice President-Engineering, Planning and Research Department, Ronald Daniels, Vice President-Revenue Requirements Department, and Thomas E. Taber, Senior Counsel, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770. In addition copies should be sent to Robert I. White and Owen D. Keegan, Edison's

attorneys in this matter, at Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036 and E. Gregory Barnes, Principal Attorney, San Diego Gas & Electric Company, P.O. Box 1831, San Diego, California 92112.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after considering all available information and after a determination is made by the DOE that the proposed transaction will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before a Presidential permit may be issued, the environmental impacts of the proposed DOE action (i.e., granting the Presidential permit, with any conditions and limitations, or denying the permit) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 2, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-464 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-01-M

Floodplain and Wetland Involvement Notification for Remedial Action at the Eastern General Services Area, Site 300, Lawrence Livermore National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of floodplain and wetland involvement.

SUMMARY: The Department of Energy (DOE) proposes to conduct remedial actions involving pumping and treating contaminated groundwater at Lawrence Livermore National Laboratory, Site 300, San Joaquin County, California. Remedial action would include installation of underground piping and the discharge of treated water into the 100-year floodplain of the Corral Hollow Creek. Specifically, the proposed action will involve the construction of an extraction well and a treatment facility outside the floodplain, and the laying of piping beneath the surface of the floodplain. Operation of the facility involves the extraction of halogenated hydrocarbon contaminated water from the Corral Hollow alluvial aquifer, treatment of that water to remove halogenated hydrocarbons, and the discharge of a maximum of 100 gallons per minute of treated groundwater to Corral Hollow Creek, an ephemeral stream. The discharged water is expected to recharge the Corral Hollow alluvial aquifer within 100 to 200 feet of the discharge point. The underground piping will be installed in such a manner as to minimize any effect on the floodplain. In accordance with floodplain/wetland environmental review requirements (10 CFR 1022), DOE will prepare a floodplain/wetland assessment to be incorporated into the environmental assessment of the proposed action. Maps and further information are available from DOE at the address below.

DATES: Any comments are due up to and including January 24, 1991.

ADDRESSES: Send comments to:

Sally A. Mann, Ph.D., Acting Director, Northwestern Area Programs, Office of Environmental Restoration and Waste Management, U.S. Department of Energy, Washington, DC 20585 (301) 353-3253.

Issued at Washington, DC, this 3rd day of January, 1991.

Paul L. Ziemer,

Assistant Secretary for Environment, Safety and Health.

[FR Doc. 91-459 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance; University Reactor Sharing Program; University of Florida, et al

AGENCY: Department of Energy.

ACTION: Intent to negotiate grants with universities and colleges with research reactor.

SUMMARY: "University Reactor Sharing Program", The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate a grant or grant renewal, on a noncompetitive basis, with each U.S. university and or college having an operating research reactor. Total funding available under this program for FY 1991 is $500,000. These grants will fund these activities through August 15, 1992. The statutory authority for the proposed awards is the Department of Energy Organization Act, Public Law 95-91, which was enacted to provide for the development of technologies and processes to reduce total energy consumption. The proposed grant renewals, as well as possible new awards, will allow DOE-ID to continue to provide financial assistance to universities and colleges with research reactors for reactor sharing. The purpose of the University Reactor Sharing Program is to make available, on a regional basis, the research, training and analytical capabilities of a reactor facility to other educational institutions, that do not have these resources. Grant funds are used to offset the costs associated with other institutions using the reactor and laboratory facilities. Applicants eligible to participate in this program are listed below:

University of Florida
Georgia Institute of Technology
Kansas State University
Mass. Institute of Technology
University of Maryland
University of Michigan
University of Missouri-Columbia
University of Missouri-Rolla
North Carolina State University
Ohio State University
Pennsylvania State University
Reed College
Texas A&M University
University of Virginia
Washington State University
University of Wisconsin
Rensselaer Polytechnic Institute
University of Arizona
Oregon State University
State University of New York
University of New Mexico
Cornell University
Purdue University
Rhode Island Nuclear Sc. Center
Idaho State University
University of California, Irvine
University of Illinois
University of Lowell
University of Texas
University of Utah
Worcester Polytechnic Institute
Iowa State University
Manhattan College

It is anticipated that all eligible applicants will receive an award. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (D). The applicants have exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise or other such unique qualifications. Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, James McGowan, Contract Specialist (208) 526-8779.

Dated: January 3, 1991.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 91-466 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance, LEU Fuel, Conversion Program, University of Florida, et al.

AGENCY: Department of Energy.

ACTION: Intent to negotiate grant renewals with universities and colleges with research reactors.

SUMMARY: "LEU Fuel Conversion Program", The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate grant renewals, on a noncompetitive basis, with a university or college having operating research reactors. Total funding available under this program for FY 1991 will be known at a later date. These renewals will fund these activities through March 31, 1992. The statutory authority for proposed awards is the Department of Energy Organization Act, Public Law 95-91, which was enacted to provide for the development of technologies and processes to reduce total energy consumption. The proposed grant renewals will allow DOE-ID to continue to provide financial assistance to universities and colleges with research reactors to comply with the Nuclear Regulatory Commission rule 10 CFR part 50, "Limiting the Use of Highly Enriched Uranium in Domestically Licensed Research and Test Reactors," which limits the use of highly enriched uranium (HEU) fuel in nonpower reactors with the objective of reducing the risk of theft or diversion of HEU fuel. These costs include the time and effort on the part of the university program to prepare the required safety analysis study for the use of low enriched uranium (LEU) fuel in their reactor, the procurement of the LEU fuel, the transfer and exchange of the LEU fuel and shipment of the HEU fuel. The assistance described herein is to provide for the internal costs to the university associated with conversion. Applicants eligible to participate in this program during FY 1991 are listed below:

University of Florida
Massachusetts Institute of Tech.
Ohio State University
Georgia Institute of Technology
University of Missouri-Columbia
Texas A&M University
University of Virginia
University of Wisconsin
Purdue University
Renssealaer Polytechnic Institute
Worcester Polytechnic Institute
Washington State University
Oregon State University
Manhattan College
University of Lowell
Iowa State University

Rhode Island Nuclear Science Center
University of Missouri-Rolla. It is anticipated that all eligible applicants will receive an award. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (D). The applicants have exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise or other such unique qualifications. Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, James McGowan, Contract Specialist (208) 526-8779

Dated: January 3, 1991.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 91-467 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance; University Reactor Instrumentation Program

AGENCY: Department of Energy.

ACTION: Solicitation of applications from universities and colleges with research reactors.

SUMMARY: "University Reactor Instrumentation Program", the U.S. Department of Energy (DOE), Idaho Operations Office, is soliciting

applications under this program from U.S. universities and colleges having research reactors. Total funding available under this program for FY 1991 is $1,000,000. Period of performance for these grants should be three to six months. The statutory authority for the proposed awards is the Department of Energy Organization Act, Public Law 95-91, which was enacted to provide for the development of technologies and processes to reduce total energy consumption. This solicitation requests applications which will allow DOE-ID to provide financial assistance in the modernization and upgrading of university based research and training reactor facilities. Eligibility to participate in this program is restricted to only those U.S. universities and colleges which have operating research reactors. Solicitation documents will be sent by mail to all eligible applicants. Deadline date for submissions of applications is February 15, 1991. Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, James McGowan, Contract Specialist (208) 526-8779.

Dated: January 3, 1991.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 91-468 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP91-59-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 2, 1991.

Take notice that on December 21, 1990, Algonquin Gas Transmission Company ("Algonquin") tendered for filing certain revisions to its FERC Gas Tariff, Second Revised Volume No. 1. Algonquin states that the proposed revisions will eliminate Section 15 of Rate Schedule AFT-1, entitled "Capacity Utilization." This paragraph sets up a procedure whereby Algonquin and shippers under Rate Schedule AIT-1 renegotiate the shipper's maximum daily transportation quantity ("MDTQ") if the shipper fails to utilize this service at a specified level throughout the preceding year. Algonquin states that these provisions are unnecessary and burdensome to both Algonquin and its shippers, and accordingly should be eliminated. Algonquin requests an effective date of January 1, 1991.

Any person desiring to be heard or to protest said filing should on or before January 9, 1991, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1990). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91-373 Filed 1-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 2, 1991.

Take notice that on December 21, 1990 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective January 1, 1991:

FERC Gas Tariff, Second Revised Volume No. 1 Ninth Revised Sheet No. 8

Reason for Filing

FGT states that the above-referenced tariff sheet is being filed to reflect an increase in FGT's demand cost of gas purchased from that level reflected in its last Quarterly PGA filing effective November 1, 1990 in Docket No. TQ91-1-34-000.

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 311 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 January 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-374 Filed 1-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-51-000]

Great Lakes Gas Transmission; Proposed Changes in F.E.R.C. Gas Tariff Purchased Gas Adjustment Clause Provisions

January 2, 1991.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 21, 1990 tendered for filing the following tariff sheets to its FERC Gas Tariff:

Item 1: First Revised Volume No. 1

First Revised Thirty-Second Revised Sheet No. 57(i)
First Revised Thirty-Second Revised Sheet No. 57(ii)
First Revised Eighteenth Revised Sheet No. 57(v)

Item 2: First Revised Volume No. 1

Substitute Thirty-Third Revised Sheet No. 57(i)
Substitute Thirty-Third Revised Sheet No. 57(ii)
Substitute Nineteenth Revised Sheet No. 57(v)

Great Lakes states that the tariff sheets referred in Item 1 were filed to reflect revised current PGA rates for the months of December, 1990 through January, 1991. Great Lakes requests waiver of the notice requirements so as to permit these tariff sheets to become effective December 1, 1990.

Great Lakes states that the tariff sheets referred in Item 2 were filed to reflect the Gas Research Institute's 1991 Research and Development Program and GRI funding unit of 1.46 cents (Mcf) approved pursuant to the Commission's Opinion No. 355 issued on October 1, 1990. The tariff sheets in Item 2 are being filed to reflect the proper GRI charge to be effective Janaury 1, 1991. Great Lakes requests that these tariff sheets become effective January 1, 1991.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such Motions or protests should be filed on or before January 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-371 Filed 1-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-634-004]

Iroquois Gas Transmission System, L.P.; Amendment

January 2, 1991.

Take notice that on December 19, 1990, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 606, Shelton, Connecticut 06484, filed an abbreviated application to amend its November 14, 1990 certificate of public convenience and necessity under section 7 of the Natural Gas Act and Subpart A of Part 157 of the Commission's Regulations, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Iroquois states that the amendment to its certificate authorization is necessary to allow Iroquois to use an accounting treatment whereby Iroquois would postpone plant depreciation and capitalize revenues received and expenses incurred in its initial year of operation. Iroquois asserts that such accounting treatment is necessary and appropriate to take into account the reduced volumes of gas available from the upstream facilities of TransCanada PipeLines Limited during the initial year of operation. Iroquois states that, during this initial year, Iroquois would provide service at the initial rates approved by the Commission in Opinion No. 357. At the end of its initial year, Iroquois would provide service at new initial rates, levelized over three years based on Iroquois' fully-certificated capacity. Thus, for the three years of operation commencing November 1, 1992, Iroquois proposes to charge, for firm reserved service in Zone 1, a maximum monthly demand charge of $8.9820 per month per dth of reservation ($16.2635 for Zone 2) and a maximum commodity charge of 11.6246 cents per dth of gas transported (21.0484 cents for Zone 2). For interruptible service commencing November 1, 1992, Iroquois proposes a maximum charge of 41.1545 cents per dth of gas transported for Zone 1 (74.5173 cents for Zone 2). Iroquois states that the new initial rates would be lower than those which Iroquois' customers otherwise would have paid upon commencement of full service.

Iroquois also requests authorization to transfer its service obligation of 5,000 Mcf of gas per day from Elizabethtown Gas Company (Elizabethtown), which no longer requires service, to Long Island Lighting Company (LILCO). Iroquois states that Elizabethtown's precedent agreement to purchase gas from Alberta Northeast Gas Limited (ANE) has been terminated and that ANE and LILCO have agreed to increase LILCO's purchase of ANE volumes by 5,000 Mcf of gas per day, thereby fully accounting for the volumes relinquished by Elizabethtown. Iroquois therefore proposes to increase the level of firm transportation service which Iroquois has been authorized to provide to LILCO by 5,000 Mcf of gas per day in lieu of providing transportation service to Elizabethtown.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 14, 1991, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91-378 Filed 1-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-53-002]

K N Energy, Inc.; Compliance Filing

January 2, 1991.

Take notice that on December 19, 1990, K N Energy, Inc. (K N) refiled Schedules C1 and G1 of its annual PGA as directed by Commission Order issued November 30, 1990, in Docket No. TA91-1-53-000. K N states that the refiling was ordered to correct specified errors.

K N states that service of the filing has been made upon each of Kentucky West's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 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 January 23, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-377 Filed 1-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-46-034]

Kentucky West Virginia Gas Co.; Compliance Filing

January 2, 1991.

Take notice that on December 13, 1990, Kentucky West Virginia Gas Company (Kentucky West), tendered for filing certain revised tariff sheets to Volume No. 3 of its FERC Gas Tariff.

Kentucky West states that the revised tariff sheets were filed in compliance with the Commission's Letter Order, issued November 21, 1990 in Docket No. TQ89-1-46-000, with the tariff sheets to become effective December 1, 1990.

Kentucky West states that service of the filing has been made upon each of Kentucky West's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital 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 January 23, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-376 Filed 1-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-60-000]

North Penn Gas Co.; Tariff Change

January 2, 1991.

Take notice that North Penn Gas Company (North Penn) on December 21, 1990 tendered for filing Fifth Revised Sheet No. 15G to its FERC Gas Tariff, First Revised Volume No. 1. North Penn states that the purpose of the filing is to include a provision to allow North Penn to track standby charges on an as-billed basis that North Penn incurs from CNG Transmission Corporation.

North Penn respectfully requests specific waiver of the Commission's PGA Regulations as contained in §§ 154.301 through 154.310, inclusive, to track the standby charges from CNG Transmission Corporation on an as-billed basis.

While North Penn believes that no other waivers are necessary for this filing, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required for this filing.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

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 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 9, 1991. 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. 91-375 Filed 1-8-91; 8:45 am]

BILLING CODE 6717-01-M

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

[Docket No. TQ91-2-11-000]

January 2, 1991.

Take notice that on December 20, 1990, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets:

Second Revised Volume No. 1

Effective January 1, 1991

Substitute Tenth Revised Sheet No. 4
Substitute Tenth Revised Sheet No. 4A
Substitute Tenth Revised Sheet No. 4B
Substitute Eighth Revised Sheet No. 4D
Substitute Tenth Revised Sheet No. 4I

Second Revised Volume No. 1

Effective February 1, 1991

Eleventh Revised Sheet No. 4
Eleventh Revised Sheet No. 4A
Eleventh Revised Sheet No. 4B
Ninth Revised Sheet No. 4D
Eleventh Revised Sheet No. 4I

United states that the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's Regulations to reflect changes in United's purchased gas adjustment as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it proposes to waive its right to collect a $0.1770 Surcharge on jurisdictional sales volumes for the period January 1, 1991 through January 31, 1991. United was authorized to charge and collect that surcharge effective October 1, 1990 through September 30, 1991 pursuant to a Commission Letter Order dated November 2, 1990, subject to the conditions set forth in that Letter Order.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington. DC 20426, in such accordance with sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before January 9, 1991

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-372 Filed 1-8-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-027]

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures from Amana Refrigeration, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Amana Refrigeration, Inc. (Amana) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's GUD model of condensing gas furnace.

Today's notice also publishes a "Petition for Waiver" from Amana. Amana's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Amana seeks to test using a blower delay time of 30 seconds for its GUD condensing gas furnace instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than February 8, 1991.

ADDRESSES: Written comments (5 copies) and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-027, Mail Stop CE-90, room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-3012.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pulib Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the wavier process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waiver generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On May 15, 1990, Amana filed an Application for an Interim Waiver regarding blower time delay. Amana's Application seeks an interim waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Amana, requests the allowance to test using a 30 second blower time delay when testing its GUD condensing gas furnace. Amana states that the 30 second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.7 percent. Since current DOE test procedures do not address this variable blower time delay, Amana asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to the Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; and Carrier Corporation, 55 FR 13182, April 9, 1990. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Amana an Interim Waiver for its GUD model of condensing gas furnace. Pursuant to paragraph (e) of section 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Amana Refrigeration, Inc. was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, January 2, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

May 15, 1990

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Subject: Petition for Waiver and Application for Interim Waiver

Gentleman: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27, as amended 14 November 1986. Waiver is requested from the test procedures for measuring the Energy Consumption of Furnaces found in Appendix N of Subpart B to Part 430, specifically the section requiring a 1.5 minute delay between burner ignition and start-up of the circulating air blower.

Amana Refrigeration, Inc. requests a waiver from the specified 1.5 minute delay, and seeks authorization in its furnace efficiency test procedures and calculations to utilize a fixed timing control that will energize the circulating air blower 30 seconds after gas valve ignition. A control of this type with a fixed 30 second blower on-time will be utilized in our GUD line of high efficiency condensing furnaces.

The current test procedure does not credit Amana for additional energy savings that occur when a shorter blower on-time is utilized. Test data for these furnaces with a 30 second delay indicate that the heat-up cycle energy losses will decrease, the amount of condensate generated during the cyclic condensate test will increase, and the overall furnace AFUE will increase up to 1.7 percentage points. Copies of the confidential test data confirming these energy savings will be forwarded to you upon request.

Amana Refrigeration is confident that this waiver will be granted, as similar waivers have been granted in the past, to Coleman Company, Magic Chef Company, Rheem Manufacturing, and the Trane Company.

Manufacturers that domestically market similar products are being sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

Alan F. Kessler,

Chief Engineer, Environmental Products, Amana Refrigeration, Inc.

Department of Energy, Washington, DC

January 4, 1991.

Mr. Alan F. Kessler,

Chief Engineer, Environmental Products, Amana Refrigeration, Inc., Amana, IA 52204

Dear Mr. Kessler: This is in response to your May 15, 1990, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the Amana Refrigeration, Inc. (Amana) GUD model of condensing gas furnace.

Previous waivers for timed blower delay control have been granted by DOE to

Coleman Company, 50 F.R. 2710, January 18, 1985, Magic Chef Company, 50 F.R. 41553, October 11, 1985; Rheem Manufacturing Company, 53 F.R. 48574, December 1, 1988, and 55 F.R. 3253, January 31, 1990; Trane Company, 54 F.R. 19226, May 4, 1989, and 55 F.R. 41589, October 12, 1990; DMO Industries, 55 F.R. 4004, February 6, 1990; Heil-Quaker Corporation, 55 F.R. 13184, April 9, 1990; and Carrier Corporation, 55 F.R. 13182, April 9, 1990.

Amana's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Amana will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Amana's Application for an Interim Waiver from the DOE test procedures for its GUD series condensing gas furnaces regarding blower time delay is granted.

Amana shall be permitted to test its line of GUD condensing gas furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up delay the blower start-up by 1.5 minutes (t-), unless (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activiation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control in adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ± 0.01 inch of water gauge of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91-465 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-0-M

[No. DE-PS01-91FE62271]

Office of Fossil Energy

Clean Coal Technology Program

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of issuance of a Program Opportunity Notice (PON) for the Clean Coal Technology Program.

SUMMARY: On or about January 17, 1991, DOE will issue a Program Opportunity Notice (PON), No. DE-PS01-91FE62271. The PON solicits proposals for cost-shared projects to demonstrate clean coal technologies for retrofitting, repowering and replacement. A total of $600 million dollars (less approximately $32 million for DOE's administrative expenses) has been appropriated for financial assistance awards under this solicitation by Public Law 101-121. In addition, it is anticipated that unobligated funds from previous Clean Coal Technology solicitations may be made available for award under this solicitation.

DATES: Proposals must be received by DOE at the address indicated in the PON by no later than 4:30 p.m., e.s.t., Washington, DC, on May 17 1991.

ADDRESSES: Copies of the PON may be obtained by writing to:

U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, PR-33, Washington, DC 20013.

Copies of the PON may be picked up at:

U.S. Department of Energy, Office of Procurement Operations, Document Control Specialist, Forrestal Building, room 1J-005, 1000 Independence Avenue, SW., Washington, DC.

Oral and written requests for the PON should include a reference to the solicitation number, DE-PS01-91FE62271. Copies of the PON may be picked up between the hours of 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Persons who have received previous Clean Coal Technology solicitations (Nos. DE-PS01-86FE60966, DE-PS01-FE61530, and DE-PS01-89FE61825), need not submit a request for the PON. One copy of the PON will be mailed to such persons on or about January 17, 1991.

SUPPLEMENTARY INFORMATION: On May 25, 1990, Public Law 101-302 was enacted which delayed issuing the CCT IV PON until September 1, 1991. Subsequently, on November 5, 1990, the President signed Public Law 101-512, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1991, and for Other Purposes." This Act, among other things, directs DOE to issue a "general request for proposals" for CCT IV by no later than February 1, 1991, and selection of projects for negotiations "no later than eight months after the date of the general request for proposals."

DOE has scheduled a preproposal conference to occur at 10 a.m. on February 5, 1991, at the Thomas Jefferson Auditorium, U.S. Department of Agriculture (South Building between 5th and 6th wings), 14th Street and Independence Avenue, SW., Washington, DC. The purpose of the preproposal conference is to provide an opportunity for prospective proposers to gain a better understanding of the objectives and requirements of the PON. Questions concerning the PON should be submitted in writing to:

Department of Energy, Office of Placement and Administration, Operations Branch "A-1" (PR-321.1), room Number 1I-065, 1000 Independence Avenue, SW., Washington, DC 20585, Attn: Herbert D. Watkins.

Questions should be received by no later than January 29, 1991. Seating will be available on a first come, first served basis.

DOE expects to complete the evaluation and selection of proposals by approximately September 17, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert D. Watkins, Tel. (202) 586-1026.

Issued in Washington, DC.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 91-460 Filed 1-8-91, 8:45 am]

BILLING CODE 6450-01-M

Cases Filed with the Office of Hearings and Appeals During the Week of November 16 through November 23, 1990

During the Week of November 16 through November 23, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 3, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
Nov. 14, 1990	Hanford Education Action League, Spokane, WA	LFA-0085	Appeal of an information request denial. If Granted: The October 25, 1990 Freedom of Information Request Denial issued by the Office of Defense Programs would be rescinded, and Hanford Education Action League would receive access to Documents relating to certain activities by the U.S. Government at the Hanford facility near Richland, Washington.
Nov. 19, 1990	National Hazard Control Corporation, Albuquerque, NM	LFA-0084	Appeal of an information request denial. If Granted: The October 26, 1990 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and National Hazard Control Corporation would receive access to the pricing information which was included in Sandia National Laboratories, Albuquerque Contract No. 45-7907
Nov. 21, 1990	Texaco/Callahan's Texaco, Bend, OR	RR321-33	Request for modification/rescission in the Texaco refund proceeding. If Granted: The August 29, 1990 Decision and Order (Case Nos. RF321-2966 and RF321-8408) issued to Callahan's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case number
11/19/90	Carberry Dist., Inc	RF326-168
11/19/90	Western Geophysical Co. of Amer	RF326-169
11/19/90	Langham Petroleum Corp	RF326-170
11/20/90	Pruitt's Shell Servicenter	RF315-10094
11/20/90	Jack Hagopian	RF304-12148
11/20/90	Richboro Arco	RF304-12149
11/23/90	Walburn's Arco	RF304-12150
11/23/90	Mac Smith Petroleum Products	RF326-171
11/16/90 thru 11/23/90	Crude Oil refund, applications received	RF272-84493 thru RF272-84582
11/16/90 thru 11/23/90	Gulf Oil refund, applications received	RF300-13653 thru RF300-13760
11/16/90 thru 11/23/90	Texaco refund, applications received	RF321-11431 thru RF321-11639

[FR Doc. 91-461 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed With the Office of Hearings and Appeals During the Week of October 26 through November 2, 1990

During the Week of October 26 through November 2, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 3, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
Oct. 16, 1990	Texaco/Jim's Texaco, Washington, DC	RR321-25	Request for modification/rescission in the Texaco refund proceeding. If Granted: The September 6, 1990 Decision and Order (Case No. RF321-1104, RF321-5741, RF321-5940) would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Oct. 29, 1990	Exxon/Williams Exxon, Memphis, TN	RR307-11	Request for modification/rescission in the Texaco refund proceeding. If Granted: The August 29, 1990 Decision and Order (Case No. RF307-9915) issued to Williams Exxon would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Oct. 29, 1990	Vigdor Schreibman, McLean, VA	LFA-0077	Appeal of an information request denial. If Granted: Vigdor Schreibman would receive access to records pertaining to programs that include the position of Paralegal Specialist.
Oct. 30, 1990	Texaco/Glaub's Texaco Service, Shelbyville, IN	RR321-26	Request for modification/rescission in the Texaco refund proceeding. If Granted: The September 28, 1990 Decision and Order (Case No. RF321-1558, RF321-7679) would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Nov. 1, 1990	Robert E. Caddel, North Augusta, SC	LFA-0078	Appeal of an information request denial. If Granted: Robert E. Caddell would receive access to all documents related to the selection process for the Department of Energy, Savannah River Announcement SR-90-029.
Nov. 1, 1990	The Crude Company, Washington, DC	LRD-0003	Motion for discovery. If Granted: Discovery would be granted to the Crude Company in connection with the amended theory of liability to the Proposed Remedial Order in Case No. KRO-0490.
Nov. 2, 1990	Texaco/Swain's Texaco, Decatur, GA	RR321-27	Request for modification/rescission in the Texaco refund proceeding. If Granted: The September 20, 1990 Decision and Order (Case Nos. RF321-8039 and RF321-9048 issued to Swain's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case number
10/29/90	L.M. Amick Inc.	RF315-10066
10/29/90	Detroit W 117th Shell	RF315-10067
10/29/90	Tyson Oil Inc #101	RF315-10068
10/29/90	Tyson Oil Inc #201	RF315-10069
10/29/90	Tyson Oil Inc #301	RF313-10070
10/29/90	Tyson Oil Inc #401	RF307-10071
10/29/90	Tyson Oil Inc #501	RF307-10072
10/29/90	Tyson Oil Inc #601	RF315-10073
11/01/90	Beech Service Station	RF315-10074
07/03/89	Harrell's Starflite Svc	RF314-77
07/03/89	Rolesville Oil Co.	RF314-78
07/03/89	By-pass Service Center	RF314-79
07/03/89	Star Mart Food Store #173	RF314-80
10/31/90	Nutley Street Exxon	RF307-10159
11/02/90	Napa Valley Petroleum, Inc.	RF315-10075
11/02/90	Carmichael Exxon	RF307-10160
10/26/90 thru 11/02/90	Crude oil refund, applications received	RF272-83814 thru RF272-84205
10/26/90 thru 11/02/90	Gulf oil refund, applications received	RF300-131187 thru RF272-13352
10/26/90 thru 11/02/90	Texaco refund, applications received	RF321-10542 thru RF321-10776
10/26/90 thru 11/02/90	Tesoro oil refund, applications received	RF326-73 thru RF326-122

[FR Doc. 91-463 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders by the Office of Hearings and Appeals During the Week of November 19 Through November 23, 1990

During the week of November 19 through November 23, 1990, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Motion for Discovery

The Crude Company, 11/20/90, LRD-0003; LRZ-0012; LRZ-0013

The Crude Company (TCC) filed a supplemental motion for discovery, a motion to be dismissed as a party, and a motion to supplement the record in connection with the Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to TCC on December 15, 1986. TCC's motions concern the PRO's amended theory of liability with respect to TCC. In considering TCC's discovery requests, the DOE determined that the information TCC was seeking from various parties and from the ERA was

aimed at substantiating factual allegations which were not directly relevant to the factual or legal allegations advanced by the ERA as a basis for the PRO's finding of liability against TCC. Accordingly, TCC's discovery requests were denied. The DOE also denied TCC's request to be dismissed as a party to the PRO, on the grounds that the ERA's findings established a *prima facie* case for TCC's liability. Finally, the DOE permitted TCC to supplement the record of the proceeding with a discussion of Constitutional objections to the ERA's theory of liability that were raised in a recent determination of the Federal Energy Regulatory Commission.

Refund Applications

A-1 Oil Co., et al., 11/23/90, RF272-65004, et al.

The DOE issued a Decision and Order denying the applications for crude oil overcharge refunds submitted by 15 applicants. Each of the applicants had been involved in retailing or reselling refined petroleum products during the crude oil price control period (August 19, 1973 through January 27, 1981). The DOE found that none of the applicants had demonstrated that it was injured by crude oil overcharges; none was therefore eligible for a refund.

Chickasha Fuel Supply, Inc., 11/19/90, RF272-13480, RD272-13480

The DOE issued a Decision and Order granting an Application for Refund filed by Chickasha Fuel Supply, Inc., in the subpart V crude oil special refund proceeding. The Applicant is a service company specializing in fractionation and drilling rigs. It was determined that the Applicant was an end-user of the refined petroleum products that formed the basis for its refund Application. The objection filed by a consortium of States was rejected and the Motion for Discovery by the States was denied.

Gulf Oil Corporation/Bulk Petroleum Corporation, 11/20/90, RF300-11598

The DOE issued a Decision and Order considering an Application for Refund filed by Bulk Petroleum Corporation from the Gulf Oil Corporation consent order fund. The DOE found that since Bulk was a wholly-owned subsidiary of Gulf during the consent order period, it would not be appropriate to grant the firm's refund request. The DOE also noted that Bulk had resold gasoline under the brand name E-Z Go, and that a number E-Z Go retailers had applied for refunds from the Gulf, Exxon and Shell consent order funds. DOE found that Bulk failed to make a reasonable effort to provide the Agency with information concerning the sources of its purchases of gasoline, even though under the terms of the Gulf consent order it was required to assist the DOE in the Gulf refund proceeding. Without that type of information the DOE was unable to make appropriate refunds to the E-Z Go applicants. The DOE therefore found that the Bulk refund request should also be denied on equitable grounds.

Gulf Oil Corporation/Shorter Avenue Gulf, 11/19/90, RF300-11303

The DOE issued a Decision and Order concerning an Application filed on behalf of Shorter Avenue Gulf by Resource Refunds, Inc. (RRI) in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The amount of the refund granted in this Decision, which includes both principal and interest, is $2,265. Because of the DOE's previous experience with RRI president Allin Means, as noted in Ken's *Professional Waterproofing*, 18 DOE ¶ 85,771 (1989), the DOE will mail the refund checks of Applicants represented by RRI directly to the Applicants.

Harry J. Holand, 11/20/90, RF272-77065

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Harry J. Holand based upon his purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The DOE determined that Mr. Holand's logging company, Holand Logging Company, was an end-user of petroleum products. Although Mr. Holand resold a small amount of gasoline and diesel fuel through gas pumps he owned in front of his logging company, Holand Logging Company itself consumed the majority of the petroleum products purchased. Because the size of his retail business and number of gallons resold were small the DOE determined that Harry is eligible to receive a refund for petroleum products consumed by Holand Logging Company. The refund granted to Harry J. Holand in this Decision is $333.

Hoffman-La Roche, Inc., 11/21/90, RF272-1038, RD272-1038

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Hoffman-La Roche, Inc., based on the firm's purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant was involved in the pharmaceutical and fine chemical industry and used the petroleum products in its business operations. Hoffmann-La Roche, Inc. was an end-user of the products claimed and was therefore presumed injured. A consortium of 30 states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicant's claim. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Applications for Refund was granted and the Motion for Discovery was denied. The refund granted to Hoffman-La Roche, Inc. is $164,644.

Postillico Brothers Asphalt Co., 11/21/90, RR272-58, RD272-58

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the subpart V crude oil proceeding by an asphalt manufacturing and road construction firm. The Application for Refund of Posillico Brothers Asphalt Co. (Posillico) in the subpart V crude oil proceeding had been dismissed when Possillico's attorney neglected to submit information requested by the DOE. The DOE decided to grant the Motion on the grounds of administrative efficiency and to reinstate Posillico's refund application. A group of States and Territories (States) objected to the application on the grounds that Posillico was able to pass through increased petroleum costs to its customers during the consent order period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury. Posillico was granted a refund of $25,011.

Shell Oil Co./Grace Distribution Services et al., 11/21/90, RF315-9154 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by Fuel Refunds, Inc. on behalf of fifteen applicants in the Shell Oil Company special refund proceeding. Not one of the applicants could substantiate his petroleum purchase volume; furthermore, not one could provide any evidence that the petroleum products he purchased originated with Shell. Accordingly, the fifteen Applications for Refund were denied.

State of Arkansas, 11/21/90, RF272-64288

The Department of Energy issued a Decision and Order granting refund monies from crude oil overcharge funds to the State of Arkansas based upon its purchases of gasoline during the period August 19, 1973 through January 27, 1981. Arkansas used records retained by its Department of Finance and Administration to calculate its gallonage claim. Arkansas' gallonage claim included the refined petroleum products purchsed by its state agencies except for the Arkansas Highway and Transportation Department and the Arkansas Game and Fish Commission. Arkansas was granted a refund of $29,580.

Texaco Inc./Douglas Gas & Oil et al., 11/20/90, RF321-2444 et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund filed in the Texaco Inc. special refund proceeding. Each of the applicants purchased directly from Texaco during the consent order period. The DOE found that each applicant had received product volume credits for Texaco "Delivery For Our Account" (DFOA) transactions. Consequently, the DOE determined that the applicants were not injured in those instances and therefore are ineligible to receive a refund for DFOA purchases. Seven applicants are resellers whose allocable shares are greater than $10,000. Each of these applicants elected to limit its claim to the larger of $10,000 or 50 percent of its approved allocable share up to $50,000. Ten applicants are resellers whose allocable shares are less than $10,000 and are eligible to receive a refund equal to the full amount of their allocable share. The sum of the refunds granted in this Decision is $339,818 ($283,701 principal and $56,117 interest).

Texaco Inc./Gulf States Asphalt Company, 11/21/90, RF321-3602

The DOE issued a Decision and Order denying an Application for Refund filed by Gulf States Asphalt Company in the Texaco Inc. special refund proceeding. Gulf States did not establish that it purchased asphalt products from Texaco during the applicable portion of the consent order for which it is claiming a refund. Nor did it supply any documentation that its purchases originated from Texaco. Since Gulf States did not submit information to substantiate its claim, it was found ineligible to receive a refund. Accordingly, this application was denied.

United States Sugar Corporation, 11/20/90, RF272-23812, RD272-23812

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to United States Sugar Corporation, based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant, a grower and refiner of sugar, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. A group of States and Territories filed Objections to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found the States' Objections to be without merit. Accordingly, the DOE granted U.S. Sugar a refund of $38,647. The States also filed a Motion for Discovery in connection with the application, which was denied for reasons discussed in earlier subpart V crude oil Decisions such as *Christian Hualand A/S*, 17 DOE ¶ 85,439 (1988).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Arco Super Service et al	RF304-11252	11/20/90.
Atlantic Richfield Company/Dennis Truck Rental Agency et al	RF304-10496	11/19/90.
Atlantic Richfield Company/Jensen Oil Company/Smith-Shafer Oil Company et al	RF304-2370	11/19/90.
Elam Construction, Inc	RF272-3991	11/23/90.
Farmers Cooperative Oil Association et al	RF272-362	11/23/90.
Glenn H. Brower et al	RF272-77008	11/20/90.
Gulf Oil Corp./George R. Brown Lease Service et al	RF300-11151	11/19/90.
Shell Oil Company/Daigle Oil Company	RF315-1151	11/21/90.
Texaco Inc./Carter Oil Supply, Inc. et al	RF321-3093	11/20/90.
Texaco Inc./Gregg County Oil Company, Inc. et al	RF321-4906	11/20/90.
Texaco Inc./Robert A. Stecher Oil Company et al	RF321-2524	11/19/90.
Texaco Inc./Swink-Quality Oil Company et al	RF321-2534	11/20/90.
Texaco Inc./United Parcel Service	RF321-2425	11/20/90.
Pan American World Airways, Inc	RF321-2476	
Pan American World Airways, Inc	RF321-3847	
New York Telephone Company	RF321-3490	
Texaco Inc./Wansley's Texaco et al	RF321-4201	11/20/90.

Dismissals

The following submissions were dismissed:

Name	Case No.
Amcon Products	RD272-72416.
Buena Vista City Schools	RF272-81541.
Chronister Oil Company	RF272-11917
Clifford D. Hatle	RD272-44615.
Connally Trucking Services	RF307-6694.
Dave's Exxon	RF307-8867.
E.J. Skelly	RF321-6338.
Jack Norton	RF272-7104.
Jiffy Auto Wash	RF321-10286.
L.B. Evans Texaco	RF321-10040.
Mid-America Dairymen, Inc.	RD272-00443.
Montezuma School	RF272-79332.
Oregon City School District	RF272-83175.
Patton Shell Service Station	RF315-3382.
Quitman County School System, Mississippi.	RF272-81945
Quitman County School System, Mississippi.	RF272-80843.
River Oaks Texaco	RF321-1260.
Robert D. Labes	LFA-0081
Springfield Terminal Railway	RF300-1812.
Strattanville Auto Truck Center	RR272-20.
William Rucker	RF307-4984.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 100 Independence Avenue, SW., Washington DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in "Energy Management: Federal Energy Guidelines," a commercially published loose leaf reporter system.

Dated: January 3, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-462 Filed 1-8-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL: 3896-2]

Public Water System Supervision Program: Program Revision for the State of Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Michigan is revising its approved State Public Water System Supervision Primacy Program. Michigan has adopted (1) drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987, (52 FR 25690) and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987, (52 FR 41534). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted within 30 days of the date of this Notice to the Regional Administrator, at the address shown below. If requests which indicate sufficient interest and/or significance are received by the end of this Notice period, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective 30 days from this Notice date.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Michigan Department of Public Health, Division of Water Supply, 3423 North Logan Street, P.O. Box 30195, Lansing, Michigan 48909, State Docket Officer: Mr. James K. Cleland, Phone: (517) 335-8326, and;

Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604-1586.

FOR FURTHER INFORMATION CONTACT: Jennifer Kurtz Crooks, Region V, Drinking Water Section at the Chicago address given above, telephone 312/886-0244, (FTS) 886-0244.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: December 14, 1990.

Valdas V. Adamkus,

Regional Administrator, EPA, Region V.

[FR Doc. 91-452 Filed 1-8-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 3, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0213.

Title: Section 73.3525, Agreements for removing application conflicts.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 238 responses, 7.03 hours average burden per response, 1,673 hours total annual burden.

Needs and Uses: Section 73.3525 requires applicants in a comparative proceeding for a broadcast station construction permit who enter into an agreement to withdraw, dismiss or amend an application to file with the FCC a joint request for approval of such agreement. A *Report and Order* in MM Docket No. 90-263, was adopted on 12/13/90. This action is taken as part of the Commission's continuing efforts to eliminate abuse of its processes. The R&O limits settlement payments that may be received by competing applicants for new broadcast stations, until commencement of the trial phase of the proceeding, to legitimate and prudent out-of-pocket expenses, and prohibits any payments thereafter. The data will be used by FCC staff to assure that the agreement is in compliance with its rules and regulations and section 311 of the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-487 Filed 1-8-91; 8:45 am]

BILLING CODE 6712-01-M

FCC Awards New Duplicating Services Contract to Downtown Copy Center (DCC)

December 20, 1990.

Effective January 2, 1991, Downtown Copy Center will begin performing under FCC Contract No. 015 for duplicating services.

Item costs for the new contract include: Public use coin-operated copies (8.5 × 11).	$.10 per page.

Public use metered copies (8.5 × 11).	.05 per page.
Operator assisted copies (8.5 × 11).	.06 per page.
Operator assisted copies (other sizes).	.20 per page.
Special filing surcharge copies.	.01 per page.
Special filing surcharge copies.	1.00 per diskette.
Microfiche to paper copies	.30 per page.
Microfiche to microfiche copies.	5.00 per fiche.
Diskette to diskette copies	4.00 per diskette.
Search and replace fee	15.00 per hour.
Retrieve and replace fee	15.00 per order.
Same day expedited service fee.	35.00 per order.
24 hour expedited service fee.	25.00 per order.
48 hour expedited service fee.	20.00 per order.
Telephone directory (picked-up).	1.00 each.
Telephone directory (mailed)	2.50 each.
FAX service	2.00 per page.

Highlights of interest to the public include:

New Equipment. The new contract requires that DCC install all new equipment at the start of performance of the base contract period. Copiers manufactured by Konica will be installed and serviced by factory trained personnel. A demo copier will be placed in room 535, 1919 M Street, NW., on December 28, 1990. The equipment will be demonstrated between the hours of 9:30 to 11:30 a.m. and 1:30 to 3:30 p.m. on that day. DCC personnel will be providing free instruction on the proper use of the copier.

DCC will occupy an office at 1919 M Street, NW., room 246, as well as offices at 1114 21st Street, NW., telephone (202) 452–1422. In Gettysburg, PA the location is 1270 Fairfield Road, suite 15, telephone (717) 337–1231.

For additional information you may contact Judy Boley at (202) 632–7513.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–486 Filed 1–8–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed; Lykes/Matson

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011311.

Title: Lykes/Matson Cooperative Working Agreement.

Parties: Lykes Bros. Steamship Co., Inc., Matson Navigation Company, Inc.

Synopsis: The proposed Agreement would enable the parties to settle the current litigation between them in the Maritime Administration/Maritime Subsidy Board Dockets S–815 and S–816. It would also provide for certain arrangements between the parties with respect to the trade between U.S. Atlantic and Gulf Coast ports and inland and coastal points via such ports, and all ports in the Republic of the Marshall Islands.

Agreement No.: 232–011312.

Title: Yangming and Hanjin Cross Space Charter and Sailing Agreement.

Parties: Hanjin Shipping Co., Ltd., Yangming Marine Transport Corp.

Synopsis: The proposed Agreement would authorize the parties to charter and cross-charter space on each other's vessels, to carry loaded or empty containers and non-containerized cargo on terms as they may agree and to rationalize schedules and sailings in the trade between ports in Asia and ports in Australia and Europe via Asian ports and United States East Coast ports. The parties may also jointly utilize terminal facilities and negotiate for stevedore and other accessorial services. The Agreement will be effective for an initial two-year term.

Agreement No.: 203–011313.

Title: Sea-Land/ISC–Waterman-CGL Cooperative Working Agreement.

Parties: Sea-Land Service, Inc., International Shipholding Corporation, Waterman Steamship Corporation, Central Gulf Lines, Inc.

Synopsis: The proposed Agreement would enable the parties to settle litigation arising out of the Maritime Administration's May 3, 1990, decision in Docket No. S–859 (*Sea-Land Service, Inc.* v. *Skinner, Secretary of Transportation, et al.*). The Agreement would also provide for continuation of Waterman's present subsidized service on Trade Routes 17 and 18 (U.S. Atlantic and Gulf/Suez to Indonesia).

Dated: January 3, 1991.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 91–361 Filed 1–8–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Philippine Commercial International Bank Manila, The Philippines; Proposal To Receive Money for Transmission to a Foreign Country

Philippine Commercial International Bank, Manila, The Philippines ("PCI Bank"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage *de novo* in receiving money for transmission to a foreign country through its wholly-owned subsidiary in organization, PCI Express Padala, Inc., Los Angeles, California ("Express Padala"). Express Padala would apply to the California Superintendent of Banks for a license to engage in the business of money transmission and would engage in no other activity.

PCI Bank proposes to establish a subsidiary to engage in money transmission pursuant to California state law. Cal. Fin. Code 1800–1827 (West 1989). Express Padala, after becoming a licensed money transmitter, would receive money at its office or offices in California and would promise to deliver a specific sum of Philippine pesos or United States dollars to a designated payee in the Philippines. Under California law, money received for transmission to a foriegn country must be forwarded to that country within 10 days of its receipt in California. Cal. Fin. Code 1810. PCI Bank proposes to engage in this activity throughout California.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with the Board's approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8).

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly

well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Association* v. *Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 **Federal Register** 806 (1984).

PCI Bank contends that the proposed activity is closely related to banking because money transmission is commonly considered a part of the commercial banking business. PCI Bank cites as support a California law providing that commercial banks in California may buy and sell "foreign coins" for customers. Cal. Fin. Code 105. As further support, PCI notes that commercial banks in California are specifically exempt from the licensing requirements and other restrictions of California's money transmission law. Cal. Fin. Code 1800.3(b)(1). In addition, PCI Bank maintains that the Board in Midland Bank PLC, 74 Federal Reserve Bulletin 252 (1988), has approved a similar activity, involving the issuance of wire transfers payable in foreign currencies unlimited as to face amount, for a subsidiary of a foreign bank.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). PCI Bank contends that Express Padala's *de novo* participation in the Philippine money transmission business would increase competition and would result in greater convenience to customers and gains in efficiency.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Comments are requested on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on these questions must be accompanied, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not after than February 7, 1991.

Board of Governors of the Federal Reserve System, January 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-356 Filed 1-8-91; 8:45 am]

BILLING CODE 6210-01-M

People's Bank of Brevard, Inc., 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 January 28, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *People's Bank of Brevard, Inc.*, Cocoa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of People's Bank of Brevard, Cocoa, Florida, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Liberty Bancorporation*, Durant, Iowa; to acquire 100 percent of the voting shares of Bennett Bancshares, Inc., Bennett, Iowa, and thereby indirectly acquire Bennett State Bank, Bennett, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Shawnee Bancorp, Inc.*, Harrisburg, Illinois; to become a bank holding company by acquiring at least 98.5 percent of the voting shares of First Bank and Trust Company, Harrisburg, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *American Community Bank Group, Inc.*, Minneapolis, Minnesota; to acquire 98.2 percent of the voting shares of Pierce County Bank & Trust Company, Ellsworth, Wisconsin.

Board of Governors of the Federal Reserve System, January 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-357 Filed 1-8-91; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancorporation Thrift and Sharing Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 that notice or to the offices of the Board of Governors. Comments must be received not later than January 22, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation Thrift and Sharing Plan*, Appleton, Wisconsin; to acquire 20 percent of the voting shares of Valley Bancorporation, Appleton, Wisconsin, and thereby indirectly acquire Valley Bank, Madison, Wisconsin; Valley Bank, Appleton, Appleton, Wisconsin; Valley Bank Northeast, Green Bay, Wisconsin; Valley Bank, Janesville, Janesville, Wisconsin; Valley Bank Southwest, Spring Green, Wisconsin; Valley Bank, Menomonie, Menomonie, Wisconsin; Valley Bank, Southeast, Hartland, Wisconsin; Valley Bank Thiensville Mequon, Thiensville, Wisconsin; Valley of Shawano, N.A., Shawano, Wisconsin; Valley First National Bank of Rhinelander, Wisconsin; Valley Bank, Kewaskum, Wisconsin; Valley Bank of Oshkosh, Oshkosh, Wisconsin; Valley First National Bank of Beaver Dam, Beaver Dam, Wisconsin; Valley Bank, South Central, N.A., Watertown, Wisconsin; Valley First National Bank of Ripon, Ripon, Wisconsin; and Valley Bank, Milwaukee, Greenfield, Wisconsin.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Shirrel Duncan*, Lake Ozark, Missouri; to acquire an additional 21.93 percent of the voting shares of First Centre Bancshares, Inc., Osage Beach, Missouri, for a total of 32.51 percent and thereby indirectly acquire First Bank Centre, Osage Beach, Missouri.

Board of Governors of the Federal Reserve System, January 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-358 Filed 1-8-91; 8:45 am]

BILLING CODE 6210-01-M

Valley Financial Services, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Financial Services, Inc.*, Mishawaka, Indiana; to acquire Northern Indiana Savings Association, F.A., Chesterton, Indiana, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-359 Filed 1-8-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESSES: Copies are available for public examination at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 1989, through September 30, 1990:

Center for Biologics Evaluation and Research: Blood Products Advisory Committee, Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research: Anti-Infective Drugs Advisory Committee, Antiviral Drugs Advisory Committee, Arthritis Advisory Committee, Drug Abuse Advisory Committee, Oncologic Drugs Advisory Committee, Peripheral and Central Nervous System Drugs Advisory Committee.

Center for Devices and Radiological Health: Gastroenterology-Urology Devices Panel, Ophthalmic Devices Panel.

Center for Veterinary Medicine: Veterinary Medicine Advisory Committee.

Annual reports are available for public inspection at: (1) The Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 133, Madison Bldg., 101 Independence Ave. SE., Washington, DC; (2) the Department of Health and Human Services Library, Rm. G-619, 330 Independence Ave. SW., Washington, DC, on weekdays between 9 a.m. and 5:30 p.m.; and (3) the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 2, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-404 Filed 1-8-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0402]

Health Care Plasma Center, Inc., and Medical Plasma, Inc.; Revocation of U.S. License Nos. 1039 and 995

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment licenses (U.S. License Nos. 1039 and 995) and the product licenses issued to Health Care Plasma Center, Inc., and Medical Plasma, Inc., respectively, for the manufacture of Source Plasma. The above establishments failed to respond to the notice of opportunity for hearings on the proposed license revocations published in the **Federal Register** of July 16, 1990 (55 FR 28941).

DATES: The revocation of the above establishment and product licenses is effective on January 9, 1991.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines, Center for Biologics Evaluation and Research (HFB-132), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA is revoking the establishment license (U.S. License No. 1039) and product license issued to Health Care Plasma Center, Inc., with facilities at 634 Whitehall St. SW., Atlanta, GA 30310, and 2124 West Pratt St., Baltimore, MD 21223, for the manufacture of Source Plasma. FDA is also revoking the establishment license (U.S. License No. 995) and product license issued to Medical Plasma, Inc., with facilities at 171 Simpson St., Atlanta, GA 30313, and 702 South Sixth Ave., Tucson, AZ 85701, for the manufacture of Source Plasma. These licenses are being revoked concurrently because the same person is designated as the Responsible Head of both establishments.

On-site inspections conducted by FDA employees between November 1987 and February 1988 had revealed that the Atlanta, GA, and Tucson, AZ, facilities had ceased operations. The licenses for the Baltimore, MD, facility had been suspended by FDA in May 1988 for numerous deviations from the applicable biologics regulations. Subsequent FDA on-site inspections in September and November 1989, verified that all four facilities remained out of operation.

Based on the inability of authorized FDA employees to conduct inspections of these facilities, proceedings for the revocation of the above licenses were initiated under 21 CFR 601.5 (b)(1) and (b)(2). FDA issued a letter dated November 21, 1989, to the Responsible Head at the Cartersville, GA, address of record. The letter served notice of FDA's intent to revoke the above licenses and further served notice of opportunity for hearings on the proposed license revocations. The letter was undeliverable at that address and was returned to FDA. FDA subsequently reissued, by certified mail, a second such letter, dated December 21, 1989, to the Responsible Head, at the same address of record. That letter was unclaimed, undeliverable at that address, and subsequently returned to FDA.

Pursuant to 21 CFR 12.21(b), FDA published, in the **Federal Register** of July 16, 1990 (55 FR 28941), a notice of opportunity for hearings on proposals to revoke the licenses of the above establishments. In the notice, FDA explained the basis for the proposed license revocations and noted that documentation in support of the license revocations had been placed on filed for public examination with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. The notice provided the establishments with 30 days to submit written requests for hearings and with 60 days to submit any data justifying hearings. The notice further provided other interested persons with 60 days to submit written comments on the proposed revocations.

Neither establishment responded within the 30-day period of time with a written request for hearings. That 30-day period of time, prescribed in the above notice of opportunity for hearings and in the regulations, may not be extended. No other interested persons submitted written comments on the proposed revocations within the prescribed 60-day period of time.

Accordingly, under 21 CFR 12.38 and the Public Health Service Act (sec. 351 (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the establishment licenses (U.S. License Nos. 1039 and 995) and the product licenses issued to Health Care Plasma Center, Inc., and Medical Plasma, Inc., respectively, for the manufacture of Source Plasma are revoked effective January 9, 1991.

This notice is issued and published under 21 CFR 601.8.

Dated: January 2, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-405 Filed 1-8-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Hearing; Reconsideration of Disapproval of New York State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on February 5, 1991, in room 3809, 26 Federal Plaza, New York City, New York to reconsider our decision to disapprove New York State Plan Amendment 90-14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 24, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove New York State Plan amendment (SPA) number 90-14.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered.

If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

New York SPA 90–14 contains the State's current fee-for-service payment rates for obstetrical and pediatric practitioner services, date on Medicaid services for children, and a comparison of the number of enrolled physicians/practitioners as a percentage of licensed physicians/practitioners.

The issue in this matter is whether SPA 90–14 meets the statutory provisions of section 1926 of the Act. The provisions require that the Secretary determine that the State is in compliance with section 1902(a)(30(A) of the Act based upon the data submitted by the State.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States must also provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(3)(A) of the Act).

OBRA 89 was passed on December 19, 1989, and HCFA is developing its final policy concerning what is required to determine that the State is in compliance with section 1902(a)(30(A) of the Act. HCFA has, however, initially determined that for obstetrical and pediatric rate SPA's to be approvable, they must include the following:

1. Payment rates for 1990 and 1991 for those obstetrical and pediatric services covered under the State plan. Pediatric rates must be specified by procedure and HCFA recommends the same format be followed for obstetrical services;

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to Health Maintenance Organizations (HMOs) under 1903(m) of the Act take into account the payment rates specifie in number 1 above.

HCFA has also developed several guidelines that, if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid Manual revision dated March 26, 1990.

Based upon HCFA's review of the data submitted, HCFA determined that the New York amendment does not comply with the statutory requirements of section 1926, and, thus, also does not comply with section 1902(a)(30)(A). The State has argued that it had met the statute under guideline 1 of the draft State Medicaid Manual revision, which permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. The data submitted, however, are insufficient to support a finding that obstetrical and pediatric services are available to Medicaid recipients at least to the extent such services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Act.

The State used the Department of Social Services Regions to document access, based on the percentage of Medicaid enrolled obstetric practitioners to total obstetric practitioners and the percentage of Medicaid enrolled pediatric practitioners to total pediatric practitioners. Although the State claims access is met, we believe the State's data have not demonstrated that the geographic areas used by the State are consistent with the geographic areas within which the general population would normally access services.

New York also provided "other pertinent information." While these data demonstrate the State's commitment to children, they do not, in themselves, comply with the statute. Generally, the State implies that it meets statutory requirements on the basis of availability; however, HCFA believes the data submitted are insufficient to support a finding that obstetrical and pediatric services are available to Medicaid recipients at least to the extent such services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Act.

HCFA also received a letter from the State in support of the amendment. It included a Report to the Legislature, dated August 7, 1989, which analyzes whether or not physician and nurse midwife participation increased based upon the January 1, 1988, fee increases for obstetrical care services (antepartum, delivery and postpartum) to Medical Assistance clients. The report showed an increase in the number of private practicing physicians and nurse midwives for the first 6 months of 1988. The increases were limited to certain obstetrical procedures and appear to have been a one time phenomenon. The rates have not changed since January 1, 1988.

New York's submittal did not include any data relating to how rates established for payments to HMOs under 1903(m) of the Act taken into account fee-for-service obstetrical and pediatric payment rates. This is required by section 1926(a) of the Act. Consequently, the amendment was disapproved.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Cesar A. Perales,
Commissioner,
New York Department of Social Services, 40 North Pearl Street, Albany, New York 12243–0001.

Dear Mr. Perales: I am responding to your request for reconsideration of the decision to diapprove New York State Plan Amendment (SPA) 90–14.

The amendment contains the State's current fee-for-service payment rates for obstetrical and pediatric practitioner services, data on medicaid services for children, and a comparison of the number of enrolled physicians/practitioners as a percentage of licensed physicians/practitioners.

The issue in this matter is enther SPA 90–14 meets the statutory provisions of section 1926 of the Social Security Act (the Act). The provisions require that the Secretary determine that the State is in compliance with section 1902(a)(30)(A) of the Act based upon the data submitted by the State.

I am scheduling a hearing on your request for reconsideration to be held on February 5, 1991, at 10 a.m. in Room 3809, 26 Federal Plaza, New York, New York. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements

present any problems, please contact the docket Clerk. In order to facilitiate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 2, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-352 Filed 1-8-91; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions and Delegations of Authority

Part F. of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 55, No. 122, p. 25888, dated Monday, June 25, 1990) is amended to reflect a change within the Office of the Associate Administrator for Management, Office of Budget and Administration, Office of Acquisitions and Grants (OAG). The change reorganizes the division and subordinate components within OAG. A new Division of Health Standards Contracts is established to assume activities previously performed in the Division of Peer Review Contracts. These changes will address the increasing workload of Peer Review and End-Stage Renal Disease contracts.

The specific amendments to Part F. are described below:

• Section FH.20.A.4.a., Division of Peer Review Contracts (FHA71) is deleted in its entirely and replaced with the following new Section FH.20.A.4.a., Division of Health Standards Contracts (FHAl71):

a. Division of Health Standards Contracts (FHA71)

• Provides acquisition services in support of HCFA's Peer Review Organization (PRO) and End Stage Renal Disease (ESRD) contracts, including guidance and assistance to the Health Standards and Quality Bureau.

• Solicits, negotiates, analyzes, and coordinates proposal evaluations and prepares award documents.

• Conducts post-award coordination, administration (including progress report and voucher monitoring), modifications, and all contract closeout functions.

• Provides guidance and assistance to incumbent and prespective contractors.

• Assists in the direction of related procurement preference programs wherever applicable.

• Participates in monitoring PRO/ESRD annual contract plans and prepares and submits required reports

• As required, on specific PRO/ESRD contract actions, serves as liaison and provides information and documentation to the Department, Congress and other Government agencies.

• Develops PRO/ESRD specific policies and procedures and provides guidance to PRO/ESRD program offices.

• Section FH.20.A.4.b., Division of Contracts and Grants (FHA72) is deleted in its entirty and replaced with the following new Section FH.20.A.4.b, Division of Contracts and Grants (FHA72):

b. Division of Contracts and Grants (FHA72)

• Provides contracting support, guidance, and assistance to all HCFA components and prospective contractors, Issues policy and procedural guidance to program staff in contracts and grants areas.

• Assists in the direction of related small, disadvantaged, 8(a) (minority contracts), labor surplus area, and women-owned business contracting efforts. Provides HCFA project (discretionary) grants and cooperative agreements services.

• Solicits, analyzes, and coordinates proposal evaluations and negotiates, prepares, and awards contracts. Directs the post-award coordination, administration and modification, and participates in the close-out of contracts.

• Serves as the HCFA liaison with the Department's Office of Procurement, Assistance and Logistics, the Office of the General Counsel, other Department of Health and Human Services' components, Congress, other Government agencies, and private parties in contract, grant, and cooperative agreement matters.

• Monitors the annual contract plans and assists in the preparation and submittal of required reports. Provides HCFA project (discretionary) grants and cooperative agreements services.

• Receives applications, operates the application referral system, reviews the system for compliance with law, policies, and cost principles, performs site visits, obtains clearances, negotiates and issues grant awards, maintains funds control records and master grant files.

• Provides HCFA small purchasing services, guidance, and assistance to all HCFA components.

Dated: December 6, 1990.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 91-351 Filed 1-8-91; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval a new information collection for the Administration on Aging's Readership Survey for the Aging Magazine.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Readership Survey for Aging Magazine.

OMB No.: N/A.

Description: The purpose of this survey is to: (a) Determine the readers' opinions of the contents, quality, and relevance of Aging magazine and (b) ascertain the readers' interests, concerns, and informational needs in the field of aging. The results of the survey would enable AoA to identify the core audience of the magazine and its preferences and, on the basis of this information, restructure the magazine's format and contents.

Annual Number of Respondents: 400.

Annual Frequency: 1.

Average Burden Hours Per Response: 0.5.

Total Burden Hours: 200.

Dated: December 27, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 91-362 Filed 1-8-91; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval a new information collection for title IV-B and title IV-E of the Social Security Act: Data Collection for Foster Care and Adoption. The proposed rule on adoption and foster care data collection was published on September 27, 1990 (55 FR 39540).

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, D.C. 20503. (202) 395-7316.

Information on Document

Title: Title IV-B and title IV-E of the Social Security Act: Data Collection for Foster Care and Adoption.

OMB No.: N/A.

Description: The proposed data collection system is designed to collect uniform, reliable information on all children, under the authority of the State title IV-B/IV-E agency, who are in foster care or who are adopted. The collection of adoption and foster care data is mandated by section 479 of the Social Security Act. The Department will use this information to respond to Congressional requests for current data on children in foster care or who have been adopted and to respond to questions and requests from other departments and agencies, the General Accounting Office, the Office of Inspector General, national advocacy organizations, States and others.

Annual Number of Respondents: 1,251.

Annual Frequency: 4.

Average Burden Hours Per Response: 165.44.

Total Burden Hours: 827,884.

Dated: December 21, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 91-363 Filed 1-8-91; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

National Cancer Institute; Meeting—Board of Scientific Counselors, Division of Cancer Prevention and Control

Pursuant to Pubic Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, January 31, 1991, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on January 31 from 8:30 a.m. to approximately 3 p.m. to discuss administrative details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on January 31 from 3 p.m. to approximately 5 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Executive Plaza-North, room 318, National Institutes of Health, Bethesda, Maryland 20892 (301-496-8526), upon request.

Dated: December 31, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-381 Filed 1-8-91; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

The Social Security Administration (SSA) announces a meeting of the Supplemental Security Income (SSI) Modernization Project (the Project). This notice also describes the proposed agenda, purpose, and structure of the Project.

DATES: February 6-7, 1991, 8:30 a.m. to 5 p.m..

ADDRESSES: The Scripps Home Auditorium, 2212 North El Molina Av., Altadena, CA 91001.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, Rm. 300, Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-3571.

SUPPLEMENTARY INFORMATION: SSA is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation for over 16 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy, aged, blind, and disabled.

To begin this dialogue, the Commissioner has involved 25 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Like members of the public attending this meeting, the experts will be able to express their individual views and concerns about the SSI program. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program.

This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

The meeting is open to the public to the extent that space is available. Public officials, representatives of professional and advocacy organizations, concerned citizens, and SSI applicants and recipients may speak and submit written comments on the issues to be discussed. (This is the fifth in a series of meetings to be held throughout the country. Each of these meetings will also be open to the public. All meetings will be announced in the **Federal Register**. If you are interested in the Project but cannot attend the meeting on February 6–7, 1991, please call the Project staff at (301) 965–3571 so we may notify you of future meetings.)

There will be a public comment portion of the meeting beginning in the afternoon of February 6, 1991. A second public comment session will be held on February 7, 1991, in the morning. In order to ensure that as many individuals as possible are given the opportunity to speak in the time allotted for public comment, each individual will be limited to a maximum of 5 minutes. Because of the time limitation, individuals are requested to present comments in their order of importance. Each speaker should provide 12 copies of their written comments to ensure full understanding and consideration of their concerns. We welcome written comments that provide a detailed and elaborative discussion of the subjects presented orally, as well as further written comments on other issues not presented orally. Individuals unable to attend the meeting also may submit written comments. Written comments will receive the same consideration as oral comments.

To request to speak, please telephone the Project Staff, at (301) 965–3571, and provide the following: (1) Name; (2) business or residence address; (3) telephone number (including area code) during normal working hours; (4) capacity in which presentation will be made; e.g., public official, representative of an organization, or citizen; and (5) which day desired. Requests must be received by January 29, 1991. Late requests to speak will be honored only if time permits.

Summaries of the meeting will be available at no charge. A transcript of the meeting will be available at cost. Summaries and transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

Dated: January 2, 1991.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 91–448 Filed 1–8–91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-250-4370-02]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Wild Horse and Burro Advisory Board.

SUMMARY: Notice is hereby given that the Wild Horse and Burro Advisory Board will meet in Las Vegas, Nevada, on February 4 and Laughlin, Nevada, February 5–7, 1991. On February 4, the Board will meet at the Howard Johnson Plaza Suite Hotel, 2080 East Flamingo Road, Las Vegas, from 8 a.m. to 2 p.m. The Board will depart from the hotel at 2 p.m. for a field tour of the Spring Mountains en route to Laughlin. On February 5, the Board will take an all-day field tour of the Black Mountain Herd Management Area. The Board will meet in Laughlin at the Flamingo Hilton Hotel, 1900 South Casino Drive, from 8 a.m. to 4:45 p.m. on February 6 and from 8 a.m. to 11:45 a.m. on February 7.

DATES: February 4–7, 1991.

ADDRESSES: Director (250), Bureau of Land Management, Premier Building—room 901, 1849 C Street, NW., Washington, DC 20240.

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

SUPPLEMENTARY INFORMATION: The purpose of the Board is to advise the Secretary of the Interior, the Director, Bureau of Land Management (BLM), the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild free-roaming horses and burros on the Nation's public lands. At this meeting, the Board will focus on the issues of planning, censusing, and monitoring wild horse and burros herds in southern Nevada (February 4) and Arizona and southern California (February 5–7).

The meeting will be open to the public. Members of the public may make oral statements to the Board on February 6, 1991, starting at 2:30 p.m. Persons wishing to make statements should notify the BLM at the address or telephone number given above by January 25, 1991, so that time can be scheduled for their presentations. Depending on the number of speakers, it may be necessary to limit the length of each presentation. Speakers should address specific wild horse and burro issues related to planning and management of wild horse and burro herds in Arizona, southern California, and southern Nevada. Speakers must submit a written copy of their testimony to the address given above or bring a written copy to the meeting. Persons who wish to provide testimony but who are unable to attend the meeting may submit a written statement to the address above. Members of the public who wish to attend the field trips on February 4 and 5 must make their own arrangements for transportation.

The proposed agenda for the meeting is:

Monday, February 4: Morning: Opening remarks and approval of minutes; briefings by BLM and Forest Service on managing wild horses and burros in southern Nevada; statements by interested organizations and agencies.

Afternoon: Open discussion by the Board; field tour of Spring Mountains, 2 p.m. to 6 p.m.

Tuesday, February 5: All-day field tour of the Black Mountain Herd Management Area with lunch at Oatman, Arizona, at 11:45 a.m.

Wednesday, February 6: Morning: Discussion with affected agencies and organizations about managing wild burros in the Black Mountains.

Afternoon: Discussion of wild horse and burro management in the California Desert; public comments beginning at 2:30 p.m.

Thursday, February 7: Morning: Open discussion by the Board; planning for next meeting.

Cy Jamison,

Director, Bureau of Land Management.

[FR Doc. 91–395 Filed 1–8–91; 8:45 am]

BILLING CODE 4310-84-M

[WY-920-41-5700; WYW104496]

Proposed Reinstatement of Terminated Oil and Gas Lease

December 31, 1990.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW104496 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the

required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW104496 effective June 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

F.R. Speltz,

Land Law Examiner.

[FR Doc. 91-407 Filed 1-8-91; 8:45 am]

BILLING CODE 4310-22-M

[CA-010-01-4212-11; CA 27582]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; California

The following public lands in Kern County, California have been examined and found suitable for classification for conveyance to the County of Kern under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for conveyance until at least 60 days after publication of this Notice in the **Federal Register.**

Mount Diablo Meridian

T. 28 S., R. 27 E.,
Sec. 6: SE¼ NE¼.
Containing 40 acres AP #092-040-05.

The County of Kern proposes to use the lands for a conservation camp facility. The camp will be administered jointly by Kern County, the California Department of Forestry and California Department of Corrections and will provide 120 inmate fire fighters for initial attack fire crews on wildland fires. Crews will also be utilized for development of fire defense improvements, vegetation management and hazard reduction projects, and provide local, state and federal agencies labor to perform conservation oriented projects.

The lands are not needed for specific Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of patent issuance.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, until February 25, 1991, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Area Manager, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, CA 93308. Any adverse comments will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: November 14, 1990.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 90-2 Filed 1-8-90; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-754681

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to purchase in foreign commerce and import one pair of wild-caught baby Asian elephants (*Elephas maximus*) from the Department of Wildlife and National Park, Malaysia, for exhibition purposes and future breeding.

PRT-753368

Applicant: University of Alabama at Birmingham, Birmingham, AL.

The applicant requests a permit to purchase two female white-collared mangabeys (*Cercocebus torquatus atys*) from Yerkes Regional Primate Research Center, Emory University, Atlanta, Georgia, for use in research involving the study of Simian Immunodeficiency Virus at the University of Alabama, Birmingham. Blood will be drawn from the primates for the separation of blood lymphocytes for in vitro assays.

PRT-753364

Applicant: Randy P. Fedak, San Diego, CA.

The applicant requests a permit to purchase one captive-hatched radiated tortoise (*Geochelone radiata*) from Mr. R.J. Brown of Tampa, Florida, for captive breeding purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Dr., Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 4, 1991.

Karen Rosa,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 91-428 Filed 1-8-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 29, 1990. Pursuant to § 60.13 of 36 CFR 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park

Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 24, 1991.

Carol D. Shull,

Chief of Registration, National Register.

IOWA

Dallas County

Mosher Building, 1017 Railroad, Perry, 90002192

MASSACHUSETTS

Hampden County

Springfield Street Historic District, Roughly bounded by Springfield St., Gaylord St. and Fairview Ave., Chicopee, 90002217

MINNESOTA

Chisago County

Point Douglas to Superior Military Road: Deer Creek Section (Minnesota Military Roads MPS), Off Co. Hwy. 16, St. Croix Wild River State Park, Amador Twp., Taylors Falls vicinity, 90002200

Crow Wing County

Red River Trail: Crow Wing Section (Minnesota Red River Trails MPS), Off Co. Hwy. 27, Crow Wing State Park, Ft. Ripley Twp., Baxter vicinity, 90002201

Goodhue County

Mendota to Wabasha Military Road: Cannon River Section (Minnesota Military Roads MPS), Cannon Bottom Rd., Red Wing, 90002199

Pennington County

Red River Trail: Goose Lake Swamp Section (Minnesota Red River Trails MPS), Off Co. Hwy. 10, S of Goose Lake Swamp, Polk Centre Twp., St. Hilaire vicinity, 90002202

Winona County

East Second Street Commercial Historic District, 66–78 Center, 54–78 E. Second and 67–71 Lafayette Sts., Winona, 90002198

NEVADA

Clark County

Las Vegas High School Neighborhood Historic District, Roughly bounded by E. Bridger, S. 9th, E. Gass and S. 6th Sts., Las Vegas, 90002204

NORTH CAROLINA

Guilford County

Oakwood Historic District, 100–300 blocks Oakwood St., High Point, 90002197

NORTH DAKOTA

Grand Forks County

Avalon Theater, 210 Towner Ave., Larimore, 90002191

OHIO

Brown County

Georgetown Public School, 307 W. Grant Ave., Georgetown, 90002215

Butler County

German Village Historic District, Roughly bounded by Vine, Dayton, Riverfront Plaza and Martin Luther King, Jr. Blvd., Hamilton, 90002216

Defiance County

Latty, Judge Alexander, House, 718 Perry St., Defiance, 90002214

Preble County

Lange Hotel, 1 W. Dayton St., West Alexandria, 90002213

Sandusky County

Soldiers Memorial Parkway and McKinley Memorial Parkway, Soldiers Memorial Pkwy. and McKinley Memorial Pkwy., Fremont, 90002212

Wood County

Simmons, Edwin H., House, 10302 Fremont Pike, Perrysburg, 90002211

OKLAHOMA

Cleveland County

Santa Fe Depot, Jct. of Abner Norman Dr. and Comanche St., Norman, 90002203

SOUTH DAKOTA

Brookings County

Michael, Herman F., Gothic Arched-Roof Barn, 5 mi. N and 3 mi. W of White, White vicinity, 90002207

Custer County

Ayres, Lonnie and Francis, Ranch, 2 mi. SE of Fourmile Jct. on US 16, Custer vicinity, 90002208

Fourmile School No. 21, ¼ mi. S of Fourmile Jct. on US 16, Custer vicinity, 90002208

Roetzel, Ferdinand and Elizabeth, Ranch, 1 mi. NW of jct. of Saginaw and Roetzel Rds., Custer vicinity, 90002210

VIRGINIA

Fauquier County

Monterosa, 343 Culpeper St., Warrenton, 90002193

Highland County

McClung Farm Historic District, Address Restricted, McDowell vicinity, 90002195

Isle of Wight County

Scott, William, Farmstead, VA 603 E of jct. with VA 600, Windsor vicinity, 90002194

Middlesex County

Urbanna Historic District, Roughly bounded by Virginia St., Rappahannock Ave., Watling St. and Urbanna Cr., Urbanna, 90002196

Montgomery County

Madison Farm Historic and Archeological District (Montgomery County MPS), E and W sides of US 460 N of jct. with VA 633, Elliston vicinity, 90002190

Northumberland County

Howland Chapel School, Jct. of VA 201 and VA 642, Heathsville vicinity, 90002206

Westmoreland County

Rochester House, Co. Rt. 613, 1 mi. NE of Lyells off VA 3, Lyells vicinity, 90002205.

[FR Doc. 91–402 Filed 1–8–91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-319]

Certain Automotive Fuel Caps and Radiator Caps and Related Packaging and Promotional Materials; Notice of Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Transworld Products, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 4, 1991.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW. Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than January 22, 1991. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reason why confidential treatment should be granted. The Commission will either

accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

By order of the Commission.

Issued: January 4, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-458 Filed 1-8-91; 8:45 am]

BILLING CODE 702-02-M

[Investigation No. 337-TA-314]

Certain Battery-Powered Ride-On Toy Vehicles and Components Thereof; Notice of Decision to Review Certain Portions of an Initial Determination; Request for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of an initial determination (ID) issued on December 5, 1990, by the presiding administrative law judge (ALD) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1087.

SUPPLEMENTARY INFORMATION: On May 15, 1990, Kransco filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation of certain battery-powered ride-on toy vehicles and components thereof. The complaint alleged infringement of claims of five U.S. patents owned by Kransco: claim 1 of U.S. Letters Patent Des. 299,666; claim 1 of U.S. Letters Patent Des. 292,009; claims 1 through 6 of U.S. Letters Patent 4,709,958; claims 1. 2, 4, 8, 9, 16, and 19 of U.S. Letters Patent 4,558,263; and claims 1 through 4 of U.S. Letters Patent 4,639,646. The Commission instituted an investigation into the allegations of Kransco's complaint and published a notice of investigation in the **Federal Register**. 55 FR 25179 (June 20, 1990).

On October 16, 1990, Kransco filed a Motion for Summary Determination pursuant to Commission interim rule 210,50. The Commission investigative attorney (IA) cross-moved for a summary determination of no violation with respect to one of the five patents at issue.

On December 5, 1990, the presiding ALJ issued an ID concerning the motions for summary determination. The ID granted Kransco's motion in its entirety, denied the IA's cross-motion, and concluded that a section 337 violation exists with respect to each of the five patents at issue.

No petitions for review of the ID were filed, and no agency comments were received. Having examined the record in the investigation, including the ID, the Commission has determined on its own motion to review section 1 of the ID, titled "Importation of the Products in Issue," and not to review the remainder of the ID. The Commission is particularly interested in the following issues:

1. Whether a section 337 violation may properly be based on shipments of infringing goods to the United States that have been solicited by or on behalf of the complainant.

2. Whether the shipment Chien Ti Enterprise Co., Ltd. of one Jeep model and one Racer model to J & L Meyer, Inc., satisfies the requirement of section 337(a)(1)(B) that there be an "importation into the United States, [a] sale for importation, or [a] sale within the United States after importation by the owner, importer, or consignee. * * *"

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in a respondent being required to cease and disist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submission s that address the form of remedy, if any, that should be ordered.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist order have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasuryl. The Commission is therefore interestred in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. Additionally, the parties to the investigation, interested government agencies, and any other persons are encouraged to file written submissions on remedy, the public interest, and bonding. Kransco and the IA are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Written submissions, including any proposed orders, must be filed by February 4, 1991, and reply submissions must be filed by February 14, 1991.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requeste should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confiderntial treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Additional information

Copies of nonconfidential versions of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: January 4, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-457 Filed 1-8-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-457 (Final)]

Heavy Forged Handtools From the People's Republic of China; Commission Determination To Conduct a portion of a Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of Woodings-Verona, petitioner, and Shandong Machinery Import & Export Corporation and Tianjin Machinery Import & Export Corporation, respondents in the above-captioned final investigation, the Commission has determined to conduct a portion of its hearing scheduled for January 3, 1991 *in camera. See* Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Abigail A. Shaine, Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1094. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that both petitioner and respondents have demonstrated circumstances justifying closure of the hearing for the presentation and discussion of certain company-specific business proprietary information that is relevant to the Commission's analysis under the Tariff Act of 1930, as amended. The Commission has determined that a full discussion of the domestic industry and of the indicators that it examines in assessing material injury by reason of subject imports could only take place if at least part of the hearing were held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will begin with the public presentation by petitioner, followed by questioning of petitioner by the Commission. Respondent will then make its public arguments, and be questioned as appropriate by the Commission. Following respondent's public presentation and questioning, an *in camera* session concerning petitioner's business proprietary information will begin. For this, the room will be cleared of all persons except: (1) Those who have been granted access to business proprietary information (BPI) under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation, (2) personnel of petitioner, if any, representing the company submitting the BPI, and (3) personnel of the Commission, including the court reporter. See 19 CFR 201.35(b)(1), (2). In the *in camera* session, respondents may make a presentation limited to a discussion of the portion of petitioner's BPI that is pertinent to the leveraged buyout by management of that company, to be followed by questions from the Commission as appropriate. Petitioner will then have an opportunity to respond, and may also be questioned by the Commission as appropriate.

Following the *in camera* sessions, the Commission may determine that it is appropriate to reopen the hearing to the public for concluding statements or for additional public questioning by the Commission. The time for the parties' presentations in the *in camera* sessions will be taken from their respective overall allotments for the hearing. All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

AUTHORITY: The General Counsel has certified, in accordance with the procedures set out in Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Final) may be closed to the public to prevent the disclosure of business proprietary information.

By order of the Commission.

Issued: January 2, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-456 Filed 1-8-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-458 and 459 (Final)]

Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea; Revised Schedule for the Subject Investigations

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairment who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On November 28, 1990, the Commission instituted the subject investigations and established a schedule for their conduct (55 FR 52105, December 19, 1990). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from February 6, 1991, to April 15, 1991. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than April 4, 1991; the prehearing conference will be held at the U.S. International Trade Commission Building on April 15, 1991 (9:30 a.m.); the prehearing staff report will be placed in the nonpublic record on April 1, 1991; the deadline for filing prehearing briefs is April 11, 1991 (nonbusiness proprietary version due April 12, 1991); the hearing will be held at the U.S. International Trade Commission Building on April 18, 1991 (9:30 a.m.); the deadline for filing posthearing briefs is April 24, 1991 (nonbusiness properietary version due April 25, 1991), and the deadline for Parties to file additional written comments on business proprietary information is May 1, 1991 (nonbusiness proprietary version due May 2, 1991).

For further information concerning these investigations see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

AUTHORITY: The investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: January 2, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-455 Filed 1-8-91; 8:45 am]

BILLING CODE 7020-02-M

Possible Modifications to the International Harmonized System Nomenclature

AGENCY: International Trade Commission.

ACTION: Request for public comment.

SUMMARY: This notice sets forth the Customs Cooperation Council's (CCC) revised schedule of review of HS chapters. The Commission is also soliciting views and comments from interested parties and agencies concerning proposals to amend the international Harmonized System, including the nomenclature, rules of interpretation, and chapter notes. Specific proposals thereon will be reviewed for potential submission to the CCC.

EFFECTIVE DATE: December 26, 1990.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (202-252-1952), or David B. Beck, Chief, Nomenclature Division (202-252-1604).

BACKGROUND: The Review Subcommittee of the Harmonized System Committee of the CCC has announced a revised schedule for consideration and possible revision of the international nomenclature of the Harmonized System. The Commission is seeking the views of interested parties for use in developing U.S. proposals for changes to that nomenclature system. The Commission has previously issued similar notices concerning the international Harmonized System. (See 54 FR 30284, July 19, 1989, and 55 FR 1736, January 18, 1990.)

This notice does not institute a formal Commission investigation. It is issued pursuant to the Commission's continuing authority to develop technical proposals jointly with the Customs Service and the Bureau of the Census. (See section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (the Act) (19 U.S.C. 3010).) The Commission is the lead agency for U.S. consideration of proposed changes to the international Harmonized System. (See United States Trade Representative Notice, 53 FR 45646, November 10, 1988.)

The comments submitted to the Commission should be limited to statements of problems and specific proposals for changes in the international Harmonized System, including the General Rules of Interpretation, the international chapter notes, and the nomenclature through the 6-digit level. They should be prepared with a view toward ensuring that the Harmonized System keeps abreast of changes in technology and in patterns of international trade. Proposals for changes to the Explanatory Notes (which are to be taken up by the Harmonized System Committee separately) or in national-level provisions (including U.S. 8-digit subheadings, statistical reporting numbers, and rates of duty) will not be considered during this process. Such matters may be raised in accordance with the Commission's continuous review procedures pursuant to section 1205 of the Act (19 U.S.C. 3005). (See 54 FR 16007, April 20, 1989.)

SCHEDULE FOR REVIEW: The Review Subcommittee is scheduled to examine Harmonized System chapters 64-83 and 86-89 beginning in September 1991. Consideration of chapters 25-40 is scheduled to begin in January 1992. Chapters 1-24, 41-49, and 91-97 will be considered in September 1992 and January 1993. The Review Subcommittee will make recommendations to the Harmonized System Committee which will submit its decisions to the Council for final approval in mid-1993. Those modifications adopted by the CCC would enter into force on January 1, 1996.

REQUEST FOR COMMENTS: The Commission will accept and consider submissions relating to chapters 25, 26, 64-83, and 86-89 beginning immediately and continuing through March 2, 1991. Comments on chapters 27-40 will be accepted through July 6, 1991. The deadlines for submission of comments with respect to the chapters scheduled for Subcommittee review in September 1992 and January 1993 will be announced in a subsequent notice.

WRITTEN SUBMISSIONS: Interested parties should file written submissions by March 1, 1991. A signed original and fourteen (14) copies should be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436. All written submissions except for confidential business information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: December 31, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-482 Filed 1-8-91; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-303]

Certain Polymer Geogrid Products and Processes Therefor; Notice of Commission Decision To Continue Suspension of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to continue its suspension of the above-captioned investigation pending the issuance of a final judgment by the U.S. District Court for the District of Maryland in *Tenax Corporation v. The Tensar Corporation*, Civil Action No. H-89-424.

ADDRESSES: Copies of the Commission's order of continued suspension and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Frances Marshall, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1089. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On October 4, 1990, the Commission granted the request of complainant and respondents to borrow certain exhibits from the Commission's record for use in a jury trial in the U.S. District Court for the District of Maryland. The Commission's investigation was suspended until after the exhibits were returned to the Commission. The parties returned the exhibits to the Commission on December 19, 1990. In order to

facilitate decision-making, the Commission has decided to maintain its suspension until the district court has issued its final judgment. The period of suspension will be excluded from the statutory time period mandated for the Commission to complete its investigation.

This action is taken under the authority of section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and Commission interim rule 210.59 (19 CFR 210.59).

By order of the Commission.
Issued: December 31, 1990.

Kenneth R. Mason,
Secretary.

[FR Doc. 91-454 Filed 1-8-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use By ALK Associates, Inc. for The Union Pacific Railroad

The Commission has received a request from ALK Associates, Inc. for permission to use certain data from the Commission's 1989 ICC Waybill Sample for a study to determine railroad industrial market shares in bulk industrial minerals.

A copy of the request may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275-6864.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-446 Filed 1-8-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31801]

Illinois Central Corporation and Illinois Central Railroad Company-Control-Midsouth Corporation, Midsouth Rail Corporation, MidLouisiana Rail Corporation, and Southrail Corporation

Applicants, Illinois Central Corporation (IC) and its rail carrier subsidiary, Illinois Central Railroad Company (ICR), filed on December 10, 1990, a notice of their intent to file an application seeking authority for IC to acquire an interest in and control of MidSouth Corporation (MS) and its rail carrier subsidiaries, MidSouth Rail Corporation (MSR), MidLouisiana Rail Corporation (MLR), and SouthRail Corporation (SR). This prefiling notification was made under 49 CFR 1180.4(b). Applicants intend to file their application under 49 U.S.C. 11341-11345 on or about February 11, 1991.

IC, a non-carrier holding company, controls ICR, a Class I rail carrier operating approximately 2,900 miles of track from Chicago, IL, to the Gulf of Mexico. IC intends to seek the necessary Commission approvals to permit it to own an interest in and to control MS (and thereby its rail carrier and non-carrier subsidiaries) through stock ownership. The railroad subsidiaries of MS operate about 1,200 miles of track in Alabama, Louisiana, Mississippi, and Tennessee.

IC proposes to acquire all of the outstanding shares of MS common stock in exchange for IC common stock. Under IC's offer, MS' shareholders will receive no less than 0.5 share nor more than 0.6 share of newly-issued, registered IC common stock in exchange for each share of MS common stock. An exchange ratio of 0.55 share would result in a premium of 19 percent over the average price of MS common stock in the past two months and an estimated 22 percent increase in per share earnings.

IC proposes to determine the exact ratio based on the average closing price for IC common stock during the 20-trading-day period prior to the closing of the transaction. Based on the outstanding shares of MS common stock, IC would issue about 3.7 to 4.4 million additional shares of IC common stock, or about 15.4 percent to 18.4 percent of IC's currently outstanding shares.[1]

IC states that this offer is currently under consideration and is subject to further discussions and negotiations. It also states that it filed this notice under the Commission's application procedures, but may withdraw the notice and file a petition for exemption based on further developments, including the possible absence of an agreement with MS.[2] The final proposal will be described in the application, which will be filed as soon as practicable after the actual terms of the proposed exchange have been established, consistent with the Commission's scheduling requirements.

IC states that after it acquires an interest in (and control of) MS's rail carrier subsidiaries through an exchange of stock, the rail carriers will continue to be operated as separate entities but MS may be merged with IC or may become a wholly-owned IC subsidiary.

IC intends to use calendar year 1990 for any traffic diversion and competitive impact analyses, cost purposes, and *pro forma* financial statements that may be required. To the extent complete data for 1990 may not be available, IC proposes to use 1989 data, contingent on Commission approval.

The proposed transaction is "significant" as defined in 49 CFR 1180.2(b). IC is non-carrier holding company controlling one Class I railroad, and proposes to acquire control of a holding company which controls two Class II rail carriers and one Class III rail carrier.

This proposed acquisition would be a major market extension as defined by 1180.3(c), since it would extend IC's control over its present 2,900-mile system to include an additional 1,200 miles. The transaction is of regional transportation significance, since IC would, as a result of the transaction, control all four carriers. IC states that its common control of ICR and MS's rail carrier subsidiaries will provide all existing customers with additional service options, such as run-through train service. Accordingly, our consolidation procedures applicable to "significant" transactions will govern this proceeding. The application must conform to the regulations set out at 49 CFR 1180, *et seq.*, and must contain all information required there for significant transactions, except as modified by advance waiver.

A procedural schedule will be issued after the application is filed and accepted as complete.

Decided: January 3, 1991.

[1] IC states that, since both IC and MSR are non-carrier holding companies, no rail carrier stock will be issued in the proposed transactions and thus authorization pursuant to 49 U.S.C. 11301 will not be required. IC also states that, should the proposed exchange of stock be altered in such a way as to require Commission authorization of any security issuance, the requisite authorization will be sought in conjunction with the application.

[2] The MS Board of Directors issued a news release on December 17, 1990, rejecting IC's acquisition offer. *See* submission of SouthRail Corporation, filed December 17, 1990, in Docket No. AB-301 (Sub-No. 6), *SouthRail Corporation Abandonment.*

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-447 Filed 1-8-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

Notice is hereby given that a proposed Partial Consent Decree and Judgment in *United States* v. *Thomas Solvent Company, et al.*, Civil Action No. K-86-167 (W.D. Mich.), between the United States, on behalf of the Environmental Protection Agency ("EPA"), and all the defendants in that case, was lodged on December 14, 1990 with the United States District Court for the Western District of Michigan. The Partial Consent Decree and Judgment resolves claims of the United States (as well as related claims of the State of Michigan which is also a party to the Decree) against Thomas Solvent Company; Thomas Development, Inc.; Thomas Solvent Company of Detroit, Inc.; Thomas of Muskegon, Inc; Thomas Solvent Inc. of Indiana; TSC Transportation Company; Richard E. Thomas, Carol Thomas, Steven Thomas, Gregg Thomas and Todd Thomas. Defendant Grand Trunk Western Railroad is also a party to the proposed Partial Consent Decree and Judgment and the proposed Decree would resolve certain of the cross-claims currently pending among the defendants.

The claims that would be resolved arise principally from the cost recovery action of the United States brought under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, for certain response costs incurred by the EPA in responding to the contamination of the Verona Well Field, the public drinking water supply for Battle Creek, Michigan.

The Department of Justice will receive comments relating to the proposed Partial Consent Decree and Judgment for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Thomas Solvent Company*, D.J. Ref. No. 90-11-2-140. The proposed Partial Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 399 Federal Building, Grand Rapids, Michigan 49503, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., suite 600, Washington, DC 20004 (202-347-2072). A copy of the proposed Partial Consent Decree and Judgment may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $14.50 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-354 Filed 1-8-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-01]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Communications and Information Systems Subcommittee (CISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Communications and information Systems Subcommittee.

DATES: January 23, 1991, 8:30 a.m. to 5 p.m., and January 24, 1991, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code SC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1510).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Communications and Information Systems Subcommittee provides technical support to the Committee and will conduct ad hoc studies and assessments. The Subcommittee will meet to review program status and plans and discuss strategic and implementation strategies. The Subcommittee is chaired by Dr. Robert T. Filep and is composed of 10 members. The meeting will be open to the public up to the capacity of the room (approximately 30 people including members of the Subcommittee).

Type of meeting: Open.

Agenda

Wednesday, January 23, 1991

8:30 a.m.—Communications and Information Systems Program Status.
9 a.m.—Advamced Communications Technology Satellite (ACTS) Program.
10:15 a.m.—Mobile Satellite Status.
10:30 a.m.—Reports from the Optical International Working Group, Communications Steering Committee, and Satellite Communications Applications Research (SCAR).
11 a.m.—Direct Broadcast Satellite (DBS) Radio.
11:30 a.m.—Report from the Space Science and Applications Advisory Committee (SSAAC) Meeting.
1 p.m.—Communications Strategic Plan, Technology Roadmap, Industry Endorsement/Implementation Strategies.
5 p.m.—Adjourn.

Thursday, January 24, 1991

8:30 a.m.—Information Systems.
11:15 a.m.—Subcommittee Business.
1 p.m.—Writing Session.
4 p.m.—Subcommittee Wrap-up.
5 p.m.—Adjourn.

Dated: January 2, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-403 Filed 1-8-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Colection of Information Submitted for OMB Reveiw

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Expeditied Clearance Request: NSF is requesting an expedited clearance of two week turn-around from OMB (see following questionnaire). Interested persons are invited to submit comments by January 22. Comments may be submitted to:

(1) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management. National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335, and to;

(2) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, Paperwork Reduction Project 93145-0-009), OMB, 722 Jackson Place, room 3208, NEOB Washington, DC 20503.

Title: Higher Education Surveys. Survey #14, Survey of Retention Practices of Higher Education Institutions.

Affected Public: Non-profit institutions.

Responses/Burden Hours: 1,140 Respondents; one hour per response.

Abstract. This and other HES are responsive to a variety of policy issues. Topics are not predetermined and survey instruments are designed specifically for each survey. This and other surveys serve program management needs, research objectives and general purposes not available through existing information sources.

Dated: January 4, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

To: Geology, Physics, and Sociology Departments.

January 4, 1991.

Dear Colleague: On behalf of the National Science Foundation (NSF), I would like to invite you to participate in this Higher Education Survey of undergraduate geology departments. This survey is the first in a comprehensive series of Higher Education Surveys, which will capture information on undergraduate science and engineering education in the Nation's universities, four-year and two-year colleges.

The National Science Foundation is now actively involved in programs to promote improvements in the quality of undergraduate education in science and engineering. In order to effect these improvements, national data on a wide variety of topics in this critical area are needed. This survey represents NSF's first effort to gather information, nationally, on a number of these important topics. Your participation in this survey, while voluntary, is vital to the development of this national picture of undergraduate science and engineering education.

The ultimate objective of the planned series of surveys of undergraduate science and engineering departments is to develop an ongoing, current, national data base, which describes undergraduate science and engineering education in this country. This data base will provide up-to-date information to planners and policy makers at the Nation's colleges and universities, industries, professional scientific and engineering societies, and federal, state and local governments for decision-making which is so critical to the strength of the Nation and to us all.

The survey is being conducted for NSF as part of the Higher Education Surveys (HES) system. The data are being collected by the HES contractor, Westat, Inc., located in Rockville, Maryland. A copy of the HES report will be sent to your institution after this study is completed. If you have any questions about this survey, please call Dr. Laurie Lewis at Westat's toll-free number, 800-937-8281.

Thank you very much for your assistance. I look forward to your helping us with this important proejct.

Sincerely,

Robert F. Watson, Ph.D.,

Director, Division of Undergraduate Science, Engineering, and Mathematics Education, National Science Foundation.

BILLING CODE 7555-01-M

HIGHER EDUCATION SURVEYS (HES)
SURVEY ON UNDERGRADUATE EDUCATION IN GEOLOGY

To the Chair of the geology department, or the department that awards bachelor's degrees in geology.

DEFINITION: For the purpose of this survey, geology is defined to include the following: geophysics, geochemistry, and paleontology.

I. Department Organization and Size

1a. Does your department have responsibility for any discipline(s) in addition to geology (e.g., _____, _____)?

☐ Yes (GO TO QUESTION 1b)
☐ No (SKIP QUESTION 1b)

1b. **IF YES TO Q1a:** For each discipline besides geology for which your department has responsibility, indicate whether your department offers undergraduate courses, confers bachelor's degrees, or confers graduate degrees in that discipline.

Discipline	Offers undergraduate courses		Confers bachelor's degrees		Confers graduate degrees	
	Yes	No	Yes	No	Yes	No
	Yes	No	Yes	No	Yes	No
Other (PLEASE SPECIFY:)	Yes	No	Yes	No	Yes	No
Other (PLEASE SPECIFY:)	Yes	No	Yes	No	Yes	No

For all questions that follow, please provide information only for geology. If it is not possible to separate information for geology from the other disciplines offered by your department (e.g., _____), please report information for your entire department as necessary, and indicate how you have responded for sections II, V, VI, and VII.

2. For each of the following types of degrees, indicate by circling "yes" or "no" in **Column A** whether your department confers degrees of that type in geology.

For each type of geology degree conferred, indicate in **Column B** the number of geology degrees conferred through your department last year (academic year 1989-90). If no geology degrees of that type were awarded last year, enter zero.

Type of degree	A. Does department confer geology degrees of this type?	B. Number of geology degrees conferred through department in academic year 1989-90
a. Associate	Yes No	
b. Bachelor's	Yes No	
c. Master's	Yes No	
d. Doctorate	Yes No	

3. On which calendar system does your school operate? (CHECK ONE)

- ☐ Semester
- ☐ Quarter
- ☐ Other (PLEASE SPECIFY: _____)

II. Undergraduate Education - Issues and Concerns

The responses to Q4 are for: (CHECK ONE)
- ☐ Geology only
- ☐ Geology plus the other disciplines (e.g., _____) offered by this department

4. In Column A, please rate on a scale from 1 to 5 (with 1 = very poor to 5 = very good) the following aspects of undergraduate education in your department. If the item is not applicable to your department (e.g., you do not have teaching assistants), circle a zero (0) for that item.

In Column B, rank up to 5 items that present the greatest problems for undergraduate education in your department, and write the rank, with "1" indicating the greatest problem, "2" indicating the second greatest problem, etc.

Aspects of undergraduate education in geology	A. (Circle one for each item) Not applicable 0	Very poor 1	2	3	4	Very good 5	B. Rank up to 5 problems (from this page)
a. Students							
1. Academic preparation of entering freshmen	0	1	2	3	4	5	_____
2. Student interest and motivation	0	1	2	3	4	5	_____
3. Computer background of students	0	1	2	3	4	5	_____
b. Curriculum							
1. Quality of introductory textbooks	0	1	2	3	4	5	_____
2. Quality of advanced textbooks	0	1	2	3	4	5	_____
3 Opportunity for undergraduate research through independent study or advanced coursework	0	1	2	3	4	5	_____
4. Availability of field trips/field work	0	1	2	3	4	5	_____
c. Laboratory equipment for undergraduate instruction							
1. Quality of instructional laboratory equipment	0	1	2	3	4	5	_____
2. Amount of instructional laboratory equipment	0	1	2	3	4	5	_____
d. Facilities for undergraduate instruction							
1. Quality of instructional laboratory space	0	1	2	3	4	5	_____
2. Amount of instructional laboratory space	0	1	2	3	4	5	_____
3. Demonstration capabilities of lecture facilities	0	1	2	3	4	5	_____
e. Faculty/staff resources							
1. Appropriateness of class size for introductory courses	0	1	2	3	4	5	_____
2. Appropriateness of class size for advanced courses	0	1	2	3	4	5	_____
3 Recruiting and retention of qualified faculty	0	1	2	3	4	5	_____
4 Language abilities of faculty members whose first language is not English	0	1	2	3	4	5	_____
f. Teaching assistants (include both graduate and undergraduate T.A.s if applicable)							
1. Availability of teaching assistants	0	1	2	3	4	5	_____
2. Quality of teaching assistants	0	1	2	3	4	5	_____
3. Language abilities of teaching assistants whose first language is not English	0	1	2	3	4	5	_____
g. Other (please specify below)							
1. Other_____	0	1	2	3	4	5	_____
2. Other_____	0	1	2	3	4	5	_____

III. Computer Resources

5. Is there computer equipment located within your department to which undergraduate students have access for undergraduate research and coursework?

☐ Yes
☐ No

6. Is there campus-wide computer equipment at your institution to which undergraduate students have access for undergraduate research and coursework?

☐ Yes
☐ No

7. Please rate on a scale from 1 to 5 (with 1 = very poor to 5 = very good) the following aspects of the computer resources available to undergraduate students at your institution for undergraduate research and coursework.

In **Column A**, rate the computer resources located within your department to which undergraduate students have access for undergraduate research and coursework. If your department does not have such computer equipment, circle zero (0).

In **Column B**, rate the campus-wide computer resources at your institution to which undergraduate students have access for undergraduate research and coursework. If your institution does not have such campus-wide computer equipment, circle zero (0).

Computer resources for undergraduates	A. Departmental resources (Circle one for each item)						B. Campus-wide resources (Circle one for each item)					
	Not applicable 0	Very poor 1	2	3	4	Very good 5	Not applicable 0	Very poor 1	2	3	4	Very good 5
1. Quality of computer equipment.....	0	1	2	3	4	5	0	1	2	3	4	5
2. Amount of computer equipment...	0	1	2	3	4	5	0	1	2	3	4	5
3. Quality of space for computers.....	0	1	2	3	4	5	0	1	2	3	4	5
4. Amount of space for computers....	0	1	2	3	4	5	0	1	2	3	4	5
5. Quality of software for undergraduate instruction.....	0	1	2	3	4	5	0	1	2	3	4	5
6. Quality of software for undergraduate research	0	1	2	3	4	5	0	1	2	3	4	5
7. Other (please specify below) a. Other_____	0	1	2	3	4	5	0	1	2	3	4	5
b. Other_____	0	1	2	3	4	5	0	1	2	3	4	5

IV. Academic Majors

8. By what point in their undergraduate academic career do students majoring in geology have to formally declare a major? (CHECK ONE)

- ☐ At the time of application for admission to your institution
- ☐ By the end of the first academic year
- ☐ By the end of the second academic year
- ☐ By the end of the third academic year
- ☐ Other (PLEASE SPECIFY:_____)

9. Over the last 5 years, has the number of students who declared a major in geology at your institution: (CHECK ONE)

- ☐ Increased
- ☐ Stayed about the same
- ☐ Decreased

10. What are the most important reasons that college students who are interested in majoring in geology decide to major in another subject?

_____

_____

_____

_____

_____

11. What is the single most important thing the National Science Foundation (NSF) can do to improve undergraduate education in geology?

_____

_____

_____

_____

_____

V. Undergraduate Course Offerings

The responses to Q12 are for: (CHECK ONE)
- ☐ Geology only
- ☐ Geology plus the other disciplines (e.g., _____) offered by this department

12. In Fall 1990, how many different undergraduate and graduate geology courses, as identified by course title or number, were taught in your department?

Number of courses: Provide the number of separate, for-credit courses (as identified by course title or number), not the number of sections.

Lower division courses: For-credit courses designed for undergraduates in the first two years of a four-year curriculum.

Upper division courses: For-credit courses designed for undergraduates during the third and fourth years of a four-year curriculum.

Joint level courses: If a course is a joint undergraduate and graduate level course, count it as an undergraduate level course.

(a) Total graduate and undergraduate geology courses (not sections) _____

(b) Total graduate geology courses (not sections) _____

(c) Total undergraduate geology courses (not sections) _____

(d) Lower division geology courses _____

(e) Upper division geology courses _____

(Check here if you cannot provide separate figures for lower and upper division geology courses ☐)

NOTE: The total graduate courses (b) plus the total undergraduate courses (c) should equal the total courses (a). The total lower division courses (d) plus the total upper division courses (e) should equal the total undergraduate courses (c).

VI. Teaching Staff

The responses to Q13-Q16 are for: (CHECK ONE)
☐ Geology only
☐ Geology plus the other disciplines (e.g., ____) offered by this department

13. In each teacher category below, in Column 1 indicate the total number of people who taught at least one geology course in your department in Fall 1990, and in Column 2 indicate the number who taught at least one geology course to undergraduates in Fall 1990.

- Consider a teacher full-time if he/she had full-time teaching/research/administrative responsibilities within your institution in Fall 1990.
- Count visiting faculty under the rank they have at their home institutions.
- Exclude members of your faculty who were on leave in Fall 1990.
- For teaching assistants, include both graduate and undergraduate students who are teaching assistants, if applicable.

Teacher category	Geology teachers in Fall 1990	
	1. Total number teaching geology	2. Number who taught geology to undergraduates
a. Full-time faculty, total		
1. Full professor		
2. Associate professor		
3. Assistant professor		
4. Lecturer or instructor		
5. Unranked		
b. Part-time faculty, total		
c. Teaching assistants, total		
d. Other (please specify):		

14. In Fall 1990, what percent of the total undergraduate instructional contact hours (lecture, laboratory, discussion group) in your department was taught by full-time faculty, part-time faculty, teaching assistants, and other kinds of instructors?

Teacher category	Percent
a. Full-time faculty	%
b. Part-time faculty	%
c. Teaching assistants	%
d. Other (please specify:)	%
TOTAL	100%

15. For those full-time and part-time faculty who taught geology to undergraduates in Fall 1990 (question 13, column 2, rows a and b), please indicate their highest degree.

Highest degree	Number who taught geology to undergraduates	
	Full-time faculty	Part-time faculty
Doctorate		
Master's		
Bachelor's		
Other (please specify):		

TOTAL: [ ] (should equal Q13, column 2, row a) [ ] (should equal Q13 column 2, row b)

16. For those full-time and part-time faculty who taught geology to undergraduates in Fall 1990 (question 13, column 2, rows a and b), please indicate their racial/ethnic group and gender.

Racial/ethnic group (see definitions below)	Full-time		Part-time	
	Men	Women	Men	Women
Non-resident aliens				
U.S. citizens and permanent residents:				
Black, non-Hispanic				
White, non-Hispanic				
Hispanic				
Asian or Pacific Islander				
American Indian or Alaskan Native				

TOTAL: [ ] (should equal Q13, column 2, row a) [ ] (should equal Q13, column 2, row b)

Racial/ethnic group

Non-resident alien: A person who is not a citizen of the United States and who is in this country on a temporary basis and does not have the right to remain indefinitely.

Black, non-Hispanic: A person having origins in any of the black racial groups in Africa, excluding persons of Hispanic origins.

White, non-Hispanic: A person having origins in any of the original peoples of Europe, North Africa, or the Middle East, excluding persons of Hispanic origins.

Hispanic: A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander: A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

American Indian or Alaskan Native: A person having origins in any of the original peoples of North America and maintaining cultural identification through tribal affiliation or community recognition.

VII. Teaching Assistants

The responses to Q17-Q22 are for: (CHECK ONE)
☐ Geology only
☐ Geology plus the other disciplines (e.g., _____) offered by this department

17. Please indicate below the percent of teaching assistants in your department in Fall 1990 who are graduate students and undergraduate students. Enter zero (0) if there were no teaching assistants of that type in Fall 1990.

a. Teaching assistants who are graduate students: _____%

b. Teaching assistants who are undergraduate students: _____%

TOTAL 100%

18. Do the teaching assistants in your department:

a.	Lecture on a regular basis?	☐ Yes	☐ No
b.	Lecture occasionally?	☐ Yes	☐ No
c.	Conduct laboratory sections?	☐ Yes	☐ No
d.	Conduct discussion groups?	☐ Yes	☐ No
e.	Grade tests and papers?	☐ Yes	☐ No
f.	Hold office hours?	☐ Yes	☐ No

19. How many laboratory sections and/or discussion groups does a teaching assistant in your department usually lead in a term (semester, quarter, etc.)? _____

20. Does your institution or department offer a course or seminar to enhance the teaching and communication skills of teaching assistants in your department?

☐ Yes (ANSWER QUESTIONS 21 AND 22)
☐ No (SKIP QUESTIONS 21 AND 22)

21. What is the content of this course or seminar? (CHECK ALL THAT APPLY)

☐ Teaching techniques
☐ Preparation of course materials
☐ Techniques for student academic or career advising
☐ English language skills
☐ Familiarization with American customs and behaviors
☐ Other (PLEASE SPECIFY: _____)

22. Are all teaching assistants in your department required to take this course or seminar? (CHECK ONE)

☐ All teaching assistants are required to attend
☐ Only some teaching assistants are required to attend
☐ No teaching assistants are required to attend

Do we have permission to release these data to the National Science Foundation with your institutional identification code? This would allow NSF to use data from other surveys to help analyze the results. All information published by NSF will be in aggregate form only.

☐ Yes
☐ No

Please sign_____

Thank you for your assistance. Please return this form by January 25 to:

Higher Education Surveys
WESTAT
1650 Research Boulevard
Rockville, MD 20850

Person completing this form:

Name:_____

Title:_____

Department name:_____

Telephone:_____

Please keep a copy of this survey for your records.

If you have any questions or problems concerning this survey, please call the HES Survey mamager at Westat:

Laurie Lewis
(800) 937-8281 (toll-free)

[FR Doc. 91-469 Filed 1-8-91; 8:45 am]
BILLING CODE 7555-01-C

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission: new, revision or extension: Revision.
2. The title of the information collection: Application for License to Export Nuclear Material and Equipment.
3. The form number if applicable: NRC Form 7.
4. How often the collection is required: On occasion. Once for each separate request for a specific export license.
5. Who will be required or asked to report: Any person in the U.S. who wishes to export nuclear material and equipment subject to the requirements of a specific license.
6. An estimate of the number of reporting responses: 200.
7. An estimate of the total number of hours needed to complete the reporting and recordkeeping requirements: 200 hours (one hour per response).
8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. *Abstract:* Any person in the U.S. wishing to export nuclear material and equipment requiring a specific authorization should file an application for a license on NRC Form 7. The application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document room, 2120 L Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0027), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 28th day of December 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official, for Information Resources Management.

[FR Doc. 91-481 Filed 1-8-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; WPPSS Nuclear Project No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from 10 CFR 55.45(b)(2)(iii) and 10 CFR 55.45(b)(2)(iv) for Facility Operating License NPF-21 issued to Washington Public Power Supply System (WPPSS), for operation of WPPSS Nuclear Project No. 2 located on the Hanford Reservation, Benton County, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would extend the date for filing NRC Form 474, "Simulation Facility Certification," as required by 10 CFR 55.45(b)(2)(iii) from March 26, 1991, to September 30, 1992. The licensee also proposed an exemption from 10 CFR 55.45(b)(2)(iv) to allow continued use of its current simulator for operator training and examinations until certification of its new simulator.

The proposed action is in accordance with the licensee's application for exemption dated April 4, 1990, as amended on September 27, 1990.

The Need for the Proposed Action

The proposed exemption to 10 CFR 55.45(b)(2)(iii) and 10 CFR 55.45(b)(2)(iv), is required in order to permit continued training and examination of licensed operators and continued plant operation until the licensee has procured and certified a plant-referenced simulator in accordance with the dates specified in 10 CFR part 55; however, it has been notified by the simulator manufacturer that delivery of the new simulator will be delayed.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed exemptions and concludes that approval of these exemptions will not endanger the public health and safety. Acceleration of the licensee's schedule to certify the simulator would be at great expense and may impact the quality of the simulator. Training licensed operator candidates at other facilities would also be expensive and defeat the intent of 10 CFR 55.45. The licensee has continuously upgraded its current simulator and successfully conducted operator training and examinations. The licensee has asserted that upgrade of its current simulator will continue until receipt and certification of its new simulator. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed exemption would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption involves the training and examination of licensed operator candidates. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the WPPSS Nuclear Project No. 2, dated December 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for exemption dated April 4, 1990, and the amendment thereto dated September 27, 1990, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 2nd day of January 1991.

For the Nuclear Regulatory Commission.

James E. Dyer,

Director, Project Directorate V, Division of Reactor Project III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-480 Filed 1-8-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 27th meeting on January 23-24, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. each day. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

- The Committee will continue discussions on 10 CFR part 60, high-level waste repository subsystem performance requirements and their conformance with the EPA high-level waste standards.
- The Committee will continue deliberations concerning the NRC and EPA regulations governing the disposal of mixed waste.
- The Committee will finalize preparations for its presentation at the Waste Management 1991 Symposium, Tucson, Arizona, on February 26, 1991.
- The Committee will hear a briefing on staff efforts to conform low-level waste guidance to 10 CFR part 61. The Committee intends to evaluate 10 CFR part 61 as it relates to low-level waste disposal facilities that utilize methods other than shallow land burial. Questions to be addressed include whether part 61 can be applied, in its existing form, to engineered facilities such as below and above ground vaults.
- The Committee will hear a trip report from two members who recently toured the Barnwell low-level waste facility.
- The Committee will discuss its priorities for nuclear waste reviews and report these priorities to the Commission.
- The Committee will discuss issues relating to human intrusion of a high-level radioactive waste disposal repository. Methods for handling this potential event in the regulatory framework will be considered.
- The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: January 4, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-477 Filed 1-8-91; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 14, 1990, through December 27, 1990. The last biweekly notice was published on December 26, 1990 (55 FR 53065).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination

unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 8, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request

should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: November 7, 1990

Description of amendment request: The proposed Technical Specifications (TS) changes the action statements of TS 3.8.1.2, 3.8.2.2, 3.8.2.4, and the limiting condition of operation (LCO) requirements of TS 3.9.4 for the A.C. electrical power sources when in Modes 5 and 6. The requirement to establish containment integrity is replaced with the requirement to suspend all operations relative to: core alterations, positive reactivity changes, the movement of irradiated fuel, and the movement of heavy loads over irradiated fuel. The change also requires that containment penetration closure, as identified in TS 3.9.4, be established within eight hours and corrective actions be initiated within one hour to restore the minimum A.C. electrical power sources to operable status. The LCO requirements of TS 3.9.4 are modified to be consistent with the above action statements and the applicable TS Bases sections are also modified to reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

[1] involve a significant increase in the probability or consequences of an accident previously evaluated; or

In MODES 1, 2, 3, and 4, a Design Basis Accident could cause a release of radioactive material into the containment. In these MODES, prevention against the release of this material to the environment is accomplished by maintaining CONTAINMENT INTEGRITY. In MODES 5 and 6; however, the probability and consequences of these events are lower because of the reactor coolant system pressure and temperature limitations of these MODES. A minimum complement of electric power sources and distribution systems is established to assure adequate power for systems required to recover from a boron dilution event or fuel handling incident, as discussed in Updated Final Safety Analysis Report Sections 14.3 and 14.18, respectively. A single power train/division is adequate in these lower MODES (5 and 6) because additional time is available to restore power before fuel damage occurs. Additionally, because of the lack of a containment pressurization potential, less stringent requirements are needed to isolate the containment from the outside atmosphere. These less stringent requirements are applied during CORE ALTERATIONS, movement of irradiated fuel, and when the power distribution systems are degraded, as addressed in Technical Specification 3.9.4, "Containment Penetration".

With the number of energized A.C. or D.C. power distribution systems less than that required, sufficient power may not be available to recover from a fuel handling accident. Consequently, the ACTION statements require immediate suspension of CORE ALTERATIONS, positive reactivity changes, movement of irradiated fuel in the containment, and movement of loads over irradiated fuel within the containment. This precludes the occurrence of the postulated events and the need for CONTAINMENT INTEGRITY. However, containment penetration closure is provided for additional mitigation of unforeseen events. Therefore, there is no increase in the probability or consequences of any accident previously evaluated.

[2] create the possibility of a new or different type of accident from any accident previously evaluated; or

The proposed changes will not represent a significant change in the configuration or operation of the plant. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, nor are any significantly different types of operations being introduced. The initiators of the accidents previously evaluated, boron dilution and fuel handling, have been reviewed with no impact identified. Other operations that are potential precursors to events which are not currently addressed in the Technical Specifications would henceforth be precluded by the proposed amendment. Therefore, there is no possibility of the creation of a new or different type of accident.

[3] involve a significant reduction in a margin of safety.

The Technical Specifications involved are based upon the need to prevent and/or control the consequences of a fuel handling incident or boron dilution event. The margin of safety is provided in the current Technical Specifications for these two events by requiring CONTAINMENT INTEGRITY to prevent the release of radioactive materials to the environment. However, full CONTAINMENT INTEGRITY is not practical to achieve under some conditions, e.g., during integrated leak rate testing or penetration modification. The revised Technical Specifications strengthen the controls to prevent the design basis accidents while modifying the means specified for controlling the consequences of such accidents. A containment boundary will continue to be provided when there are operations being conducted which could lead to a fuel handling incident or boron dilution event. Containment penetration closure is equivalent to CONTAINMENT INTEGRITY under these circumstances. Additionally, if electrical distribution systems needed to mitigate the consequences of one of these events become inoperable, the proposed Technical Specifications would require suspension of such operations and the establishment of containment penetration closure, thereby removing the possibility of the event occurring, and mitigating any unforeseen events. Therefore, margin of safety against release to environs is maintained because of an equivalent barrier. Margin is then improved upon by new restrictions on activities that could lead to a challenge to the barrier. [Thus, the proposed change does not involve a significant reduction in a margin of safety.]

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 20, 1990

Description of amendment request: The proposed amendment would revise the reactor coolant system Technical Specification Pressure/Temperature operating limits for the first 15 effective full power years, based on Regulatory Guide 1.99, Revision 2 methodology to predict the radiation-induced reference temperature (RT/NDT) value. The proposed amendment would also revise the low-temperature overpressure protection (LTOP) enable temperature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91 (a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change would not increase the probability or consequences of any

accident previously evaluated since the proposed change revises the pressure-temperature operability limits in accordance with 10CFR50 Appendix G requirements utilizing the latest NRC guidelines relative to estimating neutron irradiation damage of the reactor vessel, as well as maintaining conservative limits with respect to the low-temperature overpressure-protection system.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change would not create the possibility of a new or different kind of accident from any previously analyzed since it would not introduce new systems, failure modes or other plant changes.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change would not involve a significant reduction in the margin of safety since the planned pressure-temperature Technical Specification limitations have been developed consistent with the requirements of 10CFR50 Appendix G, Regulatory Guide 1.99, Revision 2 and Generic Letter 88-11. The low-temperature overpressure-protection setpoint and enable temperature have also been constructed consistent with these requirements or previous NRC considerations of B&W LTOP systems. The proposed change is a normal and expected revision to the subject limits due to revised regulatory guidance.

The NRC staff has reviewed the analysis and, based on this review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theordore R. Quay

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: December 11, 1990

Description of amendment request: The proposed amendment to the Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specifications (TS) revises Table 3.3-10. The proposed change provides a more definite description of the minimum number of channels required to be operable from "1" to "1 per valve" for the Pressurizer Safety Valve Acoustic Position Indication and Pressurizer Safety Valve Tail Pipe Temperature Indication.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Criterion 1 - Does not involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change provides for increased clarity to avoid misinterpretation of the requirements therefore does not involve an increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does not Create the Possibility of New or Different Kind of Accident from any Previously Evaluated.

Providing for clarity of the requirements for installed monitoring instrumentation ensures that the specification will not be misinterpreted and therefore does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does not Involve a Significant Reduction in the Margin of Safety.

As this proposed change clarifies the number of instruments required to be operable proper monitoring of valve position will be ensured. Therefore no change to the margin of safety will be incurred.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists. The proposed amendment most closely matches example (i) "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The NRC staff has reviewed the analysis and, based on this review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: September 13, 1990, as supplemented November 15, 1990 and clarified December 13, 1990

Description of amendments request: The proposed amendments would revise the Technical Specifications by removing the existing requirements for the reactor coolant resistance temperature detector (RTD) bypass system, and replacing them with requirements for fast-response thermowell-mounted RTDs. The changes to the Technical Specifications would reflect the characteristics (e.g., response time) of the fast-response RTDs. The proposed changes reflect a design change to eliminate use of the RTD bypass system and replace it with a fast-response thermowell-mounted RTD system, including upgraded digital electronics equipment (Westinghouse EAGLE-21 System) in the reactor protection and control systems. The proposed amendments would also change the surveillance interval and allowed testing "Bypass" time for the racks with the upgraded electronics. Finally, the amendments would include modifications to the axial power imbalance term in the overtemperature/delta-temperature (OTdT) and overpower/delta-temperature (OPdT) reactor trip functions.

To support this request, on September 13, 1990, the licensee submitted Westinghouse proprietary report WCAP-12632, "RTD Bypass Elimination License Report for Turkey Point Units 3 and 4," which describes the analyses, evaluation and testing performed to ensure the new design meets all safety and regulatory requirements. WCAP-12632, Revision 1 was submitted on November 15, 1990 to provide additional information and corrections. A non-proprietary version of this report is WCAP-12633.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff's preliminary evaluation of significant hazards considerations is as follows:

The proposed modifications will not significantly increase the probability of a previously evaluated accident. The RTD design functions are unchanged by replacement of the RTD bypass manifold with thermowell-mounted RTDs, or by installation of a new RTD signal processing system, so accident probability is not increased.

Changes to the axial power imbalance terms of the OPdT and OTdT reactor trips change the setpoint value for some conditions. However, the particular value of a protection setpoint does not affect the probability that an event will actually occur.

The licensee's evaluation of accident probability for the proposed surveillance interval and allowed "Bypass" time changes is as follows:

Results of a EAGLE-21 reliability/availability evaluation concluded that the EAGLE-21 digital system availability is equivalent to or better than the present analog process equipment for which extended surveillance intervals and time in "Bypass" have been previously approved by the NRC staff in WCAP 10271-P-A, "Evaluation of Surveillance Frequencies and Out of Service Times For The Reactor Protection Instrumentation System." The test methodology for the EAGLE-21 process protection channels is consistent with the methodology used for the enhancements for the analog protection channels. These same enhancements have been previously approved by the NRC staff for the EAGLE-21 process protection system in the Sequoyah Safety Evaluation Report (Docket 50-327) dated May 16, 1990. Therefore, the change to the surveillance testing interval and placing a channel in "Bypass" for up to four hours for testing of additional channels in the same function would not significantly increase the probability or consequence of an accident previously evaluated.

The licensee's discussion also applies to accident consequences, which are discussed below.

The proposed modifications will not significantly increase the consequences of a previously evaluated accident. The proposed fast-response RTDs perform the same function as the existing bypass manifold-mounted RTDs. The licensee states that channel uncertainty analysis shows elimination of the RTD bypass system and the associated electronics upgrade do not increase uncertainty beyond current FSAR analysis assumptions. The new RTDs will have the same total response time (6 seconds) as the existing RTD manifold system. Therefore, accident consequences are not significantly affected by this change.

The licensee has described analyses which show that changes to the axial power imbalance terms of the OPdT and OTdT reactor trip functions continue to trip the reactor before fuel design limits are exceeded. The analyses use methods previously approved by the staff. Therefore, these changes do not significantly affect accident consequences.

Surveillance changes are similar to previously approved changes as described in licensee's discussion given above and thus do not significantly affect accident consequences.

The proposed modifications will not create a new or different kind of accident. The proposed fast-response RTDs perform the same function as the existing bypass manifold-mounted RTDs, and are designed and will be fabricated to meet the pressure boundary criteria in ASME Section III (Class 1). Qualification and testing of pressure boundary modifications will be performed in accordance with ASME Code requirements. Adherence to these requirements ensures maintenance of pressure boundary integrity, precluding the possibility of a new or different kind of accident.

The proposed electronics upgrade is designed to maintain seismic, environmental, separation, and single-failure criteria without compromising the ability of the plant protection system to perform its intended safety function. Therefore, this upgrade does not create a new or different kind of accident.

Changes to the axial power imbalance term in the OPdT and OTdT reactor trips do not change the function of these trips. Therefore, no new or different kind of accident is created.

Proposed surveillance changes do not change the reactor protection system functional logic. Therefore, no new or different kind of accident is created.

The proposed modifications will not involve a significant reduction in a margin of safety. The licensee has evaluated the effects of the proposed modifications on RTD response time, and setpoint and temperature measurement uncertainties. The licensee states this evaluation verifies that plant operation will be maintained within the bounds defined by the FSAR and Revised Technical Specifications. Therefore, the FSAR accident analysis conclusions remain valid with no reduction in safety margin.

The licensee also states that the analyses based on previously-approved methods show the OPdT and OTdT reactor trips continue to protect the fuel centerline melting and DNB criteria after modification of the axial power imbalance terms. Therefore, this change does not reduce the margin of safety.

The proposed surveillance interval changes do not affect the margin of safety. This margin is determined by the relationship between protection system setpoints and safety analysis design criteria. This relationship is not affected by the proposed surveillance interval or allowed "Bypass" time changes.

Based on the above evaluation, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: June 15, 1989 revised October 19, 1990.

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-72 by modifying the Appendix B Technical Specifications by deleting most of the requirements for nonradiological environmental monitoring, studies and reporting requirements.

The original request, dated June 15, 1989, was revised by the October 19, 1990 submittal based on a meeting between the NRC staff and the licensee on September 27, 1990.

The licensee proposes to eliminate the requirement for water quality measurements during the time of aquatic biotic sampling, periodic sampling of benthic macroinvertebrates, ichthyoplankton and adult and juvenile fishes. Also, the licensee proposes elimination of the requirement to prepare an environmental program description document and the requirement to prepare an annual nonradiological environment operating report. The licensee also proposed to eliminate section headings of sections that have been previously deleted and other minor administrative changes that improve the clarity or consistency of the Technical Specifications.

The licensee proposes to delete the section headings for the following special studies that have been completed. The actual study requirements for each of the following section headings have been deleted by previous license amendments. The section heading and associated subheadings to be deleted are; 3.1.1.a(1) Thermal Characteristics of Cooling Water Discharge; 3.1.1.a(2) pH; 3.1.1.a(3) Biocide; 3.1.1.a(5) Chemical Release Inventory; 3.1.2.a(2) Impingement of Organisms; 3.1.2.a(3) Entrainment of Ichthyoplankton; 3.1.2.b(1) Aerial Remote Sensing; 4.1 Residual Chlorine Study Program; 4.2 Thermal Plume Mapping; 4.3 Hydraulic Effects; 4.4 Erosion Control Inspection, and 4.5 Herbicide Applications. The licensee states that removal of the section headings represent an administrative change to the Technical Specifications

since the studies have all been long completed and the current Technical Specifications contain no requirements but simply state that the sections have been deleted.

Section 3.1 Nonradiological Monitoring, provides general guidelines and bases for nonradiological environmental sampling around the TMI site. The licensee has proposed deleting this section since no continued nonradiological environmental sampling around TMI-2 is planned.

Section 3.1.1.a(4) Water Quality Analysis, requires that physical and chemical characteristics of the Susquehanna River be measured at the times and locations that biological monitoring for benthic macroinvertebrates, ichthyoplankton, and fish is conducted. The basis for these measurements of water quality is to evaluate trends and unusual occurrences, should they occur, in the biological sampling. The licensee proposes to delete the requirement to measure any physical or chemical characteristic of the Susquehanna River since they propose to delete the requirements for sampling benthic macroinvertebrates, ichthyoplankton and fish. The licensee states that since they no longer will be performing the biological monitoring, and the purpose of the water quality monitoring is to understand trends in the biological monitoring data, the elimination of the requirement for biological monitoring also eliminates the requirement for water quality monitoring.

Section 3.1.2.a(1)(a) Benthic Macroinvertebrates, requires the licensee to sample for benthic macroinvertebrates. The licensee proposes deleting the requirement for sampling benthic macroinvertebrates. The licensee states that the results of sampling have failed to show evidence of significant, adverse impacts from the TMI site on the benthic community. High variability in benthic populations could not be correlated with TMI-1 operation or the TMI-2 cleanup and appear to be based on natural fluctuations due to riverwide phenomena.

Section 3.1.2.a(1)(b) Ichthyoplankton, requires periodic ichthyoplankton sampling to detect and assess the significance of changes in species composition, relative abundance, density, and seasonal and spatial distribution as related to TMI. The licensee proposes deleting the requirement for sampling ichthyoplankton. The licensee states that the past results of the sampling program demonstrate the absence of adverse impacts associated with TMI. Data correlate variability of ichthyoplankton densities to natural spatial and temporal distributions of reported species rather than to TMI-1 operation or TMI-2 cleanup.

Section 3.1.2.a(1)(c) Fish, requires the licensee to conduct a monitoring program that detects and assesses the effects of TMI on the ichthyofauna of the Susquehanna River. The monitoring program is designed to detect and assess the significance of changes in species composition, relative abundance, and seasonal and spatial distribution of ichthyofauna in the vicinity of TMI.

The licensee proposes to delete the requirement for periodic fish sampling. The licensee states that neither operation of TMI-1 or the cleanup at TMI-2 has had an adverse impact on adult or juvenile fishes in York Haven Reservoir. The data show that fish abundance is affected by seasonal changes in river flow, water temperature, habitat difference and the natural variations inherent in fish populations.

Furthermore, creel surveys, conducted since 1975, indicate a healthy sport fishery in the vicinity of TMI. The licensee has concluded that there is little evidence that the operation of TMI-1 or the cleanup at TMI-2 has had a significant, adverse impact to fish populations in the Susquehanna River.

Section 5.4 State and Federal Permits and Certificates, requires the licensee to comply with the effluent limitations stipulated in its NPDES permit. The current technical specification identifies the specific NPDES permit, issued by the Commonwealth of Pennsylvania and gives an effective date of September 16, 1986. This date is followed by the statement that subsequent revisions to the certifications will be accommodated in accordance with provisions of Subsection 5.7.2. The NPDES permit effective when this section of the Environmental Technical Specifications was last revised, was dated September 16, 1986. The licensee proposes to change this date to January 30, 1975, the effective date of the original NPDES permit. Subsection 5.7.2 requires that the licensee notify the NRC of changes in permits or certifications for the protection of the environment. The proposed revision is an administrative change that results in no change in requirements.

Section 5.5 Procedures, requires the licensee to prepare and follow detailed written procedures to implement the environmental technical specifications. Procedures have to be prepared for both radiological and nonradiological technical specifications. The section currently refers to "procedures" not specifying either nonradiological or radiological procedures. The licensee proposes inserting the word "radiological" before the word "procedures." The licensee, in this amendment request, is proposing to delete all nonradiological monitoring, therefore, there would no longer be any nonradiological monitoring procedures. This is an administrative change that improves the clarity of the Technical Specifications.

Section 5.5.1 Environmental Program Description Document, requires the licensee to prepare and follow an environmental program description document necessary to implement the nonradiological monitoring and special programs requests of Sections 3.1 and 4 of the Appendix B Technical Specifications.

Sections 3.1 and 4 with the exception of subsection 4.6 Exceptional Occurrences, is being deleted from the Technical Specifications. Therefore, the licensee requests that Section 5.5.1 also be deleted. Section 5.5.1 requires descriptions of sampling equipment, locations for sampling, frequency and replication of samples, sample analyses and data recording, and as such is not applicable to Section 4.6. Section 4.6 requires only that the licensee make a prompt report to the NRC. No sampling is required.

Section 5.5.2 Quality Assurance of Program Results; Section 5.5.3 Compliance with Procedures; and Section 5.5.4 Changes in Procedures, Station Design or Operation, all make reference to procedures. The procedures include both radiological and nonradiological procedures. Similar to the proposed change to Section 5.5 Procedures, described above, the licensee requests that the term "radiological" precede the first mention of "procedures" in each of these sections.

Section 5.5.4 Changes in Procedures, Station Design or Operation, also has a number of other proposed changes. The licensee proposes to insert the term "Appendix B" before the term "Technical Specifications". This is an administrative change to improve the clarity of the specification.

Section 5.5.4 also references procedure requirements for Sections 5.5.1 and 5.5.5. The licensee has proposed deleting Section 5.5.1 (see above) and Section 5.5.5 (see below). Therefore, the licensee proposes eliminating the requirements in Section 5.5.4 that pertain to the two sections that have been proposed for deletion. This is an administrative change that improves

the consistency of the Technical Specifications.

Section 5.5.5 Consistency with Initially Approved Programs and Section 5.5.6 NRC Authority to Require Revisions, impose requirements on the licensee that pertain exclusively to Section 5.5.1 Environment Program Description Document. The licensee proposes deleting Sections 5.5.5 and 5.5.6 since they also propose deleting Section 5.5.1. If Section 5.5.1 is deleted then Sections 5.5.5 and 5.5.6 are not required. The proposed change is administrative and improves the consistency of the Technical Specifications.

Section 5.6.1.A.(1) Annual Environmental Operating Report Part A Nonradiological, requires the licensee to submit, by May 1 of each year, a report on all the environmental monitoring programs for the previous calendar year. The licensee proposes deleting this section. Since all environmental monitoring programs for TMI have been deleted and the remaining subsections have specific reporting requirements, no annual environmental monitoring report is required. Section 4.6 Exceptional Occurrences, requires a nonroutine report submitted in accordance with Section 5.6.2, Subsection 5.7.2 Changes in Permits and Certifications, will be reported to the NRC within 30 days, in accordance with Section 5.7.2.

Section 5.6.1.B Data Reporting Formats, specifies the format for presentation of nonradiological environmental data in the Annual Environmental Operating Report Part A Nonradiological. The licensee proposes deleting this section. Deletion of Section 5.6.1.A.(1) (above) eliminates the requirement for submission of an annual nonradiological report therefore, the data reporting formats can also be deleted. The proposed change is administrative and improves the consistency of the Technical Specifications.

Section 5.6.2 Nonroutine Reports, requires a nonroutine report if a Limiting Condition for Operation is exceeded or an exceptional occurrence occurs. The licensee proposes changing this specification by inserting, before the term "Limiting Condition for Operation" the term "Technical Specification." The proposed change is administrative and improves the clarity of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

10 CFR 50.92 provides the criteria which the Commission uses to evaluate a No Significant Hazards Consideration. 10 CFR 50.92 states that an amendment to a facility license involves No Significant Hazards if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. Involve a significant reduction in a margin of safety.

The proposed change to delete non-radiological monitoring requirements from the TMI-2 Recovery Technical Specifications has no impact on the safety of the evolutions occurring at TMI-2. Over 15 years of non-radiological monitoring have confirmed the continued absence of significant adverse environmental impact on the aquatic biota of the Susquehanna River from the TMINS. In addition, the decision to dispose of AGW by controlled evaporation remove the major mechanism for potential environmental impact used as a basis in License Amendment 21 to continue the non-radiological monitoring program.

Therefore, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. In fact, the licensee decision not to discharge AGW directly into the Susquehanna River reduces the potential for environmental impact; the proposed changes incorporate that decision into the TMI-2 Tech. Specs.; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes only involve deleting non-radiological studies that are unnecessary considering the AGW decision; or
3. Involve a significant reduction in a margin of safety. There is no impact on any margin of safety. In fact, with regard to the aquatic biota of the Susquehanna River, the licensee decision to evaporate the AGW obviates the need to continue the non-radiological monitoring that the river discharge alternative would have required.

Based on the above analysis, it is concluded that the proposed changes involve no significant hazards considerations as defined by 10 CFR 50.92.

The NRC staff has reviewed the analysis and based on this review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determined that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601 Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: Seymour H. Weiss

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 13, 1990

Description of amendment request: The proposed amendment would revise ECCS pump and valve surveillance test intervals to be consistent with ASME code requirements. The current Monticello test intervals are shorter than code requirements. The proposed amendment would also eliminate requirements for immediate and more frequent surveillance testing of redundant train equipment when equipment is found or made inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated: or (3) involve a significant reduction in a margin of safety. The licensee has stated, and the Commission agrees, that the proposed amendment does not involve a significant hazards consideration.

(1) The proposed amendment affects periodic testing requirements and allowable out-out-service intervals. The changes would serve to bring the requirements into greater consistency with current practice for facilities of more recent vintage. Although there may possibly be some slight effect, positive or negative, on the availability of safety systems, and thus the probability of an accident, the effect is considered negligible since the effect of the proposed changes would be within the bounds of established acceptability.

(2) The proposed amendment does not involve any physical change to the facility. No equipment would be added, removed or modified. Therefore the possibility of a new or different accident or other event would not be created.

(3) Safety limits, limiting safety systems setpoints, allowable stress levels, fatigue limits or other acceptance criteria would not be changed. Therefore the proposed amendment does not involve a

significant reduction in any margin of safety.

Based on the licensee's statements and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: December 21, 1990

Description of amendment request: The amendment would change the Technical Specifications (TSs) to conform to the NRC staff position on Inservice Inspection (ISI) and monitoring of unidentified leakage in Generic Letter (GL) 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping".

NRC GL 88-01, issued January 25, 1988, provided guidance in the form of NRC positions regarding Intergranular Stress Corrosion Cracking (IGSCC) problems in Boiling Water Reactor (BWR) piping made of austenitic stainless steel that is four (4) inches or larger in nominal diameter and contains reactor coolant at a temperature above 200 degrees F during reactor power operation regardless of ASME Code classification. NRC GL 88-01 requested licensees of operating BWRs and holders of construction permits for BWRs to provide information regarding conformance with the NRC positions. Two of the items which the GL requested licensees to address were: 1) a TS change to include a statement in the TS section on Inservice Inspection (ISI) that the ISI Program for piping covered by the scope of NRC GL 88-01 will be in conformance with the NRC positions on schedule, methods and personnel, and sample expansion included in the GL, and 2) confirmation of the licensee's plans to ensure that the TS related to leakage detection will be in conformance with the NRC positions on leak detection included in the GL. The NRC position on leakage detection specifically stated that unidentified leakage be limited to an increase of 2 gpm over a 24 hour period, and that leakage be monitored every eight (8) hours.

Implementing the guidance of NRC GL 88-01 at the Limerick Generating Station (LGS), Units 1 and 2, will involve the proposed TS changes described below.

1. Add new Surveillance Requirement 4.0.5.f to read "The Inservice Inspection (ISI) Program for piping identified in NRC Generic Letter 88-01 shall be performed in accordance with the staff positions on schedule, methods and personnel, and sample expansion included in the Generic Letter. Details for implementation of these requirements are included as augmented inspection requirements in the ISI Program". Additionally, a revision to Bases Section 4.0.5 is being proposed to indicate that such conformance is as approved in NRC Safety Evaluations dated March 6, 1990 and October 22, 1990.
2. Add new Limiting Condition for Operation 3.4.3.2.f to read "2 gpm increase in UNIDENTIFIED LEAKAGE over a 24-hour period." and corresponding Action statement 3.4.3.2.e to read "With any reactor coolant system leakage greater than the limit in f above, identify the source of leakage within 4 hours or be in at least HOT SHUTDOWN within the next 12 hours and in COLD SHUTDOWN within the following 24 hours." to conform with the guidance provided in NRC GL 88-01. Additionally, a revision to Bases Section 3/4.4.3.2 is being proposed to address the new Limiting Condition for Operation and corresponding Action statement, and indicate that they conform with the guidance provided in NRC GL 88-01.
3. Revise Surveillance Requirement 4.4.3.2.1.b to read "Monitoring the drywell floor drain sump and drywell equipment drain tank flow rate at least once per eight (8) hours," to conform with the guidance provided by NRC GL 88-01. Additionally, a revision to Bases Section 3/4.4.3.2 is being proposed to indicate that this Surveillance Requirement conforms with the guidance provided in NRC GL 88-01 as modified by NRC Safety Evaluation dated March 6, 1990.
4. Revise Bases Section 3/4.4.8 on Structural Integrity to include the statement "Additionally, the Inservice Inspection Program conforms to the NRC staff positions identified in NRC Genric Letter 88-01, 'NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping,' as approved in NRC Safety Evaluations dated March 6, 1990 and October 22, 1990." TS Section 3.4.8 requires the structural integrity of ASME Code Class 1, 2, and 3 components be maintained in accordance with Surveillance Requirement 4.4.8 which strictly references TS Section 4.0.5. In light of the proposed change to TS Section 4.0.5 described in Item 1 above, this revision to Bases Section 3/4.4.8 is being proposed accordingly for completeness. No change is required to Surveillance Requirement 4.4.8 for the reasons stated above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes conform with the guidance provided in NRC GL 88-01. The proposed TS changes provide additional and more restrictive requirements in the TS regarding monitoring and responding to reactor coolant system leakage as well as examination of piping susceptible to IGSCC. This will ensure the structural integrity of components and piping by early detection of flaws. The NRC staff acknowledges in GL 88-01 that if the NRC positions are implemented, adequate levels of piping integrity and reliability can be achieved. The proposed TS changes do not affect any plant hardware, plant design, plant systems, operating parameters or conditions that would cause a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or difference kind of accident from any accident previously evaluated.

The proposed TS changes do not alter the design or function of any plant equipment, nor do they introduce any new operating scenarios, configurations, or failute modes that would create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety

The NRC acknowledges in GL 88-01 that if the NRC positions are implemented, adequate levels of piping integrity and reliability can be achieved. The proposed TS changes actually enhance recognition and evaluation of potential degradation before a more severe condition or accident occurs, and therefore, do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Senior V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania, 19101

NRC Project Director: Walter R. Butler

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 22, 1990

Description of amendment request: This amendment specifies that the provisions of Trojan Technical Specification (TTS) 3.0.4 do not apply to TTS 3.7.6.1 regarding the operability requirements for two trains of independent control room emergency ventilation system, CB-1. This is done by incorporating the following words in the action statement for TTS 3.7.6.1: "c. The provisions of Specification 3.0.4 are not applicable."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

In accordance with the requirements of Title 10, of the Code of Federal Regulations, Part 50.92 (10 CFR 50.92), this LCA is judged to involve no significant hazards consideration based upon the following information:

1. Does the proposed license change involve a significant increase in the probability or consequences of an accident?

The addition of a TTS 3.0.4 exemption to TTS 3.7.6.1 does not affect any current accident analyses in that the TTS allows for one train of CB-1 to be inoperable for both MODE 5 and 6, as indicated in the ACTION statement.

Additionally, the proposed revisions to TTS 3.0.4, made in accordance with the guidance found in Generic Letter 87-09 and submitted in LCA 186, would allow transiting from MODE 6 to MODE 5. This change is consistent with that endorsed by Generic Letter 87-09.

2. Does the proposed license change create the possibility of a new or different kind of accident from any accident previously analyzed?

The addition of a TTS 3.0.4 exemption to TTS 3.7.6.1 does not create any new scenarios in that having one train of CB-1 inoperable in both MODE 5 and 6 is allowed per the ACTION statement. Additionally, the proposed revisions to TTS 3.0.4, made in accordance with the guidance found in Generic Letter 87-09 and submitted in LCA 186, would allow transiting from MODE 6 to MODE 5. This change is consistent with that endorsed by Generic Letter 87-09.

3. Does the proposed license change involve a significant reduction in a margin of safety?

The addition of a TTS 3.0.4 exemption to TTS 3.7.6.1 does not affect a margin of safety as the present ACTION statement allows for one train of CB-1 to be inoperable in both MODES 5 or 6.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. Based upon this review, the staff agrees with the licensee's analysis. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: James E. Dyer

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: October 26, 1990

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.8.4 to allow the deletion of two valves from Table 3.8-2, the addition of twelve valves to Table 3.8-2, the rearranging of Table 3.8-2 into alphanumeric order and the updating of ten valve designations. The change would also allow for an updating of the valve functions as listed on Table 3.8-2 to agree with the site computer system listing. Finally, the proposed change would allow for the addition of surveillance requirements for valves whose overloads are not bypassed and the deletion of surveillance requirements on circuitry that is not used at the Virgil C. Summer Nuclear Station, Unit No. 1 (Summer Station or VCSNS).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

South Carolina Electric & Gas Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration. The licensee maintains that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously analyzed for the following reasons:

The deletion of surveillance requirements not applicable to the Virgil C. Summer Nuclear Station in no way diminishes surveillance requirements presently in place in technical specifications for MOV's [motor operated valves] and their associated safety systems. These tests are used to assure that thermal overloads and/or bypass circuitry associated with each MOV will not prevent it from operating under accident conditions. Therefore, the probability or consequences of a previously evaluated accident has not been increased.

Additional testing is also being imposed on MOV's with non-bypassed overloads to assure their operability under accident conditions. Since this proposed change does not physically alter safety related equipment or change the safety function of any safety related equipment, the probability or consequences of a previously evaluated accident has not been increased.

Additional MOV's have been included to [sic] the list of MOV's subjected to these surveillance tests. Adding requirements will not increase the probability or consequences of an accident previously evaluated but will add to the operability checks already in place. The deletion of two valves from Table 3.8-2 which no longer exist in the plant system will not increase the probability or consequences of an accident previously evaluated in the FSAR. These MOV's were removed in accordance with the plant modification program and are no longer subject to testing requirements.

And lastly, rearranging Table 3.8-2 into alphanumeric order, updating valve designations, and making the valve function listing consistent with the site computer listing are editorial changes in nature and have no technical impact. No physical change to the plant is being made and test requirements for the MOV's are still in place. These changes therefore will not increase the probability or consequences of an accident previously evaluated in the FSAR.

The licensee further maintains that the proposed amendment does not create the possibility or a new or different kind of accident from any accident previously evaluated for the following reasons:

The deletion of surveillance requirements not applicable to Virgil C. Summer Nuclear Station will not create the possibility of a new or different kind of accident since surveillance requirements presently in technical specifications for MOV's and their associated safety systems are still in place.

Adding surveillance test [sic] to MOV's with thermal overloads not bypassed does not contribute to the possibility of a new or different kind of accident since the plant as described in the FSAR is not being physically altered. Additional testing will only add to the operability checks already in place in the safety analysis of the FSAR.

The addition of twelve valves being subjected to testing will not increase the possibility of a new accident from any previously evaluated. As stated before, adding operability checks does not create a safety problem but adds to the assurance that the MOV's will operate safely and correctly under accident conditions.

The deletion of two valves from Table 3.8-2 will not create a new kind of accident since these MOV's were removed and no longer impact on the plants [sic] safety systems.

Lastly, rearranging Table 3.8-2 into alphanumeric order, updating valve designations, and making the valve function listing consistent with the site computer listing will not create the possibility of a new or different accident than previously evaluated since they have no technical impact and are purely administrative changes. No change to the plant is being made and surveillance requirements are not being decreased.

Finally, the licensee maintains that the proposed amendment does not involve a significant reduction in a margin of safety for the following reasons:

The deletion of non-applicable surveillance requirements does not alter the basic surveillance requirements in the technical specifications imposed on MOV's with thermal overload protection. Therefore, the margin of safety as defined the technical specification bases has not been reduced.

Additional surveillance testing imposed on MOV's with thermal overloads not bypassed does not reduce the margin of safety as defined in technical specifications. It does however, add assurance to the operability of these MOV's which is the intent of the surveillance tests.

Additional MOV's have been included in the list of MOV's that are subjected to these surveillance tests. Adding requirements does not decrease the margin of safety, but instead adds to the operability checks already in place. And as before stated, assuring operability is the intent of the surveillance tests.

The deletion of two valves from Table 3.8-2 will not decrease the margin of safety because the MOV's are no longer a part of the plant system.

Lastly, rearranging Table 3.8-2 into alphanumeric order, updating valve designations, and making the valve function listing consistent with the site computer listing have no technical impact. All test requirements as described in the technical specifications are still in place for the MOV's on Table 3.8-2. Therefore, this change will not reduce the margin of safety as described in the bases of the technical specifications.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 26, 1990

Description of amendment request: The proposed amendment would remove surveillance requirement 4.8.1.1.1.b from the Technical Specifications (TS). Surveillance requirement 4.8.1.1.1.b contains a requirement to demonstrate each of two physically independent offsite power sources operable every 18 months by manually transferring from one circuit to the other. Because the station electrical distribution system is configured so that both of these offsite power sources are continuously connected to the site class 1E system, the licensee believes that this requirement is unnecessary.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c).

South Carolina Electric & Gas Company (SCE&G or licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration since operation in accordance with the proposed amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the offsite power supply system as described in the FSAR [Final Safety Analysis Report] section 8.2 and the function of the onsite A-C power system as described in FSAR section 8.3.1 remain unchanged. The two independent offsite power supply sources normally supply preferred AC power to the class 1E ESF [Engineered Safety Features] buses through stepdown transformers. These two sources have adequate separation and isolation to preclude any single failure from degrading the ESF AC power system. The intent of the surveillance requirement to demonstrate operability of the offsite power sources is met on a continuous basis. VCSNS [Virgil C. Summer Nuclear Station, Unit No. 1] does not have an "alternate" offsite power supply source. Therefore, the requirement to transfer the unit power supply to the alternate circuit is not applicable. The proposed TS change does not affect the probability or consequences of a previously evaluated accident.

(2) create the possibility of a new or different kind of accident from any previously analyzed.

The as-built electrical distribution system does not physically change, or change its operation, as a result of the proposed TS change. Offsite power supply automatic transfer from a normal circuit to an alternate circuit was never intended since the offsite power system normally and continuously supplies power to the ESF buses. Therefore, the proposed change will not create the possibility of a new or different accident.

(3) involve a significant reduction in a margin of safety.

Deletion of surveillance requirement 4.8.1.1.1.b does not affect the configuration or operation of the offsite power supply system. The offsite AC power supply system, designed to supply sufficient capacity, redundancy, and reliability to ensure availability of power to the ESF system, remains unchanged. The basis [sic] of the system design "provide at least one single offsite circuit capable of powering the ESF loads," is not affected by the proposed change. The proposed change does not reduce the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 14, 1990

Description of amendment requests: This amendment application is a request to modify TS 3/4.7.2 regarding the minimum pressurization temperature for the San Onofre Unit No. 3 steam generators from 70° F to 90° F based on a vendor recommendation to change the reference nil ductility transition temperature. Additionally, the San Onofre Unit Nos. 2 and 3 TS 3/4.7.2 would be clarified to indicate that the pressure/temperature limitation pertains only to the steam generator secondary side. Both San Onofre Unit Nos. 2 and 3 bases would be revised to include a change to the reference temperature for the nil ductility transition.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change prescribes a more restrictive steam generator temperature limitation for Unit 3; specifies Section 3/4.7.2 as applying specifically to the secondary side of the steam generator and specifies RT_{NDT} valves consistent with the respective material properties of the Units 2 and 3 steam generators. The more restrictive steam generator temperature limitation provides the required 30° F margin between the RT_{NDT} and the lowest service temperature as specified by the 1974 Edition of the ASME Boiler and Pressure Vessel Code. The application of this limitation only to the secondary side is merely a clarification since Technical Specification 3/4.4.8 provides the appropriate limitation for the primary side. The proposed change is consistent with the applicable design criteria and therefore does not involve any increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change does not involve a change in the plant configuration. Further, the proposed change facilitates plant operation consistent with the applicable design criteria and existing Technical Specifications. The 1974 Edition of the ASME Boiler and Pressure Vessel Code prescribed a 30° F margin between the RT_{NDT} and minimum steam generator temperature at pressures greater than 20% of the preoperational hydrostatic test pressure. The change prescribes a more restrictive steam generator temperature limitation for Unit 3; clarifies that Section 3/4.7.2 applies only to the secondary side of the steam generator and provides RT_{NDT} values consistent with the respective material properties of the Units 2 and 3 steam generators as provided by the vendor. The application of this limitation only to the secondary side is merely a clarification since Technical Specification 3/4.4.8 provides the appropriate limitation for the primary side. The proposed change is consistent with the applicable design criteria and therefore, no accidents of a different nature or type will occur as a result of operation at the new more conservative limitation.

3. Will operation of the facility in accordance with the proposed change involve a significant reduction in margin of safety?

Response: No

The proposed change substantiates the margin of safety established in the applicable design criteria. Technical Specification 3/4.7.2 specifies requirements which ensure that the steam generator pressure/temperature is maintained within the limits of the ASME Boiler and Pressure Vessel Code. The code specifies that the lowest service temperature is the nil ductility reference temperature (RT_{NDT}) + 30° F. The reference temperature for the nil ductility transition (RT_{NDT}) specified in the Basis for Technical Specification 3/4.7.2 has been corrected by the vendor from 30° F for each steam generator in each unit to 60° F for the Unit 3 steam generators and 40° F for the Unit 2 steam generators. The revised RT_{NDT} values are based on an evaluation of the limiting secondary side material properties used in the fabrication of the steam generators for each unit. The minimum pressurization temperature when steam generator pressure is greater than or equal to 200 psig is thus 70° F (as currently specified) for Unit 2 and 90° F for Unit 3. The higher temperature proposed for Unit 3 therefore does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: November 20, 1990

Brief description of amendments: The proposed amendments would revise the technical specifications relating to the minimum required shutdown cooling flowrate. The amendments would reduce the required flowrate from 4000 gpm to 3780 gpm to provide additional margin for preventing air entrainment while the reactor coolant system is partially drained.

Date of publication of individual notice in **Federal Register:** December 21, 1990 (55 FR 52337)

Expiration date of individual notice: January 22, 1991

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application

complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket No. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of application for amendments: July 13, 1990

Brief description of amendments: The amendments change the Technical Specifications to modify the most negative moderator temperature coefficient limiting condition for operation, the associated surveillance requirements, and the associated Bases section.

Date of issuance: December 21, 1990

Effective date: December 21, 1990

Amendment Nos.: 86 and 80

Facility Operating License No. NPF-2. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34363)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: October 22, 1990

Brief description of amendment: This amendment replaces the existing 0-10 effective full power years (EFPY) and 10-40 EFPY heatup and cooldown curves with 0-12 EFPY heatup and cooldown curves. These curves are based on the final version of Regulatory Guide 1.99, Revision 2, and uses Combustion Engineering methodology, which has been previously reviewed and approved. These new calculations also resulted in Technical Specification (TS) changes to the low temperature overpressure protection (LTOP) system including the pressure operated relief valve (PORV) setpoint, the reactor coolant pump controls, the high pressure safety inspection (HPSI) operability and the HPSI controls which are reflected in this amendment. The supporting TS Bases were modified to reflect the changes.

Date of issuance: December 18, 1990

Effective date: December 18, 1990

Amendment No.: 131

Facility Operating License No. DPR-69. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47565) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 20, 1990

Brief Description of amendments: The amendments change the Technical Specifications to comply with Generic Letter 88-01.

Date of issuance: December 20, 1990

Effective date: December 20, 1990

Amendment Nos.: 150 and 180

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34365) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: September 10, 1990, as supplemented November 20, 1990

Brief description of amendment: The amendment revises the reactor coolant system (RCS) pressure/temperature limits of Technical Specifications (TS) 3.4.9.1 and 3.4.9.2 to protect the reactor pressure vessel (RPV) from the potential of brittle fracture as the RPV neutron exposure increases from three (3) effective full power years (EFPY) to five (5) EFPY. In addition, the low pressure overpressure protection (LTOP) set points are adjusted accordingly and an effective lower temperature limit for usage of the LTOP set points has been added to ensure that the setpoints are used only in the region where the system can provide the necessary protection.

Date of issuance: December 26, 1990

Effective date: December 26, 1990

Amendment No. 23

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40462) The November 20, 1990, submittal provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register** (55 FR 40462). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: September 21, 1990

Brief description of amendments: These amendments revise the Technical Specifications so that new overcurrent protective devices associated with the new cooling units are added to Table 3.8.3.2-1 so that they will be properly controlled and tested.

Date of issuance: December 18, 1990

Effective date: December 18, 1990

Amendment Nos.: 76 and 60

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** October 31, 1990 (55 FR 45878)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: September 28, 1990

Brief description of amendment: This amendment changes the TS to provide a one-time extension of approximately 9 months to the decreased interval for hydraulic snubber visual inspection otherwise required by the TS. The words of the footnote have been revised for clarity as discussed with members of the licensee's staff.

Date of issuance: December 26, 1990

Effective date: December 26, 1990

Amendment No.: 132

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47570) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: June 18, 1990 as supplemented on October 26, 1990.

Brief description of amendment: Revises the Technical Specification to extend the hydrogen recombiner surveillance interval.

Date of Issuance: November 26, 1990

Effective date: November 26, 1990

Amendment No.: 158

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34371)

The October 26, 1990 submittal provided additional clarifying information and did not change our initial determination of no significant hazards consideration.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 26, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: April 3, 1990, as supplemented June 29, 1990.

Brief description of amendment: This amendment revises the operating license for Nine Mile Point Unit 2, to delete License Condition 2.C(9) part (a) which addresses the Detailed Control Room Design Review and the associated Human Engineering Discrepancies. The NRC staff is not acting on the application to delete License Condition 2.C(9) parts (b) and (c) at this time. Parts (b) and (c) may be deleted at a later time following a certification by the licensee that the subject actions have been completed.

Date of issuance: December 18, 1990

Effective date: December 18, 1990

Amendment No.: 24

Facility Operating License No. NPF-69: Amendment revises the Facility Operating License.

Date of initial notice in **Federal Register:** November 14, 1990 (55FR47572) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1990.

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 31, 1989

Brief description of amendment: The amendment revises the Trojan Technical Specifications by incorporating numerous editorial corrections and clarifications, and by making Containment Purge Noble Gas Monitors PRM-1C and PRM-1D separate entries so as to apply appropriate footnotes to the PRM-1D entry, and to renumber the rest of the Containment Purge Monitor entries accordingly.

Date of issuance: December 18, 1990

Effective date: December 18, 1990

Amendment No.: 167

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47577) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: April 20, 1990, as supplemented by letters dated May 24, June 8, July 7, July 12, July 27, August 28, August 31, October 19, and by two letters dated November 29, 1990.

Brief description of amendment: The amendment provides NRC approval of the thermal shield support system replacement design that was proposed by the licensee and provides NRC approval of the proposed change to License Condition 3.M, which will continue the thermal shield monitoring program through Cycle 11 operation.

Date of issuance: December 19, 1990

Effective date: December 19, 1990

Amendment No.: 140

Provisional Operating License No. DPR-13: The amendment revised License Condition 3.M.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21980) The supplementary information provided by the licensee was submitted to facilitate NRC review of the requested action and was not outside the scope of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: June 8, 1990 (TS 285)

Brief description of amendment: The amendment changes the Technical Specifications to allow reactor operation in an expanded region of core power versus core flow.

Date of issuance: December 18, 1990

Effective date: December 18, 1990, and shall be implemented within 30 days

Amendment No.: 181

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36350) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: August 27, 1990 (TS 90-17)

Brief description of amendment: This amendment revises the surveillance requirements (SR) on pressure/temperature limits in the Sequoyah Unit 2 Technical Specification (TSs). The changes delete (1) Table 4.4-5, "Reactor Vessel Material Surveillance Program Withdrawal Schedule," and (2) references to Table 4.4-5 in SR 4.4.9.1.2. Table 4.4-5 was redundant to the requirements given in Appendix H, 'Reactor Vessel Material Surveillance Program Requirements," of 10 CFR Part 50. The same changes to the Sequoyah Unit 1 TSs were issued as Amendment 87 for Unit 1 in the staff's letter dated October 14, 1988.

Date of issuance: December 17, 1990

Effective date: December 17, 1990

Amendment No.: 138

Facility Operating Licenses No. DPR-79. Amendment revised the Unit 2 Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38605)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 27, 1989 as supplemented on June 23, 1989

Brief description of amendment: The amendment changes the expiration date of Facility Operating License No. DPR-28 from December 11, 2007 to March 21, 2012.

Date of issuance: December 17, 1990

Effective date: December 17, 1990

Amendment No. 127

Facility Operating License No. DPR-28. Amendment revised the License.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31120).

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Rockville, Maryland, this 2nd day of January 1991.

For the Nuclear Regulatory Commission

Bruce A. Boger,

Director, Division of Reactor Projects—III, IV, and V Office of Nuclear Reactor Regulation

[FR Doc. 91-297 Filed 1-8-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 30-30691; License No. 35-26953-01; EA 90-102]

Barnett Industrial X-Ray; Order Imposing Civil Monetary Penalty

I

Barnett Industrial X-Ray (BIX) Stillwater, Oklahoma (Licensee) is the holder of License No. 35-36953-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on December 28, 1988. The license authorizes the Licensee to possess iridium-192 in sealed sources in various radiography exposure devices for use in industrial radiography in accordance with the conditions specified therein. The license is scheduled to expire on December 31, 1993.

II

An inspection of the Licensee's activities was conducted from April 7, 1990 to May 7, 1990, following an April 6, 1990 report from the Licensee to the NRC in regard to a radiography incident. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 7, 1990. The Notice described the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in two letters dated October 2, 1990. In its reseponse, the Licensee disputed NRC's assertion that two individuals received radiation exposures in excess of NRC limits, claiming that one of the exposure estimates was based on inconclusive data which, in its view, was not credible. In addition, the Licensee requested remission or mitigation of the proposed civil penalty because it felt that BIX had suffered financially as a result of this matter.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $7,500 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. In the alternative, the civil penalty may be paid in 36 monthly installments that would include accrued interest. If payment will be made in monthly installments, the licensee shall contact the Director, Office of Enforcement in writing, within the thirty day period to arrange the terms and conditions of payment.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearng within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment of the entire civil penalty or a commitment in writing to pay the civil penalty in installments in accordance with Section IV above, has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation I.B of the Notice referenced in Section II above, specifically, whether the radiographer received a whole body exposure in excess of three rems, and

(b) Whether, on the basis of this violation and the violations admitted by the licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Dated at Rockville, Maryland this 31st day of December 1990.

Appendix; Evaluations and Conclusions

On September 7, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violations identified during the April 7 through May 7, 1990, NRC inspection. Barnett Industrial X-Ray (BIX) responded to the Notice of Violation and requested mitigation of the proposed civil penalty in letters dated October 2, 1990. NRC's evaluations and conclusions regarding the licensee's response follow:

Restatement of Violations

I. Violations Assessed a Civil Penalty

A. 10 CFR 34.43(b) requires the licensee to ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed. If the radiographic exposure device has a source guide tube, the survey must include the guide tube.

Contrary to the above, on April 6, 1990, a radiographer and a radiographer's assistant employed by the licensee made two radiographic exposures and did not survey the entire circumference of the radiographic exposure device and the source guide tube after each exposure to ensure that the sealed source had been returned to its shielded position.

B. 10 CFR 20.101(a) requires that the licensee limit the whole body radiation dose of an individual in a restricted area to 1.25 rems per calendar quarter, except as provided by 10 CFR 20.101(b). 10 CFR 20.101(b) allows a licensee to permit an individual in a restricted area to receive a whole body radiation dose of 3 rems per calendar quarter provided specified conditions are met.

Contrary to the above, a radiographer and a radiographer's assistant employed by the licensee received whole body occupational radiation doses in excess of 3 rems during the second calendar quarter of 1990.

Collectively, these violations have been classified as a Severity Level I problem (Supplements IV and VI).

Cumulative Civil Penalty—$7,500 (assessed equally between the violations).

Summary of Licensee's Response to Notice of Violation

Of the two violations which resulted in the assessment of the proposed civil penalty, the Licensee admitted Violation I.A., and contested, in part, Violation I.B. In contesting I.B., the Licensee disputed NRC's assertion that two individuals had received whole body exposures in excess of the limits of 10 CFR 20.101. While admitting that the assistant radiographer received such an overexposure, the Licensee stated that the film badge for the radiographer involved in the April 6, 1990, incident indicated less than 3 rems, and that estimates of the radiographer's whole body exposure based on cytogenetic studies were inconclusive and subject to wide variances.

In regard to Violation I.B., the Licensee based its position in part on the results of the processing of the radiographer's film badge. The Licensee's film badge vendor reported an equivalent exposure of 2.7 rems. Additionally, the Licensee contended that while the cytogenetic test results provided by Oak Ridge Associated Universities (ORAU) indicated exposure in excess of 3 rems, those results were not credible because such exposure estimates involved what the Licensee believes to be a "low percentage rate for accuracy." The Licensee also noted that Oklahoma Medical Center, a second laboratory which also conducted cytogenetic studies, provided test results which were not conclusive with regard to whether an overexposure occurred.

NRC Evaluation of Licensee's Response to Notice of Violation

NRC's review of the incident which led to the exposure of the radiographer and his assistant included a detailed review of the actions of the two individuals involved in conducting radiographic oeprations on the evening of April 6, 1990. This included reenactment of their activities prior to and following their recognition that the radiographic source had not been returned to its shielded position within the exposure device, as well as review

of the location of personnel radiation monitoring devices (film badges) relative to the unretracted iridium-192 source.

Although the radiographer was also involved in the recovery of the source once it became known that it had not retracted, NRC believes that the most significant exposures to the radiographer occured during the positioning and retrieval of the film prior to the discovery of the unretracted source. NRC's review of this incident led NRC to conclude that the radiography source was not connected to its drive cable when the two involved radiography exposures were made. Thus, during activities between and following these exposures, the radiographer was exposed to the unshielded source. The radiographer indicated to NRC that his film badge has been attached to his front shirt pocket during the two radiographic exposures that were made prior to this discovery. Based on NRC's interviews with the radiographer, NRC concludes that the radiographer's back was to the source when he was positioning the radiographic film, creating a situation in which his body provided shielding for the badge. Thus, in NRC's view, the exposure indicated by the film badge is not the most accurate indication of the radiographer's actual radiation exposure.

The ORAU laboratory reported that the radiographer had received an equivalent whole-body dose of 17 rads (equivalent to 17 rems exposure for gamma radiation) as determined by the number of dicentric chromosomes observed in 1,050 first-division metaphases from peripheral blood lymphocyte cultures obtained from the radiographer shortly after the incident. The equivalent dose value is determined by comparison of the number of dicentric chromosomes observed in the subject's sample with those observed in "normal" cell cultures and cultures obtained from cells which have been exposed to radiation under controlled conditions. The dose range provided in the report, 8–27 rads with 95% confidence, represents standard statistical analysis conducted for test results as determined from the ORAU data-base and mathematical analysis.

The NRC staff does not dispute the 2.7 rems exposure reading provided by the licensee's film badge vendor, but maintains that this exposure reading represents the exposure to the film badge, which is not necessarily the same as that received by the radiographer. Further, the staff does not believe that the 95% confidence interval provided for ORAU's dose determination supports the Licensee's assertion regarding the inaccuracy of this test or method of analysis. NRC also notes that even the lower end of ORAU's estimate (8 rads) would indicate that the radiographer received an exposure in excess of 3 rems. While the NRC staff agrees that it is difficult to precisely determine the exposure received by the radiographer, the NRC staff concludes that his exposure did exceed 3 rems.

NRC concludes that the violation occurred as stated, that both the radiographer and assistant received doses in excess of 3 rems, and that the explanation provided by the licensee did not merit modification of the proposed civil penalty.

NRC also notes that, as a practical matter, even if it had accepted the Licensee's position that an overexposure to the radiographer had not occurred, it would not have altered NRC's position that the violation occurred nor its view that it was a Severity Level I violation. This is based on the fact that the assistant radiographer received an exposure to the tissue of the neck substantially in excess of the minimum criteria for a Severity Level I violation. Thus, the failure to survey in combination with the exposure to the assistant radiographer would have resulted in the classification of the two violations collectively at Severity Level I whether or not the radiographer had been involved in the incident. The only practical effect of accepting or rejecting the licensee's argument is the assignment of a whole-body exposure to the permanent exposure record for the radiographer. In NRC's view, the more conservative measure in this case would be to assign the radiographer a whole-body exposure equal to that estimated by ORAU, which in NRC's view is a more accurate estimate of the individual's actual whole-body exposure.

Summary of Licensee's Request for Mitigation

In protesting the proposed civil penalty, the Licensee stated that its license was suspended for three weeks following the April 6, 1990, incident (actually the Licensee voluntarily suspended radiographic activities at NRC's request for two weeks while NRC reviewed the circumstances surrounding the incident). The Licensee stated that this suspension created a substantial loss of income, and that the publicity surrounding the incident caused and continues to cause a loss of clientele. In summary, the Licensee stated that he feels that he has "suffered enough financial loss" and requested remission or mitigation of the proposed civil penalty.

NRC's Evaluation of Licensee's Request for Mitigation

NRC is not in a position to dispute the Licensee's statement that he has suffered financially as a result of the April 6, 1990, incident. NRC accepts the Licensee's statement that the suspension of activities and the publicity surrounding the incident have had a financial impact on the company. Such financial consequences frequently result from significant enforcement actions. NRC also recognizes that the Licensee cooperated fully with NRC in agreeing to suspend its activities pending NRC's review of the incident (the Licensee's agreement was confirmed in a Confirmation of Action Letter dated April 9, 1990). NRC notes, however, that the actual voluntary suspension lasted from the date the incident was reported to NRC on April 6 until April 20, the date of a meeting between the Licensee and NRC in Arlington, Texas, and thus was in effect for two rather than three weeks.

NRC's Enforcement Policy states that it is not NRC's intention that monetary civil penalities put licensees out of business or detract from a licensee's ability to conduct licensed activities safely. Considering the size of the civil penalty in this case and the opportunity to pay in regular installments if necessary, NRC believes that these unintended effects need not occur. While NRC is sympathetic to the Licensee's argument that it has suffered financially, NRC is also cognizant of the fact that a serious radiation exposure occurred as the result of Licensee personnel failing to perform required radiation surveys. In that NRC's regulations are designed to prevent such exposures, and in that NRC's regulations were not followed in this case, NRC believes it has applied its Enforcement Policy appropriately. NRC believes that this civil penalty, when it was proposed, was already mitigated to the extent provided for by the Enforcement Policy (25 percent mitigation as a result of the Licensee's promptly reporting the incident to NRC). NRC does not believe the Licensee has introduced any information that NRC was not aware of and did not take into account in proposing the $7,500 civil penalty.

NRC Conclusion

In conclusion, NRC does not believe

the Licensee has provided any information that warrants modification of the proposed civil penalty. NRC concludes that the violations that led to the proposed civil penalty occurred as stated in the original Notice, that the violations were appropriately classified at Severity Level I, and that the proposed civil penalty of $7,500 was appropriate given the seriousness of the resultant radiation exposures. Consequently, the proposed $7,500 civil penalty should be imposed by Order.

[FR Doc. 91-478 Filed 1-8-91; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 030-03465; License No. 48-09843-18; EA 90-098]

University of Wisconsin—Madison; Order Imposing Civil Monetary Penalties

I

The University of Wisconsin—Madison, Madison, Wisconsin (Licensee) is the holder of Byproduct Materials License No. 48-09843-18 (license) initially issued by the Nuclear Regulatory Commission (NRC or Commission) on August 8, 1956. The license was most recently renewed on February 7, 1989 and is due to expire on March 31, 1994. The license authorizes the Licensee to use a variety of byproduct materials for medical and research applications at various locations within the University complex in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on March 26 through May 2, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated July 25, 1990. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the Violations. The Licensee responded to the Notice on September 24, 1990. In its response, the Licensee admitted Violation I.A of the Notice, but argued that escalation of the base civil penalty was unwarranted; denied Violation I.B of the Notice in its entirety; and admitted Violation II of the Notice.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay civil penalties in the amount of $7,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation I.B. of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials, Safety, Safeguards, and Operations Support.

Dated at Rockville, Maryland this 28th day of December 1990.

Appendix; Evaluations and Conclusions

On July 25, 1990, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection on March 26 through May 2, 1990. The University of Wisconsin-Madison (Licensee) responded to the Notice on September 24, 1990. In its response, the Licensee admitted Violations I.A., II.A. and II.B. and denied Violation I.B. In addition, the Licensee requested reduction of the 50 percent escalation of the base civil Licensee's requests are as follows:

I. Restatement of Violation I.A.

License Condition No. 23 requires, in part, that the Licensee conduct its program in accordance with statements, representations, and procedures contained in the application dated January 10, 1989.

The application dated January 10, 1989, Attachment VI, Procedures, Section 1, Operating Procedures, requires that operating procedures be established, in writing, and implemented.

An operating procedure reviewed and approved by the Radiation Safety Committee in April 1989, High Dose-Rate Remote Afterloader, Section A.2, requires that a trained operator be present during any use of the unit.

Contrary to the above, on two occasions during the period April 1989 through March 26, 1990, the High Dose-Rate Remote Afterloader was used to treat patients and a trained operator was not present.

Summary of Licensee's Response to Violation I.A.

The Licensee admits this violation occurred as stated. The proposed civil penalty was escalated 50 percent for NRC identification of the violation; however, the Licensee protests this escalation, and requests that, instead, the base civil penalty be mitigated 50 percent because it identified the violation after the civil incident occurred.

The first incident occurred when a physicist left a nurse alone at the HDR unit treatment console while a patient was undergoing treatment. The Licensee admits the nurse was an untrained operator. It contends this incident was identified by the University shortly after it occurred and before the NRC inspection. It states the physicist involved was informed this was unacceptable and was not to happen in the future.

The Licensee believes it should not be cited for the second incident involving an untrained operator because it could not have reasonably discovered this violation before it occurred. The second incident occurred when the physicist responsible for the treatment was called away and left an untrained dosimetrist alone at the HDR treatment control console. The Licensee contends the

physicist allowed the dosimetrist to be alone at the control console because he assumed she had received the required vendor-provided training since he had seen her name on the attendance roster for the training. In fact, the dosimetrist had not received this training because she was called away for other duties about ten minutes after the training began. Another attendee signed the dosimetrist's name to the attendance sheet on the assumption that the dosimetrist would return momentarily

The Licensee notes that its corrective action for this violation includes revising the training of HDR operators and submission of an amendment request setting forth new requirements. This request was approved by the NRC. The new training requirements for operators include 4 hours of training, passing a written exam and performing treatments under the direct supervision of a trained operator.

The Licensee did not contest the other escalation and mitigation factors originally proposed.

NRC's Evaluation of Licensee's Response to Violation I.A.

The Licensee's letter dated September 24, 1990, states it had identified the first example of the violation involving the nurse prior to the NRC inspection. However, it did not provide any documentation to support this contention. During the inspection on March 26, 27, and 28, 1990, the NRC inspectors questioned the Radiation Safety Officer as to whether any incidents, other than the two reported misadministrations which initiated the special inspection documented in NRC's letter dated May 21, 1990, and occurred with the use of the HDR unit. The Radiation Safety Officer denied any other incidents had occurred.

During the inspection, on March 28, 1990, a dosimetrist mentioned the first incident involving the nurse and the inspectors made an inquiry into the event. During a telephone interview with the inspector on April 2, 1990, the nurse was asked whether she had mentioned this incident to the Chief Physicist, Dr. Paliwal, or to anyone else. She stated she could not recall informing her supervisors of this incident, but apparently did mention it to her peers because a dosimetrist told the inspectors about it.

Based on the information collected by the inspectors during and after the inspection, it appears that Licensee management as well as other physicists who were involved in the program were not aware of this event or that corrective actions were to be taken. Had the Licensee identified the incident involving the nurse described in the first example of the violation and reported it to the inspectors in response to their questions during the inspection or reported it internally to Radiation Safety program management, mitigation may have been considered. However, no such report or documentation of the incident supporting the Licensee's contention that it identified this violation was given the inspectors during the inspection or presented or discussed during the enforcement conference. Therefore, the NRC concludes that there was insufficient information provided to show that the Licensee identified this event as a violation, and, as such, there was no basis for mitigation of the base civil penalty

The second example of Violation I.A. involved a dosimetrist. A Nucletron training session attendance list indicated that eight people, including this dosimetrist, attended the training session on April 13, 1989. Also in attendance was the physicist who left this dosimetrist alone at the treatment control console on one of the occasions indicated in Violation I.A. During the inspection, it was learned that this dosimetrist was only present at the course for approximately 10 minutes and another attendee had signed the dosimetrist's name on the attendance sheet on the assumption that she would return shortly and complete the training. However, the dosimetrist did not return and her name was not struck from the attendance roster.

The NRC concludes that the physicist's contention that he reasonably assumed the dosimetrist had completed the training, based on his recollection that the dosimetrist's name was on an attendance roster for training that occurred 11 months prior to the incident, is without merit. It is clear that the dosimetrist was not trained and was left alone at the control panel by the physicist. This was a violation as set forth in Violation I.A. The accuracy of the training list is the responsibility of the Licensee and any mistake regarding that list does not justify or mitigate the instant violation. Moreover, it is reasonable to expect that a person supervising a critical task such as the operation of the High Dose-Rate Remote Afterloader, would confirm that the dosimetrist was qualified prior to leaving the person alone.

The NRC did not excalate or mitigate this case on the basis of corrective actions. However the Licensee discussed its corrective actions as an additional basis for mitigation. Although the Licensee's corrective actions, as submitted in the license amendment request dated April 6, 1990 and incorporated as Amendment No. 73 dated May 3, 1990, are appropriated and extensive, the submission of this amendment was initiated at the request of NRC and therefore not considered prompt. NRC requested that the Licensee prepare an amendment to its license and provided specific information as to what the amendment should contain. Therefore, the NRC still concludes that neither escalation or mitigation is appropriate under the corrective action factor.

II. Restatement of Violation I.B.

License Condition No. 23 requires, in part, that the Licensee conduct its program in accordance with statements, representations, and procedures contained in the application dated January 10, 1989.

1. The application dated January 10, 1089, Attachment VI, Procedures, Section 4, Treatment Time Calculations, requires that treatment time calculations be independently verified.

Contrary to the above, during the period April 1989 through March 26, 1990, at least 35 treatment plans did not have the treatment time calculations verified.

2. The application dated January 10, 1989, Attachment VI, Procedures, Section 1, Operating Procedures, requires that operating procedures be established, in writing, and implemented.

An operating procedure reviewed and approved by the Radiation Safety Committee in April 1989, High Dose-Rate Remote Afterloader, Section C.1.b., requires that the treatment plan be reviewed by a second person to check for possible errors.

Contrary to the above, during the period April 1989 through March 26, 1990, at least 35 treatment plans were not reviewed by a second person to check for possible errors.

Summary of Licensee's Response to Violation I.B

The Licensee denies the violation and alleges that the NRC does not have regulations or guidance documents establishing the requirements for operation of an HDR unit. The Licensee asserts that the treatment time calculations were independently verified and the treatment plan reviewed by a second person to check for possible errors during preparation of the treatment card when a physicist watched a dosimetrist work up the treatment plan.

The Licensee claims the dosimetrist were trained and capable of preparing HDR treatment plans wholly on their own and that the physicist observing their treatment plan preparation was simultaneously performing the required independent verification of the treatment time calculations and was checking for possible errors.

Until the first misadministration occurred on February 7, 1990, the Licensee claimed it exercised reasonable care in executing an independent verification of treatment plan parameters. After this first misadministration, the Licensee instituted a "functionally independent" verification procedure in which a second physicist working alone checked the plan.

NRC's Evaluation of Licensee's Response to Violation I.B.

Contrary to the Licensee's assertion that NRC does not have regulations or guidance documents for an HDR unit, it should be noted that, on February 20, 1986, NRC issued Policy and Guidance Directive FC 86–4, "Information Required For Licensing Remote Afterloading Devices." Enclosure 2 of this Directive is routinely provided to Licensees upon request, in order to assist in the preparation of an amendment request to add authorization for a remote afterloading device to an existing license. In reviewing the University of Wisconsin-Madison License Amendment No. 68, it is apparent that this guidance document was used to prepare the Licensee's application, dated January 10, 1989, to add the remote afterloading device authorization to its license. The format of the January 10, 1989 application shows a close correlation with the guidance document. This guidance document directs Licensees to make certain commitments in an application for a remote afterloading device, including a commitment to independently verify treatment time calculations before treatment is begun (Section VI. "Operating Procedures," Subitem A.5.). In its application, dated January 10, 1989, the Licensee made this

commitment, in accordance with the guidance.

Regarding the dosimetrists' ability to prepare HDR treatment plans on their own, the NRC inspectors interviewed four of the Licensee's dosimetrists during the inspection. Three of the four indicated discomfort, inexperience and inadequate training for their role in HDR treatment planning. The fourth dosimetrist, who indicated her level of HDR knowledge and experience made her comfortable, was the only one sent to Nucletron for a dedicated three day training session, instead of just having had the four hour training session Nucletron conducted onsite at the Licensee's facilities. Therefore, the NRC has concluded that three of four Licensee dosimetrists, by their own admission, were not qualified to prepare HDR treatment plans on their own. In these cases the physicists were providing assistance in preparing the treatment plan rather than an independent verification. In addition, in its letter, dated September 24, 1990, the Licensee states ". . . following the first misadministration, we realized that a physicist observing the preparation of a plan was not functionally independent and established a procedure in which a second physicist working alone checked the plan."

The NRC has concluded that the Licensee's argument justifying its interpretation of independent verification of treatment parameters is without merit and does not provide a basis for withdrawing the violation.

III. NRC Conclusion

Based on the information presented by the Licensee and evaluated by the NRC, it has been concluded that the $7,500 in civil penalties proposed by the NRC in its July 25, 1990 Notice of Violation and Proposed Imposition of Civil Penalties is justified and should be imposed.

[FR Doc. 91-479 Filed 1-8-91; 8:45 a.m.]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the National Critical Technology Panel

The National Critical Technology Panel will meet on January 25, 1991. This meeting will be held at the offices of The Analytic Sciences Corporation (TASC), located at 1101 Wilson Blvd., suite 1500, Arlington, Virginia. The Panel will start its deliberations at 9 a.m., Monday, November 19th, and will conclude its activities at approximately 5 p.m.

The purpose of this Panel is to prepare and submit to the President a biennial report on national critical technologies on even-numbered years. These are to be the product and process technologies the Panel deems most critical to the United States, and shall not exceed 30 in number in any one year.

This meeting will be closed to the public, since discussions will take place in matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order, according to 5 U.S.C. 552b.(c)(1). Discussions will also envolve privileged information according to 5 U.S.C. 522b.(c)(4).

For further information, please call Tom Russell, at the Office of Science and Technology Policy, Executive Office of the President, (202) 395-5736.

Dated: January 3, 1991.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91-425 Filed 1-8-91; 8:45 am]

BILLING CODE 3170-01-M

PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee (PEPAC) was formed under Executive Order 12687 as amended. PEPAC provides the President with ongoing advice related to education policy matters.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes consideration of a policy statement related to measuring the national education goals and recommendations for future education initiatives.

DATES: The sixth meeting of PEPAC will be held on January 16, 1991.

ADDRESSES: The meeting is currently scheduled from 1-4:30 in room 180 of the Old Executive Office Building.

FOR FURTHER INFORMATION CONTACT: Rae Nelson at the White Huse Office of Policy Development. The phone number is (202) 456-7777. For clearance purposes, please indicate your intention to attend no less than twenty-four hours before the meeting. Please provide over the phone your date of birth and name as it appears on your driver's license. When entering the building, you will be required to show picture identification.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

January 3, 1991.

[FR Doc. 91-426 Filed 1-8-91; 8:45 am]

BILLING CODE 31-2701-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28731; File No. SR-NASD-90-61]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval to Proposed Rule change Amending the Entry and Annual Fees Charged to Issuers on the NASDAQ System

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("Commission") on November 9, 1990 [1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b-4 thereunder.[3] The proposed rule change amends Schedule D, part IV of the Association's By-Laws [4] governing the entry and annual fees charged to issuers whose securities are included in the NASDAQ System.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 28665, November 30, 1990) and by publication in the **Federal Register** (55 FR 50261, December 5, 1990). No comments were received on the proposal. This order approves the proposed rule change.

The NASD's current fee structure for issuers under Schedule D, part IV of the By-Laws governing the NASDAQ System does not distinguish between securities listed on the NASDAQ National Market System ("NASDAQ/NMS" or "NMS") and securities that are not listed on NMS ("Regular NASDAQ") (together referred to as "The NASDAQ Stock Market"). The rule change approved herein creates two schedules for securities listed on NASDAQ; one for NMS issues and one for Regular

[1] The NASD has amended the proposed rule change three times since its original filing date. Amendment No. 1, filed November 19, 1990, was technical in nature and changed the Article and Section cited in the NASD By-Laws that gives the Board of Governors authority to amend Schedules to the By-Laws without membership approval. Amendment No. 2, submitted on December 14, 1990, requested accelerated approval of the rule change pursuant to section 19(b)(2) of the Act. (See discussion infra.) Amendment No. 3, dated December 26, 1990, clarifies the language of the proposed rule change by making particular modifications to the text of the proposed rule. It does not alter the substance of the proposal.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1989).

[4] *NASD Securities Dealers Manual*, CCH ¶ 1814-16.

NASDAQ issues and adjusts the fees charged for both types of issues. With the continued growth of the NASDAQ Stock Market [5] in the last decade, and especially the growth in the quality and competitiveness of the NMS, this bifurcation and adjustment of the issuer fee structure is both necessary and appropriate. The Commission believes that the NASD's amendments to the issuer fee structure are both fair and reasonable. The NMS inclusion and maintenance requirements are significantly more rigorous than the requirements for Regular NASDAQ; they are comparable to the listing standards of the national securities exchanges. Changes to the issuer fee structure will compensate the NASD for the additional expense and responsibility it incurs in connection with the enforcement of these requirements and reasonably and fairly reflect the costs inherent in the NASD's continuing improvement of the NASDAQ Stock Market.

In addition to the bifurcation of the fee structure, the NASD proposal amends part IV of Schedule D to require the payment of a new on-refundable $1,000 processing fee, which will be credited against the applicant issuer's minimum entry fee for application to both the NMS and Regular NASDAQ.

The proposed rule change will also add a provision allowing the waiver of entry and annual fees for both NMS and Regular NASDAQ applicants if, in the discretion of the Board of Governors or its designee, such a waiver is justified.[6] The NASD has represented [7] that in utilizing its waiver authority for any portion of the fees, the NASD will consider, but not limit itself to, the following factors where the imposition of the fee would be inequitable under the circumstances: (1) Whether the issue presently trades in Regular NASDAQ and is seeking NMS inclusion; (2) whether the entity seeking an NMS listing has resulted from a business combination where one or more of the predecessor companies were previously listed on Regular NASDAQ or the NMS; (3) whether the company has other issues already trading in the NMS; (4) whether the company was previously listed in the NMS; and (5) other information deemed material to the company's listing application.

Finally, in view of the proposed changes to the fee structure for NMS and Regular NASDAQ, the NASD is proposing to eliminate the current section entitled "Interim Inclusion Fee." The interim inclusion fee has provided a means for new issues seeking listing on a national securities exchange to be listed on the NASDAQ Stock Market on an interim basis. Any need for a reduced fee for interim inclusion of a security can now be accommodated through the proposed entry fee waiver provision.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A(b) (5) and (6).[8] Section 15A(b)(5) requires, in part, that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using any system which the NASD operates. Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission believes, for the reasons mentioned above, that the proposed rule change satisfies these statutory requirements.

Additionally, the Commission finds good cause pursuant to section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**. The NASD's budget year begins on January 1, 1991. The issuer fees to be collected pursuant to the amendment to Schedule D of the Association's By-Laws, proposed herein, from the principal source of revenue for the NASD's marketing operations for the year 1991. Accelerated effectiveness of this rule change would allow the Association to fund its budgeted marketing operations without the disruption, including possible interruption in operations, that would occur if the expected revenue stream were delayed.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[9]

Dated: January 2, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-370 Filed 1-8-91; 8:45 am]

BILLING CODE 8010-01-M

[5] *See* NASD Press Release, "NASDAQ Grows Fivefold in the 1980s," December 29, 1989. In 1981, NASDAQ had an annual share volume of 7.8 billion shares traded. In 1988, total volume for the year was 31 billion shares traded. In 1989, total volume for the year was 33.5 billion shares traded. NASDAQ grew in this time period to become the second largest U.S. securities marketplace, after the New York Stock Exchange.

[6] When the current waiver provisions were adopted, virtually all situations where a waiver might be justified fell into the standard categories covered by the provisions. The NASD has increasingly found situations in which granting a waiver is justified but not permitted by the current provisions. The proposed waiver would allow the NASD more flexibly to waive fees on a case-by-case basis in situations which are not precisely covered by the waiver provisions currently in effect or where other unforeseen considerations might warrant a waiver.

[7] *See* letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Katherine England, Branch Chief, SEC, dated January 2, 1991.

[8] 15 U.S.C. 78o-3 (1982).

[9] 17 CFR 200.30-3(a)(12) (1989).

[File No. 0-11307]

Issuer Delisting; Notice of Application to Withdraw from Listing; Global Natural Resources, Inc., Common Stock, $1.00 Par Value

January 3, 1991.

Global Natural Resources, Inc. ("Company") has filed an application with the Securities and Exchange commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following: As of the opening of business on December 20, 1990, the Company's common stock commenced trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and Amex. The company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 25, 1991, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application

after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-369 Filed 1-8-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-1]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petitions or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 28, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 2, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26213.

Petitioner: California Department of Forestry and Fire Protection.

Sections of the FAR Affected: 14 CFR 91.119 (b) and (c).

Description of Relief Sought: To allow petitioner to operate aircraft below 500 feet but in no case lower than 100 feet of any person, vessel, vehicle, or structure. Such operation would be used in wildlife suppression, forest pest control, and reseeding.

Docket No.: 26381.

Petitioner: Eastern Metro Express, Inc.

Sections of the FAR Affected: 14 CFR 135.293(b) and 135.297(a)

Description of Relief Sought: To allow petitioner's pilots in command to receive an annual instrument proficiency check and a 6-month proficiency check in an approved simulator. Additionally, to allow petitioner's seconds in command to alternate every other instrument proficiency check in an approved simulator.

Docket No.: 26405.

Petitioner: AMR Combs.

Sections of the FAR Affected: 14 CFR 135.157(b)(2)(ii).

Description of Relief Sought: To allow petitioner to operate its pressurized aircraft, capable of safely descending to 15,000 feet MSL within 4 minutes, with a 10-minute oxygen supply instead of a 30-minute oxygen supply or to comply with the requirement of § 135.157(a) in the event of a loss of cabin pressure and descent below 15,000 feet MSL is not possible based on planned route of flight.

Docket No.: 022NM.

Petitioner: MarkAir.

Sections of FAR Affected: 14 CFR 25.857(b)(1).

Description of Relief Sought: To allow certification and operation of two de Havilland DHC-6-311 airplanes in certain combination passenger/cargo configurations without providing firefighting access into the cargo compartments.

Dispositions of Petitions

Docket No.: 25351.

Petitioner: USAir.

Sections of FAR Affected: 14 CFR 121.371(a) and 121.378.

Description of Relief Sought/Disposition: To extend Exemption No. 5005A, which allows petitioner to utilize certain foreign equipment manufacturers and related repair facilities to perform maintenance, and alterations on the components, parts, and appliances that are produced by such manufacturers, which are used on the BAe-146, B737, MD-80, F-28, F-100, and B767 aircraft operated by petitioner.

Grant, December 19, 1990, Exemption No. 5005B

Docket No.: 26199.

Petitioner: Crow Executive Air Charter, Inc.

Sections of FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/Disposition: To allow appropriately trained pilots employed by petitioner to perform the preventive maintenance function of removing and replacing passenger seats in its aircraft.

Denial, December 26, 1990, Exemption No. 5263.

[FR Doc. 91-408 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 35-90]

Treasury Notes, Series AH-1992

December 27, 1990.

The Secretary announced on December 26, 1990, that the interest rate on the notes designated Series AH-1992, described in Department Circular—Public Debt Series—No. 35-90 dated December 20, 1990, will be 7¼ percent. Interest on the notes will be payable at the rate of 7¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-384 Filed 1-8-91; 8:45 am]

BILLING CODE 4810-40-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 36-90]

Treasury Notes, Series Q-1994

December 28, 1990.

The Secretary announced on December 27, 1990, that the interest rate on the notes designated Series Q-1994, described in Department Circular—

Public Debt Series—No. 36-90 dated December 20, 1990, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-385 Filed 1-8-91; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 236]

Delegation of Authority; Examination Case Managers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The new delegation order authorizes Examination case managers limited settlement authority with respect to rollover and recurring issues in the Coordinated Examination Program. It also authorizes case managers to execute closing agreements and Forms 870AD to effect any final settlement with respect to any rollover or recurring issue.

EFFECTIVE DATE: November 7, 1990.

FOR FURTHER INFORMATION CONTACT: Harry E. Lebedun, EX:C:C, room 2132, 1111 Constitution Avenue, NW. Washington, DC 20224, 202-566-6158 (not a toll-free call).

The authority vested in the Commissioner of the Internal Revenue by Treasury Order Nos. 150-04, 15009 and 150-10 and the authority contained in 26 U.S.C. 7121 is hereby delegated as follows:

1. All District Directors, Examination division chiefs, Examination branch chiefs, and Examination case managers are delegated discretionary authority under section 7121 of the Internal Revenue Code to accept settlement offers, regardless of the amount of liability sought to be compromised, with respect to rollover and recurring issues in coordinated Examination Program cases where a settlement on the merits has been effected by Appeals with respect to the same taxpayer in a previous tax period. Prior to finalization, the proposed settlement, together with any related closing agreement or Form 870AD, shall be substantively reviewed and approved by the appropriate branch chief within the Examination function.

2. For purposes of this delegation of limited settlement authority, the terms "rollover" and "recurring" issues are defined as follows:

(a) A "rollover" issue involves an adjustment arising from the same legal issue in the same transaction or taxable event and impacts more than one tax period. For example, the rate of amortization or depreciation of an asset, bad debt losses, basis and inventory adjustments and the like, when related to the same transaction and which affect future tax periods, would be susceptible to case manager settlement where a settlement on the merits has been reached in Appeals in a previous tax period with respect to the same taxpayer.

(b) A "recurring" issue involves an adjustment arising from the same legal issue in a separate transaction or a repeated taxable event in which the taxpayer advances the same legal position with respect to such similar transaction or repeated taxable event as advanced by such taxpayer in a prior tax period. For example, the method of depreciation with respect to similar assets, the use of the same accounting method with respect to similar transactions, the annual computation of such deductions as depletion, the computation of certain tax credits and the like, when advanced by the same taxpayer in later tax periods would be susceptible to case manager settlement where a settlement on the merits has been reached by Appeals in a previous tax period with respect to the same taxpayer.

3. No settlement shall be effected unless the following factors are present in the tax year currently under Examination jurisdiction:

(a) The facts surrounding a transaction or taxable event in the tax period under examination, including the relative amounts at issue, are substantially the same as the facts in the settled period.

(b) The underlying issue must have been settled on its merits independently of other issues in a previous tax period by Appeals.

(c) The legal authority relating to such issue must have remained unchanged.

(d) The issue must have been settled in Appeals with respect to the same taxpayer (including consolidated and unconsolidated subsidiaries) in a previous tax period.

4. All District Directors, Examination division chiefs, Examination branch chiefs, and Examination case managers are delegated authority to execute closing agreements and the Form 870AD in order to effect any final settlement reached with respect to any rollover or recurring issue in a Coordinated Examination Program case.

5. The authority delegated in this Order may not be redelegated.

6. The authority contained in this Order is intended to supplement the authority contained in Delegation Order No. 97 (as amended).

Dated: November 7, 1990.

Michael J. Murphy,

Senior Deputy Commissioner.

[FR Doc. 91-383 Filed 1-8-91; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 707]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of title 18, United States Code. Accordingly, the following is the 1991 List of Explosive Materials subject to regulation under 18 U.S.C. chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated January 12, 1990, (53 FR 52561) and will be effective as date of publication in the **Federal Register.**

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.

Ammonium nitrate explosive mixtures (cap sensitive).
* Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate composite propellant.
Ammonium picrate (picrate of ammonia, Explosive D).
Ammonium salt lattice with isomorphously substituted inorganic salts.
* ANFO (ammonium nitrate-fuel oil).

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
* Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine (RDX).
Cyclotetramethylenetetranitramine (HMX).
Cyclonite (RDX).
Cyclotol.

D

DATB (diaminotrinitrobenzene).
DDNP (diazodinitrophenol).
DEGDN (diethyleneglycol dinitrate).
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine (glycerol dinitrate).
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
DNDP (dinitropentano nitrile).
DNPA (2,2-dinitropropyl acrylate).
Dynamite.

E

EDDN (ethylene diamine dinitrate).
EDNA.
Ednatol.
EDNP (ethyl 4,4-dinitropentanoate).
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN (ethylene glycol dinitrate).
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbsons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Fulminate of mercury.
Fulminite of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen (RDX).
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX (cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen).
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF (potassium dinitrobenzefuroxane).

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate (styphnate of lead, lead trinitroresorcinate).
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP (methyl 4,4-dinitropentanoate).
MEAN (monoethanolamine nitrate).
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 (40% TNT, 40% ammonium nitrate, 20% aluminum).
MMAN (monomethylamine nitrate); methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN (nitroisobutametriol trinitrate).
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine (NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine).
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN).
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.

Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen (HMX).
Octol (75 percent HMX, 25 percent TNT).
Organic amine nitrates.
Organic nitramines.

P

PBX (RDX and plasticizer).
Pellet powder.
Pentrinite composition.
Pentolite.
PYX (2,6-bis(picrylamino)-3,5-dinitropyridine.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN (nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate).
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX (95% nitromethane, 5% ethylenediamine).
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.

R

RDX (cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine).
Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid explosives.

T

Tacot (tetranitro-2,3,5,6-dibenzo-1,3a,4,6a-tetrazapentalene).
TATB (triaminotrinitrobenzene).
TEGDN (triethylene glycol dinitrate).
Tetrazene (tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate).
Tetranitrocarbazole.
Tetryl (2,4,6 tetranitro-N-methylaniline).
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF (trinitroethyl formal).
TNEOC (trinitroethylorthocarbonate).
TNEOF (trinitroethyl orthoformate).
TNT (trinitrotoluene, trotyl, trilite, triton).
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-789-3030).

Approved: December 26, 1990.

Stephen E. Higgins,

Director.

[FR Doc. 91-423 Filed 1-8-91; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Donated Book Assistance Awards

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Subject to the availability of funds, the Book Promotion Branch of the U.S. Information Agency will provide limited assistance awards to non-profit U.S. institutions and organizations in the private sector to administer donated books projects during FY'91. All interested organizations which wish to compete for awards to administer one or several of the following projects are invited to request detailed proposal guidelines. The proposals will be evaluated by a review panel and recommendations for awards will be based on professional staff assessment of relevant qualifications and compliance with established criteria.

DATES: Deadline for receipt of request for proposal guidelines is January 23, 1991.

Deadline for receipt of completed proposals is COB February 22, 1991. *Duration:* The duration of the award will be twelve months. No funds may be expended until the award agreement is signed.

ADDRESSES: One signed original and twelve copies of the completed application, including required forms, should be submitted to the office below; U.S. Information Agency, Office of the Executive Director, E/X, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations which wish to compete for awards to administer one or several of the following projects are invited to request detailed proposal guidelines and criteria by writing or calling Ms. Carol Nelson, Book Promotions Branch, E/CBP, room 320, 301 4th Street, SW., Washington, DC 20547 (202) 619-5899.

SUPPLEMENTARY INFORMATION:

Regional Projects follow

Africa: One or more assistance awards, not to exceed a total of $80,000 for this region, will be made to a non profit organization(s) to help defray costs for distributing appropriate donated books to several countries in Sub-Saharan Africa designated by the Agency. Donated books shipments for this region must consist of at least 75% new materials and no more than 25% used materials in subject areas requested by each country and that are consistent with Agency guidelines. The books shipped to recipient countries should be in subject areas that stress democratic values, market oriented economics, American civilization with particular emphasis on American history, legal system, government, literature, arts, educational system, science and technology, foreign policy,

and TEFL and English Teaching. The books will be distributed to needy students and teachers in secondary schools, universities, research centers and institutes. The award recipient, prior to the shipment of any books, must identify a local consignee/distributor in each recipient country who will be responsible for handling in-country logistics, processing and distribution. To ensure that books selected for shipment comply with requests of each recipient country, the award recipient must send annotated book lists in advance, including number of titles available in different instructional levels, to the overseas recipient institution(s) for selection and approval. The award recipient must also notify USIA (E/CBP) when shipment is made to the recipient country, providing all pertinent shipping information i.e., ETD, shipping line, vessel, size of shipment, consignee, ETA, etc.

American Republics: One or more assistance awards, not to exceed a total of $40,000 for this region, will be made to a non-profit organization(s) to help defray costs for distributing appropriate donated books to several countries in the Caribbean and/or other countries designated by the Agency in the American Republics. Donated book shipments for this region, in Spanish and English (both new and used), and in subject areas requested by each country and that are consistent with Agency guidelines, must be distributed with funds from this award. The books shipped to recipient countries should be in subject areas that stress democratic values, market oriented economics, American civilization with particular emphasis on American history, legal system, government, literature, arts, educational system, science and technology, foreign policy, and TEFL and English Teaching. The books will be distributed to needy students and teachers in secondary schools, universities, research centers and institutes. Prior to the shipment of any books, the award recipient must identify a local consignee/distributor in each recipient country who will be responsible for handling in-country logistics, processing and distribution. To ensure books selected for shipment comply with requests of each recipient country, the award recipient must send annotated book lists in advance, including number of titles available in different instructional levels, to the overseas recipient institution(s) for selection and approval. The award recipient must also notify USIA (E/CBP) when shipment is made to the recipient country, providing all pertinent shipping information, i.e. ETD, shipping line, vessel, size of shipment, consignee, ETA, etc.

East Asia: One or more assistance awards, not to exceed a total of $80,000 for this region, will be made to help defray costs for distributing appropriate donated books to the island nations of the Pacific, the People's Republic of China, the Philippines and other countries designated by the Agency. Donated books (new and used), and in subject areas requested by each country, must be distributed with funds from this award. The books shipped to recipient countries should be in subject areas that stress democratic values, market oriented economics, American civilization with particular emphasis on American history, legal system, government, literature, arts, educational system, science and technology, foreign policy, TEFL and English Teaching. The books will be distributed to needy students and teachers in secondary schools, universities, research centers and institutes. Prior to the shipment of any books, the award recipient must identify a consignee who will be responsible for handling in-country processing and distribution. To ensure that books selected for shipment comply with requests of each recipient country, the award recipient must send annotated book lists in advance, including number of titles available in different instructional levels, to the overseas recipient institution(s) for selection and approval. The award recipient must also notify USIA (E/CBP) when shipment is made to the recipient country, providing all pertinent shipping information, i.e., ETD, Shipping line, vessel, size of shipment, consignee, ETA, etc.

Eastern Europe: One or more assistance awards, not to exceed a total of $150,000 for this region, will be made to help defray costs for distributing appropriate donated books to Poland, Hungary, Czechoslovakia, Bulgaria, Yugoslavia and/or other countries in Eastern Europe that are designated by the Agency. Donated Books in subject areas requested by each country, must be distributed with funds from this award. Book shipments for this region must consist of at least 75% new material and no more than 25% used materials. The books shipped to recipient countries should be in subject areas that stress democratic values, market oriented economics, American civilization with particular emphasis on American history, legal system, government, literature, arts, educational system, foreign policy, and TEFL and English teaching. The books will be distributed to needy students and teachers in secondary schools, universities, research centers and institutes. Prior to the shipment of any books, the award recipient must identify a local consignee/distributor who will be responsible for handling in-country logistics, processing and distribution. To ensure that books selected for shipment comply with requests of each recipient country, the award recipient must send annotated book lists in advance, including number of titles available in different instructional levels, to the overseas recipient institution(s) for selection and approval. The award recipient must also notify USIA (E/CBP) when shipment is made to the recipient country, providing all pertinent shipping information, i.e. ETD, shipping line, vessel, size of shipment, consignee, ETA, etc.

Eligibility

To be eligible for consideration an organization must be incorporated in the U.S. as a 501(c)(3), not-for-profit organization as determined by the IRS, and be able to demonstrate expertise in administering the project(s) on which it is bidding. An organization may apply for awards to administer more than one regional project.

Dated: December 31, 1990.

Warren J. Obluck

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-366-Filed 1-8-91; 8:45 am]

BILLING CODE 6230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 6
Wednesday, January 9, 1991

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).

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 15, 1991, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Incentive Awards Plan
(2) Response to Requests for Constituent Listings from Congressional Offices
(3) B.O. 75-1 (Proposed revision to pages 6, 7, and 8)
(4) B.O. 75-1
(5) B.O. 75-2
(6) B.O. 75-3
(7) Proposed Occupational Disability Physical Standards
(8) Regulations—Part 200, General Administration
(9) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act
(10) Regulations—Part 203, Employees Under the Act
(11) Regulations—Part 216, Eligibility for an Annuity
(12) Regulations—Part 255, Recovery of Overpayments
(13) Regulations—Part 259
(14) Regulations—Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations
(15) Regulations—Parts 320 and 340, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from Such Determinations; Recovery of Benefits

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: January 4, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-580 Filed 1-7-91; 1:01 pm]

BILLING CODE 7905-01-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the rescheduling of the following meeting of the Board:

TIME AND DATE: 1:30 p.m. January 29, 1991. Rescheduled from 1:30 p.m. January 28, 1991.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: Briefing by the Department of Energy and its contractors on status of the Waste Isolation Pilot Plant near Carlsbad, New Mexico.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri or Carole Council, (202) 208-6400.

Dated: January 7, 1991.

Kenneth M. Pusateri,

General Manager,

[FR Doc. 91-562 Filed 1-7-91; 1:00 pm]

BILLING CODE 6820-KD-M

federal register

Wednesday
January 9, 1991

Part II

Department of the Interior

Bureau of Indian Affairs

Intent to Prepare an Environmental Impact Statement for the La Posta Recycling Center; Notice of Intent and Public Scoping Meetings

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Intent to Prepare an Environmental Impact Statement for the La Posta Recycling Center

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: This notice advises the public that the BIA intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the La Posta Recycling Center proposed on the Las Posta Indian Reservation located in southeastern San Diego County, California. A description of the proposed project, location and environmental considerations to be addressed in the EIS is provided below (see supplemental information). In addition to this notice, two public meetings regarding the proposal and preparation of the EIS will be held (additional details provided below). This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

DATES: Comments should be received by March 8, 1991. Public scoping meetings will be held January 28, 1991, in the Mountain Empire Junior/Senior High School, 3291 Buckman Springs Road, Pine Valley, California 91962 from 6 p.m. to 9 p.m.; as well as January 29, 1991, in the Alpine Community Center, 1834 Alpine Boulevard, Alpine, California 91901 from 2 p.m. to 5 p.m.

ADDRESSES: Comments should be addressed to Ron Jaeger, Area Director, Bureau of Indian Affairs, Sacramento Area Office, 2800 Cottage Way, Sacramento, California 95625.

FOR FURTHER INFORMATION CONTACT: Gilbert Stuart, Land Operations Officer, Bureau of Indian Affairs, Southern California Agency, 3500 Lime Street, suite 722, Riverside, California, 92501, telephone (714) 276-6629.

SUPPLEMENTARY INFORMATION: The proposed project, the La Posta Recycling Center (LPRC), involves the development and operation of an integrated hazardous and non-hazardous waste recycling and treatment facility. The project site is located on the south side of Interstate 8, approximated 60 miles east of downtown San Diego (just east to La Posta Road). The LPRC would include several types of waste treatment technologies to accommodate a variety of waste streams. The need for such facility, for recycling and treatment of hazardous and non-hazardous wastes, is specifically recognized in the current County and regional waste management plans, and is accentuated by legislation limiting landfill disposal and requiring recycling.

The selection and design of the treatment technologies for LPRC is oriented primarily towards recycling/reuse of up to approximately 80 percent of the treated waste materials. Wastes which cannot be recycled would undergo thermal destruction—incineration—or be treated/prepared for off-site disposal. No landfill or other subsurfaces disposal is proposed as part of the project. The waste treatment technologies currently proposed for the LPRC include:

(1) Soil Tech Process—A low-temperature treatment system capable of separating oils and hydrocarbon products from soils and plastics (e.g., treating soils contaminated from leaking underground fuel/oil tanks, and recycling plastics);

(2) Solvent Recovery—A distillation and filtration process by which solvents (i.e., industrial solvents, dry cleaning fluids, paint thinner, etc.) are purified;

(3) Aqueous Metals Separation—Wastes containing water and soluble metals are neutralized and filtered to generate water and metal-bearing solids which are stabilized and prepared for off-site disposal (see Stabilization description below);

(4) Household Hazardous and Recyclable Wastes—Household hazardous wastes such as paints, thinners, automotive oils and solvents will undergo the appropriate treatments on-site and household recyclables may be processed in terms of paper being pelletized for off-site cogeneration plants, plastics being broken down to fuel oil or reuse, glass being sorted, crushed and used for vitrification (see Stabilization below) and aluminum cans being sorted, crushed and shipped to can manufacturers;

(5) Incineration—Post-treatment residues, organic liquids and solids that cannot be recycled will be incinerated through a rotary-kiln system (no polychlorinated biphenyls (PCBs) will be incinerated); and

(6) Stabilization—Residues remaining from incineration and aqueous metals separation through the addition of binding materials-vitrification (encasement in glass).

Environmental issues to be addressed within the EIS are expected to include landform/topography, geology/soils/seismicity, hydrology/water quality, biological resources, cultural and scientific resources, land use, air quality, transportation/circulation, noise, health and safety/risk of upset, public services and utilities, and visual resources. In addition to the project proposal, the EIS will address a number of project alternatives including alternative technologies, facility sizing and several alternative locations.

This notice is published pursuant to § 1501.7 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508 implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371 et seq.), Department of the Interior Manual (516 DM 1-6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM-8.

Dated: December 31, 1990.

William D. Bettenberg,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91-368 Filed 1-8-91; 8:45 am]

BILLING CODE 4310-02-M

federal register

Wednesday
January 9, 1991

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 8, 35, 200, et al.

Inapplicability of Public Housing Rules to Indian Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 8, 35, 200, 215, 571, 750, 813, 880, 881, 882, 883, 884, 886, 887, 904, 905, 912, 913, 966, 968, 969, 970 and 990

[Docket No. R-90-1502; FR-2871-F-01]

RIN 2577-AA88

Inapplicability of Public Housing Rules to Indian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule—technical amendment.

SUMMARY: A rule has been published that consolidates all the requirements from rules in chapter IX (the 900 series) of title 24 of the Code of Federal Regulations that apply to Indian Housing into a revised part 905 (55 FR 24722, June 18, 1990). This rule completes the separation of Indian Housing from Public Housing by amending the Department's rules throughout the title to clarify which provisions no longer pertain to Indian Housing and to add appropriate cross references.

EFFECTIVE DATE: February 8, 1991.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office Of Indian Housing, room 4232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-1015 (voice) or (202) 708-0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Nondiscrimination in Housing. Two provisions of part 8 implements the statutory prohibition against discrimination based on handicap with respect to Indian Housing. (The Department of Justice has determined that the statute does apply to Indian Housing, regardless of whether the Indian Housing Authority (IHA) was created under State law or as an exercise of tribal self-government.) The provision concerning multifamily projects requires them to be made accessible. It is this provision (§ 8.25) that is amended in this rule to clarify that Indian Housing is not a category of Public Housing, but a distinct program. The provision applicable to the vast majority of Indian Housing (§ 8.29), requiring single family homes to be accessible only if the prospective buyer or expected occupant needs it, requires no modification. The appendix listing the housing programs covered by part 8 is amended to clarify that Indian Housing is still covered, but not as a category of Public Housing.

Lead-Based Paint. Part 35 continues to apply to Indian Housing until final changes have been made to part 905, subpart H, that incorporate provisions of part 35 into part 905. Therefore, the amendments merely clarify the status of Indian Housing as a separate program from Public Housing.

Disclosure of Social Security Number. The two subparts of part 200 (T and U) that require disclosure and verification of an applicant or tenant's Social Security Number do apply to Indian Housing. Part 750, which deals solely with the method of disclosure and verification of social security numbers and employer identification numbers, also applies to Indian Housing. The definition of Public Housing Agency (PHA) in both of these parts is phrased in terms of including an IHA. This rule rephrases the definition of PHA to indicate that this inclusion of IHAs is the exceptional use of the term.

Federal Selection Preferences. Throughout the rules governing assisted housing programs (Parts 215, 880, 881, 882, 883, 884, 886, and 887), there is a reference to the rule used to determine the utility allowance (for purposes of determining rent burden for purposes of Federal selection preferences) in the case of an applicant residing in the jurisdiction of an IHA that does not establish a utility allowance under a Section 8 Housing Assistance Payments Program. All of these provisions, found in paragraph (i)(4) of the various sections, are revised to refer to the appropriate subpart (K) of the new part 905.

Tribal Resolution. Part 571 referred to compliance with an IHA's tribal resolution, giving as a citation an appendix in the CFR. Since the new part 905 no longer contains such an appendix, the reference has been made more general.

Turnkey III Homeownership. Part 904 governs the Turnkey III Program generally. However, since the publication of the separate Indian Housing rule, Turnkey III projects operated by an IHA are governed by subpart G of the new part 905. Part 904 is amended to reflect the applicability of this new regulation.

Indian Housing Correction. The Consolidated Indian Housing Rule published in June 1990 included provisions concerning ranking of applications in the Development subpart. Section 905.220 contained two references to dates from which the length of time to the previously funded application was to be measured. Inadvertently, a specific year was stated, instead of the generic term "current calendar year". This rule amends that section to correct the term.

Definition of Income. Part 913 has governed the determination of income and rental (and homebuyer) payments for Indian Housing as well as Public Housing. Now that subpart D of part 905 covers this subject for Indian Housing, the title of this part is being revised, as well as its applicability section. The statement that a PHA includes an IHA is removed from the definition of PHA, and references to Indian Housing are removed throughout the part.

Maintenance and Operation of PHA-owned Projects. The Department has determined that the provisions of part 965 covering energy audits and conservation measures, individual metering, establishment of utility allowances, the Consolidated Supply Program, and lead-based paint poisoning prevention in the new part 905 are not adequate. Therefore, the references to Indian Housing Authorities will remain in this part now. When the final version of part 905 (the Consolidated Indian Housing rule) is issued, the provisions covering these subjects will be expanded and references to IHAs will be removed from pertinent sections of part 965.

Lease and Grievance Procedures. Part 966 already excluded Indian Housing from its coverage. However, it stated that the Mutual Help Homeownership Opportunities Program is also excluded. Since that program is considered to be one of the Indian Housing Programs, it does need to be listed separately and it has been removed from the exclusionary language in this part.

Public Housing Modernization. Part 968 has included IHAs in the definition of PHAs. This rule deletes those references and inserts a cross-reference to the new part 905 (subpart I).

Continued Operation as Low-Income Housing. Part 969's applicability section is revised to exclude Indian Housing projects, since subpart L of part 905 now covers that subject for IHAs.

Demolition or Disposition. A reference to title I of the United States Housing Act of 1937 is added to part 970, and an exclusion for Indian Housing is added to the applicability section, since that subject is now covered by subpart M of part 905.

Operating Subsidy. Since this subject is now covered for Indian Housing Programs by subpart J (or subpart E for Mutual Help or subpart G for Turnkey III—both on an exception basis), part 990 is revised to reflect its inapplicability to the Indian Housing Programs.

Findings and Certifications

Justification for Final Rule. In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own rule on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." 24 CFR 10.1. In this case, the rule is technical in nature, clarifying which of two possibly overlapping regulations applies to Indian Housing Programs. Therefore, the Department finds that it is unnecessary to delay publication of the rule for effect so that public comment could be solicited.

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

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

Impact on Small Entities. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, since it is technical in nature, conforming the Department's rules to one published recently.

Regulatory Agenda. This rule was listed as Item No. 1287 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44568) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Requirements. There are no information collection requirements imposed in the amendments contained in this rule that would be required to be submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, since it is technical in nature. As a result, the rule is not subject to review under the Order.

Family Impact. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects

24 CFR Part 8

Administrative practice and procedure, Handicapped, Civil rights, Reporting and recordkeeping requirements, Equal employment opportunity, Loan programs—housing and community development, Grant programs—housing and community development.

24 CFR Part 35

Lead poisoning, Reporting and recordkeeping requirements, Grant programs—housing and community development, Mortgage insurance, Rent subsidies.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organizaiton and functions (Government agencies), Reporting and recordkeeping requirements, Social security.

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 571

Alaska, Community development block grants, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 750

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security.

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

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

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 905

Grant programs: Indians, Low and moderate income housing, Homeownership, Public housing.

24 CFR Part 912

Public housing, Reporting and recordkeeping requirements.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 969

Grant programs—housing and community development, Low and moderate income housing, Public housing.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR parts 8, 35, 200, 215, 571, 750, 813, 880, 881, 882, 883, 884, 886, 887, 904, 905, 912, 913, 966, 968, 969, 970, and 990 as follows:

PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1. The authority citation for part 8 is revised to read as follows:

Authority: Sec. 504, Rehabilitation Act of 1973 (29 U.S.C. 794); sec. 109, Housing and Community Development Act of 1974 (42 U.S.C. 5309); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 8.22 [Amended]

2. In § 8.22, paragraph (a) is amended by adding the phrase "and Indian housing" after the phrase "public housing".

§ 8.25 [Amended]

3. In § 8.25, the section heading is amended by removing the opening parenthesis, the word "including", and the closing parenthesis, and by adding the word "and" after the phrase "Public housing"; paragraphs (a) and (b) are amended by adding the phrase "and multifamily Indian housing" after each occurrence of the phrase "public housing"; paragraph (a)(3) is amended by adding the phrase "and IHAs" after the word "PHAs"; and paragraph (c) introductory text is amended by adding, after the first occurrence of the term "PHA" in the first sentence, the phrase "(for the purpose of this paragraph, this includes an Indian Housing Authority)".

Appendix A [Amended]

4. In appendix A to part 8, the fourth program listed under the heading of "*Housing Programs*" is amended by adding the word "and" in place of the comma after the word "subsidies", by adding a closed parenthesis after the word "modernization", and by removing the closed parenthesis after the phrase "Indian housing".

Appendix A [Amended]

5. In Appendix A to part 8, the eighteenth program listed under the heading of "*Housing Programs*" is amended by removing the parenthetical phrase and replacing it with the phrase, "(Turnkey III housing administered by PHAs and IHAs and Mutual Help housing administered by IHAs)".

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

6. The authority citation for part 35 continues to read as follows:

Authority: Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 35.24 [Amended]

7. In § 35.24, paragraph (b)(4) is amended by removing the phrase "Public and Indian Housing)" and replacing it with the phrase "(Public Housing), part 905, subpart K (Indian Housing)".

PART 200—INTRODUCTION

8. The authority citation for part 200 continues to read as follows:

Authority: Titles I, II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subparts T and U are also issued under sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); subpart T is also issued under sec. 101, Housing and Urbana Development Act of 1965 (12 U.S.C. 1701s), and sec. 203, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–11).

9. In § 200.1005, the last sentence of the definition of "PHA" is revised to read as follows:

§ 200.1005 Definitions.

* * * * *

PHA. * * * For purposes of this subpart, the term PHA includes an Indian Housing Authority.

* * * * *

10. In § 200.1105, the last sentence of the definition of "PHA" is revised to read as follows:

§ 200.1105 Definitions.

PHA. * * * For purposes of this subpart, the term PHA includes an Indian Housing Authority.

* * * * *

PART 215—RENT SUPPLEMENT PAYMENTS

11. The authority citation for part 215 is revised to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C.s 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 215.22 [Amended]

12. In § 215.22, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E" and replacing it with the phrase "part 905, subpart K".

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

13. The authority citation for part 571 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. Section 571.606 is revised to read as follows:

§ 571.606 Housing assistance.

In those instances where a Tribe has established an Indian Housing Authority (IHA) and the IHA has obtained housing assistance from HUD, the Tribe's compliance with its commitments, set forth in the tribal resolution creating the IHA, will be a performance consideration for the Tribe under the Indian CDBG program.

PART 750—DISCLOSURE AND VERIFICATION OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS AND PARTICIPANTS IN CERTAIN HOUSING ASSISTANCE PROGRAMS

15. The authority citation for part 750 is revised to read as follows:

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); secs. 3, 6, 8, 17, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437o, 1437ee); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Development Act (42 U.S.C. 3535(d)).

16. In § 750.1, paragraph (a)(1) is revised to read as follows:

§ 750.1 Summary and purpose.

(a) *Summary.* (1) This part implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543), as it pertains to the Section 8 Housing Assistance Payments programs administered by the Department under 24 CFR chapter VIII, and the Public Housing and the Indian Housing programs administered under 24 CFR chapter IX.

* * * * *

17. In § 750.5, the last sentence of the definition of "Public housing agency" is revised to read as follows:

§ 750.5 Definitions.

* * * * *

Public housing agency (PHA) * * * For purposes of this part, the term includes an Indian Housing Authority.

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

18. The authority citation for part 813 continues to read as follows:

Authority: Secs. 3, 5(b), 8, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 813.101 [Amended]

19. In § 813.101, the last sentence is amended by removing the phrase "and Indian Housing Programs.)", and replacing it with the phrase "program and 24 CFR part 905, subpart D for the rule applicable to the Indian Housing program.)".

§ 880.613 [Amended]

20. In § 880.613, paragraph (i)(4) is amended by removing the phrase "part 964, subpart E." and replacing it with the phrase "part 905, subpart K.".

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

21. The authority citation for part 881 is revised to read as follows:

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

§ 881.613 [Amended]

22. In § 881.613, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E." and replacing it with the phrase "part 905, subpart K.".

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

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

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

§ 882.219 [Amended]

24. In § 882.219, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E." and replacing it with the phrase "part 905, subpart K.".

§ 882.517 [Amended]

25. In § 882.517, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E." and replacing it with the phrase "part 905, subpart K.".

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

26. The authority citation for part 883 is revised to read as follows:

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

§ 883.714 [Amended]

27. In § 883.714, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E." and replacing it with the phrase "part 905, subpart K.".

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

28. The authority citation for part 884 is revised to read as follows:

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

§ 884.226 [Amended]

29. In § 884.226, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E." and replacing it with the phrase "part 905, subpart K.".

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

30. The authority citation for part 886 is revised to read as follows:

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

§ 886.132 [Amended]

31. In § 886.132, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E." and replacing it with the phrase "part 905, subpart K.".

§ 886.337 [Amended]

32. In § 886.337, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E." and replacing it with the phrase "part 905, subpart K.".

PART 887—HOUSING VOUCHERS

33. The authority citation for part 887 is revised to read as follows:

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

§ 887.157 [Amended]

34. In § 887.157, paragraph (i)(4) is amended by removing the phrase "part 965, subpart E." and replacing it with the phrase "part 905, subpart K.".

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

35. The authority citation for part 904 is revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437ee); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

36. In § 904.101, the introductory language of paragraph (b) is revised to read as follows:

§ 904.101 Introduction.

* * * * *

(b) *Applicability.* This subpart is applicable to Turnkey III developments operated by LHA. For Turnkey III developments operated by an Indian Housing Authority, applicable provisions are found at 24 CFR part 905, subpart G.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

37. The authority citation for part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 905.220 [Amended]

38. In paragraphs (b)(3) (iii) and (iv) introductory text of § 905.220, the number ", 1990" is removed and the phrase "of the current calendar year" is inserted in its place.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

39. The authority citation for part 912 is revised to read as follows:

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

§ 912.1 [Amended]

40. In § 912.1, paragraph (b)(1) is amended by adding a period in place of the comma after the word "programs", and removing the rest of the sentence that follows it.

41. The title of part 913 is revised to read as follows:

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

42. The authority citation for part 913 continues to read as follows:

Authority: Secs. 3, 6, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

43. Section 913.101 is revised to read as follows:

§ 913.101 Purpose and applicability.

This part establishes definitions, policies and procedures related to income limits and the determination of eligibility, income and rent for applicants and tenants in Public Housing, including the Turnkey III Homeownership Opportunities program; and for applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)). (See 24 CFR part 813 for the analogous rule applicable to the Section 8 Housing Assistance Payments and related programs, and 24 CFR part 905, subpart D for the analogous rule applicable to Indian Housing, including the Turnkey III Homeownership Opportunities program operated by Indian Housing Authorities.)

§ 913.102 [Amended]

44. In § 913.102, the first definition of "Public Housing Agency" is removed. The last sentence of the remaining definition of "Public Housing Agency (PHA)" is removed.

§ 913.104 [Amended]

45. In § 913.104, paragraph (b) is amended by removing the phrase "and Indian Housing" and by removing the letter "s" from the word "Programs".

§ 913.105 [Amended]

46. In § 913.105, paragraph (a) is amended by removing the phrase "or Indian Housing"; and paragraph (d) is amended by removing the phrase "and Indian Housing" and by removing the letter "s" from the word "Programs".

§ 913.109 [Amended]

47. In § 913.109, paragraph (b) is amended by removing the phrase "or Indian Housing" in the first sentence.

PART 966—LEASE AND GRIEVANCE PROCEDURES

48. The authority citation for part 966 is revised to read as follows:

Authority: Secs. 3 and 6, United States Housing Act of 1937 (42 U.S.C. 1437a and 1437d); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 966.1 [Amended]

49. In § 966.1, the last sentence is amended by removing the phrase ", to the Mutual Help Homeownership Opportunities Program,".

PART 968—PUBLIC HOUSING MODERNIZATION

50. The authority citation for part 968 is revised to read as follows:

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d and 14371); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 968.101 [Amended]

51. In § 968.101, paragraph (b)(2) is amended by removing the phrase ", including IHAs," from the first sentence; and paragraph (a) is amended by adding the following sentence at the end: "For requirements applicable to Indian Housing modernization, see part 905 of this chapter."

§ 968.105 [Amended]

52. In § 968.105, the definition of "IHA" is removed, and the definition of "PHA" is amended by removing the phrase ", including IHA".

§ 968.110 [Amended]

53. In § 968.110, paragraph (a) is amended by removing the last sentence.

PART 969—PHA-OWNED PROJECTS—CONTINUED OPERATION AS LOW-INCOME HOUSING AFTER COMPLETION OF DEBT SERVICE

54. The authority citation for part 969 is revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

55. Section 969.102 revised to read as follows:

§ 969.102 Applicability.

This part applies to any lower-income public housing project that is owned by a Public Housing Agency (PHA), including any Turnkey III housing, and is subject to an ACC under section 5 of the United States Housing Act of 1937 (Act). This part does not apply to the Section 8 and Section 23 Housing Assistance Payments Programs, the Section 10(c) and Section 23 Leased Housing Programs, Lanham Act and Public Works projects that remain under administration contracts, or Indian Housing projects.

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

56. The authority citation for part 970 continues to read as follows:

Authority: Sec. 18, United States Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 970.1 [Amended]

57. Section 970.1 is amended by adding the words "Title I of" after the word "under".

58. In § 970.2, the introductory language and paragraph (a) are revised to read as follows:

§ 970.2 Applicability.

This part applies to public housing projects that are owned by public housing agencies (PHAs) and that are subject to Annual Contributions Contracts (ACCs) under the Act. This part does not apply to the following:

(a) PHA-owned section 8 housing, housing leased under section 10(c) or section 23 of the Act, or Indian Housing;

* * * * *

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

59. The authority citation for part 990 is revised to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

60. In § 990.103, paragraph (b) is revised to read as follows:

§ 990.103 Applicability of PFS.

* * * * *

(b) *Projects covered.* PFS is applicable to all PHA-owned rental units under Annual Contributions Contracts. PFS applies to PHAs that have not received operating subsidy payments previously, but are eligible for such payments under PFS. PFS, as described in this part, is not applicable to Indian Housing, the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs. PFS is not applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. Operating subsity payments to these PHAs are made in accordance with subpart B of this part.

* * * * *

§ 990.105 [Amended]

61. In § 990.105, paragraph (g) is amended by removing the terms "/IHAs", "/IHA", "/MHACC", and "/IHA's".

Dated: December 31, 1990.

Jack Kemp,

Secretary.

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Part IV

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 661

Buy America Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 661

[Docket No. 88-G]

RIN 2132-AA15

Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule implements section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (the STURAA) (Pub. L. No. 100-17), which amended the Urban Mass Transportation Administration's (UMTA) Buy America requirements. In this final rule, UMTA implements the statutory changes and makes other amendments based on UMTA's experience in enforcing and implementing the existing regulation. Certain changes are required by law, while others are being made to increase the usability of the regulation.

EFFECTIVE DATE: February 8, 1991.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Attorney-Advisor, Office of the Chief Counsel, room 9316, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1936.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Surface Transportation Assistance Act of 1978 (the 1978 STAA) (Pub. L. No. 95-599) included a Buy America provision applicable for the first time to the UMTA program. The provision was not an absolute prohibition against the procurement of foreign products, but established a preference for products mined, produced or manufactured in the United States. This initial provision only applied to contracts of UMTA grantees over $500,000.

Section 165 of the Surface Transportation Assistance Act of 1982 (1982 STAA) (Pub. L. No. 97-424) made significant changes to the Buy America requirements by eliminating the $500,000 applicability threshold. It also provided that no Federal funds could be obligated for mass transportation projects unless steel, cement, and manufactured products used in these projects are produced in the United States, with four exceptions. Section 10 of Public Law 96-229, enacted on March 9, 1984, amended section 165(a) of the STAA by striking "cement" from the materials and products covered under section 165.

The first exception allowed a waiver if the materials and products being procured are in the public interest. The second exception provided that the requirement would not apply if materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The third exception provided that the requirement would not apply if the inclusion of domestic material will increase the cost of the overall project contract by more than 10 percent in the case of projects for the acquisition of buses and other rolling stock or 25 percent in the case of other projects.

The fourth exception, in essence, established an entire second program with its own requirements. This exception provided that the Buy America provisions would not apply to the procurement of buses and other rolling stock (including train control, communications, and traction power equipment) if the cost of components produced in the United States was more than 50 percent of the cost of all components of the vehicles or equipment, and if final assembly took place in the United States.

Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (the STURAA) (Pub. L. No. 100-17) made further significant changes to UMTA's Buy America requirements for buses and other rolling stock. First, section 337 requires that more than 50 percent of the cost of a component's subcomponents be of U.S. origin for the component itself to be considered of U.S. origin. In addition, the domestic content requirement was increased from 50 to 55 percent on October 1, 1989, and to 60 percent on October 1, 1991. (However, any company that has met the existing Buy America requirement as of April 2, 1987, would be exempted from these increases for all contracts entered into before April 1, 1992.) Finally, the rolling stock price differential waiver was increased from 10 percent to 25 percent.

Today's final rule incorporates the most recent changes mandated by the STURAA into the Buy America requirements.

II. The Notice of Proposed Rulemaking

On August 29, 1988, UMTA issued a notice of proposed rulemaking (NPRM) seeking comments on the proposed amendments. The NPRM reflected both the statutory changes and UMTA's experience in enforcing and implementing the existing regulation (See 53 FR 32994).

In the preamble to the NPRM, UMTA discussed at length the statutory changes and the proposed revisions to the existing regulation, and invited the public to submit comments and data on specific issues. The initial 60-day comment period ended on October 28, 1988, but was extended until November 14, 1988, in response to requests from the public.

Thirty-three (33) commenters submitted their views to the NPRM docket. The breakdown among commenter categories is as follows:

12 Manufacturers of rolling stock and related equipment.
6 UMTA recipients.
5 State Departments of Transportation.
4 Trade Associations.
2 Foreign Governments.
2 Engineering Firms.

III. Specific Comments and UMTA's Response

This section discusses the comments on the NPRM, and UMTA's specific response to them.

A. Procurement of Manufactured Products (§ 661.3(d).)

A number of commenters addressed the proposed requirements for the procurement of manufactured products. Some commenters supported UMTA's proposed revisions to the requirements concerning manufactured products, while others opposed the proposal.

The procurement of manufactured products is governed by section 165(a) of the 1982 STAA. The implementing UMTA regulation (§ 661.3(d)) defines a manufactured product as a "product produced as a result of [a] manufacturing process." Manufacturing is defined in § 661.3(e) of the regulation as the application of processes to alter the form or function of materials or of elements of the product adding value and transforming those materials or elements so that they represent a new product functionally different from that which would result from mere assembly of the materials or elements.

As indicated in the NPRM, compliance with the Buy America provisions requires that a manufactured product be produced in the United States from original items or material originating in the United States. In other words, an item is considered to be produced in the United States if all of the manufacturing processes for the item take place in the United States, and the components of that item are of U.S. origin. UMTA proposed amending the regulations to reflect this position.

Commenters opposed to the proposal argued that neither section 165(a) of the 1982 STAA nor UMTA's existing regulations at 49 CFR part 661 require a

manufactured product to contain a minimum domestic content. The commenters argue that the statutory requirement would be satisfied as long as an item is produced in the United States by a manufacturing process.

Section 401(a) of the 1978 STAA, UMTA's original Buy America requirement, provided that "Only * * * manufactured articles, materials, and supplies as have been manufactured in the United States *substantially all* from articles, materials, and supplies mined, produced, or manufactured * * * in the United States" could be used in UMTA-funded contracts. (Emphasis supplied.) Section 165(a) of the 1982 STAA requires that manufactured products used in an UMTA-funded project must be "produced in the United States," without further elaboration.

The legislative history of section 165 does not provide any guidance on why the term "substantially all" was dropped when the Buy America provision was revised. However, UMTA has taken the position since 1982 that the manufactured product requirements of section 165(a) are unambiguous—all manufacturing processes for the product must take place in the United States and all of the components of the product must be of U.S. origin.

Even if the language of the section was ambiguous, however, other provisions in the 1982 STAA, as well as other Buy America legislation, confirm UMTA's view of the terminology. For example, the Buy America Act of 1933 (41 U.S.C. 10b) contains a "substantially all" provision, which has been administered by the Federal Government as meaning over fifty percent domestic content. Moreover, section 165(b)(3) of the STAA (applicable to procurement of rolling stock and other associated equipment) explicitly provides for a fifty percent domestic content requirement in determining compliance with the statutory requirements. Since rolling stock and associated equipment are an expected category to the general domestic preference requirements, the agency believes that this supports its view that Congress intended manufactured products to be held to a higher standard of domestic content—100 percent.

Some commenters also questioned whether section 165(a) requires merely that all of the components of a manufactured product be of U.S. origin, or whether UMTA is required to examine the origin of all of the subcomponents that go into the manufacture of that component.

Again, UMTA looks to the statute for guidance. Section 165(b)(3) of the 1982 STAA, as amended by section 337(b) of the STURAA, imposes domestic preference requirements on the subcomponents of components of rolling stock and associated equipment. No similar statutory changes were made to section 165(a) for manufactured products. Therefore, the agency concluded that a component of a manufactured product is of U.S. origin if it is manufactured in the United States. (As indicated above, the manufactured product must be manufactured in the United States from items all of U.S. origin.) In other words, in determining the origin of a component of a manufactured product governed by section 165(a), UMTA will look only to where that component is manufactured, and will not look to the origin of the various materials included in that product during the manufacturing process.

B. Increase in Price Differential Waiver (§ 661.7(d).)

Two commenters suggested that UMTA not raise the price differential waiver for rolling stock from 10 percent to 25 percent until the agency has a change to analyze more fully the effect of the change on rolling stock procurements. UMTA has no discretion in this matter since the increase in the price differential was mandated by statute, and has thus revised § 661.7(d) of the regulation to reflect this increase.

C. Application of Price Differential Waiver (§ 661.7(d).)

In the NPRM, UMTA indicated that the price differential must be applied independently to each individual item even if there is a single contract for all of these items. The bid for each non-domestic item must be adjusted by the differential and then the adjusted bid price for the foreign item compared to the lowest responsive and responsible bid for a domestic item to determine if the grounds for a waiver exist. UMTA proposed to amend § 661.7(d) to reflect this and to clarify that the price differential is not to be applied to the overall contract between the grantee and its supplier, but to the comparative costs of each individual item being supplied.

UMTA received several comments on both sides of this proposal. Some of the commenters opposing the proposal thought that UMTA indicated that it should apply to the procurement of a vehicle containing several sub-systems. This is not the case. There have been many situations in which a grantee was purchasing multiple manufactured products and only one or two were of foreign origin. The calculation of the price differential waiver is applied only to the comparative costs of the items for which both foreign and domestic bids were received. The application of the waiver to the over-all bid could skew the entire bid process, especially in the case where the foreign item is of low cost compared to all of the other items being procured.

This interpretation is consistent with the statutory terms, because the inclusion of domestic material in the overall project contract still is considered before a waiver is granted. The regulation amendment will only affect directly the determination of adjusted bid price in the case of a single contract for multiple items. A single contract for a single items will not be affected by the amendment. Accordingly, the amendment is adopted as proposed.

D. Requests for Waivers (§ 661.9.)

One commenter questioned why all waivers under § 661.9 are approved at UMTA Headquarters, rather than at the Regional level. UMTA is concerned with maintaining strict uniformity in the granting of waivers, and will continue its current practice of approving all waivers at the Headquarters level. All waiver requests are coordinated with the appropriate Regional Office.

E. General Waivers—(§ 661.7—Appendix A.)

One commenter suggested that UMTA revise the waiver in appendix A to § 661.7 concerning the incorporation of exceptions from the Federal Acquisition Regulation to incorporate the correct citation. In a separate rulemaking, UMTA already made this revision, and it is reflected in the revised Part 661.

F. Waivers for Prototype Vehicles (§ 661.9.)

One commenter suggested UMTA consider a general waiver for cases in which a grantee wishes to procure a prototype vehicle for testing and evaluation. Prototype vehicles are considered rolling stock, and are subject to the requirements of section 165(b)(3) of STURAA. While UMTA does not consider it appropriate to grant a general waiver for such procurements, UMTA has granted waivers for such procurements on a case-by-case basis.

G. General Waiver for Audio-Visual Equipment (§ 661.9.)

One State Department of Transportation sought a general non-availability waiver for audio-visual equipment. On May 23, 1988, UMTA published a request for comments on a

general waiver to the Buy America requirements to permit the procurement of certain audio-visual training equipment produced outside the United States (53 FR 18320). The agency received insufficient information on which to base a determination supporting a general waiver. However, UMTA has granted a number of individual non-availability waivers for audio-visual equipment and will continue to do so as appropriate. The agency will reconsider granting a general waiver if changed conditions warrant.

H. Determination of End Product in a Particular Procurement (§ 661.11(u).)

One commenter questioned how UMTA determines the end product in each procurement. An end product is "any item * * * that is to be acquired by a grantee, as specified in the overall project contract." (See § 661.11(u).) The key determinant is the grantee's specification. For example, if a grantee is procuring a new rail car, the car is the end product and the propulsion motor could be a component of the end product. If that same grantee is procuring a replacement propulsion motor for an existing rail car, that propulsion motor would be the end product. In the case of a contract for several items, each item may be a different end product.

I. Applicability of Buy America Requirements to Turn-Key Projects (§ 661.11(u).)

One commenter questioned how UMTA applies the Buy America requirements when a grantee procures an entire system (a turn-key project). In purchasing systems, it is industry practice to have a contract broken down by sub-systems. As just mentioned, UMTA has defined end product as "any item or items * * * to be acquired by a grantee, *as specified in the overall project contract.*" (Emphasis supplied.) (See § 661.11(u).) Accordingly, each sub-system identified in the contract is an end product and subject to the Buy America requirement.

For example, UMTA has determined in the past that an entire people mover system has six sub-systems to be supplied by the contractor (under the terms of a particular contract) and that each sub-system is an individual end product. The six sub-systems are: the guideway surfaces and equipment; the vehicles; the traction power system; the command and control system; the communications system; and the maintenance facility and equipment. This means that six separate products must meet the Buy America requirements.

J. Determination of Grandfathered Companies (§ 661.10)

A substantial number of commenters responded to the questions raised in the NPRM on the grandfathering provisions of section 337(a)(2)(B) of the STURAA. Specifically, that section provides that the revised requirements shall not apply to any contract entered into prior to April 1, 1992, with "any supplier or contractor or any successor in interest or assignee which qualified under the provision of section 165(b)(3) of the Surface Transportation Assistance Act of 1982 prior to (April 2,1987)."

The first question concerned the scope of a grandfather determination—whether a company can be grandfathered on a nationwide basis, or whether the company is limited to previous contracts with a specific transit authority. If a company qualifies for the grandfathered treatment, this will be done on a nationwide basis. In other words, if a company entered into a single contract which qualified it for grandfathered status, it receives that status for all contracts entered into in the timeframes set forth in the statutory provisions.

Second, commenters asked whether a company which provided an item complying with section 401 of the 1978 STAA, but did not provide an item complying with section 165(b)(3) of the 1982 STAA, qualifies for grandfathered status. A company that provided an item complying with section 401 would qualify for grandfathering status, even through the company did not supply an item complying with section 165(b)(3). The agency's reasoning follows.

Section 401 did not mandate specific requirements concerning the procurement of rolling stock, but UMTA implementing regulations provided that rolling stock would be considered domestic if more than 50 percent of its components, by cost, were of U.S. origin and final assembly took place in the United States. Section 165(b)(3) of the 1982 STAA essentially made these regulatory requirements statutory. Therefore, a company that complied with the requirements of section 401 (for the procurement of rolling stock and associated equipment) meets the domestic content requirements in the STURAA's grandfather provisions, section 337(a)(2)(B). Accordingly, section 661.11 of the regulations now reflects this position.

Third, commenters asked how UMTA will determine company eligibility to be grandfathered, including: (1) What must a company do to prove that it qualifies for the grandfather provision; and (2) what must a company show to demonstrate that it is a successor in interest to a grandfathered company.

With regard to qualifying for the grandfather provision, two commenters suggested that a company be allowed to certify that it qualifies to be grandfathered. UMTA agrees that this is an appropriate process and has added regulatory language to this effect. (See § 661.10.)

A company may receive grandfather treatment under the statute if the company is a successor in interest to a qualifying company. With regard to determining who is a successor in interest, several commenters suggested solutions. One commenter recommended that a company be considered a successor in interest if the company provides a like product or service, maintains the same assurances to the contracting party, and ensures compliance with the contract terms and conditions. Another commenter suggested that a successor in interest be "any entity which is duly contracted within the specified time and for which a duplicate or similar activity or service is required as that of the assignor."

A third commenter suggested that a successor in interest be a "U.S. corporation with ownership of more than 50 percent of the assets of the original U.S. entity that is being acquired or to which an interest is being assigned". This commenter also recommended that the supplier be required to show that it has been in compliance continuously with the requirements of section 165(b)(3) of the 1982 STAA and has served essentially the same market without a significant lapse of time in business. UMTA's reading of the legislative history of section 337(a)(2)(B) finds no support for this position.

UMTA believes that Congress intended to apply the increased domestic content requirements on an accelerated basis to firms entering the marketplace after April 2, 1987, and that it intended to grandfather existing firms that had complied with previous Buy America requirements regardless of the number of contracts or the product supplied (e.g. a bus versus a rail car).

A fourth commenter suggested that a successor in interest include a "wholly-owned U.S. subsidiary of overseas companies."

A fifth suggestion, UMTA believes, offers a reasonable approach. The commenter recommends that the determination focus on the transfer of substantial assets such as "contracts

and work in progress, designs and technology, manufacturing plants and staff." The commenter noted that the "mere acquisition of an established trade name by an existing unrelated business enterprise normally would not qualify the newly named enterprise as a successor in interest of the business which previously operated under that trade name." The commenter also suggested that maintaining continuity in ownership and assets should qualify an entity as a successor in interest, whether or not the name of the predecessor company was adopted. UMTA agrees with this comment and has made appropriate changes in the regulation (§ 661.10(b)).

Further, the regulation provides that a company claiming to be a successor in interest must supply UMTA with documentation to support its claim. UMTA will evaluate this material and publish a notice in the **Federal Register** concerning its determination.

One commenter indicated that the grandfather provision may give a competitive advantage to some companies. UMTA does not dispute this claim, but it appears that Congress intended to give an advantage to companies which had complied with previous Buy America requirements.

K. Requirements Applicable to the Manufacture of a Component (§ 661.11(g).)

UMTA received a number of comments on the manufacture of components requirements. Several commenters were concerned particularly with UMTA's position that mere assembly was not sufficient. As indicated below, one commenter suggested that UMTA look to the definition of a product of the United States as defined by the Customs Service in its Tariff regulations, while others suggested that the definition make reference to sufficient activities to advance or improve the conditions of the subcomponents, or adding value.

UMTA agrees that the requirement must be more explicit, and that the phrase "mere assembly of a component" may be a bit confusing. Accordingly, the regulations have been modified to clarify and expand on the steps that are needed for a component to be considered manufactured (see § 661.11(g)). The key element of this definition is the alteration of subcomponents to form a new product. The processes of alteration may include forming, extruding, material removal, welding, soldering, etching, plating, material deposition, pressing, permanent adhesive joining, shot blasting, brushing, grinding, lapping, finishing, vacuum impregnating, and, in electrical and electronic pneumatic, or mechanical products, the collection, interconnection, and testing of various elements.

L. Application of Requirements to Major Components (§ 661.11.)

In the NPRM, UMTA sought comment on whether the domestic content requirements should apply to all components of rolling stock and associated equipment, or just to the major components of these items. Comments on this issue were mixed. The Conference Report states that section 337 of STURAA is intended to cover only "major components" and "primary subcomponents." UMTA therefore considers that the requirements of section 337 of STURAA apply to all "major components" and "primary subcomponents" of rolling stock and related equipment.

M. Inclusion of List of Components of Buses and Rail Rolling Stock; Discussion of "Components" and "Subcomponents" (§ 661.11.)

The Conference Report to the STURAA lists major components of both buses and rail rolling stock. In the preamble to the NPRM, UMTA repeated the complete lists, but indicated that it had developed general language on the identification of components for the rule itself. UMTA requested comments on whether the complete listing from the Conference Report should be included in the regulation.

The commenters' views varied on this issue—some suggested the entire list be incorporated into the regulation, while some suggested inclusion in the regulation for illustrative purposes only. Still others opposed any inclusion, since such lists "appear to be an inconsistent and incomplete mixture of systems, components and subcomponents".

UMTA believes that the intent of Congress in implementing section 337 of STURAA was to increase the overall domestic content of rolling stock by requiring that all prime components have a domestic content of at least 50 percent.

As indicated above, section 165(b)(3) of STAA provided that rolling stock would meet the domestic content requirements only if "the cost of components which are produced in the United States is more than 50 per centum of the cost of all components * * * and final assembly takes place in the United States." Section 337 of STURAA amended this provision by adding "and subcomponents."

The Conference Report to the STURAA states that "(b)y including the term subcomponent, the conferees intend that major components, systems, or assemblies of buses and rail rolling stock be counted towards meeting the Buy America domestic content standard if the components, systems, or assemblies themselves would meet the domestic content requirement." Therefore, under the regulation, a component is considered of domestic origin if the total cost of its subcomponents meet the domestic content requirements mandated by section 337 of STURAA, and the component is manufactured in the United States. In the example provided by the Conference Report for "grandfathered" companies, this means that a component will be considered domestic only if the domestic content value of its subcomponents is at least 50 percent. In the case of all other companies, as of October 1, 1989, a component meets the domestic content requirements if it has a domestic content value of at least 55 percent.

In the NPRM, UMTA sought comment on whether Congress intended that UMTA look to the origin of the parts of the subcomponents, or the "sub-subcomponents."

The Conference Report points out that section 337 of STURAA is intended to cover only "major components" and "primary subcomponents." UMTA concludes from this, and from the lack of any specific mention of the origin of sub-subcomponents, that the conferees intended that only components and subcomponents be counted toward the domestic content requirements. It is therefore UMTA's position that the origin of sub-components is immaterial and that to be considered domestic, a subcomponent need only be manufactured in the United States.

Clearly, then, to be considered domestic, components must meet a more stringent test than subcomponents, since in addition to manufacture in the United States, they must have a domestic content value of at least 50 percent.

It is therefore important to distinguish between the terms "component" and "subcomponent" for the purpose of establishing Buy America compliance. To assist grantees and manufacturers in making this distinction, and to prevent possible abuses resulting from an over-classification of vehicles parts as subcomponents, UMTA believes that it is useful to include the Conference Report list of major components in the regulations. Accordingly, UMTA includes the listings as appendices to the regulations concerning the procurement of rolling stock, specifying that they are not exhaustive.

N. Definition of Subcomponent (§ 661.11(h).)

One commenter noted that UMTA proposed a definition of component, but it did not propose a definition of a subcomponent. This commenter offered a definition, drawing on the language of the Conference Report referring to subcomponents as "one step removed" from components. UMTA agrees that such a definition should be included, and has adopted the commenter's definition.

O. Origin of Sub-Subcomponents

As indicated above, in the NPRM UMTA indicated that it believed that Congress did not intend that the origin of sub-subcomponents be examined when calculating the cost of subcomponents and components. All of the comments received on this issue supported UMTA's position. Accordingly, the regulation will *not* contain any requirements concerning the origin of sub-subcomponents.

P. Use of Tariff Exemption (§ 661.11(k).)

UMTA proposed using an existing tariff procedure to trace subcomponents of domestic origin which are exported from the United States, and then imported as part of a component. All of the commenters on this issue supported the proposal. One commenter suggested that it would be useful for UMTA to make clear that the standard for determining whether a subcomponent is domestic is the same standard imposed by the Customs Regulations for determining whether an item is a product of the United States (and therefore entitled to a tariff exemption under 19 CFR 10.10–10.24). The NPRM proposed that a subcomponent be considered to be of domestic origin if it is manufactured in the United States, but the NPRM did not provide requirements concerning manufacturing in the United States. One commenter recommended that UMTA adopt the Custom Service's requirements for defining the manufacture of a component or subcomponent (see discussion concerning manufacturing of components).

This commenter also indicated that UMTA should make clear that U.S.-origin subcomponents, installed overseas but retaining their domestic indentity, will be valued for Buy America purposes in the same way they are valued for purposes of tariff exemption. UMTA proposed that the cost of a subcomponent is "the price that a bidder or offeror must pay to a subcontractor or supplier" for that subcomponent. The commenter suggested that UMTA amend the rule to specify that the cost of a subcomponent retaining its domestic identity under the Tariff Exemptions will be determined as provided in the Customs Service regulation. UMTA agrees with this suggestion, and has included the appropriate definition in the regulation.

Q. Domestic Materials that Lose Physical Identity (§ 661.11(l).)

Two commenters disagreed with or questioned UMTA's position on domestic materials that are shipped abroad and lose their physical identity. The commenters believe that UMTA's position would discourage foreign manufacturers from using domestic suppliers. While UMTA agrees that foreign manufacturers may not utilize domestic sources for some materials, it is UMTA's position that it would be extremely difficult to trace such materials. The Customs approach that UMTA proposed is an established Federal procedure. In addition, since certain items will retain their domestic identity, UMTA believes that foreign manufacturers will use such items to meet the domestic content requirements. UMTA has not revised the regulations to permit domestically produced items or materials that are shipped abroad and lose their physical identity to be included when calculating domestic content. The final rule adopts the Customs Service procedure outlined in the NPRM.

R. Setting Cost for Foreign Components (§ 661.11(p).)

One commenter stated that the determination of Buy America compliance is affected by the currency exchange rates, and recommended that the regulations provide that compliance be determined on the basis of rates prevailing at a fixed point in time. UMTA agrees with the suggestion, and the regulations have been revised to reflect that the cost of a component of foreign origin will be set at the time the appropriate Buy America certificate is executed (See § 661.11(p)).

S. Final Assembly Requirements (§ 661.10(t).)

In the NPRM, UMTA proposed eliminating the regulatory provision that sufficient final assembly activity would be presumed to exist if the cost of final assembly is at least 10 percent of the overall project contract cost—indicating that its experience was that the 10 percent figure was arbitrary and that several manufacturers of rolling stock were performing adequate final assembly requirements, but the cost of such final assembly did not reach the 10 percent level.

UMTA received four comments on this issue. Two supported the proposal, while two opposed the elimination of a set percentage to test final assembly.

The issue of determining what is adequate final assembly is one of the most difficult UMTA has faced. Since the Buy America requirements apply to such a vast number of products, it is extremely difficult for UMTA to develop a single definition to address all products.

UMTA had used the 10 percent test because it provided some yardstick against which manufacturers could measure their performance. Unfortunately, a number of suppliers spent considerable effort trying to determine what to include in the cost of final assembly in order to meet the artificially set standard of 10 percent of the total contract cost.

UMTA recognizes that, in the vast majority of cases that it has examined, there has been adequate and sufficient final assembly regardless of the cost of such activities. Additionally, UMTA has found that there has been little, if any, abuse of the regulations in this regard. UMTA believes that significant assembly operations are taking place without the imposition of an artificial threshold requirement. Accordingly, the final regulation contains no specific minimum cost requirement for final assembly.

Nonetheless, in order to clarify the required operations and to provide guidance for manufacturers and grantees, UMTA has defined "final assembly" in § 661.10(t) as "the creation of the end product from different elements brought together for that purpose through the application of manufacturing processes." These manufacturing processes may include joining, welding, installing, interconnecting (wire, fibers, or tube), filling, finishing, cutting, trimming, inspecting and testing. In the case of the manufacture of a new rail car, for instance, "final assembly" would include, as a minimum, the following operations: installation and interconnection of propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, wheels and axles, suspensions and frames; the inspection and verification of all installation and interconnection work; and, the testing in plant of the stationary product to verify all functions.

T. Train Control, Communications, and Traction Power Equipment (§ 661.11(u).)

The regulation contains non-inclusive listings of train control, communications, and traction power equipment governed by the requirements of section 165(b)(3) of the 1982 STAA. UMTA sought comments and suggestions on items that should be added to the lists and specifically sought comment on whether pantographs should be included as traction power equipment.

The comments on pantographs were mixed. Commenters opposing the inclusion did so since they believe that a pantograph is a component of rail rolling stock, and should not be listed. While UMTA agrees that a pantograph can be a component, it also can be an end product if it is supplied as a spare or replacement part. Therefore, UMTA agrees with those comments suggesting inclusion in the appropriate listing.

One commenter suggested that the contact rail be included as an item of traction power equipment. Those favoring inclusion did so since they felt that the contact rail is essential to the provision of power to rail rolling stock. While UMTA cannot disagree that the contact rail may be essential, UMTA agrees with the commenter that said the manufacturing of a contact rail does not differ from the manufacturing of a running rail, and that the purpose of the rail should not be dispositive of determining Buy America applicability. Accordingly, the regulations will continue to indicate that contact rail is not to be considered as traction power equipment. (See a **Federal Register** notice of February 11, 1986 (51 FR 5139), requesting comment on this issue.)

Another request to the agency outside the context of this rulemaking recommended that automatic door control systems for rail rolling stock be considered to be part of train control equipment since the vehicle cannot operate if the automatic door control system is not operating, or if the doors are not closed. While UMTA does not disagree with the purpose of the automatic door control system, the agency believes that the tie-in between the automatic door control system and the operation of a rail vehicle is for safety purposes, and the automatic door control system is *not* part of the actual train control system. Accordingly, this item will not be added to the listing of train control equipment.

U. Certifications by Component and Subcomponent Manufacturers (§ 661.11(z).)

Several commenters suggested that UMTA require component and subcomponent manufacturers to submit certifications of compliance with the Buy America requirements. While UMTA is aware that the end product supplier must rely on component and subcomponent manufacturers in making its certification to UMTA grantees, UMTA does not believe that it is appropriate for UMTA to mandate that component and subcomponent manufacturers submit certifications. The ultimate supplier is responsible for determining how it will comply with the Buy America requirements, and is, in fact, free to use non-domestic sources as long as the minimum domestic content requirements are met. UMTA believes that it is more appropriate for the ultimate supplier of a product to ensure that its suppliers are providing domestic materials through contractual terms than to use federally mandated certification.

V. Update of Certifications and Contracts (§ 661.12)

One commenter suggested that UMTA's Buy America certifications set out in § § 661.6 and 661.12 be updated to reflect current requirements. The certifications in § 661.6 were not affected by the 1987 statutory change, and do not need to be revised. The certification in § 661.12 are being revised to reflect the 1987 statutory change. In addition, UMTA will revise its standard contract terms and conditions to reflect the 1987 statutory changes.

W. Investigations (§ 661.15)

All commenters on investigations supported the proposed revision permitting UMTA to initiate an investigation and conduct site visits.

The proposed revision to the regulation specified that an investigated party could correspond directly with UMTA concerning an investigation as long as the affected grantee informed UMTA that this process would be used. The intent of this proposal is two-fold: (1) To facilitate the procurement process by expediting the investigation; and (2) to protect the confidentiality of information presented by the investigated party.

UMTA believes that its grantee should concur in having an investigated party correspond directly with UMTA since the grantee is bound contractually under its grant contract with UMTA to ensure that the Buy America requirements are met. The proposal did not require that all information go through the grantee, but intended the grantee be aware that the investigated party is corresponding directly with UMTA.

The final rule reflects the proposed rule's original intent.

IV. The Final Rule

This final rule implements section 337 of the STURAA, which amended UMTA's Buy America requirements. Section 337 of the STURAA made significant changes to UMTA's Buy America requirements for buses and other rolling stock. First, section 337 requires that more than 50 percent of the cost of a component's subcomponents be of U.S. origin for the component to be considered of U.S. origin. In addition, the domestic content requirement was increased from 50 to 55 percent on October 1, 1989, and to 60 percent on October 1, 1991. (However, any company that has met the domestic Buy America requirement as of April 2, 1987, would be exempted from these increases for all contracts entered into before April 1, 1992). Finally the rolling stock price differential was increased from 10 percent to 25 percent.

UMTA has also included, as appendices to the regulation, the listings of major components of buses and rail rolling stock set out in the Conference Report to the STURAA. UMTA has included these listings in order to assist grantees and manufacturers in distinguishing between the terms "components" and "subcomponents" for the purpose of establishing Buy America compliance, and to prevent possible abuse resulting from an over-classification of vehicle parts as subcomponents. These listings are not exhaustive.

The final rule also includes certain changes made to increase the usability of the regulation. Amendments have been made, for instance, in § 661.15, to clarify the investigation process.

Finally, it should be noted that the U.S.-Canada Free Trade Agreement does not exempt Canadian-made products from the UMTA Buy America requirements. Products manufactured in Canada are considered foreign goods, and are entitled to no special treatment under the UMTA Buy America provisions.

V. Impact analyses

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and UMTA has determined that it is not a major rule. The rule will not result in an annual effect on the economy of $100 million or more, nor would it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant

adverse effects on competition employment, investment, innovation or the ability of United States-based enterprises in domestic or export markets. The agency has prepared a Regulatory Evaluation for the rulemaking, which is on file in the public docket.

B. DOT Policies and Procedures on Improving Governmental Regulations.

This regulation is a "significant" rule, as defined by the Department's Regulatory Policies and Procedures on Improving Governmental Regulations, because it involves important departmental policy and it generates substantial public interest. UMTA has prepared a Regulatory Evaluation in support of this rulemaking, which is on file as part of the docket to this rulemaking. The regulatory evaluation responds to comments received in response to the agency's request for data on the potential economic impact of the rule.

C. Regulatory Flexibility Act.

Consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

D. Paperwork Reduction Act.

Collection of information under the Buy America regulations in part 661 has been approved by the Office of Management and Budget and given OMB control number 2132-0544. In addition, the regulation requires two new certification processes (i.e., for grandfathered companies and successor-in-interest companies), which certification requirements will be submitted to OMB for review.

E. Federalism.

This rule has been reviewed under Executive Order 12612 on Federalism, and UMTA has determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism assessment. The rule will not limit the policymaking and administrative discretion of the States, nor will it affect the States' abilities to discharge traditional State government functions or otherwise affect any aspects of State sovereignty.

List of Subjects in Part 661

Buy America, Domestic preference requirements, Grant programs—transportation, Mass transportation.

Accordingly, for the reasons set out in the preamble to this document, 49 CFR chapter VI is amended by revising part 661 to read as follows:

PART 661—BUY AMERICA REQUIREMENTS—SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982, AS AMENDED

Sec.
661.1 Appicability.
661.3 Definitions.
661.5 General requirements for steel and manufactured products.
661.6 Certification requirement for procurement of steel or manufactured products.
661.7 Waivers.
661.9 Application for waivers.
661.10 Determination of qualification under section 337(a)(2)(B) of the STURAA.
661.11 Rolling stock procurement.
661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.
661.13 Grantee responsibility.
661.15 Investigation procedures.
661.17 Failure to comply with certification.
661.19 Sanctions.
661.20 Rights of third parties.
661.21 State Buy America provisions.

Authority: Sec. 165, Pub. L. 97-424, as amended by Sec. 337, Pub. L. 100-17 (49 U.S.C. 1602 note); 49 CFR 1.51.

§ 661.1 Applicability.

Unless otherwise noted, this part applies to all federally assisted procurements using funds authorized by the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C. 103(e)(4); and section 14 of the National Capital Transportation Act of 1969, as amended.

§ 661.3 Definitions.

As used in this part:

Act means the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424), as amended by section 337 of the Surface Transportation and Uniform Relocation Assistance of 1987 (Pub. L. 100-17).

Administrator means the Administrator of UMTA, or designee.

Grantee means any entity that is a recipient of UMTA funds.

Manufacutured product means an item produced as a result of manufacturing process.

Manufacturing process means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

Rolling stock means transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.

STURAA means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. No. 100-17).

UMTA means the Urban Mass Transportation Administration.

United States means the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

§ 661.5 General requirements for steel and manufactured products.

(a) Except as provided in §§ 661.7 and 661.11 of this part, no funds may be obligated by UMTA for a grantee project unless all steel and manufactured products used in the project are produced in the United States.

(b) All steel manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

(c) The steel requirements apply to all steel items including, but not limited to, structural steel, running rail and contact rail.

(d) For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All items or material used in the product must be of United States origin.

§ 661.6 Certification requirement for procurement of steel or manufactured products.

If steel or manufactured products (as defined in §§ 661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in § 661.13(b) of this part.

Certificate of Compliance With Section 165(a)

The bidder hereby certifies that it will comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations in 49 CFR part 661.

Date _____
Signature _____
Company Name _____
Title _____

Certificate for Non-Compliance With Section 165(a)

The bidder hereby certifies that it cannot comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to section 165 (b)(2) or

(b)(4) of the Surface Transportation Assistance Act of 1982 and regulations in 49 CFR 661.7.

Date _____
Signature _____
Company Name _____
Title _____

§ 661.7 Waivers.

(a) Section 165(b) of the Act provides that the general requirements of section 165(a) shall not apply in four specific instances. This section sets out the conditions for the three statutory waivers based on public interest, non-availability, and price-differential. Section 661.11 of this part sets out the conditions for the fourth statutory waiver governing the procurement of rolling stock and associated equipment.

(b) Under the provision of section 165(b)(1) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that their application would be inconsistent with the public interest. In determining whether the conditions exist to grant this public interest waiver, the Administrator will consider all appropriate factors on a case-by-case basis, unless a general exception is specifically set out in this part.

(c) Under the provision of section 165(b)(2) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

(1) It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.

(2) In the case of a sole source procurement, the Administrator will grant this non-availability waiver only if the grantee provides sufficient information which indicates that the item to be procured is only available from a single source or that the item to be procured is not produced in sufficient and reasonably available quantities of a satisfactory quality in the United States.

(d) Under the provision of section 165(b)(4) of the Act, the Administrator may waive the general requirements of section 165(a) if the Administrator finds that the inclusion of a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than 25 percent. The Administrator will grant this price-differential waiver if the amount of the lowest responsive and responsible bid offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid offering the item or material produced in the United States.

(e) The four statutory waivers of section 165(b) of the Act as set out in this part shall be treated as being separate and distinct from each other.

(f) The waivers described in paragraphs (b) and (c) of this section may be granted for a component or subcomponent in the case of the procurement of the items governed by section 165(b)(3) of the Act (requirements for rolling stock). If a waiver is granted for a component or a subcomponent, that component or subcomponent will be considered to be of domestic origin for the purposes of § 661.11 of this part.

(g) The waivers described in paragraphs (b) and (c) of this section may be granted for a specific item or material that is used in the production of a manufactured product that is governed by the requirements of § 661.5(d) of this part. If such a waiver is granted to such a specific item or material, that item or material will be treated as being of domestic origin.

Appendix A to § 661.7—General Waivers

(a) All waivers published in 48 CFR 25.108 which establish excepted articles, materials, and supplies for the Buy American Act of 1933 (41 U.S.C. 10a–d), as the waivers may be amended from time to time, apply to this part under the provisions of § 661.7 (b) and (c).

(b) Under the provisions of § 661.7(b) of this part, 15 passenger vans produced by Chrysler Corporation are exempt from the requirement that final assembly of the vans take place in the United States (49 FR 13944, April 9, 1984).

(c) Under the provisions of § 661.7(b) of this part, 15 Passenger Wagons produced by Chrysler Corporation are exempt from the requirement that final assembly of the wagons take place in the United States (letter to Chrysler Corporation dated May 13, 1987.)

(d) Under the provisions of § 661.7 (b) and (c) of this part, microcomputer equipment, including software, of foreign origin can be procured by grantees (50 FR 18760, May 2, 1985 and 51 FR 36126, October 8, 1986).

§ 661.9 Application for waivers.

(a) This section sets out the application procedures for obtaining all waivers, except those general exceptions set forth in this part for which individual applications are unnecessary and those covered by section 165(b)(3) of the Act. The procedures for obtaining an exception covered by section 165(b)(3) are set forth in § 661.11 of this part.

(b) A bidder who seeks to establish grounds for an exception must seek the exception, in a timely manner, through the grantee.

(c) Except as provided in paragraph (d) of this section, only a grantee may request a waiver. The request must be in writing, include facts and justification to support the waiver, and be submitted to the Administrator through the appropriate Regional Office.

(d) UMTA will consider a request for a waiver from a potential bidder or supplier only if the waiver is being sought under § 661.7 (f) or (g) of this part.

(e) The Administrator will issue a written determination setting forth the reasons for granting or denying the exception request. Each request for an exception, and UMTA's action on the request, are available for public inspection under the provisions of 49 CFR part 601, subpart C.

§ 661.10 Determination of qualification under section 337(a)(2)(B) of the STURAA.

(a) A supplier or contractor that qualifies under the provisions of section 337(a)(2)(B) because it had supplied an item that complied with the provisions of section 165(b)(3) of the Surface Transportation Assistance Act of 1982 or under section 401 of the Surface Transportation Assistance Act of 1978 must certify to this qualification when its bid or offer is submitted. Such certification must accompany the certification set forth in § 661.12 of this part.

(b) A supplier or contractor that qualifies as a successor in interest or assignee under the provisions of section 337(a)(2)(b) of the STURAA is one to which has been transferred the substantial assets, such as contracts and work in progress, designs and technology, and manufacturing plants and staff, of a previously existing company. The mere acquisition of an established trade name by an existing business enterprise does not qualify as a successor in interest. A supplier or contractor adoption of a new corporate name while maintaining continuity in ownership and assets qualifies the supplier or contractor as a successor in interest.

(c) Any supplier or contractor wishing to claim that it is a successor in interest or assignee under the provisions of paragraph (b) of this section must provide UMTA with sufficient documentation to support its claim. If UMTA determines that a supplier or contractor does qualify as a successor in interest or assignee, UMTA will publish notice of this determination in the **Federal Register**.

§ 661.11 Rolling stock procurement.

(a) The provisions of § 661.5 of this part do not apply to the procurement of buses and other rolling stock (including train control, communication, and traction power equipment), if the cost of components which are produced in the United States is more than 50 percent of the cost of all of the components and final assembly takes place in the United States.

(b) Except as provided in paragraph (c) of this section, the domestic content requirement is 55% for contracts entered into after October 1, 1989, and is 60% for contracts entered into after October 1, 1991.

(c) The domestic content requirement will be 60% for contracts entered into after April 1, 1992, with any supplier or contractor or any successor in interest or assignee, as determined under the provisions of § 661.10 of this part, which complied with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982 or section 401 of the Surface Transportation Assistance Act of 1978 before April 2, 1987.

(d) The increased domestic content requirements in paragraphs (b) and (c) of this section also apply to the domestic content requirements for the components set forth in paragraphs (i), (k), and (n) of this section.

(e) A component is any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location.

(f) A component may be manufactured at the final assembly location if the manufacturing process to produce the component is a separate and distinct activity from the final assembly of the end product.

(g) A component is considered to be manufactured if there are sufficient activities taking place to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article.

(h) Except as provided in paragraph (m) of this section, a subcomponent is any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component (as defined in paragraph (e) of this section) in the manufacturing process and that is incorporated directly into a component.

(i) For a component to be of domestic origin, more than 50 percent of the subcomponents of that component, by cost, must be of domestic origin and the manufacture of the component must take place in the United States. If, under the terms of this part, a component is determined to be of domestic origin, its entire cost may be utilized in calculating the cost of domestic content of an end product.

(j) A subcomponent is of domestic origin if it is manufactured in the United States.

(k) If a subcomponent manufactured in the United States is exported for inclusion in a component that is manufactured outside of the United States and it receives tariff exemptions under the procedures set forth in 19 CFR 10.11–10.24, the subcomponent retains its domestic identity and can be included in the calculation of the domestic content of an end product even if a such a subcomponent represents less than 50% of the cost of a particular component.

(l) If a subcomponent manufactured in the United States is exported for inclusion in a component manufactured outside of the United States and it does not receive tariff exemption under the procedures set forth in 19 CFR 10.11–10.24, the subcomponent loses its domestic identity and cannot be included in the calculation of the domestic content of an end product.

(m) Raw materials produced in the United States and then exported for incorporation into a component are not considered to be a subcomponent for the purposes of calculating domestic content. The value of such raw materials is to be included in the cost of the foreign component.

(n) If a component is manufactured in the United States but contains less than 50% domestic subcomponents, by cost, the cost of the domestic subcomponents and the cost of manufacturing the component may be included in the calculation of the domestic content of the end product.

(o) For purposes of this section, except as provided in paragraph (q) of this section:

(1) The cost of a component or a subcomponent is the price that a bidder or offeror must pay to a subcontractor or supplier for that component or subcomponent. Transportation costs to the final assembly location must be included in calculating the cost of a component. Applicable duties must be included in determining the cost of foreign components and subcomponents.

(2) If a component or subcomponent is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component or subcomponent, an allowance for profit, and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles.

(p) The cost of a component of foreign origin is set at the time the bidder or offeror executes the appropriate Buy America certificate.

(q) The cost of a subcomponent which retains its domestic identity consistent with paragraph (l) of this section shall be the cost of the subcomponent when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers, or, if no purchase was made, the value of the subcomponent at the time of its shipment for exportation, f.o.b. United States port of exportation or point of border crossing, as set out in the invoice and entry papers.

(r) In accordance with section 165(c) of the Act, labor costs involved in final assembly shall not be included in calculating component costs.

(s) The actual cost, not the bid price, of a component is to be considered in calculating domestic content.

(t) Final assembly is the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly.

(u) An end product means any item subject to section 165(b)(3) of the Act, that is to be acquired by a grantee, as specified in the overall project contract.

(v) Train control equipment includes, but is not limited to, the following equipment:

(1) Mimic board in central control.
(2) Dispathers console.
(3) Local control panels.
(4) Station (way side) block control relay cabinets.
(5) Terminal dispatcher machines.
(6) Cable/cable trays.
(7) Switch machines.
(8) Way side signals.
(9) Impedance bonds.
(10) Relay rack bungalows.
(11) Central computer control.
(12) Brake equipment.
(13) Brake systems.

(w) Communication equipment includes, but is not limited to, the following equipment:

(1) Radios.
(2) Space station transmitter and receivers.
(3) Vehicular and hand-held radios.
(4) PABX telephone switching equipment.
(5) PABX telephone instruments.
(6) Public address amplifiers.
(7) Public address speakers.
(8) Cable transmission system cable.

(9) Cable transmission system multiplex equipment.
(10) Communication console at central control.
(11) Uninterruptible power supply inverters/rectifiers.
(12) Uninterruptible power supply batteries.
(13) Data transmission system central processors.
(14) Data transmission system remote terminals.
(15) Line printers for data transmission system.
(16) Communication system monitor test panel.
(17) Security console at central control.
(x) Traction power equipment includes, but is not limited to, the following:
(1) Primary AC switch gear.
(2) Primary AC transformers (rectifier).
(3) DC switch gear.
(4) Traction power console and CRT display system at central control.
(5) Bus ducts with buses (AC and DC).
(6) Batteries.
(7) Traction power rectifier assemblies.
(8) Distribution panels (AC and DC).
(9) Facility step-down transformers.
(10) Motor control centers (facility use only).
(11) Battery chargers.
(12) Supervisory control panel.
(13) Annunciator panels.
(14) Low voltage facility distribution switch board.
(15) DC connect switches.
(16) Negative bus boxes.
(17) Power rail insulators.
(18) Power cables (AC and DC).
(19) Cable trays.
(20) Instrumentation for traction power equipment.
(21) Connectors, tensioners, and insulators for overhead power wire systems.
(22) Negative drainage boards.
(23) Inverters.
(24) Traction motors.
(25) Propulsion gear boxes.
(26) Third rail pick-up equipment.
(27) Pantographs.
(y) The power or third rail is not considered traction power equipment and is thus subject to the requirements of section 165(a) of the Act and the requirements of § 661.5 of this part.
(z) A bidder on a contract for an item covered by section 165(b)(3) of the Act who will comply with section 165(b)(3) and regulations in this section is not required to follow the application for waiver procedures set out in § 661.9 of this part. In lieu of these procedures, the bidder must submit the appropriate certificate required by § 661.12 of this part.

Appendix A to § 661.11—General Waivers

(a) The provisions of § 661.11 of this part do not apply when foreign sourced spare parts for buses and other rolling stock (including train control, communication, and traction power equipment) whose total cost is 10 percent or less of the overall project contract cost are being procured as part of the same contract for the major capital item.

Appendix B to § 661.11—Typical Components of Buses

The following is a list of items that typically would be considered components of a bus. This list is not all-inclusive.

Engines, transmissions, front axle assemblies, rear axle assemblies, drive shaft assemblies, front suspension assemblies, rear suspension assemblies, air compressor and pneumatic systems, generator/alternator and electrical systems, steering system assemblies, front and rear air brake assembles, air conditioning compressor assemblies, air conditioning evaporator/condenser assemblies, heating systems, passenger seats, driver's seat assemblies, window assemblies, entrance and exit door assemblies, door control systems, destination sign assemblies, interior lighting assemblies, front and rear end cap assemblies, front and rear bumper assemblies, specialty steel (structural steel tubing, etc.), aluminum extrusions, aluminum, steel or fiberglass exterior panels, and interior trim, flooring, and floor coverings.

Appendix C to § 661.11—Typical Components of Rail Rolling Stock

The following is a list of items that typically would be considered components of rail rolling stock. This list is not all-inclusive.

Car shells, main transformer, pantographs, traction motors, propulsion gear boxes, interior linings, acceleration and braking resistors, propulsion controls, low voltage auxiliary power supplies, air conditioning equipment, air brake compressors, brake controls, foundation brake equipment, articulation assemblies, train control systems, window assemblies, communication equipment, lighting, seating, doors, door actuators and controls, couplers and draft gear, trucks, journal bearings, axles, diagnostic equipment, and third rail pick-up equipment.

§ 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in § 661.13(b) of this part.

Certificate of Compliance With Section 165(b)(3)

The bidder hereby certifies that it will comply with the requirements of section 165(b)(3), of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11.

Date _____
Signature _____
Company Name _____
Title _____

Certificate for Non-Compliance with Section 165(b)(3)

The bidder hereby certifies that it cannot comply with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirement consistent with section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.

Date _____
Signature _____
Company Name _____
Title _____

§ 661.13 Grantee responsibility.

(a) The grantee shall adhere to the Buy America clause set forth in its grant contract with UMTA.

(b) The grantee shall include in its bid specification for procurement within the scope of these regulations an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with § 661.6 or § 661.12 of this part, as appropriate.

(c) Whether or not a bidder or offeror certifies that it will comply with the applicable requirement, such bidder or offerer is bound by its original certification and is not permitted to change its certification after bid opening. A bidder or offeror that certifies that it will comply with the applicable Buy America requirements is not eligible for a waiver of those requirements.

§ 661.15 Investigation procedures.

(a) It is presumed that a bidder who has submitted the required Buy America certificate is complying with the Buy America provision. A false certification is a criminal act in violation of 18 U.S.C. 1001.

(b) Any party may petition UMTA to investigate the compliance of a successful bidder with the bidder's certification. That party ("the petitioner") must include in the petition a statement of the grounds of the petition and any supporting documentation. If UMTA determines that the information presented in the petition indicates that the presumption in paragraph (a) of this section has been overcome, UMTA will initiate an investigation.

(c) In appropriate circumstances, UMTA may determine on its own to

initiate an investigation without receiving a petition from a third party.

(d) When UMTA determines under paragraph (b) or (c) of this section to conduct an investigation, it requests that the grantee require the successful bidder to document its compliance with its Buy America certificate. The successful bidder has the burden of proof to establish that it is in compliance. Documentation of compliance is based on the specific circumstances of each investigation, and UMTA will specify the documentation required in each case.

(e) The grantee shall reply to the request under paragraph (d) of this section within 15 working days of the request. The investigated party may correspond directly with UMTA during the course of investigation, if it informs the grantee that it intends to do so, and if the grantee agrees to such action in writing. The grantee must inform UMTA, in writing, that the investigated party will respond directly to UMTA. An investigated party may provide confidential or proprietary information (see paragraph (l) of this section) directly to UMTA while providing other information required to be submitted as part of the investigation through the grantee.

(f) Any additional information requested or required by UMTA must be submitted within 5 working days after the receipt of such request unless specifically exempted by UMTA.

(g) The grantee's reply (or that of the bidder) will be transmitted to the petitioner. The petitioner may submit comments on the reply to UMTA within 10 working days after receipt of the reply. The grantee and the low bidder will be furnished with a copy of the petitioner's comments, and their comments must be received by UMTA within 5 working days after receipt of the petitioner's comments.

(h) The failure of a party to comply with the time limits stated in this section may result in resolution of the investigation without consideration of untimely filed comments.

(i) During the course of an investigation, with appropriate notification to affected parties, UMTA may conduct site visits of manufacturing facilities and final assembly locations as it considers appropriate.

(j) UMTA will, upon request, make available to any interested party information bearing on the substance of the investigation which has been submitted by the petitioner, interested parties or grantees, except to the extent that withholding of information is permitted or required by law or regulation.

(k) If a party submitting information considers that the information submitted contains proprietary material which should be withheld, a statement advising UMTA of this fact may be included, and the alleged proprietary information must be identified wherever it appears. Any comments on the information provided shall be submitted within a maximum of ten days.

(l) For purposes of paragraph (j) of this section, confidential or proprietary material is any material or data whose disclosure could reasonably be expected to cause substantial competitive harm to the party claiming that the material is confidential or proprietary.

(m) When a petition for investigation has been filed before award, the grantee will not make an award before the resolution of the investigation, unless the grantee determines that:

(1) The items to be procured are urgently required;

(2) Delivery of performance will be unduly delayed by failure to make the award promptly; or

(3) Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

(n) In the event that the grantee determines that the award is to be made during the pendency of an investigation, the grantee will notify UMTA before to making such award. UMTA reserves the right not to participate in the funding of any contract awarded during the pendency of an investigation.

(o) Initial decisions by UMTA will be in written form. Reconsideration of an initial decision of UMTA may be requested by any party involved in an investigation. UMTA will only reconsider a decision only if the party requesting reconsideration submits new matters of fact or points of law that were not known or available to the party during the investigation. A request for reconsideration of a decision of UMTA shall be filed not later than ten (10) working days after the initial written decision. A request for reconsideration will be subject to the procedures in this section consistent with the need for prompt resolution of the matter.

§ 661.17 Failure to comply with certification.

If a successful bidder fails to demonstrate that it is in compliance with its certification, it will be required to take the necessary steps in order to achieve compliance. If a bidder takes these necessary steps, it will not be allowed to change its original bid price. If a bidder does not take the necessary steps, it will not be awarded the contract if the contract has not yet been awarded, and it is in breach of contract if a contract has been awarded.

§ 661.19 Sanctions.

A willful refusal to comply with a certification by a successful bidder may lead to the initiation of debarment or suspension proceedings under part 29 of this title.

§ 661.20 Rights of third parties.

The sole right of any third party under the Buy America provision is to petition UMTA under the provisions of § 661.15 of this part. No third party has any additional right, at law or equity, for any remedy including, but not limited to, injunctions, damages, or cancellation of the Federal grant or contracts of the grantee.

§ 661.21 State Buy America provisions.

(a) Except as provided in paragraph (b) of this section, any State may impose more stringent Buy America or buy national requirements than contained in section 165 of the Act and the regulations in this part.

(b) UMTA will not participate in contracts governed by the following:

(1) State Buy America or Buy National preference provisions which are not as strict as the Federal requirements.

(2) State and local Buy National or Buy America preference provisions which are not explicitly set out under State law. For example, administrative interpretations of non-specific State legislation will not control.

(3) State and local Buy Local preference provisions.

Issued: January 3, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-360 Filed 1-8-91; 8:45 am]

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January 9, 1991

Part V

Department of the Interior

Bureau of Land Management

43 CFR Parts 3840 and 3850

Nature and Classes of Mining Claims; Assessment Work; Amendments Affecting Petroleum Placer Claims, Particularly Oil Shale Claims; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3840 and 3850

RIN 1004-AB43

[WO-680-4130-02-24 1A]

Nature and Classes of Mining Claims; Assessment Work; Amendments Affecting Petroleum Placer Claims, Particularly Oil Shale Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The BLM proposes to amend the portions of 43 CFR parts 3840 and 3850 that relate to oil shale mining claims to clarify the meaning of the phrase "discovery of a valuable oil shale deposit" as it relates to the phrase "valid claims existent on Feb. 25, 1920" in the savings clause in section 37 of the Mineral Leasing Act (30 U.S.C. 193). The proposed rule would also clarify the meaning of the phrase "substantial compliance with assessment work" as required by the Mining Law (30 U.S.C. 28) for all mining claims.

DATES: Comments should be submitted by March 11, 1991. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on issuance of a final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Bldg., 1849 C Street NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Reed L. Smith, (202) 208-4147.

SUPPLEMENTARY INFORMATION: This proposed rule would amend the existing regulations on oil shale mining claims to describe the showing required to satisfy the discovery test in order to qualify as a valid existing claim under the savings clause of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 193), and also to clarify the meaning of substantial compliance with assessment work as required by the Mining Law (30 U.S.C. 28) for all mining claims.

On August 12, 1987, the U.S. Court of Appeals for the Tenth Circuit vacated as moot several decisions that served as precedents with respect to the meaning of the phrase "discovery of a valuable oil shale deposit" within the context of the mining laws. This proposed rule would establish for the first time in regulatory form the definition of a discovery of a valuable oil shale deposit. If adopted as a final rule, this provision would be applicable to the approximately 1,600 remaining unpatented oil shale placer claims.

The proposed changes in the provisions covering assessment work requirements are designed to clarify the conditions under which the United States can contest a mining claim for a claimant's failure to fulfill the assessment work requirements. An important element of the proposed rule is the establishment and inclusion in the regulation of the principle of resumption. Under the proposed rule, the United States would be precluded from initiating a contest against a mining claim after the claimant has resumed labor on the claim, without regard to the length of the period of the failure to meet the annual obligation for labor on the claim.

Background

Prior to 1920, oil shale was a locatable mineral subject to the Mining Law of 1872. In 1920, the Mineral Leasing Act made oil shale a leasable mineral but "grandfathered" existing oil shale mining claims so that valid oil shale claims that were maintained in compliance with the Mining Law of 1872 could be patented under that law (30 U.S.C. 193).

Since the change in the law in 1920 and, therefore, in the status of oil shale, the issue of what actions are required by oil shale mining claimants in order to maintain their claims and go to patent has been the subject of many judicial and administrative decisions. Some of the decisions have been conflicting. There is no clear, unequivocal interpretation of the law to serve as a guide to the claimant and the Federal administrator to assure that all remaining claims are handled consistently and equitably.

The case history involving oil shale claims indicates that litigation has generally involved two areas: Discovery and assessment work.

Discovery

The discovery of a valuable deposit of minerals is required under 30 U.S.C. 23 in order to perfect a claim.

As stated above, prior to 1920, lands principally valuable for oil shale were open to location and patent in the same manner as oil and gas placer mining claims. In the case of *Freeman* v. *Summers*, 52 L.D. 201 (1927), the Department of the Interior ruled that the prospective value of oil shale was sufficient to engender this belief despite the fact that no profitable distillation of oil shale had been demonstrated in the Piceance Basin of Colorado to date. Furthermore, the decision found that the "lean" oil shale exposed within the claim was sufficient exposure of minerals to meet the discovery test, because geologic inference reasonably led to the belief that "richer" oil shale occurred at depth.

In 1930 and 1931, Congressional committees examined the patenting of oil shale mining claims by the Department of the Interior. The Senate Committee on Public Lands focused almost exclusively on the *Freeman* v. *Summers* standards.

Upon concluding hearings, the Committee Chairman advised the Department to complete disposition of the pending applications for oil shale lands in conformity with the law. This congressional acquiescence in the Department's actions in patenting oil shale anchored case law and Departmental practice from 1930 to 1961. During that time, the *Freeman* v. *Summers* discovery standard was routinely applied and 523 patents for 2,326 claims covering 349,088 acres were issued.

In the mid-1960's, the Government reexamined this policy and began to impose a more restrictive discovery standard placing emphasis on the lack of profitability in producing shale oil, that is, requiring a showing of the likelihood that a claim could be operated with a reasonable prospect of success as a commercial venture. Therefore, the Department of the Interior began to contest oil shale claims under patent application, alleging that no discovery of a valuable mineral deposit had been made. In 1974, the Interior Board of Land Appeals (IBLA) overruled the discovery standard of *Freeman* v. *Summers* in the case *U.S.* v. *Winegar* (81 I.D. 370), placing great emphasis on the lack of profitability. In 1980, this more restrictive standard was rejected by the Supreme Court in the case of *Andrus* v. *Shell Oil Co.*, 446 U.S. 657 (1980), holding that the *Freeman* discovery standard is the correct interpretation of the savings clause of the Mineral Leasing Act, that it had received congressional ratification, and that the Department of the Interior could not invalidate claims on the grounds that oil shale had no present commercial value.

Assessment Work

The obligation to perform assessment work is the other major issue that has been associated with the management of oil shale mining claims since the passage of the Mineral Leasing Act. The

savings clause of that Act required oil shale mining claims to be maintained in accordance with the mining laws (30 U.S.C. 193). Under the mining laws, to hold a claim, a claimant is required, among other things, to perform at least $100 worth of assessment work per claim each year (30 U.S.C. 28). The purpose of this provision is to encourage diligent development of the claim. Failure to perform this labor allows relocation of the claim by rival claimants, unless labor is resumed first (30 U.S.C. 28). This qualification is called the resumption principle and serves to bar adverse actions against the claim.

In the 1920's and early 1930's, the Department of the Interior contested a number of oil shale mining claims for failure to perform annual assessment work. These administrative contest efforts led to two Supreme Court decisions adverse to the Department: *Wilbur* v. *Krushnic*, 280 U.S. 306 (1930); and *Ickes* v. *Virginia-Colorado Development Corp.*, 295 U.S. 639 (1935). In both decisions, the Supreme Court held that the claimant's right under 30 U.S.C. 28 to resume assessment work was preserved by the savings clause of the Mineral Leasing Act. In *Wilbur*, the court specifically held that the Government was barred from contesting a mining claim for failure to perform annual assessment work as long as the claimant resumed performance prior to the contest. In *Ickes*, however, the court suggested that the Government had no authority at all to contest a mining claim for failure to perform annual assessment work. In *Ickes*, the alleged lapse of work had lasted for just one year. Accordingly, the Department of the Interior, in *The Shale Oil Company*, 55 L.D. 287 (1935), reversed its decisions invalidating oil shale claims for failure to perform assessment work. From 1935 to the early 1960's, the Department issued patents to approximately 350,000 acres of land for oil shale claims, without regard to whether annual assessment work was done, continuing to use the *Freeman* v. *Summers* precedent to verify the discovery of a valuable oil shale deposit.

In the early 1960's, the Department changed its policy regarding assessment work requirements. It began rejecting patent applications for oil shale claims that it deemed invalid for failure to perform assessment work based on pre-1935 contests. Claimants whose patent applications were rejected on this ground brought suit. In 1966, the Federal District Court for Colorado ruled that the Department lacked authority to contest the claims for lack of assessment work and that the pre-1935 contests based on that allegation were void for that reason. In 1970, the Supreme Court reversed that decision, holding that the Department of the Interior could contest claims where a claimant did not "substantially satisfy" the assessment work requirement (*Hickel* v. *Oil Shale Corp.*, 400 U.S. 48, 57 (1970)). The Supreme Court, however, did not define the term "substantial compliance" nor did it indicate any guidelines for developing a definition. Instead, the Supreme Court remanded the case to the District Court to allow the applicants "to bring their claims within the narrow ambit of *Krushnic* and *Virginia-Colorado*, as [the Supreme Court has] construed and limited these opinions."

As promulgated in 1972, 43 CFR 3851.3(a) provided that mining claims were subject to cancellation for substantial failure to comply with annual assessment requirements. Since 1972, the Department has been in a better position to contest claims because of nonperformance of annual assessment work, subject to the constraint of the resumption principle.

Since 1979, section 314 of the Federal Land Policy and Management Act (FLPMA) has required every mining claimant to file annually either an affidavit of assessment or a notice of intent to hold the claim. The Department accepts the statement in the affidavits of assessment work unless compelling evidence to the contrary is presented. Filing pursuant to FLPMA of a notice of intent to hold a mining claim does not create a presumption of performance of labor.

The TOSCO v. Hodel Decisions

The litigation commonly referred to as the "TOSCO" case resulted from consolidation of thirteen separate lawsuits filed after the Department rejected 41 oil shale patent applications in the 1960's. The TOSCO case was the test case on the meaning of "maintenance" of a claim that is required by the Savings Clause of the Mineral Leasing Act. Following a 1976 remand by the U.S. Court of Appeals for the Tenth Circuit for consideration of all issues, the Department filed new contests against the mining claims. Each contest alleged lack of discovery and substantial failure to comply with assessment work requirements. These contests resulted in four decisions by the Interior Board of Land Appeals and one by the Director, Office of Hearings and Appeals. The mining claims were found invalid because the claimants had not substantially complied with the assessment work requirement, or because they contained no exposure of oil shale of sufficient quality to support a discovery. In *TOSCO Corp.* v. *Hodel*, 611 F.Supp. 1130 (D.Colo. 1985), vacated as moot, 826 F.2d 948 (10th Cir. 1987), the U.S. District Court for the District of Colorado reversed the holdings of the Interior Board of Land Appeals and the Director, Bureau of Land Management. Among other things, the Court held, that (1) Exposure of a surface outcrop of oil shale from the Green River Formation supported an inference of sufficient oil shale at depth to support a discovery; (2) the Department was barred from raising failure to perform assessment work because the claimant had resumed the work; and (3) the claimants had substantially complied with the annual assessment work requirement because a cumulative total $500 worth of labor had been performed on each claim, which is all that is necessary to patent. Subsequent to this holding, the plaintiff and the United States entered into a settlement agreement. In view of this, the Tenth Circuit Court of Appeals vacated the District Court decision of *TOSCO Corp.* v. *Hodel* as moot, and ordered the District Court to vacate the decisions of the Interior Department which led to *TOSCO*, rendering them no longer controlling a precedent.

Proposed rule—Discovery

The proposed rule would establish the standard of discovery necessary to demonstrater that a valuable oil shale deposit, within the meaning of the mining laws, occurs within the claim. The standard stems from an analysis of the options available to the Department of the Interior in administratively determining oil shale mining claim validity. The decision in *Andrus* v. *Shell Oil* recognizes that the 1927 Secretarial decision in *Freeman* v. *Summers* is the correct interpretation of discovery requirements for oil shale. The standard recognizes exposure of the rich beds of the Green River Formation as having sufficient prospective value to qualify as a discovery. The prospectively valuable oil shale standard adopted by the U.S. Geological Survey in 1916, (beds at least 1 foot thick yielding at least 15 gallons of shale oil per ton of rock, and yielding at least 1,500 barrels of oil per acre) is established as the standard in the proposed rule.

This standard may be met by the Parachute Creek Member in the Piceance and Uinta basins of Colorado and Utah, respectively. In the oil shale basins of Wyoming, the geologic nomenclature differs from the locale of the *Freeman* claims. In the Green River basin, claims containing exposures of

the rich beds of the Laney and Wilkins Peak Members were patented in the past, but in the Fossil Basin no oil shale patents have been issued although the Fossil Butte Member reportedly contains some rich beds of oil shale. All of the above members are considered as part of the Green River Formation.

The standard of discovery can also be met through exposure of marlstone tongues of the Green River Formation, containing at least three gallons of shale oil per ton of rock, that can be reasonably inferred to connect to the prospectively valuable rich beds defined above. Such is the case in the vicinity of the oil shale claims at issue in *Freeman* v. *Summers* which were deemed to contain a discovery of a valuable mineral deposit sufficient to patent the claims.

Substantial Compliance with Assessment Work Requirements

The proposed rule would further clarify the criteria for substantial compliance with assessment work requirements of the mining laws necessary to maintain a mining claim under the Savings Clause, section 37 of the Mineral Leasing Act. The Supreme Court in *Hickel* v. *Oil Shale Corp.*, 400 U.S. 48 (1970), created such a standard but provided no definition of "substantial compliance." The *TOSCO* decision, which narrowly interpreted this phrase, and the Interior Board of Land Appeals decisions that broadly interpreted it, have all been vacated as moot.

The proposed rule would make it clear that a resumption of assessment work after a lapse of any duration, but prior to initiation of a contest by the United States, would prevent invalidation of the claim for substantial failure to comply with the assessment work requirement. The resumption principle is an essential part of section 5 of the Mining Law of 1872 (30 U.S.C. 28). Section 5, among other things, contains the $100 annual assessment work requirements and allows a third party to relocate the claim when the original locator fails to perform the annual labor. Section 5 then provides that relocation is barred if the original locator has resumed performance of assessment work. The Supreme Court applied the resumption principle against the United States in *Wilbur* v. *Krushnic*. The Supreme Court recognized in the *Hickel* decision that the maintenance requirement of section 37 of the Mineral Leasing Act of 1920 (30 U.S.C. 193) allows the United States to stand in the place of a third party relocator under section 5 of the Mining Law. The Supreme Court in *Hickel* closely examined section 5 and held that an oil shale claimant must substantially comply with its provisions in order to maintain his minimg claim, and that the United States may properly invalidate a claim for failure to do so. However, the Court did not overrule the resumption holding of *Wilbur* v. *Krushnic* and, equally important, did not suggest that this holding was incorrect.

On September 1, 1972, the Interior Department promulgated a final rule requiring substantial compliance with assessment work requirements by all mining claimants. Failure to comply renders one's mining claim subject to cancellation. That regulation put the oil shale mining community on notice that the 1935 policy decision was reversed, but said nothing about the resumption principle and its effect against the United States.

The proposed rule would place the burden upon mining claimants to prove that labor was resumed prior to the initiation of a contest if no affidavit of assessment work has been filed with the BLM under section 314 of the Federal Land Policy and Management Act (FLPMA) for the previous 2 years. Of course, a notice of intent to hold a mining claim must have been filed in lieu of an affidavit of assessment work or the mining claim is conclusively deemed abandoned by operation by law, *U.S.* v. *Locke*, 471 U.S. 84 (1985). The requirement that the lapse be at least 2 years in length stems from the fact that in both *Wilbur* v. *Krushnic* and *Ickes* v. *Virginia-Colorado Development Corp.*, where the Supreme Court held that the Government lacked authority to contest claims for failure to perform assessment work, the duration of the lapse was 1 year. This rule would prospectively change this time period in recognition of the additional guidance, provided by the Supreme Court in its 1970 *Hickel* decision, regarding the Government's authority to contest claims for substantial failure to comply with the assessment work requirements.

The Department does not propose to adopt a rule recognizing that $500 worth of assessment work constitutes substantial compliance for the life of the mining claim. The $500 requirement is one of the criteria for receiving a patent established by section 6 of the Mining Law (30 U.S.C. 29). There is no relationship between this requirement and substantial compliance with the annual assessment work requirement.

The principal author of this proposed rule is Richard Deery, Division of Mining Law and Salable Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

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

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

The changes made by this proposed rule will have a very insignificant effect on an oil shale placer claimant, whether large or small, because it merely places in regulatory form the judicial and administrative case law interpretations of the provisions of the Mining Law. The changes should accelerate the processing of applications for patent on oil shale placer claims.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects for 43 CFR Part 3840

Land Management Bureau, Mines, Public lands-mineral resources.

List of Subjects for 43 CFR Part 3850

Land Management Bureau, Mines, Public lands-mineral resources.

Under the authorities cited below, it is proposed to amend parts 3840 and 3850, Group 3800, subchapter C, chapter II of title 43 of the Code of Federal Regulations as set forth below:

PART 3840—NATURE AND CLASSES OF MINING CLAIMS

1. An authority citation is added for part 3840 to read as follows:

Authority: 30 U.S.C. 21 et seq., 30 U.S.C. 161 et seq., 30 U.S.C. 181 et seq., 30 U.S.C. 613, 29 Stat. 526, 30 U.S.C. 101 et seq., and 43 U.S.C. 1701 et seq.

2. Section 3842.4 is revised to read:

§ 3842.4 Petroleum placers.

(a) The Act of February 11, 1897 (29 Stat. 526), provided for the location and entry of public lands chiefly valuable for petroleum or other mineral oils. Entries of that nature made prior to the passage of that Act are to be considered as though made pursuant to the provisions of that Act. That Act was superseded by the Mineral Leasing Act as amended

and supplemented (30 U.S.C. 181 et seq.). Section 37 of the 1920 Act as amended (30 U.S.C. 193) excepts from its coverage valid mining claims existing on February 25, 1920, and thereafter maintained in compliance with the laws under which the mining claims were initiated.

(b) In order to establish the validity of an oil shale mining claim held under section 37 of the Mineral Leasing Act, a mining claimant shall demonstrate that there was a discovery of a valuable oil shale deposit within the meaning of the mining laws on February 25, 1920, or that the claimant or his/her predecessors in interest were diligently seeking to make such a discovery.

(c) Discovery of a valuable oil shale deposit shall be shown to exist by an exposure of the prospectively valuable rich beds of oil shale of the Green River Formation within the boundaries of a mining claim yielding 15 gallons or more of shale oil per ton of rock, in beds not less than one foot thick, and yielding 1500 barrels or more per acre. Further, this standard may be met by an exposure of a marlstone tongue of the Green River Formation within the boundaries of the mining claim, yielding not less than three gallons of shale oil per ton of rock upon destructive distillation, inferred to connect to the prospectively valuable rich beds of oil shale lying at depth within the boundaries of the mining claim, but the inferred connection of the qualifying marlstone tongue need not occur within the confines of the mining claim.

PART 3850—ASSESSMENT WORK

3. The authority citation for part 3850 is revised to read as follows:

Authority: 30 U.S.C. 21 et seq., 30 U.S.C. 181 et seq., 30 U.S.C. 611 et seq., 30 U.S.C. 101 et seq., and 43 U.S.C. 1701 et seq.

4. Section 3851.3(a) is revised to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

(a) Failure of a mining claimant to comply substantially with the requirements of section 5 of the Act of May 10, 1872 (30 U.S.C. 28), shall render the mining claim subject to contest proceedings under part 4 of this title, if the mining claim was located for minerals of a type no longer subject to disposition under the mining law, or embraces lands subsequently closed to the operation of the mining law. In order to meet the requirement for substantial compliance, the claimant shall annually perform not less than $100 worth of labor or make improvements in such amount in an effort to develop a valuable mine. Resumption of qualifying assessment work, prior to the initiation of a challenge by the United States, is an absolute defense in a contest brought on that basis. For lapses that occurred prior to the effective date of this section, the United States shall not initiate contest proceedings for any lapse of 2 years or less. After the effective date of this section, a lapse of 1 year, without resumption of labor, is sufficient basis upon which the United States may initiate contest proceedings. The requirements of this paragraph are in addition to those in subpart 3833 of this title.

* * * * *

Dated: November 29, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 91-437 Filed 1-8-91; 8:45 am]

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A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.