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Monday
April 1, 1991

Briefings on How To Use the Federal Register
For information on briefings in Miami, FL, Chicago, IL, and Washington, DC, see announcement on the inside cover of this issue.

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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.

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue
Room 914
Miami, FL
RESERVATIONS: 1-800-347-1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: 1-800-366-2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 91-24 of March 11, 1991

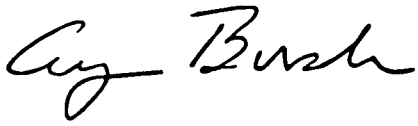
Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that $6,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the unexpected and urgent needs of refugees and other persons in the Occupied Territories and Sri Lanka.

Of this amount, $5,000,000 will be contributed to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for emergency food distribution in the Occupied Territories, and $1,000,000 will be contributed to the International Committee of the Red Cross (ICRC) to assist victims of the conflict in Sri Lanka.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, March 11, 1991.

[FR Doc. 91-7716
Filed 3-28-91; 1:25 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 91-25 of March 21, 1991

Emergency Military Sales to Israel and Saudi Arabia

Memorandum for the Secretary of State

Pursuant to section 36(b)(1) of the Arms Export Control Act (22 U.S.C. 2776(b)(1)), I hereby determine that an emergency exists that requires the immediate transfer to Israel of one Patriot fire unit, and the sale of repair parts and other logistical support to the Kingdom of Saudi Arabia, in the national security interests of the United States. The specific foreign military sales cases include:

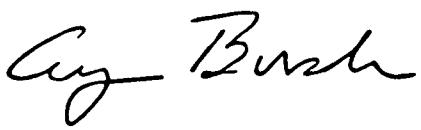
Transmittal No. 91-18—One Patriot fire unit, including eight missile launching stations, 64 Patriot (PAC 1) missiles, with related ancillary equipment, hardware, USG and contractor training and support.

Transmittal No. 91-15—Logistical services for the Saudi Ordnance Corps.

Transmittal No. 91-16—Repair Parts and other Logistical Support for the Royal Saudi Land Forces.

Transmittal No. 91-17—Repair Parts and other Logistical Support for the Royal Saudi Air Force.

This memorandum shall be included in the certification transmitted to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate under section 36(b)(1) of the Arms Export Control Act with respect to the foreign military sales cases described herein.



THE WHITE HOUSE,
Washington, March 21, 1991.

[FR Doc. 91-7765
Filed 3-28-91; 4:00 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 62
Monday, April 1, 1991

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1948

Intermediary Relending Program

CFR Correction

In title 7 of the Code of Federal Regulations, parts 1940 to 1949, revised as of January 1, 1991, the text from pages 715 through 723, excluding the last four lines on page 723, should be moved to page 698 and inserted before subpart C. The last four lines on page 723 and everything through page 738, excluding the last line, should be removed in their entirety.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, 773, and 774

[Docket No. 910357-1057]

Exports to Ireland: Shorter Processing Timeframes, General Licenses G-COCOM and GCG, Permissive Reexports From Ireland to the People's Republic of China, Permissive Reexports to COCOM Participating Countries, and Higher Level Computers Under the Distribution License

AGENCY: Bureau of Export Administration, Commerce

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard reexports of U.S.-origin strategic goods and technology, the Bureau of Export Administration (BXA) is extending to Ireland export licensing benefits available under the provisions of section 5(k) of the Export Administration Act of 1979, as amended (EAA). This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is:

- Amending § 770.14 to provide shorter processing times for license applications for Ireland;
- Amending General Licenses G-COCOM and GCG to authorize certain shipments of U.S.-origin commodities to Ireland;
- Removing the requirement for specific U.S. reexport authorization for reexports from Ireland to the People's Republic of China of commodities described in Advisory Notes for the People's Republic of China or Country Groups QWY;
- Amending the permissive reexport provisions of § 774.2(k) to include Ireland; and
- Amending the Distribution License procedure to authorize exports to Ireland of computers up to but not including the supercomputer level.

EFFECTIVE DATE: This rule is effective April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-007, 0695-0010, and 0694-0015. Licensing requirements will be reduced as a result of this rule, thereby reducing the paperwork burden on the public.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports

15 CFR Parts 771, 773, and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, 773, and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citations for 15 CFR parts 770, 771, 773, and 774 are revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986), Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 2, 1989); Pub. L. 995-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*), E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 770—[AMENDED]

§ 770.14 [Amended]

2. Section 770.14 is amended by revising the phrase "Austria, Finland,

Korea (Republic of)," to read "Austria, Finland, Ireland, Korea (Republic of)," in the introductory text of paragraph (a) and in paragraph (a)(3)(ii).

PART 771—[AMENDED]

§ 771.14 [Amended]

3. In § 771.14, paragraph (b) is amended by adding the word "Ireland," immediately after the word "Finland,".

§ 771.24 [Amended]

4. Section 771.24(a) is amended by revising the phrase "Austria, Finland, and Switzerland," to read "Austria, Finland, Ireland, and Switzerland,".

5. In § 771.24, paragraph (b) is amended by adding the word "Ireland," immediately after the word "Greece,".

PART 773—[AMENDED]

Supplement 8 to Part 773 [Amended]

6. In part 773, Supplement No. 8 is amended by adding in alphabetical order "Ireland" to the list of countries.

PART 774—[AMENDED]

§ 774.2 [Amended]

7. In § 774.2, paragraph (j) is amended by adding the word "Ireland," immediately after the word "Finland,".

8. In § 774.2, paragraph (k) introductory text is amended by adding the word "Ireland," immediately after the word "Finland,".

9. In § 774.2, paragraph (k)(2)(i) is amended by adding the word "Ireland," immediately after the word "Finland,".

Dated: March 26, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-7547 Filed 3-29-91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AD09

Supplemental Security Income; Determining Disability for a Child Under Age 18; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Final rule with request for comments; correction.

SUMMARY: This document corrects the wording in a final rule with request for comments, concerning determining disability for a child under age 18, that was published on Monday, February 11, 1991.

EFFECTIVE DATE: February 11, 1991.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1758.

In FR Doc. 91-3123 beginning on page 5534 in the issue of Monday, February 11, 1991, make the following corrections:

PART 416—[CORRECTION]

1. On page 5554, § 416.924(b), in the third column, on line 5, remove the comma.

2. On page 5554, § 416.924(e), in the third column, on the last line, change the section number to "416.926a".

3. On page 5557, § 416.924b(d)(3), in the first column, on line 16, remove the words "As children", and remove all of lines 17 and 18.

4. On page 5557, § 416.924c(d)(5), in the third column, on line 53, insert "and" before "in".

5. On page 5562, § 416.994a(b)(1), in the third column, on line 33, change the section number to "416.926a".

6. On page 5565, § 416.994a(f)(4)(i), in the first column, on line 41, insert "in" before "appendix".

Alan H. Wilder,

Acting Director, Division of Regulations.

[FR Doc. 91-7668 Filed 3-29-91; 8:45 am]

BILLING CODE 4190-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 601

Statement of Organization

AGENCY: United States Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: The Agency is publishing a current description of its organization and functions in order to reflect cumulative minor changes in duties or titles.

EFFECTIVE DATE: March 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Flagg, Acting Executive Secretary, U.S. Arms Control and Disarmament Agency, Washington, DC 20451, telephone 202-647-8478.

SUPPLEMENTARY INFORMATION: This information is published in compliance with section 552(a)(1) of title 5, United States Code, and 1 CFR 305.76-2

List of Subjects in 22 CFR Part 601

Organization and functions (government agencies), Arms control.

Accordingly, 22 CFR part 601, is revised to read as follows:

PART 601—STATEMENT OF ORGANIZATION

Sec.
601.1 Definition.

Subpart A—Agency Responsibilities and Structure

601.5 Responsibilities.
601.6 Structure.
601.7 General Advisory Committee.
601.8 Office of Arms Control Negotiations in Geneva.

Subpart B—Functional Statements

601.10 Office of the Director.
601.11 Bureau of Strategic and Nuclear Affairs (SNA).
601.12 Bureau of Multilateral Affairs (MA).
601.13 Bureau of Nonproliferation Policy (NP).
601.14 Bureau of Verification and Implementation (VI).
601.15 Office of the General Counsel (GC).
601.16 Office of Congressional Affairs (CA).
601.17 Office of Public Affairs (PA).
601.18 Office of Administration (A).
601.19 Office of the Inspector General (OIG).
601.20 Office of Security (SY).
601.21 Office of the Chief Science Advisor (OCSA).

Authority: Sec. 1, Pub. L. 90-23, 81 Stat. 54 (5 U.S.C. 552(a)(1)); Title II, Pub. L. 87-297, 75 Stat. 632, as amended (22 U.S.C. 2561 et seq.); and sec. 41(h), Pub. L. 87-297, 75 Stat. 636, as amended (22 U.S.C. 2581(1)).

§ 601.1 Definition.

As used in this part, "Agency" means the U.S. Arms Control and Disarmament Agency.

Subpart A—Agency Responsibilities and Structure

§ 601.5 Responsibilities.

(a) The Agency is charged with providing the President, the Secretary of State, other officials of the executive branch, and the Congress with recommendations concerning United States arms control and disarmament policy, and assessing the effect of these recommendations upon our foreign policies, our national security policies, and our economy.

(b) The Agency also has the capacity for providing the essential scientific, economic, political, military, legal, social, psychological, and technological information on which realistic arms control and disarmament policy must be based, and the authority, under the direction of the President and the

Secretary of State, to carry out the following primary functions:

(1) The conduct, support, and coordination of research for arms control and disarmament policy formulation;

(2) The preparation for and management of United States participation in international negotiations in the arms control and disarmament field as well as United States implementation of existing treaties;

(3) The dissemination and coordination of public information concerning arms control and disarmament; and

(4) The preparation for, operation of, or as appropriate, direction of United States participation in such verification systems as may become part of United States arms control and disarmament activities. Verification systems include both United States national means and negotiated control measures such as on-site inspections.

(c) The Agency works at the highest level of the United States Government and, under the direction of the Secretary of State, conducts United States participation in international arms control and disarmament negotiations. It does not normally hand down decisions or engage in regulatory activities affecting the general public, since its functions are principally in the advisory or diplomatic areas. Copies of publications resulting from the Agency's activities, such as its Annual Report, may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or requested directly from the U.S. Arms Control and Disarmament Agency, 320 21st Street NW, Washington, DC 20451.

§ 601.6 Structure.

(a) The Agency is headed by a Director, appointed by the President with the advice and consent of the Senate, who is responsible for the executive direction of the Agency. He also functions as the principal adviser to the Secretary of State, the National Security Council, and the President on arms control and disarmament matters and, under the direction of the Secretary, has primary responsibility within the Government for such matters. He is assisted by a Deputy Director, similarly appointed by the President with the advice and consent of the Senate, who acts for him in his absence.

(b) The Director is supported by a personal staff which includes the Executive Assistant, Special Assistant and Personal Secretary. Other officials included within the Director's office are the Counselor of the Agency, the Executive Secretary, two Special Representatives appointed by the President with the advice and consent of the Senate, the U.S. Commissioner on the Standing Consultative Commission, the U.S. Representative to the Special Verification Commission, the U.S. Representative to the Conference on Disarmament, the Senior Military Advisor, the Senior Policy Advisor, the Principal Deputy Director of the On-Site Inspection Agency, and the Equal Employment Opportunity Officer. The Office of the Director also supports the General Advisory Committee.

(c) In its deliberations during the establishment of the Agency, Congress made it clear that the Director of the Agency would rank with the Under Secretary (now Deputy Secretary) of State and report directly to the Secretary; the Deputy Director would rank with the Deputy Under Secretary of State (now Under Secretary) and Assistant Directors would rank with Assistant Secretaries of State. Congress also made it clear that although he has a special and close relationship to the Secretary of State, the Director also has direct access to the President when necessary and that he has sufficient authority and independence to deal directly with the heads of other agencies, such as the Department of Defense, on matters not falling within the competence of the Department of State.

(d) The Agency's program responsibilities are primarily discharged through four Bureaus and the Office of the Chief Science Advisor. Each of the Bureaus (Strategic and Nuclear Affairs, Nonproliferation Policy, Multilateral Affairs, and Verification and Implementation) is headed by an Assistant Director appointed by the President with the advice and consent of the Senate. Within the range of its program responsibilities, each of the Bureaus and the Office of the Chief Science Advisor is responsible for generating policy proposals, and for working closely with other Agency units and Government agencies on matters related to its program areas. Other organizations units with staff responsibilities are the Office of the General Counsel, the Office of Congressional Affairs, the Office of Public Affairs, the Office of Administration, the Office of the Inspector General, and the Office of Security.

§ 601.7 General Advisory Committee.

The Act creating the Agency authorized the President, by and with the advice and consent of the Senate, to appoint a General Advisory Committee (GAC) of not to exceed 15 members. This Committee must meet at least twice each year. From time to time it advises the President, the Secretary of State, and the Director of the Agency on matters affecting arms control, disarmament, and world peace. Under the Federal Advisory Committee Act (5 U.S.C. appendix I) and Executive Order 12024, as implemented by the General Services Administration, the Agency exercises significant support functions for the GAC.

§ 601.8 Office of Arms Control Negotiations in Geneva.

This diplomatic mission was established by the State Department for the expanded negotiations on defense and space weapons, strategic nuclear weapons, and intermediate range nuclear weapons. Consistent with the Agency's statutory authority, under the direction of the President and the Secretary of State, for management of United States participation in arms control negotiations, the Agency manages the operation of these negotiations.

Subpart B—Functional Statements

§ 601.10 Office of the Director.

(a) The Director of the Agency is the principal adviser to the Secretary of State, the National Security Council, and the President on arms control matters. Under the direction of the Secretary of State, he has primary responsibility within the Government for formulation of policy recommendations and for operations in such matters. He is responsible for the executive direction and coordination of all activities of the Agency and the Agency's relations with the Congress. He attends all meetings of the National Security Council involving arms control and disarmament matters, proliferation, arms transfers, weapons procurement, and consideration of the defense budget.

(b) The Deputy Director assists the Director in carrying out his responsibilities as head of the Agency, and acts for and exercises the powers of the Director during his absence and has special responsibility for the Office of Administration and the Office of Security.

(c) The two Special Representatives perform their assigned duties under the direction of the President and the Secretary of State, acting through the Director of the Agency.

(d) The U.S. Commissioner to the Standing Consultative Commission (SCC), with the rank of Ambassador, under the direction of the President and

the Director of the Agency, serves as head of the United States component of the SCC, which is the U.S.-Soviet implementing body for the Anti-Ballistic Missile Treaty.

(e) The U.S. Representative to the Special Verification Commission (SVC), with the rank of Ambassador, under the Direction of the President and the Director of the Agency, heads the United States Delegation to the SVC, which is the U.S.-Soviet implementing body for the INF Treaty.

(f) The U.S. Representative to the Conference on Disarmament (CD), with the rank of Ambassador, serves as U.S. Representative to the CD, may represent arms control interests on the United States delegation to the United Nations and its constituent bodies, and also represents the Director of the Agency in other negotiations having arms control significance as requested by the Director.

(g) The Counselor assists the Director and serves as a principal adviser on all aspects of the Agency's operations and as a link between the Director and top decisionmakers within the Agency and in other agencies.

(h) The Senior Military Advisor to the Director is responsible for serving as the principal adviser to the Director on military affairs and is the principal representative of the Director to the Office of the Secretary of Defense and the Joint Chiefs of Staff. He evaluates arms control proposals from a military perspective and assesses their potential contribution to the national security.

(i) The Senior Policy Advisor to the Director provides analysis and advice on policy areas within the Agency's mission from a broad and independent perspective, and is a principal representative of the Director on policy matters. The Senior Policy Advisor also serves as Director of the Policy Planning Group, establishing and executing needed planning activities and developing analyses for short and long-range policy planning issues.

(j) The Principal Deputy Director of the On-Site Inspection Agency (OSIA) assists the Director of OSIA in the management of that Agency and acts as the representative of the Director of the U.S. Arms Control and Disarmament Agency on matters falling within the competence of OSIA.

(k) The Executive Director of the General Advisory Committee (GAC) provides substantive and administrative support to the GAC, including White House and Congressional liaison, in the GAC's exercise of broad statutory responsibilities as a Presidential advisory body on arms control and disarmament activities.

(l) The Equal Employment Opportunity (EEO) Officer has the primary responsibility for advising the Director of the Agency with respect to the preparation of national equal employment opportunity plans, procedures, regulations, reports, and other matters pertaining to the Agency's equal employment opportunity program, for evaluating the sufficiency of the total Agency program for equal employment opportunity, and when authorized by the Director of the Agency, for making changes in programs and procedurs designed to eliminate discriminatory practices and improve the Agency's program for equal employment opportunity. The EEO Officer maintains contact with the Office of Personnel Management, the Equal Employment Opportunity Commission, schools, and other related organizations.

(m) The Executive Secretary of the Agency directs and coordinates staff work for the Director, directs substantive issues studies, and assists the Director in keeping policy and organizational functional aspects of arms control matters in phase.

§ 601.11 Bureau of Strategic and Nuclear Affairs (SNA).

SNA has principal responsibility for the diplomatic, political, and technical aspects of bilateral negotiations, and implementation of bilateral agreements, with respect to issues other than verification and compliance. SNA areas of responsibility include strategic and theater nuclear arms and defense and space arms control, the U.S.-Soviet Standing Consultative Commission (SCC), and the U.S.-Soviet Special Verification Commission (SVC). SNA coordinates implementation of agreed policy, generates and analyzes proposals, and evaluates weapons systems and other questions relating to these negotiations. It also takes the leading role in formulating Agency positions on basic strategic and theater nuclear arms and defense and space arms control and outer space policy issues that require high-level decision within the Government. SNA chairs the interagency backstopping committees for START, the Defense and Space Talks, the SCC and the SVC.

§ 601.12 Bureau of Multilateral Affairs (MA).

MA develops policy, strategy, and tactics for negotiations and discussions in multilateral arms control forums. It also provides organizational support and expert staffing for United States delegations to the Conference on Disarmament in Geneva, in which the negotiations on a global ban on chemical weapons are conducted, as well as the First Committee of the General Assembly and the Disarmament Commission of the United Nations. In addition, the MA Bureau takes the leading policy role in formulating Agency positions in support of the negotiations on Conventional Armed Forces in Europe and Confidence- and Security-Building Measures in Europe. The Bureau is also responsible for development of policy relating to other international arms control agreements and negotiations, including Open Skies, the Biological Weapons Convention, and the Seabeds Treaty. The Bureau assists in the formulation of Agency policy with regard to arms control in non-European regions of the world.

§ 601.13 Bureau of Nonproliferation Policy (NP).

NP is responsible for representing the Agency in policy development, implementation, and international negotiations concerning efforts to halt the proliferation of nuclear/chemical/biological weapons and missiles. It promotes United States interests in multilateral nonproliferation regimes, e.g., the Nuclear Non-Proliferation Treaty, the Treaty of Tlatelolco, the Missile Technology Control Regime, and the Australia Group, Chemical Weapons list. It participates in the review of nuclear exports and provides technical and policy support for the International Atomic Energy Agency's safeguards and technical assistance efforts. NP also has responsibility within the Agency for the development and implementation of arms control policy regarding nuclear testing. Other areas of activity include export controls on conventional arms and dual-use technologies as well as the role of arms control in certain regional security efforts. The Bureau prepares the Arms Control Impact Statements, the annual statistical compendium *World Military Expenditures and Arms Transfers*, as well as the Agency's Annual Report to the Congress. Additionally, NP, in conjunction with VI, has responsibility for planning and participating in inspections to ensure compliance with the Antarctic Treaty.

§ 601.14 Bureau of Verification and Implementation (VI).

VI has principal responsibility within the Agency for verification, compliance, and intelligence issues pertaining to implementation of all existing arms control agreements as well as to all arms control negotiations in progress, and for development of the Agency position on these issues. VI is responsible for developing verification

frameworks for all agreements under consideration, assisting in the development of treaty language bearing upon verifiability, preparing for and overseeing implementation of agreements, assessing compliance, and preparing related reports pursuant to statutory responsibilities. VI is also responsible for the development of United States actions related to implementation questions concerning verification and compliance, and participates, in coordination with other Bureaus having responsibility for specific treaties or negotiations, in dealing with such issues through diplomatic channels and in treaty-specific bilateral and multilateral commissions. VI is responsible for overseeing the operations of the arms control inspection organs of the United States, principally the On-Site Inspection Agency, and for the conduct of the Agency's formal liaison with all elements of the Intelligence Community. VI provides intelligence support to the Director and to the other Agency components, and represents the Agency as a full participant in interagency intelligence deliberations relevant to arms control. To prepare the way for future progress in arms control, VI works to enhance the United States ability to verify agreements by establishing requirements for improved national collection, analysis, and reporting capabilities, as well as for effective cooperative verification measures.

§ 601.15 Office of the General Counsel (GC).

This Office is responsible for all matters of domestic and international law relevant to the work of the Agency. It provides advice and assistance in drafting and negotiating arms control treaties and agreements, and on questions regarding their approval by Congress, implementation, interpretation, ratification, and revision. GC lawyers regularly serve as the Legal Advisors to United States arms control negotiating delegations. The Office is also involved in the legal aspects of the nuclear weapons non-proliferation responsibilities of the Agency. It is responsible for legal matters relating to arms control policy formulation and Agency legislation, including drafting of such legislation. It also handles the legal aspects of Agency policies and operations in the areas of personnel, security, patents, contracts, procurement, fiscal, and administrative matters.

§ 601.16 Office of Congressional Affairs (CA).

The Office of Congressional Affairs has primary responsibility for all congressional liaison, including briefings, consultations, hearings, legislative inquiries, visits by Members of Congress to arms control negotiating fora, and other matters such as the status of proposed and existing arms control agreements. Communications between the Agency and congressional committees, staff and members, formal and informal, are designed to keep Congress informed of United States arms control efforts and obtain for the Agency relevant congressional insights and suggestions.

§ 601.17 Office of Public Affairs (PA).

PA carries out the Agency's legislative mandate for the dissemination and coordination of public information concerning arms control matters. It is responsible for all contacts with the media and prepares guidance as required on questions relating to the Agency's business. It oversees the operation of the Agency's Technical Reference Center. It collects, screens, and distributes information to Bureaus and Offices to keep the Agency's staff abreast of developments of interest and use in connection with carrying out their responsibilities. It also prepares publications and handles the planning as well as the details of speaking engagements by Agency officials. Within PA, the Agency Historian is responsible for the preparation of historical analyses on arms control topics and previous negotiations.

§ 601.18 Office of Administration (A).

This Office, under the direction of the Administrative Director reporting through the Deputy Director of the Agency, is responsible for administrative management of the Agency and for providing support to all of its components, including the negotiating staffs in Geneva and Vienna. This includes all personnel, budget, fiscal, supply, contracts, communications, and general administrative activities. The Office maintains regular liaison with the Office of Management and Budget, the Appropriations Committees of the Congress, the Department of State, the General Services Administration, and other organizations providing services for the Agency.

§ 601.19 Office of the Inspector General (OIG).

This Office is headed by the Inspector General of the Agency who has the duties, responsibilities, and authorities specified in the Inspector General Act of 1978, as amended. The Inspector General of the Agency utilizes personnel of the Office of the Inspector General of the Department of State in performing the duties of Inspector General of the Agency.

§ 601.20 Office of Security (SY).

The Office of Security, under direction of the Director of Security reporting through the Deputy Director of the Agency, is responsible for the security program of the Agency, including the offices located in Geneva, Switzerland, and Vienna, Austria. The program includes physical, procedural, personnel, technical, and computer security, as well as investigative and counterintelligence functions. The Office conducts liaison with national security and federal investigative agencies.

§ 601.21 Office of the Chief Science Advisor (OCSA).

This Office has responsibility for oversight of research and analysis carried out within the Agency, for management of the Agency's program of external research, and for the coordination of arms control related research carried out by other government agencies. OCSA also provides operations analysis and scientific computer support for the Agency. The Office works closely with VI, in particular, to assess technology that may be appropriate for use in arms control verification, and to direct the development of relevant technology in support of on-going negotiations.

Dated: March 26, 1991.

Stephen R. Hanmer,

Deputy Director.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 771

[FHWA Docket No. 89-17]

RIN 2125-AC18

Environmental Impact and Related Procedures; Constructive Use

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), Department of Transportation.

ACTION: Final rule.

SUMMARY: The FHWA and the UMTA are amending their joint regulation on section 4(f) of the Department of Transportation Act to define "use" and to more clearly establish the circumstances under which a "constructive use" of certain protected resources would or would not occur. The amendment also sets forth the procedures pursuant to which such determinations are made. The protected resources include publicly owned public parks, recreation areas, wildlife and waterfowl refuges, and historic sites of national, State or local significance.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: For FHWA, Mr. Ken Perret, Office of Environment and Planning, (202) 366-4093, or Mr. L. Harold Aikens, Jr., Office of the Chief Counsel, (202) 366-0791, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays. For UMTA, Mr. Abbe Marner, (202) 366-0096, or Scott Biehl, Office of the Chief Counsel, (202) 366-4063, Urban Mass Transportation Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA and the UMTA (hereafter referred to as "the Administration") are issuing a final rule amending their regulation implementing Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303 and 23 U.S.C. 138 (referred to hereafter as "Section 4(f)") to define "use" of land and to more clearly establish the circumstances under which a constructive use of certain protected resources would or would not occur. This amendment is in furtherance of the policy of the Administration "that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites." 49 U.S.C. 303(a).

Section 4(f) permits the use of land for a transportation project from a significant publicly owned public park, recreational area, wildlife or waterfowl refuge, or any significant historic site only when the Administration has determined that (1) There is no feasible and prudent alternative to such use, and (2) the project includes all possible planning to minimize harm to the property resulting from such use. Thus, the purpose of Section 4(f) is to preserve parkland, recreation areas, refuges, and historic sites by limiting the circumstances under which such land can be used for transportation programs or projects.

The two part test mentioned above is predominantly applicable where there is a permanent use of land. There are instances where there is a temporary use of such land. Generally, this occurs when a construction easement is required in order to complete the project. There is no use under Section 4(f) if there is a temporary occupancy of land involving minor work that is not adverse in terms of the statute's preservationist purposes, and the site is returned to the same or better condition. The statute's purpose is met where no land is permanently incorporated in a transportation project and it is not permanently diminished in value.

The meaning of the term "use" has been gradually expanded by a number of court decisions to include the concept of "constructive use." Thus, when applied to transportation projects constructed near Section 4(f) resources, a constructive use may occur when impacts due to proximity of the project substantially impair the activities, features, or attributes of the resource.

The current regulation on Section 4(f) addressed use only indirectly by setting forth several situations where Section 4(f) does not apply, even where there is some physical taking of land, e.g., archeological sites which are not important for preservation in place. Those provisions arose from judicial decisions which held it possible for a physical occupancy of land that is not adverse in terms of the Section 4(f) statute's preservationist purposes to not result in a use. No definition of "use" or "constructive use" exists in the current regulation.

Divergent and contradictory views relating to specific projects have been expressed by the courts, government agencies, special interest groups, and the public on what types and amount of impacts create a constructive use. The Administration believes that these differing views have been due, in part, to the lack of a clear definition of constructive use and of specific guidance to affected agencies and the public. By this rule, which defines "use" of a Section 4(f) resource to include "constructive use," and establishes circumstances under which the latter would or would not occur, the Administration has set forth a procedure to assure future consistency in determining when a constructive use occurs.

Description

The final rule concerns rules of practice and procedure for use by the Administration, State and local transportation agencies, and other affected parties in conjunction with determinations made under Section 4(f) and contains recommended criteria for determining when a constructive use would or would not occur. This rule does not mark a major departure from existing Administration practice or interpretation of "use" or "constructive use." Instead, the rule largely reflects the current policy of the Administration and is designed to establish consistent guidance as to these matters. Of course, some changes were made in response to the comments received. These changes are noted in this preamble. Also, this rule creates a process for making determinations of constructive use (or no constructive use), which draws on procedures applied previously on an ad hoc basis.

Public Comments

On February 2, 1990, the Administration published in the **Federal Register** (55 FR 3599-3603, Docket 89-17) a Notice of Proposed Rulemaking (NPRM) on this subject. On April 3, 1990, when Docket No. 89-17 closed, the Administration had received 24 comments. An additional 9 comments were received shortly thereafter. Of the 33 comments received, 15 respondents expressed support for the proposed rulemaking and 8 respondents expressed opposition or urged substantial changes to the proposed rulemaking. Ten respondents had no clear expression of support or opposition. Almost all commenters offered technical comments and proposed revisions to one or more paragraphs. All issues raised by these respondents were considered in promulgating the final rule, including those received after the closing date, April 3, 1990.

General comments supporting the rule stated that it clarified for State agencies the application of Section 4(f) to particular projects. A representative comment was made by the Oklahoma Department of Transportation: "The proposed rules are a positive effort in defining 'constructive use' and in providing guidance when Section 4(f) properties are potentially affected by proposed transportation projects." The California Department of Transportation commented: "We strongly support the proposed revisions. We believe that the rulemaking will provide consistency in determining when a constructive use occurs." Another commenter stated:

"The Maryland State Highway Administration supports the proposed amendments and believes they will offer a reasonable set of standards to determine the applicability of constructive 4(f) criteria."

Some of the general comments opposing the proposed rule questioned whether the proposed rule represented a retreat from the statutory purposes of Section 4(f) and would have an adverse impact upon public parks and historical properties. For example, the National Association for Olmsted Parks commented: "[T]he basic intent of the proposed regulations, which substantially cut back on the existing constructive use doctrine, will leave our urban parks in serious jeopardy and is therefore a premise that the National Association for Olmsted Parks *strongly opposes*." (Emphasis in original.) Similarly, the National Trust for Historic Preservation ("National Trust") commented: "In our view, however, these proposed regulations represent an improper attempt to impose substantial restrictions on the constructive use doctrine and to reverse a solid body of existing case law."

As stated in the NPRM, it continues to be the policy of the Administration that special effort should be made to preserve the natural beauty and use of public park and recreation lands, wildlife and waterfowl refuges, and historic sites. It is also important to note that Section 4(f) does not prohibit the use of such lands, but rather places limitations upon such use. The rule, as several respondents noted, provides guidance to the States and other agencies on those limitations.

Nor does the rule seek to alter the purposes of the statute by reversing "a solid body of case law." Several courts have expressed different views on the extent of the application of Section 4(f) to transportation projects and have provided inconsistent interpretation. The Administration also believes that a few court decisions have been misapplied Section 4(f). However, the focus of the rule is upon: (1) Providing future guidance to the States and other agencies charged with the day-to-day implementation of the statute; and (2) providing for consistency in that implementation across the country.

Although several of the opposing commenters urged that the Administration withdraw the proposed rulemaking or issue only "technical guidance" instead, they still recognized that clarification of the doctrine of "constructive use" and guidance from the Administration would be helpful. For example, the National Trust commented: "In general, the National Trust endorses the goal of codifying the constructive use doctrine in regulations, and has long recognized the need for more specific guidance on this issue to agency staff and to the states." The National Association for Olmsted Parks also commented: "In general, the National Association for Olmsted Parks endorses the goal of codifying the constructive use doctrine in regulations. We feel that there is a need for more specific guidance on this important issue."

Significantly, almost all respondents suggested some revisions to the proposed rule and provided specific examples. Thus, the position that the subject of "constructive use" is appropriate for rulemaking at this time, and that such a rulemaking can have beneficial purposes, is justified and shared by the Administration with almost all of the respondents.

Issues raised by the respondents focused upon all aspects of the proposed rule and, as noted, specific revisions were often proposed. These specific comments by the respondents are addressed below.

"Inconvenience" to the Property Owner

Three commenters referenced a phrase in the preamble of the NPRM which referred to "an annoyance or inconvenience that the property owner must suffer as one of the costs of present day civilization." 55 FR 3600 (1990). One State transportation agency felt that this phrasing "trivialized" the nature of proximity impacts and should be deleted. One State historical agency felt that the preamble implied that "property owners must suffer due to the cost of civilization," and it disagreed with this assertion. Finally, a State conservation agency stated that disturbances to Section 4(f) resources are not a "necessary consequence of present day civilization."

The phrase at issue was used in discussing property law concepts from older cases. The entire sentence, as stated in the preamble of the proposed rule, provides: "*The issue in these cases is* whether the proximity impacts constitute an infringement of a legally protected right, as opposed to an annoyance or inconvenience that the property owner must suffer as one of the costs of present day civilization." (Emphasis added.) And as further noted in that preamble, the question of constructive use with regard to Section 4(f) is on the "vitality of the activities, features, or attributes" of the resource itself, and not upon "broader, often irrelevant, concepts of property damage." Any inconvenience to property owners resulting from ordinary, present day disturbances, from whatever source, is not relevant to Section 4(f) or the guidance provided by the Administration in this rule.

Indeed, except to the extent that protected lands (other than historic sites) must be publicly owned, the term "property owner" is generally irrelevant to section 4(f). Consultation and coordination by the Administration is with the "Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site," and the focus of Section 4(f) is upon the benefit of such lands to the public.

Activities, Features, or Attributes of a Resource

The National Trust for Historic Preservation objected to the alleged "segmentation" and "fragmentation" of the character of historic sites into "activities, features or attributes," as that phrase was used throughout the proposed rule. A State historical commission made a similar comment. As stated by the National Trust: "There is no legal basis for such an interpretation, which appears to be particularly targeted at historic sites." As an alternative, the National Trust suggested that regulations of the Advisory Council on Historic Preservation be used, and that the focus be placed upon the "character" or "setting" of the property, as opposed to its features. The Illinois Department of Conservation believes that "the impacts of transportation projects cannot be broken down into individual actions that affect only one portion of a 4(f) property." Another public interest organization commented that the words "activities, features, and attributes" were too subjective and would lead only to further litigation. The U.S. Department of the Interior also did not agree with the "segmentation" of resources, believing that "constructive use should be defined as a dynamic and complex process involving variable site-specific impact thresholds."

By contrast, a State transportation department believed that the words "activities, features or attributes that qualify a resource for protection" worked well for historic structures, but were inappropriate for public parks which do not have "qualifying features." A consultant stated that "substantial impairment" to historic properties should be explicitly linked to those features or attributes of a property which make it eligible for listing in the "National Register." Another State transportation department stated that substantial impairment "must be clearly tied to the effect on the activities,

features, or attributes that are the basis for the significance of a Section 4(f) resource" and the reference to "utility of the resource in terms of its prior significance" does not sufficiently provide the needed clarification.

The Administration believes that with regard to historic sites, Section 4(f) status is provided initially for the attributes which make that site significant as determined by the official with jurisdiction. The Administration recognizes, however, that other prevailing uses of the site by the public may develop over time, that such uses are often ones intended to be protected by Section 4(f), and that these changes in use will be considered. The use of the disjunctive "or" means that one or more of the terms "activities," "features," and "attributes" should be applicable to the protected resource, whether it is a park, refuge, or historic site. In some instances, such activities, features, or attributes will be closely related to the setting of the historic site; in other instances, they will not. The final rule is consistent with the statute.

Not all proximity impacts on historic sites (particularly privately owned sites) would constitute a constructive use. For example, the commercial use of an architecturally significant historic site, e.g., as an office building, would not be considered noise sensitive for purposes of constructive use. However, the building structure itself could be sensitive to visual impacts and thus subject to constructive use. Nor should too strict or too broad interpretations apply to public parks. Not all features of a public park would be susceptible to constructive use—for example, where a potential noise impact may only affect a parking lot for automobiles, but no other area of the park.

It should also be remembered that the essential purpose of the rule is to provide guidance to Administration and State and local transportation officials in the evaluation of "impacts" on a Section 4(f) resource. As noted, not all impacts should invoke the protection of Section 4(f). Rather, the Administration must look to the purposes for which the resource is of value to the public and the public uses of the resource, i.e., its activities, features, or attributes. Focusing upon such specific items, and upon specific impacts, will aid the Administration and other governmental agencies in their assessment of a transportation project's impact upon the Section 4(f) resource.

The Administration recognizes, as suggested by the Department of the Interior, that many Section 4(f) lands were "set aside for general, rather than specific purposes * * *" For example, the original nomination statements for a historic site may currently be irrelevant to impacts upon its present use. Constructive use determinations should consider the present uses of the resource by the public.

Officials having jurisdiction over the Section 4(f) resource should delineate key activities, features, and attributes to aid the analytical process.

Thus, as clarified herein, the determination of a constructive use of a Section 4(f) resource is a four-step analytical process: First, is the site a "protected resource" under Section 4(f), i.e., is it a publicly owned public park, recreation area, wildlife or waterfowl refuge, or an historic site of local, State or national significance? Second, what do the officials having jurisdiction consider the current and primary activities, features, or attributes of the Section 4(f) resource? Third, are these current and primary activities, features, or attributes of any type that would qualify for protection under Section 4(f)? Fourth, will the transportation project cause a substantial impairment to any of those current, primary and protected activities, features or attributes? Although this four-step analysis will be undertaken, to the extent it reasonably can, in consultation with the Federal, State, or local official having jurisdiction over the resource, the responsibility for this analysis and the determination of whether a constructive use actually would occur rests with the Administration. Thus, for example, if the official having jurisdiction fails to address the current activities, features or attributes of the Section 4(f) resource, it will be up to the Administration to do so.

The National Register of Historic Places

Two commenters felt that the emphasis in the proposed rule upon the placement of a site on the National Register of Historic Places was inappropriate, particularly in view of the limited nature of older nomination forms. The National Conference of State Historic Preservation Officers stated that the description listed in a National Register nomination form should not control the determination of the activities, features, or attributes of an historic site, because the description in the nomination form may be too limited. They felt that eligibility for the National Register was merely a "threshold" procedure, and that it is important not to rely solely on the characteristics and values listed in the nomination. Although we agree with the National Conference of State Historic Preservation Officers, we will continue to review the nomination forms as one source of information regarding the values of a site.

The National Trust for Historic Preservation commented that "on or eligible for the National Register of Historic Places," as stated in the preamble of the proposed rule, is an inappropriate limitation for Section 4(f) historic sites since the statute applies to any historic site deemed significant by local, State, or Federal officials. The applicability of Section 4(f) to historic resources is addressed at 23 CFR 771.135(e). Reference to the National Register as the primary means of determining historic significance has been part of the Administration's environmental review procedures since 1980. The reference to the National Register of Historic Places in the preamble and in § 771.135(p)(4)(vi) of the proposed rule did not provide a limiting definition of "historic site" for Section 4(f) application. However, in the Administration's experience, practically all the historic sites afforded Section 4(f) protection are either on or eligible for the National Register.

The preamble also noted that eligibility normally requires a site to be at least 50 years old. The preamble then noted the Administration's intention to expand the 50 year criterion of the National Register to include sites which would reach that age prior to actual construction of the transportation project. The Administration continues to recognize that there may be historical sites to which Section 4(f) would apply which are not listed or eligible for listing on the National Register, but are nonetheless historically significant when so identified by the Federal, State, or local official having jurisdiction. See, § 771.135(e).

Definitions of "Use" and "Constructive Use"

Section 771.135(p)(1) of the proposed rule defined "use," as set forth in Section 4(f). It included the words "temporary occupancy that is adverse in terms of the statute's preservationist purposes" in § 771.135(p)(1)(ii). The U.S. Department of the Interior and a State transportation department commented that use of the words "in terms of the statute's preservationist purposes" in § 771.135(p)(1)(ii) was inappropriate, the Department of the Interior believing that it was "too ambiguous" and would lead to numerous interpretations.

The intent of § 771.135(p)(1)(ii) is to provide guidance where none previously existed regarding certain minimal, temporary uses of land (such as right of entry and construction easements), which would not be subject to the

application of Section 4(f). Some construction-related activities taking place on land included in a Section 4(f) resource may be so minor in scope and duration that the preservation of parks and historic sites would not be impeded. Using publicly owned lands for construction easements can result in less disruption to the surrounding community and often may result in enhancement of the protected resource, such as minor regrading, landscaping, or other improvements. The Administration believes that an exclusion from Section 4(f) for certain temporary nonadverse occupancy of land, with the agreement of the officials having jurisdiction, is appropriate.

Obviously, several factors may be considered in determining whether a temporary occupancy of land is so minimal as to not constitute a use within the meaning of Section 4(f). The rule has been expanded in § 771.135(p)(7) to explain temporary occupancy of land as follows: (1) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land; (2) scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal; (3) there are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis; (4) the land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and (5) there must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

Section 771.135(p)(2) of the proposed rule provided, in part: "Constructive use occurs when the transportation project does not incorporate land from a Section 4(f) resource but the project's impacts due to proximity are so severe that the activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Substantial impairment would only occur when the utility of the resource in terms of its prior significance is substantially diminished or destroyed, amounting to an indirect taking of such activities, features or attributes." (Emphasis added.) Only one commenter, a State transportation department, suggested that there can be no substantial impairment unless the significance of the resource is diminished or destroyed to such an extent that it amounted to an indirect taking. The U.S. Department of the Interior commented that the reference to "indirect taking" was inappropriate and the cause of several adverse comments to other sections of the proposed rule. Another commenter stated that the "indirect taking" standard is improper and inappropriate. One commenter believes the language defining constructive use is too limiting and narrow. The National Trust commented that the emphasized words above, in effect, negated the words "substantially diminished" and imposed destruction of the use as the only test for substantial impairment. Such an interpretation was not the intent of the proposed rule by the Administration. If an attribute of a resource is "destroyed," then it has obviously been "diminished." However, a substantial impairment may also exist which is less than destruction. In response to the above comments, and in connection with the discussion contained under the heading "Activities, Features, or Attributes of a Resource" above, that part of § 771.135(p)(2) in this final rule states: "Substantial impairment would occur only when the protected activities, features, or attributes of the resource are substantially diminished."

Determination of Constructive Use

The Transportation Cabinet of the State of Kentucky generally supported the proposed rule, but suggested that in § 771.135(p)(3), guidance should be provided as to when constructive use determinations "must" be made. Georgia DOT wanted to replace the second sentence of § 771.135(p)(3) with a slightly modified version of paragraph (p)(6) of that Section. A difficulty in this area arises, however, with the variety of possible instances as to when a constructive use might exist and the identification of all such instances when a determination should be made that there is no constructive use. The Administration would like to maintain the discretion to not make a determination. The Colorado Department of Highways felt that, where there has been consultation with the State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) under Section 106 of the National Historic Preservation Act which has resulted in acceptable protection for affected resources, further analysis under Section 4(f) would result in an unnecessary burden. Although the Administration coordinates the Section 106 and Section 4(f) processes as much as possible, the two statutes are substantively different and require distinct determinations. At this time § 771.135(p)(3) is adopted as proposed.

As a matter of general guidance to Federal, State and local agency officials to aid in the application of section 4(f) to transportation improvement projects, the Administration notes that a determination under § 771.135(p)(6) should normally be made when: (A) The proposed transportation project is adjacent to the section 4(f) resource; or (B) a Federal, State or local official with jurisdiction over a section 4(f) resource alleges that the transportation project may constitute a constructive use of that resource; or (C) there is an "adverse effect" determination under section 106 after consultation with the SHPO and the ACHP. The Administration also intends to issue further guidance in this area.

When a Constructive Use Would Occur

In proposed § 771.135(p)(4) the Administration set forth four examples of situations where a constructive use would be deemed to occur, relating to noise, visual, access, and vibration impacts. The Pennsylvania Department of Transportation commented that such examples should be deleted. It believed that parties would attempt to determine if specific project situations "fit the example(s) given." The Georgia Department of Transportation commented that paragraphs (p)(4) and (5) of § 771.135 could be condensed. It stated: "It is understood why examples have been included; however, this level of detail is usually found in a technical advisory. We believe it would be sufficient to list the types of indirect or secondary effects (air, noise, access, visual, economic, seismic, etc.) which when substantial may constitute a constructive use." The National Trust commented that, while the use of "examples in the regulations would provide helpful guidance to highway officials and courts," the specific examples listed in paragraph (p)(4) suggested a "threshold" for substantial impairment that "is far too high." And, the U.S. Department of the Interior commented that the use of some examples was helpful, but that the list of examples was not complete and "other impacts" could exist. Numerous commenters also responded favorably to the inclusion of examples in the rule.

The Administration continues to believe that the use of specific examples in the rule itself assists in providing necessary guidance to State and local transportation officials and others. The stated examples do not represent a "threshold" of substantial impairment, but rather represent examples of when a

constructive use would occur. Past experience indicates that these types of impacts are involved in the great majority of constructive use situations.

The four examples listed in the proposed rule do not constitute the only impacts that could occur. Other impacts may also constitute substantial impairment (and therefore become a constructive use). Also, it is possible that a particular fact situation which appear similar to a listed example may not, in fact, constitute a constructive use. Such determinations are strongly dependent upon the particular facts and circumstances of specific projects and specific resources.

Noise Level Increase as Substantial Impairment

One of the primary environmental impacts involved in the assessment of constructive use is the noise predicted to occur from a transportation project. The proposed rule noted that objective technical analysis can aid in the determination of whether a noise level increase due to the project will substantially impair the activities, features, or attributes that qualify an area or site for protection under section 4(f). Noise was addressed in the context of constructive use in two sections of the proposed rule, one covering situations where a constructive use would occur and the other covering situations where it would not occur.

Section 771.135(p)(4)(i) of the proposed rule gave several examples of noise-sensitive resources protected by section 4(f) which could be substantially impaired by excessive noise. The National Trust commented that the examples used in § 771.135(p)(4)(i) were too restrictive, particularly for historic sites "where a quiet setting is a major contributing factor to the historic significance." and urban parks "where serenity and quiet are of extraordinary significance." Similar comments about the too narrow application to parks and historic sites were made by the National Association for Olmsted Parks, the Massachusetts Metropolitan District Commission, Massachusetts Historical Commission, and others.

The Administration continues to believe that in order for predicted project-related noise to substantially impair a section 4(f) resource, the resource must derive some of its value and use from a relatively quiet setting. Thus, the examples in § 771.135(p)(4)(i) deal with types of resources which are in some degree "noise-sensitive." Clearly this is the case with performances at an outdoor amphitheater or the sleeping areas of a campground in a public park. With regard to historic sites and urban parks included in this example, the wording has been changed to make the provision somewhat broader while still recognizing that the resource must have some type of noise-sensitive activity or use in order for substantial interference due to noise to occur. In response to the above comments, language in this paragraph of the final rule now states in part that a constructive use would occur if: "The projected noise level increase attributable to the project would substantially interfere with the use and enjoyment * * * of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes."

Visual Intrusion as Substantial Impairment

Proposed § 771.135(p)(4)(ii) provided an example of constructive use due to visual intrusion. Substantial impairment on the basis of visual impact is a more subjective determination than is the case in the assessment of noise. Nevertheless, an example of visual intrusion was included because close proximity of a proposed transportation project can, under certain circumstances, substantially impair visually sensitive features or attributes of a park or historic site. It should be noted, though, that in order for constructive use on the basis of visual impact to occur, the resource must possess significant esthetic or visual qualities.

A comment was received from the Massachusetts Metropolitan District Commission which stated that "any diminishment" of the quality of a visually sensitive feature should constitute a constructive use and invoke the protection of Section 4(f). The Administration declines to adopt this view because "any diminishment" of values cannot be equated with substantial impairment. As noted in the preamble to the proposed rule, "a constructive use does not arise merely because a transportation improvement can be seen from the protected resource." (55 FR 3601 (1990)). The visual impact must be more substantial, such as when a proposed facility would dominate the immediate surroundings, interfering with primary views of or from the resource.

The Massachusetts Historical Commission expressed concern over potential damage to historic properties from transportation projects which introduce elements out of character with historic properties and their settings. Without mentioning visual impacts specifically, the National Trust was also concerned about potential impacts which would alter the character of a historic property's setting "when that character contributes to the property's qualification for the National Register [of Historic Places]." The Administration recognizes that the setting of a historic site or park can be an important aspect of the site worthy of protection, although this is certainly not always the case. This is something that will have to be considered in individual cases where projects are proposed to be located close to a section 4(f) resource. While not adopting the National Trust's suggestion to rely on the Advisory Council on Historic Preservation's regulation, the Administration has revised the language in § 771.135(p)(4)(ii) to make it clear that: (1) Constructive use based on visual intrusion would occur only when there is substantial impairment to esthetic features or attributes of a resource, where such features or attributes are important contributing elements to the value of the resource; and (2) constructive use would occur when the location of the proposed transportation facility substantially detracts from the setting of a resource such as a park or historic site which derives its value in substantial part due to its setting.

Restriction of Access as Substantial Impairment

Proposed § 771.135(p)(4)(iii) noted that a restriction of access to a Section 4(f) resource may be a constructive use, such as when access by vehicles or pedestrians is "effectively eliminated." The Massachusetts Metropolitan District Commission commented that the example provided for restriction of access is too extreme, as did another commenter, and that in some instances, such as a waterfront park, access may constitute the primary value of the park. The National Trust made a similar comment and requested additional examples for this section discussing access to public historic sites and the possible negative impacts of increased access resulting from a project affecting sensitive archaeological resources.

The Administration believes that it has insufficient experience on the subject of "increased access" at this time to include such an example in the final rule. However, the National Trust's proposed deletion of the examples in the NPRM will be adopted for the same reason, i.e., insufficient experience, and to clarify that the Administration's intention is not to define "restriction on access" too narrowly. Section 771.135(p)(4)(iii) in the final rule

provides: "The project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site."

Vibration Impacts as Substantial Impairment

The National Trust commented that the example contained in § 771.135(p)(4)(iv) of the proposed rule was too extreme and "suggests that vibration impacts would not trigger Section 4(f) unless the vibration created an actual safety hazard or placed the building in danger of collapsing." The National Trust recommended revising the example to refer to affecting the "architectural integrity of a historic building or to substantially impair the public or private use and enjoyment of a historic site."

In response to the National Trust's comments, the Administration has further considered the issue of vibration from transportation projects and the conditions under which vibration impacts may constitute a constructive use.

First, a distinction should be made between vibration occurring during construction of a transportation facility and the vibration which may occur during operation of the facility. Pile driving, pavement breaking, and blasting are vibration-producing activities which warrant special consideration during construction. Advance planning and monitoring during actual construction will limit vibration to levels that will not normally cause structural or architectural damage to structures protected by section 4(f). In cases where heavy construction is carried out close to frail historic buildings, special measures must be taken, such as selecting appropriate equipment and placing limits on certain vibration-producing activities. The Administration believes that through planning, design and construction oversight, construction-related vibration can be adequately controlled and, because of the temporary nature of the activities, should not be construed as a constructive use of a Section 4(f) property. A new § 771.135(p)(5)(ix) has been added to the regulation to address vibration impacts during construction of a transportation project.

Vibration impacts during operation of a transportation project are a separate concern. Numerous studies of operational highway traffic vibration impacts have all shown that vibration levels from highway traffic have been well below criteria for architectural or structural damage to nearby buildings. Thus, it was not appropriate to retain the highway example used in the proposed rule.

Vibration from operations of rail transit projects can be a problem. Subways and surface rail lines serving dense urban areas may be located so close to buildings that architectural damage and annoyance to the buildings' occupants may result. There are a number of design and engineering measures that can be employed to reduce vibration from rail transit projects to acceptable levels. Nevertheless, rail transit is an appropriate example to use since damage or annoyance could result if special attention is not given to frail, old buildings with historical significance located very near the alignment. Section 771.135(p)(4)(iv) has been revised by using rail transit as an example and indicating that constructive use will occur when the predicted vibration levels from operation of the project are likely to cause structural damage or annoyance that would substantially impair the utility of the building. In these situations, guidelines published by the UMTA will be used to assess the magnitude of the impact and the need for, and effectiveness of, vibration control measures.

Other Examples

A comment was received from the United States Fish and Wildlife Service, New England Field Office, which requested that § 771.135(p)(4) be amended by adding a new section relating to "ecological intrusion" which substantially diminishes the value of wildlife habitat or interferes with long-established wildlife migratory paths or habits. A similar, more general comment was also received from the Office of Environmental Policy of the Department of the Interior. The Fish and Wildlife Service provided specific language for inclusion in the rule, covering a variety of such instances.

The Administration agrees with the suggestion made by the Fish and Wildlife Service. The Administration has expanded the examples provided in the rule by adding a new § 771.135(p)(4)(v), which provides: "The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes."

When a Constructive Use Would Not Occur

In proposed § 771.135(p)(5), the Administration set forth nine examples of when a constructive use would not be deemed to occur in the implementation of section 4(f). Where a situation is not clear-cut, the process set out in § 771.135(p)(6) should be used.

No comments were received from the respondents on §§ 771.135(p)(5) (i) and (viii). Accordingly, these sections have been adopted in the final rule as proposed.

Noise Abatement Criteria

The U.S. Department of the Interior and the Washington Department of Transportation disagreed with § 771.135(p)(5)(ii) of the proposed rule. Their concern focused on a substantial increase in projected noise levels due to the proposed action which do not exceed the FHWA noise abatement criteria. The Administration believes that, even if there is a substantial increase in projected noise levels, the various categories of noise-sensitive resources, and the threshold for consideration of noise abatement for each category, are appropriate for determining if there is a noise impact which could substantially impair a protected resource. Where there will be a substantial increase in projected noise levels due to the proposed action, but the levels do not exceed the FHWA noise abatement criteria or the UMTA guidelines for assessing noise impact, the Administration has determined that there will be no substantial impairment. Other than adding an additional clause to address the operational noise levels of transit projects which exceed the UMTA guidelines, the thrust of this section remains essentially the same.

Under § 771.135(p)(5)(iii), there is no constructive use if the projected noise increase is barely perceptible, even if the projected noise level is greater than the FHWA noise abatement criteria or the UMTA guidelines. Where the increase is greater than 3 dBA, and the FHWA noise abatement criteria or the UMTA guidelines are exceeded, there could be a constructive use as indicated by § 771.135(p)(4)(i).

No-Build Impacts as a Basis of Comparison

The National Trust was concerned about § 771.135(p)(5)(iii), no constructive use where there is a barely perceptible noise impact above projected no-build levels, and § 771.135(p)(5)(vii), no constructive use where proximity impacts are mitigated to an equivalent or better level than the no-build

scenario, because of its belief that current environmental documentation "tends to assume impacts for no-build alternatives that are seriously exaggerated, and are supported by little if any documentation." Accordingly, the National Trust suggested that these provisions be modified to provide for proximity impacts "demonstrated to occur" in the no-build scenario "as of the projected completion date for the project."

No-build projections in environmental documents submitted to the Administration are prepared by reasonably accepted methods and frequently represent a conservative estimate. Using a standard of "demonstrated to occur," as urged by the National Trust, implies a degree of certainty in predicting the future which may not be obtainable. In addition, projecting the no-build scenario impacts "as of the projected completion date" is of limited value. Projects are generally designed to last, and provide improved transportation benefits, for 20 years or more without substantial alteration. Thus, the appropriate comparison date is the minimal expected life of the project. Therefore, these sections have been adopted in the final rule as proposed.

Subsequent Development of the 4(f) Resource

Proposed § 771.135(p)(5)(iv) stated that a constructive use would not occur where the designation or development of the section 4(f) resource occurred subsequent to establishment of the transportation project's location.

The Maryland Department of Transportation supported the wording in this section and urged that it not be changed. While acknowledging the need to address the problem of transportation agencies being unfairly penalized by the later "creation" of public parks simply to block a project, the National Trust still suggested that the example was "too broad as currently drafted." The National Trust also noted that this example should not apply to historic sites, and it should only relate to section 4(f) resources designated after the Administration's "final" approval of an environmental impact statement. The Illinois Department of Conservation objected to this section by noting that Illinois applicants have adopted locations for transportation projects dating back to the 1960's. "In such a case it is entirely possible, with no intentional conflict of interest intended, that the designation, establishment or change in significance of a resource could occur." The U.S. Department of the Interior agreed that federally-approved right-of-way acquisition by a transportation agency was an appropriate restriction, but disagreed with the remaining location identification methods.

Other respondents to the proposed rule sought to expand the applicability of § 771.135(p)(5)(iv). The Transportation Corridor Agencies (TCA's) of Orange County, California, effectively noted the many problems faced by public agencies on land use planning with the subsequent or concurrent development of public parks in relationship to transportation improvements. The TCA's supported the intent of the proposed section, but asked that the rule be revised: (1) To provide that constructive use does not occur when the project is "designated" in planning documents before the section 4(f) resource is "established;" (2) to refer to designation of a "general alignment by any local or state agency;" and (3) to remove any implication that section 4(f) could apply to privately-owned parks designated in local planning documents. Similar comments were received from the Orange County Environmental Management Agency. Finally, a private land development corporation commented that language should be added to § 771.135(p)(5)(iv) which would provide that the "location" of the transportation project is deemed established for section 4(f) purposes "where a formal governmental action was taken to identify the general location" prior to the "designation" of the section 4(f) resource and with knowledge of the project's location identification.

The Administration declines to extensively broaden this example of when a constructive use would be determined not to occur. Formal governmental action beyond mere identification is necessary with respect to a project's location. Governmental actions, such as acquisition of right-of-way, adoption of a project location, or the Administration's approval of an environmental impact statement, are lengthy processes, with extensive studies, analysis, coordination and public involvement. Such processes act to provide "notice" to parties contemplating the subsequent development of a section 4(f) resource.

For these reasons, the Administration also does not accept the position of the Department of the Interior or the request of the National Trust to limit prior project designation to that contained only in a "final" environmental impact statement or other environmental document approved by the Administration. Such a limitation would not effectively address the problem, acknowledged by the National Trust, of unfair subsequent park designation designed solely to "stop" a transportation project after action has been taken to establish the location. As stated in the preamble to the NPRM: "When land is purchased and developed by an agency under such circumstances, the proposed transportation project should be anticipated by the purchasing agency [of the Section 4(f) resource] and the land should be developed to be compatible with the proposed transportation project * * * [I]t would be unreasonable to apply section 4(f) or to expect the Administration to shift its alignment * * * [creating a] potential for a never ending problem." 55 FR 3602 (1990). The Administration did add "final" before "environmental document" to clarify that the environmental process must be completed.

The Administration does accept, as urged by the TCA's, that governmental agencies other than an "applicant" for Federal-aid participation may acquire right-of-way for use in transportation corridors, and that a determination of Federal-aid participation may be made at a subsequent date. The Administration further recognizes the position of the National Trust that "subsequent development" problems are generally related to the creation of new public parks and recreation areas, and not normally related to historic sites. As noted in the preamble to the NPRM, in most cases, historic sites are not eligible for the National Register until they are at least 50 years old. However, it is the Administration's policy that if the age of the site is close to, but less than, 50 years, and construction would begin after the site was eligible, the Administration would treat the site as a historic site on or eligible for the National Register. The fact that a site is on or eligible for the National Register is important because it is presumed to be significant for purposes of section 4(f).

Thus, in response to these comments, § 771.135(p)(5)(iv) of the final rule provides: "There are proximity impacts to a section 4(f) resource, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the Administration approval of a final environmental document established the location for a proposed transportation project before the designation, establishment, or change in the significance of the resource. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or

approval, and except for its age would be eligible for the National Register, and construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register."

Concurrent Development of the 4(f) Resource

In proposed § 771.135(p)(5)(v), the Administration sought to address problems that occur when governmental agencies concurrently develop both a transportation project and a section 4(f) resource. This problem is particularly acute in the planning of transportation "corridors" in presently low population areas, designed to serve anticipated future growth and development. The Maryland Department of Transportation urged that the wording in this section remain the same in the final rule. Several commenters noted that "fear" of section 4(f)'s potential impact in this area actually serves to prevent the designation or donation of future parks and recreation areas for the public's benefit. The TCA's documented several instances of this problem. The Administration, and several commenters, believe that section 4(f) was not intended to have such an effect. Only the U.S. Department of the Interior commented that this section should be entirely deleted from the rule, stating that "these situations are best handled on a case-by-case basis."

The Massachusetts Metropolitan District Commission was also concerned with the following scenario: "It frequently happens that a park agency, struggling with a limited budget, owns land and has a long-range plan for its development. When a highway project is proposed, and there is no feasible and prudent alternative to the taking of some parkland, the development of adjacent parkland is proposed by the highway agency. The new regulation leaves open the possibility that the previously designated park land is exempted from constructive use impact—*because of the mitigation.*" The Administration agrees that where a park agency owns the property and has designated it for development as a section 4(f) resource, then a constructive use may result. However, where the resource's development is not reasonably foreseeable but for development with the transportation project, then consideration of both projects is best determined as "concurrent" development. Of course, a role for the park agency which owns or has jurisdiction over the property should be preserved in this process, and the final rule so provides.

While acknowledging the general benefits of this section of the proposed rule, the commenters also sought further "clarification" of concurrent planning to assist local agencies in their interpretation of section 4(f).

Although all possible instances of such concurrent planning, given the myriad of State and local government agencies involved, cannot be set forth in the rule, the Administration believes that further guidance is appropriate. The Administration also accepts the comment of the National Trust that this section is inapplicable to historic sites.

Accordingly, § 771.135(p)(5)(v) of the rule provides: "There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resources are concurrently planned or developed. Examples of such concurrent planning or development include, but are not limited to: (A) designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource, or (B) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other."

Overall Proximity Impacts to a Section 4(f) Resource

Section 771.135(p)(5)(vi) of the proposed rule was proposed in recognition of the fact that in certain limited circumstances, individual impacts of the transportation project may not substantially impair a resource, yet the combined effects of the impact may be of sufficient magnitude to cause a constructive use. A consultant was concerned that "secondary impacts arising from proximity" could result in neglect of a historic site due to a lessening of property value, or result in an increase in land value, an incentive to development which could lead to destruction of the historic resource. One commenter suggested that this section be deleted for fear that it "threatens to undo all of the progress made by the remainder of the proposed regulations defining constructive use."

This provision was never intended to greatly broaden the situations in which a constructive use could arise. It merely recognizes that an accumulation of impacts could, in specific instances, be so great as to cause a substantial impairment of the resource, even if each of the impacts taken alone might not. The Administration believes that there should be very few instances where this would occur.

In view of the limited number of situations to which this section could apply, the Administration has decided that the text of this section should remain unchanged.

Procedures for Determining Constructive Use

In proposed § 771.135(p)(6), the Administration set forth certain procedures with regard to the determination of a constructive use. The Oklahoma Department of Transportation, while generally supporting the proposed rule, believed that following the procedures under § 771.135(p)(6) would, in essence, require the preparation of a section 4(f) statement on every project where there may be constructive use. They recommended that this section be deleted and that such determinations be made by the Administration, State transportation officials, and other officials with jurisdiction over the resource on a "case-by-case basis." The National Trust commented that § 771.135(p)(6)(ii) should provide for the consideration of mitigation measures only when they are "binding and enforceable" and applied to all other alternatives considered in any analysis. The National Trust also commented that consultation with other Federal, State, and local officials having jurisdiction over the resource was insufficient; the National Trust would require "concurrence" from such officials on the identification and analysis. The Massachusetts Metropolitan District Commission offered comments similar to those of the National Trust. The U.S. Department of the Interior noted that it "fully supported" the consultation requirements of the rule, but asked that the Administration stress the plural nature of the word "officials," as many parties may have a proprietary or jurisdictional interest in certain protected lands. The Georgia Department of Transportation stated it would not be possible to comply with historic preservation requirements because the SHPO operates under section 106 procedures only.

The Administration believes that while the determination of whether a constructive use will exist should be made with the input of all officials with jurisdiction over the section 4(f) resource, the actual decision of the extent of the impacts remains with the Administration. Thus, a requirement of "concurrence" is inappropriate. It should be noted, when consultation with the SHPO results in an agreement of "no

effect" or "no adverse effect", under § 771.135(p)(5)(i) there would be no constructive use. If there is an "adverse effect" determination, the consultations with the SHPO would satisfy § 771.135(p)(6)(iii). Section 771.135(p)(6) is to be used on a case-by-case basis, when a legitimate question exists, to determine whether or not there is a constructive use. If there is no constructive use, the documentation of the analysis would not have to be detailed to the extent of a section 4(f) statement. There need only be enough information to support a determination that the project's impacts on a 4(f) resource do not rise to a level of constructive use. The Administration also believes that State and local officials who propose certain mitigation measures, and submit such measures for the consideration of the Administration and the general public, will reasonably and in good faith fulfill commitments made. The Administration already requires that proposed mitigation measures approved by the Administration be implemented. See 23 CFR 771.105 and 23 CFR part 630, subpart C, appendix A, paragraph 20. Thus, the Administration does not believe that it is necessary for this part of the rule to refer to "binding," "mandatory," or "enforceable" mitigation measures.

The Administration does agree, that when proposed mitigation measures are used in a constructive use determination, so that only the net impact need be considered in the analysis, reasonably equivalent mitigation measures should be proposed and considered for all other "build" alternatives. Frequently, an environmental impact statement or similar document will contain several transportation improvement alternatives and weigh the relative merits of each. All reasonable alternatives should be given equal consideration. If any of the proximity impacts will be mitigated, reasonably equivalent mitigation meaures should be similarly analyzed for all feasible and prudent alternatives which are considered, and only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project. It is FHWA and UMTA policy that all feasible and prudent alternatives must be equally considered. However, this section does not deal with alternatives; rather, it focuses on the impacts, and mitigation of such impacts, on individual protected resources. The Administration determined that, except for substituting "project" for "action", § 771.135(p)(6)(ii) of the final rule should not be changed.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The Administration has determined that this document does not contain a major rule under Executive Order 12291, although it is a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the substantial public interest in environmental matters.

One commenter believed that "the proposed new regulations can very well have a significant economic impact on a substantial number of small entities,' such as city and state park departments and should be further evaluated," but gave no reason for his belief. The Administration anticipates that the regulatory impact of this rule, if any, will be minimal since the amendments concern rules of practice and procedure. The revisions do not impose any new mandatory standards on State and local governments, but do provide recommended criteria for determining when a constructive use would or would not occur. The revisions merely formalize existing procedures and policies. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the Administration has evaluated the effects of this rule on small entities. Based on the evaluation, the Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers: 20.205, Highway Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; 20.504, Urban Mass Transportation Technology; 20.505, Urban Mass Transportation Technical Studies Grants; 20.506, Urban Mass Transportation Demonstration Grants: 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20.509, Public Transportation for Rural and Small Urban Areas; 20.510, Urban Mass Transportation Planning Methods, Research and Development; 23.003, Appalachian Development Highway Systems; 23.008, Appalachian Local Access Roads. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have a significant effect on the quality of the environment.

Regulatory Identification Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 771

Environmental impact statements, Grant programs—transportation, Highway location and design, Highways and roads, Historic preservation, Mass transportation, Parks, Public hearings, Public lands—multiple use, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuge.

Issued on: March 22, 1991.

T.D. Larson,

Administrator, Federal Highway Administration.

Brian W. Clymer,

Administrator, Urban Mass Transportation Administration.

In consideration of the foregoing, part 771 of chapter I of title 23, Code of Federal Regulations, is amended as set forth below.

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

1. The authority citation for part 771 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 109, 128, 138 and 315; 49 U.S.C. 303(c), 1602(d), 1604 (h) and (i), and 1610; 40 CFR 1500 *et seq.*; 49 CFR 1.48(b) and 1.51.

2. Section 771.135 is amended by adding a new paragraph (p) to read as follows:

§ 771.135 Section 4(f) (49 U.S.C. 303).

* * * * *

(p) *Use.* (1) Except as set forth in paragraphs (f), (g)(2), and (h) of this section, "use" (in paragraph (a)(1) of this section) occurs:

(i) When land is permanently incorporated into a transportation facility;

(ii) When there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes as determined by the criteria in paragraph (p)(7) of this section; or

(iii) When there is a constructive use of land.

(2) Constructive use occurs when the transportation project does not incorporate land from a section 4(f) resource, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the resource are substantially diminished.

(3) The Administration is not required to determine that there is no constructive use. However, such a determination could be made at the discretion of the Administration.

(4) The Administration has reviewed the following situations and determined that a constructive use occurs when:

(i) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by section 4(f), such as hearing the performances at an outdoor amphitheater, sleeping in the sleeping area of a campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;

(ii) The proximity of the proposed project substantially impairs esthetic features or attributes of a resource protected by section 4(f), where such features or attributes are considered important contributing elements to the value of the resource. Examples of substantial impairment to visual or esthetic qualities would be the location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part due to its setting;

(iii) The project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;

(iv) The vibration impact from operation of the project substantially impairs the use of a section 4(f) resource, such as projected vibration levels from a rail transit project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

(v) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

(5) The Administration has reviewed the following situations and determined that a constructive use does *not* occur when:

(i) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places, results in an agreement of "no effect" or "no adverse effect";

(ii) The projected traffic noise levels of the proposed highway project do not exceed the FHWA noise abatement critieria as contained in Table 1, 23 CFR part 772, or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria in the UMTA guidelines;

(iii) The projected noise levels exceed the relevant threshold in paragraph (p)(5)(ii) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(iv) There are proximity impacts to a section 4(f) resource, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the Administration approval of a final environmental document, established the location for a proposed transportation project before the designation, establishment, or change in the significance of the resource. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or approval, and except for its age would be eligible for the National Register, and construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register;

(v) There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. Examples of such concurrent planning or development include, but are not limited to:

(A) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource, or

(B) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other;

(vi) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under section 4(f);

(vii) Proximity impacts will be mitigated to a condition equivalent to, or better than, that which would occur under a no-build scenario;

(viii) Change in accessibility will not substantially diminish the utilization of the section 4(f) resource; or

(ix) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.

(6) When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

(i) Identification of the current activities, features, or attributes of a resource qualified for protection under section 4(f) and which may be sensitive to proximity impacts;

(ii) An analysis of the proximity impacts of the proposed project on the section 4(f) resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts

which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project;

(iii) Consultation, on the above identification and analysis, with the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.

(7) A temporary occupancy of land is so minimal that it does not constitute a use within the meaning of section 4(f) when the following conditions are satisfied:

(i) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(ii) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the section 4(f) resource are minimal;

(iii) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis;

(iv) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and

(v) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

[FR Doc. 91-7569 Filed 3-29-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 207

[Docket No. R-91-1419; FR-2501]

RIN 2502-AA72

Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in HUD Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Technical amendment.

SUMMARY: On September 27, 1989 the Department published in the **Federal Register** a final rule relating to the disclosure and verification of social security numbers and employer identification numbers by applicants and participants in HUD programs. As published, that document did not include a corrected conforming cross-reference in 24 CFR 207.19. The purpose of this document is to insert this corrected cross-reference in § 207.19.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Office of General Counsel, Regulations Division, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2084. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 27, 1989 the Department published in the **Federal Register** (54 FR 39680) a final rule relating to disclosure and verification of social security numbers and employer identification numbers by applicants and participants in HUD programs. A provision in that rule revised 24 CFR 207.17 by adding a new paragraph (b) and redesignating the existing paragraph (b) (which relates to public mortgagors) as paragraph (c).

The rule failed, however, to make a conforming change in the introductory language of 24 CFR 207.19. The reference to public mortgagors in that section continues to refer to § 207.17(b) instead of § 207.17(c). This document revises the introductory language of § 207.19 to correct this error.

List of Subjects in 24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, and Solar energy.

Accordingly, 24 CFR part 207 is amended to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Secs. 207.258 and 207.258b are also issued under sec. 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)).

2. The introductory language in § 207.19 is revised to read as follows:

§ 207.19 Required supervision of private mortgagors.

The following are the items which will be regulated or restricted, except in the case of mortgagors of the character described in § 207.17(c):

* * * * *

Dated: March 26, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-7551 Filed 3-29-91; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R-91-1522; FR-2782-F-01]

RIN 2577-AA82

Public Housing Development—Technical Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the Department's regulations at 24 CFR part 941, which govern public housing development by public housing agencies (PHAs), to conform these regulations to certain technical changes made in the public housing development program by recent legislative amendments. This rule also updates the part 941 regulations to reflect certain existing statutory requirements applicable to Federally-assisted public housing, and to incorporate certain procedures currently part of the public housing development program. The changes in the regulations made by this final rule are limited to those which can be implemented without public comment because they are remedial in effect, noncontroversial, and require little or no regulatory elaboration. Other changes proposed to be made to the part 941 regulations require prior notice, and public comment. Accordingly, these changes will be published in the near future as a proposed rule. The revisions made by this final rule, and the basis for each revision, are discussed in the Supplementary Information portion.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-1800. Hearing- or speech-impaired individuals may call the Office of Public Housing's TDD number (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements for the public housing development program, as set forth in the part 941 regulations, have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, and have been assigned OMB control numbers 2577-0033 and 0036. This final rule does not impose additional information collection requirements.

Background

Sections 4, 5 and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c and 1437g) (the 1937 Act) authorize the Department to assist public housing agencies (PHAs) in the development and operation of lower income housing projects, and to provide financial assistance. The Department's regulations at 24 CFR part 941 establish the requirements and procedures for the development of lower income housing (excluding Indian housing) by PHAs (Public Housing Development Program). The regulations at part 941 prescribe the development methods for public housing projects, the PHA eligibility requirements, the proposal process, and other program requirements, which include a number of Federal statutory and administrative requirements applicable to public housing development.

Rule Revisions

Section 112 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) (the 1987 Act) amended Section 5(a) of the 1937 Act to include grants as a form of financial assistance that may be provided to PHAs for the development of public housing projects. Accordingly, § 941.101, which describes the purpose and scope of the regulations, is revised to clarify that contributions made to PHAs under the Public Housing Development Program include contributions in the form of grants. Additionally, § 941.103, which defines annual contributions contract, is revised to include this additional form of financial assistance. Section 941.103 also is revised to include a definition for *reformulation*, a term used in the Public Housing Development Program to describe certain project changes, but for which the existing regulations do not provide a definition.

HUD-assisted public housing is subject to Title VIII of the Civil Rights Act of 1968 (Title VIII), which prohibits discriminatory housing practices based on race, color, religion, sex or national origin. Section 941.208, which specifies other Federal requirements for the program, requires compliance with Title VIII. Title VIII was amended by the Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988). The Fair Housing Amendments Act expanded coverage of Title VIII to prohibit discriminatory housing practices based on handicap and familial status. Section 941.208 is amended to clarify that compliance with Title VIII, as amended by the Fair Housing Amendments Act of 1988, is part of the program requirements. (The Public Housing Development Program is already subject to compliance with section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on handicap in Federally assisted programs.)

HUD-assisted public housing also is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4141-4157) which requires certain Federal and federally-funded buildings to be designed, constructed or altered in accordance with standards that insure accessibility to, and use by, physically handicapped persons. However, this requirement inadvertently failed to be incorporated in the public housing regulations. Section 941.208 is amended to codify this statutory requirement.

HUD-assisted programs involving interaction and cooperation with State and local governmental agencies are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. Accordingly, § 941.208 is amended to include compliance with Executive Order 12372 and the Department's regulations at 24 CFR part 52, implementing this order. Section 941.404, which lists the items to be included in a proposal for a public housing project, is also amended to include compliance with the Intergovernmental Review requirements with respect to certain new construction and substantial rehabilitation projects. Section 941.405, which describes the proposal processing procedure, is amended to include reference to the applicability of Intergovernmental Review in evaluating proposals.

Section 941.404 also is amended to permit a PHA to submit a limited proposal in connection with scattered-site housing, instead of the full proposal required by this section. The Department currently permits PHAs to submit limited proposals for scattered-site housing, on a case-by-case basis.

Codifying this practice will facilitate the processing of limited proposals, and, consequently, will benefit PHAs. (A limited-proposal feature for scattered-site housing previously was part of the public housing development regulations, but was omitted inadvertently when these regulations were revised in 1980.)

Section 114 of the 1987 Act added a new subsection (k) to section 5 of the 1937 Act to limit the Department's recapture of funding reservations in certain circumstances. Section 114 provides that, after the reservation of public housing development funds to a PHA, the Department may not recapture any of the amounts included in such reservation because of the failure of the PHA to begin construction or rehabilitation, or to complete acquisition, during the 30-month period following the date of the reservation. Section 941.405, which governs technical processing and approval of proposals, is revised to incorporate this statutory provision. Section 941.406(c), which governs termination of advances, is revised to include a cross-reference to the cancellation of fund reservation provision.

The purpose of this final rule is to update the part 941 regulations to conform these regulations to certain existing statutory requirements and program procedures. The changes in the regulations made by this final rule are limied to those which can be implemented without public comment because they are remedial in effect, noncontroversial, and require little or no regulatory elaboration. Other changes proposed to be made to the part 941 regulations require prior notice and public comment, and, therefore, will be published in the near future as a proposed rule.

Justification for Final Rulemaking

It is the Department's usual practice to publish regulation changes as proposed rulemaking for public comment before adopting the changes as final. In this instance, the Department has determined that notice and prior public comment on this rule are unnecessary. The amendments made by this final rule merely conform the part 941 regulations to certain existing statutory requirements and Program practices. The statutory requirements and Program procedures codified by this rule are limited to those which already are part of the Public Housing Development Program, and are remedial in effect and noncontroversial.

Other Matters

This rule does not constitute a "major rule" as that term is defined in Section 1(b) Executive Order 12291 on Federal Regulations issued on February 17, 1981. 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.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule's major effect is on public housing agencies, which are state and local governmental entities. The rule revises the regulations governing the Department's public housing development program to reflect statutory and administrative requirements with which PHAs already comply.

This rule was listed as sequence number 1280 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44566), under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, that implement section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410-0500.

The General Counsel, as the Designated Official under Section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The rule does not introduce new program requirements or procedures.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

The Catalog of Federal Domestic Assistance Program title and number is 14.850, Public and Indian Housing.

List of Subjects in 24 CFR Part 941

Grant programs: housing and community development, Loan programs: housing and community development, Public housing.

Accordingly, 24 CFR part 941 is amended as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 941.101, the first sentence of paragraph (a) is revised to read as follows:

§ 941.101 Purpose and scope.

(a) *Purpose.* The U.S. Housing Act of 1937 (Act) authorizes HUD to assist public housing agencies (PHAs) with the development and operation of lower income housing projects and financial assistance in the form of loans and contributions, or grants, under sections 4, 5, and 9 of the Act. * * *

* * * * *

3. In § 941.103, the definition of Annual Contributions Contract (ACC) is revised, and a new definition for "Reformulation" is added, alphabetically, to read as follows:

§ 941.103 Definitions.

* * * * *

Annual Contributions Contract (ACC). A contract (in the form prescribed by HUD) for loans and contributions, which may be in the form of grants, whereby HUD agrees to provide financial assistance and the PHA agrees to comply with HUD requirements for the development and operation of a public housing project.

* * * * *

Reformulation. The procedure by which HUD approves division of a project (including units and related funds) into two or more projects, or combining two or more projects into one, or redistributing units and related funds in a project among two or more projects, in order to provide PHAs with the flexibility to adapt to site availability, to resolve development problems, to acquire buildings ready for development (before acquisition of other buildings), and to save on interest and initial operating costs.

* * * * *

4. In § 941.208, paragraph (a) and the heading and text of paragraph (c) are revised, and a new paragraph (i) is added to read as follows:

§ 941.208 Other Federal requirements.

(a) *Equal Opportunity requirements.* Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601-3620), Executive Orders 11063, 11246, and 11375, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and all related rules, regulations and requirements.

* * * * *

(c) *Accessibility requirements.* Participation in this program requires compliance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Executive Order 11914, and Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601-3620) (Fair Housing Act), relating to nondiscrimination against the handicapped, and all related rules, regulations and requirements.

* * * * *

(i) *Intergovernmental Review.* Participation in this program requires compliance with Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52. This order allows each State to establish its own process for review and comment on proposed Federal financial assistance programs.

5. In § 941.404, the introductory text is revised and new paragraphs (m) and (n) are added to read as follows:

§ 941.404 Proposal content.

Each proposal shall be prepared in the form prescribed by HUD and shall include, at a minimum, the following:

* * * * *

(m) *Intergovernmental Review.* New construction projects and substantial rehabilitation projects which involve: a change in land use; an increase in project density; or a change from rental to homeownership, must meet the Intergovernmental Review requirements of 24 CFR part 52. The PHA must certify that the State Single Point of Contact (SPOC) was notified, by providing a copy of the signed and dated Standard Form SF-424 with its Proposal. If there is no SPOC, or public housing development is not a program or activity selected for the State process, the PHA must submit evidence that the SF-424

was sent directly to affected state, areawide, regional and local entities.

(n) *Special Procedures for Scattered-Site Projects.* PHAs may, in lieu of submission of the complete proposal described in this section, submit a limited proposal if: the proposal is for a project involving scattered-site acquisition or a scattered-site conventional new construction or rehabilitation development; if the proposal has been determined to be eligible for front-end funding pursuant to § 941.402(c) or § 941.403(c); and if the diversity of ownership of the properties is expected to make site control difficult. The special proposal procedures provided by this paragraph do not apply to scattered-site projects involving turnkey development. Each limited proposal shall be prepared in the form prescribed by HUD and shall include, at a minimum, the following:

(1) A project development schedule;

(2) the PHA demonstration of financial feasibility;

(3) a neighborhood map or maps, identifying the specific neighborhoods in which acquisitions are proposed ("jurisdiction-wide" proposals are not acceptable);

(4) a description of each neighborhood, identifying the range of structure types, unit sizes (number of bedrooms), ages of units, general condition, and price ranges by unit size;

(5) a description of each neighborhood, identifying its racial composition, availability of schools, shopping and social services, and transportation routes;

(6) evidence that the type of housing to be acquired is regularly available;

(7) data regarding occupancy (owner/tenant) and an estimate of relocation costs, if any;

(8) the ACC and related documents, executed by the PHA; and

(9) if applicable, a copy of the signed and dated SF-424 evidencing initiation of Intergovernmental Review (see subparagraph (m) above).

HUD shall review the limited proposal, in accordance with § 941.405, and upon approval of the proposal, HUD shall execute the ACC and permit advances for the purposes and amounts described in § 941.406(b)(3). The PHA shall select individual properties in accordance with its approved limited proposal, but shall not acquire a property or make a commitment to acquire without specific HUD site approval, including approval of work write-ups, plans and specifications, or repair lists; and a determination that the property, including the resultant total development cost, is consistent with the approved limited proposal.

6. In § 941.405, paragraphs (b) introductory text and (b)(2) are revised, and a new paragraph (d) is added, to read as follows:

§ 941.405 Technical processing and approval.

* * * * *

(b) *Technical processing.* Upon determining that a proposal is acceptable for technical processing, the field office will:

(1) * * *

(2) Evaluate the proposal to determine compliance with all program requirements including, if applicable, the comments received as a result of Intergovernmental Review, or from the unit of general local government.

* * * * *

(d) Cancellation of fund reservation. The field office may cancel the fund reservation if the PHA fails to develop the project within the 30 months, dating from the time of fund reservation, allowed for a start (the beginning of construction or rehabilitation), or for completion (acquisition of existing housing) pursuant to section 5(k) of the Act. During this 30-month period, the PHA may, in accordance with HUD requirements, change the site of the public housing project, or reformulate the project, provided that the change in site or reformulation results in not less than the original number of dwelling units to be constructed, rehabilitated, or acquired. There shall be excluded from the computation of the 30-month period any delay in the beginning of construction or rehabilitation of the project caused by: failure of HUD to process the project within a reasonable period of time; any environmental review requirement; any legal action affecting the project; or any other factor beyond the control of the PHA. Extensions beyond 30 months must be approved in writing by the Regional Administrator. In the event the PHA defaults on its obligations with regard to development of the project, advances made to the PHA shall be repaid by the PHA from any funds or assets available for that purpose.

7. In § 941.406, paragraph (c) is revised to read as follows:

§941.406 Maximum development cost and advances.

* * * * *

(c) *Termination of advances.* The field office may terminate advances if the PHA fails to develop the project in accordance with the approved project development schedule. In the event the PHA defaults on its obligations with regard to development of the project, the amount of advances made to the PHA shall be repaid by the PHA from any funds or assets available for that purpose. Cancellation of fund reservation is governed by § 941.405(d).

* * * * *

Dated: March 22, 1991.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-7553 Filed 3-29-91; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: This rule amends the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), to permit the importation of Cuban paintings and drawings pursuant to a limited genreal license.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This rule amends the Regulations to permit, pursuant to a general license, the importation into the United States of paintings and drawings created by persons who are, or at any time were, Cuban. This includes not only paintings and drawings created by Cuba nationals, but also those created by persons who were Cubans at any time prior to July 8, 1963, in which there exists or existed an interest of Cuban or a Cuban national after that date. This license enables persons subject to the jurisdiction of the United States to own and view such art, without generating significant foreign exchange earnings for Cuba, given the art's generally low economic value. Paintings and drawings by non-Cuban artists but owned by the Government of Cuba or its nationals—for example, a French impressionist painting held by a Cuban national museum—may not be purchased or imported pursuant to this general license. Individual art pieces having a foreign market value of $10,000 or more are subject to a reporting requirement upon importation.

Transactions directly incident to the physical importation of the painting or drawing are authorized. However, no payment may be made relating to works not yet in being, or for marketing and business consulting services, or for the service of making artistic or other substantive alteration or enhancements to paintings and drawings. Importation of items that are primarily utilitarian in nature is not authorized by this amendment.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

This rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collection of information contained in this rule is being submitted to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505-****), Washington, DC 20503, with copies to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than May 31, 1991. Notice of OMB action on these requests will be published in the **Federal Register**.

The collection of information in this rule is contained in § 515.570. This information is required by the Office of Foreign Assets Control for purposes of monitoring the extent to which the license is being used to import Cuban paintings and drawings of significant value into the United States. The likely respondents are individuals and business organizations.

Estimated total annual reporting and/or recordkeeping burden: 10 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 1 hour, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents and/or recordkeepers: 10.

Estimated annual frequency of responses: 1.

List of Subjects in 31 CFR Part 515

Cuba, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended: 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp., p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p 748.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. A new § 515.570 is added to subpart E to read as follows:

§ 515.570 Importation of Cuban paintings and drawings.

(a) To the extent otherwise prohibited by this part, all financial and other transactions directly incident to the physical importation, whether commercial or otherwise, of paintings and drawings created by a person who is or at any time was a Cuban, are authorized. This authorization includes not only paintings and drawings created by "nationals" of Cuba as defined in § 515.302 of this part, but also those created by Cubans at any time prior to the effective date in which an interest of Cuba or a Cuban national exists or existed subsequent to the effective date, as well as all transactions of common carriers directly incident to the importation of such artwork, including chartered aircraft flying directly to the United States from Cuba.

(b) This section does not authorize transactions relating to works in which there is an interest of Cuba or a Cuban national but which were not created by persons who are or were Cuban or Cuban nationals. This section does not authorize transactions relating to works not yet in being, or to marketing or business consulting services, or to services for the artistic or other substantive alteration or enhancement of paintings or drawings. Nor does it authorize transactions related to decorative or decorated items of a primarily utilitarian nature, such as carved tables, decorated mirrors, handpainted coffee mugs, or proprietary production drawings for industrial or commercial use.

(c) If the individual painting or drawing being imported into the United States pursuant to this section has a foreign market value of $10,000 or more, the importer must provide the Customs Service officer at the port of importation with a statement addressed to the Office of Foreign Assets Control certifying the following:

(1) The name and age of the painting or drawing being imported, if known;

(2) The means by which its foreign value was determined;

(3) The name of the artist, if known;

(4) That the artist is or at some time was a Cuban or Cuban national; and

(5) The amount paid, if the piece was purchased by a person subject to U.S. jurisdiction.

Dated: March 7, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 8, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-7519 Filed 3-26-91; 3:38 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 210

[DoD Directive 5525.4]

Enforcement of State Traffic Laws on DoD Installations

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This document amends 32 CFR part 210 to include a revision of Department of Defense policy concerning vehicular and pedestrian traffic on military installations. This amendment delegates to the installation commanders the authority to prescribe local traffic regulations.

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: Office of the Assistant Secretary of Defense (Force Management and Personnel) (Requirements and Resources Legal and Legislation Policy), room 4C763, The Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: W. Mason, telephone (703) 697-3387.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 210

Federal buildings and facilities, Traffic regulations

Accordingly, 32 CFR part 210 is amended as follows:

PART 210—ENFORCEMENT OF STATE TRAFFIC LAWS ON DOD INSTALLATIONS

1. The authority citation for part 210 continues to read as follows:

Authority: 63 Stat. 377, as amended, 18 U.S.C. 13; 40 U.S.C. 318 a through d., 40 U.S.C. 612.

§ 210.1 [Amended]

2. Footnote 1 to § 210.1 is revised to read as follows: "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

3. Section 210.3 is amended by removing paragraph "(d)"; redesignating paragraph "(c)" as paragraph "(d)"; adding a new paragraph (c) and footnote 2 to read as follows:

§ 210.3 Policy.

* * * * *

(c) Pursuant to the authority established in the Enclosure 1 to DoD Directive 5525.4 [2], installation commanders of all DoD installations in the United States and over which the United States has exclusive or concurrent legislative jurisdiction are delegated the authority to establish additional vehicular and pedestrian traffic rules and regulations for their installations. All persons on a military installation shall comply with locally established vehicular and pedestrian traffic rules and regulations.

* * * * *

[2] See footnote 1 to § 210.1.

Dated: March 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-7520 Filed 3-29-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-90-074]

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Emergency temporary rule.

SUMMARY: At the request of the Federal Highway Administration, the Coast Guard is issuing additional temporary regulations to govern operation of the Woodrow Wilson Bridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland. These temporary regulations are identical to, and are an extension of, the temporary regulations now in effect. These temporary regulations are needed to permit the bridge owner additional time to complete extensive ongoing repairs necessary for the safe and reliable operation of the bridge. This action provides for the reasonable needs of navigation.

DATES: This temporary rule is effective from April 1, 1991, until June 1, 1991, unless amended or terminated before that date.

FOR FURTHER INFORMATION CONTACT: Ms. Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION: The permanent regulations for this drawbridge are contained in 33 CFR 117.255. On August 2, 1990, a temporary deviation from those regulations was published in the **Federal Register** (55 FR 31384) to facilitate emergency repairs to the bridge's electrical systems. That emergency deviation expired on September 21, 1990. On September 20, 1990, temporary regulations were issued which modified the restrictions on bridge openings authorized by the temporary deviation; they were effective on September 22, 1990. Those temporary regulations were published in the **Federal Register** October 1, 1990 (55 FR 39962) and remained in effect until January 25, 1991. In conjunction with the temporary regulations that were effective on September 22, 1990, the Coast Guard published supplementary information on the temporary regulations with a request for comments in the October 1, 1990 **Federal Register** (55 FR 39963). Comments were received through October 16, 1990. Although many comments were received, the majority of them related to the matter of a change to the current published permanent regulations, and not to the temporary regulations for which comments were being solicited. In general, there were no comments of a new or significant nature relating to the temporary regulations to cause the Coast Guard to amend the temporary regulations at issue. On December 21, 1990, new temporary regulations were issued to allow the bridge owner additional time to complete the ongoing repairs to the bridge. These temporary regulations were effective on January 25, 1991, and will remain in effect until April 1, 1991. They were published in the **Federal Register** on January 8, 1991 (56 FR 635).

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and Capt. M. K. Cain, Project Attorney.

Discussion of Temporary Regulations

This temporary regulation provides an opening schedule identical to that provided by the temporary regulation which is currently in effect until April 1, 1991. The Federal Highway Administration has advised that the actual completion of repairs needed to return the bridge to safe, reliable operation, cannot be accomplished within the timeframe allowed by the current temporary regulation. This temporary regulation is intended to provide additional time to complete needed repairs to the continuing electrical and mechanical problems associated with the operation of this bridge. In early December 1990, the bridge again experienced a combination of mechanical and electrical problems resulting in a safety hazard for a large commercial ship attempting to transit through the bridge, as well as delays to thousands of motorists waiting for the bridge to close and allow the flow of highway traffic. Because of the critical need for repairs to this bridge, and the continued reliable operation of the bridge for both highway and marine interests until those repairs are completed, good cause exists for publishing this temporary regulation without publication of a notice of proposed rulemaking. Delaying this rule for publication of a notice of proposed rulemaking would be contrary to the public interest. The Coast Guard believes these temporary regulations will not unduly restrict vessel passage through the bridge, as vessel operators and the marine industry can plan transits to conform with this temporary regulation.

Federalism Assessment

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

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this temporary regulation on

commercial navigation or on any industries that depend on waterborne transportation should be minimal. Since the economic impact of this temporary regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.255 is temporarily amended by revising paragraphs (a) (1) and (2) and by adding paragraphs (a) (3) through (7) to read as follows. This is a temporary rule and will not appear in the Code of Federal Regulations.

§ 117.255 Potomac River.

(a) * * *

(1) Shall open for all vessels with a 2-hour advance notice on weekdays from 12 midnight to 4 a.m., and on Saturdays, Sundays, and Federal Holidays from 12 midnight to 6 a.m.

(2) Shall open for all vessels with a 2-hour advance notice on weekdays at 12 noon, and on weekends and Federal holidays falling on Fridays or Mondays at 12 noon and 9 p.m.

(3) Shall open for commercial vessels over 1800 gross tons on weekdays from 10 a.m. to 1 p.m. and from 9 p.m. to 12 midnight and on Saturdays, Sundays and Federal Holidays from 9 p.m. to 12 midnight with a 2-hour advance notice.

(4) Advance notification for all openings other than those provided for in paragraph 5 below should be directed to the operator in the bridge tower by telephone at (202) 727-5522 or by marine radio VHF Channels 13 or 16.

(5) Commerical vessels requiring transit at other than any of the above times due to tidal stages may receive special permission from Commander, Fifth Coast Guard District, Portsmouth, VA, and must provide a 24-hour advance notice, followed by a 1-hour advance confirmation of arrival.

(6) Need not open for any vessel from 6:30 a.m. to 9 a.m. and 4 p.m. to 6:30 p.m., Monday through Friday except Federal Holidays.

(7) This temporary regulation is effective beginning on April 1, 1991, and will terminate on June 1, 1991, unless amended or terminated before that date.

Dated: March 22, 1991

Paul A. Welling,

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

[FR Doc. 91-7556 Filed 3-29-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Department of the Air Force

41 CFR Ch. 132

Utilization and Disposal of Real Property

AGENCY: Department of the Air Force, DOD.

ACTION: Interim rule with request for comments.

SUMMARY: The Deputy Secretary of Defense redelegated authority from the Administrator of the General Services Administration to the Secretary of the Air Force, with respect to excess and surplus real and related personal property located at Air Force installations to be closed or realigned under the Base Closure and Realignment Act (BCRA). In carrying out the redelegated disposal authority, the Air Force has developed policies and procedures which incorporate various changes required to implement necessary disposal and real estate actions. Other excess real property will be reported to the General Services Administration and disposed of under 41 CFR part 101-47. The Air Force's proposed disposal process has significant involvement by local communities affected by base closures.

DATES: Interim rule effective April 1, 1991. Comments must be submitted on or before May 1, 1991.

ADDRESSES: Send written comments to Mr. James F. Boatright, Deputy Assistant Secretary of the Air Force (Installations), Washington, DC 20330-1000.

FOR FURTHER INFORMATION CONTACT: Leonard C. Sandelli, telephone 703 697-7462.

SUPPLEMENTARY INFORMATION: The BCRA requires the Air Force to exercise authority in accordance with GSA Federal Property Management Regulations which were in effect on October 22, 1988, the date of the approval for that act. As the Air Force is both the holding and disposal agency for base closure properties, requirements have changed for reporting property excess, determining property surplus, and funding of protection and maintenance. Additionally, the thresholds for reporting and requesting approval of negotiated sales and antitrust advice from the Attorney General have been raised by amendment to the Federal Property and Administrative Services Act of 1949. These Air Force policies and procedures will implement these various changes and provide for an expeditious and judicious disposal of Air Force installations.

A Regulatory Impact Analysis is not required. These policies and procedures are not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; cause a major increase in costs to consumers or others; or have other significant adverse effects. The Air Force based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequences of this rule. It has determined the potential benefits to society outweigh the potential costs and these policies and procedures maximize the net benefits. Therefore, the Air Force has chosen this alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Chapter 132

Real property utilization and disposal.

Therefore, title 41 of the Code of Federal Regulations is amended by establishing chapter 132 and part 132-47 as set forth below:

CHAPTER 132—DEPARTMENT OF THE AIR FORCE

PART 132-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Sec.
132-47.000 Scope of part.

Subpart 132-47.1—General Provisions

132-47.103 Definitions.

Subpart 132-47.2 Utilization of Excess Real Property

132-47.201-1 Policy.
132-47.201-2 Guidelines.

132-47.202 Reporting of excess real property.
132-47.203 Utilization.
132-47.203-50 Utilization to assist the homeless persons.
132-47.203-51 Interim use.
132-47.204 Determination of surplus.

Subpart 132-47.3 Surplus Real Property Disposal

132-47.301-2 Applicability of antitrust laws.
132-47.304 Advertised and negotiated disposals.
132-47.304-9 Negotiated disposals.
132-47.304-12 Explanatory statements.
132-47.307 Conveyances.
132-47.307-6 Proceeds from disposals.

Authority: 10 U.S.C. 2687 Note, and 10 U.S.C. 2661.

§ 132-47.000 Scope of part.

The provisions of this part are applicable to Air Force bases identified for closure under the Base Closure and Realignment Act of 1988, and the Defense Base Closure and Realignment Act of 1990. This part prescribes the Air Force policies and procedures governing the utilization of excess real property and disposal of surplus real and related personal property under these two acts.

Subpart 132-47.1—General Provisions

§ 132-47.103 Definitions.

In addition to the definitions contained in 41 CFR part 101-47, the following definitions apply to properties being disposed of by the Air Force.

(a) *Base Closure and Realignment Act of 1988 (BCRA-88).* Public Law 100-526, signed into law on October 22, 1988, the "Defense Authorization Amendments and the Base Closure and Realignment Act," 102 Stat. 2623, 10 U.S.C. 2687 note.

(b) *Defense Base Closure and Realignment Act of 1990 (DBCRA-90).* Public Law 101-510, signed into law on November 5, 1990, cited as the "Defense Base Closure and Realignment Act of 1990."

(c) *Secretary.* The Secretary of the Air Force, or a designated official of the Air Force to whom the Secretary has redelegated functions. The Air Force is acting as the disposal agency for real and related personal property being disposed of under BCRA-88 and DBCRA-90.

(d) *Deputy Assistant Secretary of the Air Force (Installations) (SAF/MII).* The official responsible for establishing policies and directing disposal activities under BCRA-88 and DBCRA-90. He or she exercises the authority delegated to utilize excess real property and dispose of surplus real and related property.

(e) *Closure Implementation Office.* An organization of the Air Force Engineering and Services Center, located in Washington, DC, or any successor organization. This organization is responsible for carrying out the policies and directions of the Deputy Assistant Secretary (Installations) with regard to BCRA-88 and DBCRA-90.

(f) *Disposal Management Team.* A Disposal Management Team is a staff extension of the Closure Implementation Office. It reports to the Closure Implementation Office and is responsible for protection and maintenance, disposal and environmental matters at the base being closed. The Closure Implementation Office will establish a Disposal Management Team at each base that is named for closure under BCRA-88 and DBCRA-90. This team will be the community's local point of contact for reuse and disposal.

(g) *Environmental Impact Analysis Process (EIAP).* Air Force environmental process as defined in 32 CFR 989, and which implements the National Environmental Policy Act (NEPA) and the President's Council on Environmental Quality (CEQ) regulations.

Subpart 137-47.2—Utilization of Excess Real Property

§ 132-47.201-1 Policy.

In addition to the policies stated in 41 CFR 101-47.201-1, it is the policy of SAF/MII to work closely with local reuse organizations to ensure that disposal or continued Federal utilization of property is compatible with community plans where possible.

§ 132-47.201-2 Guidelines.

(a) In addition to the guidelines contained in 41 CFR 101-47.201-2, SAF/MII and the Closure Implementation Office will coordinate identified Federal agency uses with local reuse organizations to ensure that proposed Federal uses are as consistent as practicable with community reuse plans. In the event of conflicts the Air Force will first require the Federal agency to work with the community reuse organization and other local governmental units in order to resolve those conflicts. SAF/MII will resolve any issues not settled in that fashion. Federal agencies requesting transfer of properties at bases to be closed under the base closure acts will also be invited to participate in the analysis of the environmental impacts of a proposed transfer to a Federal agency and subsequent reuse in accordance with the prevailing Air Force implementation schedule to promote rapid transition to civilian ownership.

(b) SAF/MII will consider requests for transfers of a hospital or clinic building to the Department of Veterans Affairs (VA), Public Health Service (PHS), or the Indian Health Service (IHS) at no cost, if the Office of Management and Budget concurs in the transfer.

§ 132-47.202 Reporting of excess real property.

(a) The Closure Implementation Office will assemble the information for the Air Force necessary to properly dispose of real and related personal property at the designated closure bases. SAF/MII will determine when real property at a closure base becomes "excess" as defined by 40 U.S.C. 472(e). Once this determination is made, the Closure Implementation Office will prepare an SF 118, without the backup schedules, and send copies to the General Services Administration for its information. Other information normally transmitted with an SF 118 will be maintained in the Closure Implementation Office and in the base Disposal Management Team for as long as maintaining it serves a useful purpose.

(b) Funding for protection and maintenance will be from the Base Closure Account or Base Closure Account 90, as applicable.

§ 132-47.203 Utilization.

§ 132-47.203-50 Utilization to assist the homeless persons.

The Air Force will comply with the requirements of the Stewart B. McKinney Homeless Assistance Act, as amended, 42 U.S.C. 11411 ("McKinney Act"), the implementing regulations promulgated under the Act, and any applicable federal court orders. Consistent with these requirements, the Air Force will use the following procedures for reporting properties at the designated closure bases under the McKinney Act:

(a) The Air Force will provide the Department of Housing and Urban Development (HUD) with information relative to properties being disposed of at the Air Force bases designated for closure under BCRA-88 and DBCRA-90. That information will be grouped by similar use (e.g. housing, recreation, administration areas, etc.) and sent to HUD no earlier than 12 months before the anticipated date the facilities will be vacated by Federal Government activities, including activities of Reserve Components.

(b) Within 30 days of the submission by the Air Force, HUD will provide the Air Force with a suitability

determination. The Air Force will notify HUD within 45 days whether and when the property will be available. Within 15 days of the Air Force's determination, HUD will publish in the **Federal Register** a list of those properties that are suitable and available, suitable and unavailable, suitable and to be determined excess and those that are unsuitable.

(c) Upon publication in the **Federal Register**, the Air Force will take action to notify homeless assistance providers of the available properties. The Air Force will withhold disposal action on suitable and available properties for 60 days after publication in the **Federal Register**.

(d) In the event a property has been determined by HUD to be unsuitable for homeless assistance use, representatives of homeless assistance groups have 20 days to request a review of that determination. The Air Force will take no disposal action on those properties until the expiration of that 20 day period.

(e) A prospective applicant must express written interest to the Department of Health and Human Services (HHS) within 60 days after publication of the property in the **Federal Register** and submit a complete application to HHS within 150 days from the date of publication. HHS will, with the concurrence of the Air Force, grant reasonable extensions to applicants.

(f) Within 25 days from receipt of a completed application, HHS will approve or disapprove the application.

(g) Due to the Air Force's requirement to dispose of properties at the designated closure bases, any assignment to HHS for homeless assistance purposes will be solely for transfer by deed for a public health use. Surplus property may be conveyed to representatives of the homeless under paragraphs (1) and (4) of section 203(k) of the Federal Property Act, 40 U.S.C. 484(k) (1) and (4).

(h) In disposing of surplus real property under section 203 of the Federal Property Act, 40 U.S.C. 484, the Air Force must give priority of consideration to uses assist the homeless. However, the Air Force may consider other compelling and meritorious uses for the property. Disposal of the surplus real property for any other use is subject to a congressional reporting requirement under 42 U.S.C. 11411(f)(3)(B) and requires the prior approval of SAF/MII. A request for such approval must be accompanied by an explanatory statement detailing the need to be satisfied by the proposed conveyance and the reasons for concluding that such need is so meritorious and compelling as to outweigh the needs of the homeless.

(i) The Air Force will proceed with disposal under these policies and procedures upon the latter of written notice from HHS that no homeless assistance provider has expressed written interest in the property during the 60-day holding period or advice from HHS that any and all applications have been disapproved.

§ 132-47.203-51 Interim use.

The Air Force may lease real and related personal property at those bases identified for closure pursuant to BCRA-88 and DBCRA-90 under the authorities contained in 10 U.S.C. 2667 until such time as it is determined to be excess. These leases may be to state or local governments or local reuse organizations. Interim leases of excess real and related personal property at closure bases may be granted to state or local governments pending final disposition of the property under 10 U.S.C. 2667(f). SAF/MII will consult with state and local planning groups with regard to its leasing actions to ensure that interim uses are compatible as possible with local zoning (if property is zoned), base realignment schedules, and eventual disposal schedules for the property. SAF/MII may also competitively lease portions of those bases to the general public. Generally, these leases will be for one year and revocable upon 30 days' notice to the lessee. However, the Air Force may lease the property under such other terms as may be appropriate to the base closure schedule if the property has not been determined to be excess. The Air Force will consult with local reuse organizations concerning interim use.

§ 132-47.204 Determination of surplus.

SAF/MII will determine when areas which have been screened against the needs of Federal agencies or for which SAF/MII has waived Federal agency screening become surplus. Normally this determination will be made after a Record of Decision (ROD) is issued by the Air Force following completion of the environmental impact analysis process for the particular closure base. Federal sponsoring agencies, state and local governments will have been notified of the availability of the property pursuant to 41 CFR 101-47.303-2 prior to the determination of surplus.

Subpart 132-47.3 Surplus Real Property Disposal

§ 132-47.301-2 Applicability of antitrust laws.

(a) In any case of a proposed disposal to any private interest of real and related personal property which has an estimated fair market value of $3,000,000 or more, SAF/MII will transmit promptly to the Attorney General notice of the proposed disposal and the probable terms or conditions thereof of the transaction as provided in section 207 of the Federal Property Act, 40 U.S.C. 488. The property may not be disposed of until the Attorney General advises the Air Force whether the proposed disposal would tend to create or maintain a situation inconsistent with the antitrust laws.

(b) Upon request of the Attorney General, the Air Force will furnish such information as it may possess which the Attorney General determines to be appropriate or necessary to enable him or her to give the requested advice or to determine whether any other disposal or proposed disposition of surplus real property violates or would violate any of the antitrust laws.

§ 132-47.304 Advertised and negotiated disposals.

§ 132-47.304-9 Negotiated disposals.

The provisions of 47 CFR 101-47.304-9 apply. The Air Force may dispose of real and related personal property at a closure base by negotiation when the estimated fair market value of the property involved does not exceed $15,000, whether the base was identified for closure under BCRA-88 or DBCRA-90.

§ 132-47.304-12 Explanatory statements.

The provisions of 41 CFR 101-47.304-12 apply. The Air Force will not prepare an explanatory statement for any of the following disposals of real property at a closure base by negotiation, whether the base was identified for closure under BCRA-88 or DBCRA-90:

(a) Any real property that has an estimated fair market value of less than $100,000.

(b) Any real property disposed of by lease for a term of 5 years or less unless the total estimated rent over the term of the lease is more than $100,000.

(c) Any real property disposed of by lease for a term of more than 5 years unless the total estimated rent over the term of the lease is more than $100,000.

§ 132-47.307 Conveyances.

§ 132-47.307-6 Proceeds from disposals.

All proceeds received from any sale, lease, or other disposition of excess real property and surplus real and related personal property will be deposited into the respective Defense Base Closure Account established by either BCRA-88 or DBCRA-90.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-7586 Filed 3-29-91; 8:45 am]

BILLING CODE 3910-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[DA 91-320]

General Mobile Radio Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects amendatory instruction 8 of the Order adopted December 5, 1990, and released December 12, 1990, (DA 90-1776) concerning general mobile radio service. That instruction erroneously referred to § 97.181 as the section that was being amended. It should have referred to § 95.181.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC, 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION: The correction shown in the attached Erratum should be made in FR Doc. 90-29483, filed 12-17-90, and published in the **Federal Register** on December 18, 1990, at 55 FR 51909.

Erratum

Released: March 20, 1991.

§ 95.181 [Corrected]

Amendatory instruction 8 of the Order in the above-captioned proceeding, adopted December 5, 1990, and released on December 12, 1990 (DA 90-1776), erroneously referred to § 97.181 as being amended by removing and reserving paragraph (b) thereof. Amendatory instruction 8 should have stated that § 95.181 was being amended.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91-7506 Filed 3-29-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 62
Monday, April 1, 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 Parts 907 and 908

[Docket No. FV-91-249]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Order Directing That Referenda Be Conducted; Determination of Representative Periods for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum orders.

SUMMARY: This document directs that referenda be conducted among eligible growers of navel and Valencia oranges grown in Arizona and designated parts of California to determine whether they favor continuance of the marketing orders regulating the handling of navel and Valencia oranges grown in the production area.

DATES: The representative production periods are from November 1, 1989, through October 31, 1990, for navel oranges, and from February 1, 1990, through January 31, 1991, for Valencia oranges. The referenda will be conducted from May 1 through May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, MOAB, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION:

Pursuant to Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), hereinafter referred to as the "orders," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," it is hereby directed that referenda be conducted within the period May 1 through May 31, 1991, among growers in the production area who, during the periods November 1, 1989, through October 31, 1990, for navel oranges, and February 1, 1990, through January 31, 1991, for Valencia oranges (which periods are hereby determined to be representative periods for purposes of such referenda), were engaged in the production of navel or Valencia oranges covered by the said marketing orders to ascertain whether continuance of each order is favored by the respective growers.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the respective orders if less than three-fourths of the growers voting in that referendum and growers of less than two-thirds of the volume of navel or Valencia oranges represented in that referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of each continuance referendum but also all other relevant information concerning the operation of the respective order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of that order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials that will be used in the referenda herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581-0116 and 0581-0121, respectively, for navel and Valencia oranges. It has been estimated that it will take an average of 20 minutes for each of the approximately 4,070 growers of navel oranges and 3,500 growers of Valencia oranges to participate in the voluntary referenda balloting.

Mr. Robert J. Curry and Mr. Kurt J. Kimmel, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, are hereby designated as referendum agents of the Secretary of Agriculture to conduct such referenda. The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*).

Copies of the text of the aforesaid marketing orders may be examined in the office of the referendum agents at 2202 Monterey Street, suite 102B, Fresno, California 93721, or in the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456.

Ballots to be cast in the referenda may be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

Authority: Agricultural Marketing Agreement Act of 1937, as amended, Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: March 22, 1991.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91-7583 Filed 3-29-91; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064-AB06

Contracts Adverse to Safety and Soundness of Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule and advance notice of proposed rulemaking.

SUMMARY: This part would implement the mandate to the FDIC in section 225

of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA," Pub. L. 101-73; 103 Stat. 183, 275-76 (1989) (12 U.S.C. 1831g)) to prescribe regulations as may be necessary to prevent any depository institution insured by the FDIC from contracting for goods, products or services in a way that would adversely affect its safety or soundness.

DATES: Comments must be received by May 31, 1991.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F-400 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-400 between 8:30 a.m. and 5 p.m. on business days. (FAX number: (202) 898-3838).)

FOR FURTHER INFORMATION CONTACT: (For information on supervisory issues) Michael D. Jenkins, Examinations Specialist, Division of Supervision, (202) 898-6896, or Robert F. Miailovich, Assistant Director, DOS, (202) 898-6918; (for information on legal issues) Walter P. Doyle, Counsel, Legal Division, (202) 898-3682, or Philip P. Houle, Senior Attorney, Legal Division, (202) 898-3718; FDIC, 550 17th Street NW., WAshington, DC 20429.

SUPPLEMENTARY INFORMATION:

Discussion

In recent years, the FDIC has encountered several types of abuse that seriously jeopardized or misrepresented an insured institution's safety and soundness resulting from contracts made by or on behalf of the institution. It is estimated that such abuses may have added $500 million or more to the FDIC's cost in resolving some recent assistance transactions and closed bank cases, particularly those involving large holding companies.

To deal with such actual or potential abuses, section 225 of FIRREA added a new section 30 to the Federal Deposit Insurance Act (12 U.S.C. 1831g) prohibiting an insured depository institution from entering into a written or oral contract with any person to provide goods, products, or services to or for the benefit of such depository institution which would adversely affect the safety or soundness of the institution.

When section 30 was introduced as an amendment to FIRREA, Senator Bumpers elucidated the reasons why it was necessary to regulate contracts between depository institutions and providers of goods or services. He described a few examples of the abuses that illustrate a widespread use of contractual relationships to manipulate accounting principles to make an institution appear to be in better financial shape than it really is, without actually improving its financial position at all. Senator Bumpers stated:

> [S]ome of these practices get pretty sophisticated, and it would make it almost impossible to prove that somebody had had several million dollars extorted from him in order to get some business or that they had agreed to make a deposit in a bank in exchange for a contract.

135 Cong. Rec. S4269 (daily ed. April 19, 1989).

Section 30 was passed to eliminate these abuses and, by authorizing the FDIC to issue regulations implementing the section, Congress intended to give the FDIC broad discretion to determine the "sophisticated practices" being used and to design regulations to eradicate them. This intent is evidenced by the evolution of the language of section 30. The language of the section was changed several times before the bill was passed. On April 19, 1989, the section prohibited insured financial institutions (which were defined to include bank and savings and loan holding companies) from:

> * * * enter[ing] into a[ny] written or oral contract with any person related to the provision of goods, products, or services * * * if such contract contains any of the following:
>
> (1) A provision under which such person agrees to purchase any asset of such financial institution unless the asset is directly related to the provision of such goods, products, or services.
>
> (2) A provision under which the person providing such goods, products or services agrees to purchase the stock of, invest capital in, or make a deposit in such financial institution.

135 Cong. Rec. S4269 (daily ed. April 19, 1989).

This language is obviously aimed at the specific examples that were brought to the attention of Congress.

By June 19, 1989, the section contained language that further limited the scope of the prohibition to contracts which required the above purchases or investments and which adversely affected the safety and soundless of the institution. See, 135 Cong. Rec. S6915 (daily ed. June 19, 1989). With this language, Congress attempted to focus the attention of the statute on the effect the contract had on the institution.

As the section was passed in August 1989, however, all of the specific, limiting language was deleted and the section, as enacted, contains only very general language prohibiting unsafe or unsound contracts by insured institutions, with FDIC being granted broad rulemaking authority to carry out the purposes of the statutory prohibition and prevent evasions thereof. The sole inference that can be drawn from this legislative history is that Congress decided the problem was too widespread and amorphous for it to try to enumerate the precise situations in which the prohibition would apply. Certain examples were brought to the attention of Congress which Congress initially sought to eliminate by a rather narrowly defined prohibition. After looking into the problem, however, Congress realized that these practices could take a myriad of forms which they could not hope to specify. Congress, therefore, decided to leave the regulation of specific areas of abuse to the FDIC, which could detect where problems were occurring and devise appropriate regulations to stop the specific types of transactions causing the problems. No other inference can be drawn from the wording of the section, evolving as it did from specific to general, than that Congress intended to give the FDIC broad discretion to uncover the various forms these abuses can take and fashion regulatory approaches to deal with unsafe and unsound contracting practices by insured instititions.

The proposed new part 334 would implement this statutory mandate and the FDIC seeks comment on the proposal. Section 30 and regulations thereunder are enforceable by the appropriate federal supervisor against an insured institution and all institution-affiliated parties. Corrective actions for violations may include orders to cease and desist (which may require the rescission of contracts or the disposal or restitution of any assets), civil money penalties, and prohibition orders barring contractors from dealing with all insured depository institutions.

Abuses Generally

Many significant abuses in this area have already occurred. These abuses have occurred in real situations, present potentially serious loss to the FDIC funds, and are considered sufficient to justify the proposed reguation. It would be imprudent if the FDIC were to wait until it has suffered substantial additional losses before it responds to FIRREA's mandate and exercise its existing statutory authority in an attempt to prevent evasion of the statute and the incurrence of such losses in the first instance. The most significant types of abuses that are being presented have occurred in two general areas: (1) Contracts for goods and services

between insured institutions and outside vendors (such as an EDP servicer); and (2) contracts between subsidiary insured institutions and other non-depository subsidiaries of the same holding company or related interests under common control therewith. A proposed rule is being presented to deal with the first area of abuses while an advance notice of proposed rulemaking is being presented to cover the second area of abuses.

Proposed Rulemaking

Outside Vendors

A major area of abuse is with regard to service contracts with outside vendors. Typically, a supplier will buy an insured institution's or holding company's assets or securities at an inflated price in return for the institution's or a related institution's purchasing of certain goods or services at a price above market. As a result, the institution avoids showing a loss on the assets sold or reports an illusory increase in capital which is then incorporated into the price paid for the goods or services brought—in effect, amortizing the amount over the term of the supply contract. Likewise, a purchaser buys one group of assets outright at an inflated gain to the seller but charges an inflated fee for a linked services arrangement involving related assets.

The FDIC has encountered these types of abuses in the following settings:

(1) A supplier has purchased assets (such as electronic data processing (EDP) hardware or foreclosed real estate) from an insured institution at inflated values as an inducement to obtain an EDP service contract, and then builds the loss into the contract fees. Or, the supplier pays the institution merely to enter the contract and builds that cost into the contract fees.

(2) A supplier has purchased stock or capital notes of an institution, linked with obtaining an EDP contract or revising an existing contract, and then recovers the investment cost in higher contract fees.

(3) An outside data servicer paid a fee to insiders of the holding company in return for a subsidiary insured institution of the holding company entering into a contract with the servicer. The costs of the fees were recovered by the servicer through increased contract fees paid by the institution. The FDIC has also encountered a variation of this concept involving purchases of assets from banks where the buyer pays an inflated price for the assets and receives an irrevocable, below-cost servicing agreement from the bank which retains the servicing.

(4) A data service contract failed to provide the institution (including its successor, receiver or conservator) with sufficient reasonable prior notice of termination, and necessary information, materials (*e.g.*, software, machine-readable tapes, etc.) and opportunity to provide for replacement services at fair market terms. This problem did not become apparent until the institution was in trouble or had failed. The FDIC was forced to deal with a form of coercion in meeting excess payment demands by virtue of a conflict over the ownership of the data base.

These situations distort an institution's true condition as represented in its financial statements, thereby misleading its regulators, depositors, creditors and investors. Such contracting practices can also give the supplier an unfair competitive advantage and might motivate the supplier to provide goods or services of a lower quality than would otherwise be provided. Furthermore, the existence of such above market contracts impedes effective resolution by the FDIC if the institution should fall.

Section 334.3 of the proposed regulation would prohibit any insured institution from entering into any contract determined to be adverse. Certain examples are included to help in determining if a contract is adverse; however, each contract wuld have to be evaluated separately on the basis of its own terms and by comparison with the terms of similar contracts entered into by the institution and other institutions.

Burden of Proof

Public comment is sought particularly on § 334.4 which would place on the institution and its contractor the burden of establishing the propriety of a contract as to which the appropriate regulator had made an initial determination of adverse effect on the institution's safety and soundness. This would embody an established rule of evidence placing the burden of proof or persuasion on the party best able to produce evidence on the issues of good faith and proper intent of the contracting parties and to justify a contract that appears likely to affect adversely or misrepresent the institution's safety and soundness. Normally the "preponderance of the evidence" standard would apply; but where there is evidence of bad faith, intentional wrong-doing or fraud, the propriety and legality of the contract should be established by clear and convincing evidence.

Enforcement

The proposed regulation also makes clear that enforcement actions may be taken directly against the contractor, as an "institution-affiliated party." In most administrative enforcement actions against insured depository institutions for violation of section 30 and part 334, it therefore may be preferable to proceed jointly against the persons contracting with the institution (as "institution-affiliated parties") in order to insure that the proceedings will have binding effect as to all parties.

Advance Notice of Proposed Rulemaking

Contracts With Affiliates

Another major area in which abuses have occurred has been with regard to contracts between insured institutions and their parent holding companies or with non-depository subsidiaries of the holding company or related interests under common control therewith. Instances of these situations have added dramatically to the costs of the resolution of assistance transactions and failed banks. If the holding company subsidiaries which provided services to insured institutions would have been subsidiaries of an insured institution and if the cross guarantee provisions in section 5(e) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)) had been in effect, the cost to the FDIC fund would have been considerably less, since ownership of such subsidiaries would have been an asset available to the FDIC.

The following are examples of the abuses and lost values which the FDIC has encountered in actual situations:

(1) A multi-institution holding company owned an EDP subsidiary which provided services for all the insured institutions in the holding company. The holding company sold the EDP subsidiary for substantially more than market value to an unrelated interest. The unrelated interest was compensated for paying the higher than market value through renegotiated contracts with the insured institutions at substantially higher fees. This transaction provided a large cash infusion into the holding company as a result of the inflated premium, with the funds repaid directly back to the servicer over time by the insured institutions. The institutions did not immediately book any of these costs as they were to be realized over the next several years through increased data processing fees.

(2) A multi-institution holding company directly owned a subsidiary

which performed management services (wire transfers, note tellers, investment advisory services, security investigators etc.) for all the subsidiary insured institutions in the system. When the system began experiencing financial difficulties, the holding company arranged to have several employees of the insured institutions (who were performing duties related to those management services performed by the affiliated service company) transferred to the affiliated service company. The contract terms for those management services were retroactively increased by substantially more than what the institutions had been paying those individuals to do the same duties. These transactions resulted in the insured institutions receiving no additional or improved services but several million dollars were eventually transferred from the insured institutions to the holding company.

(3) In several situations a depository institution holding company owned an EDP subsidiary and the affiliated insured institutions were overcharged for services, or were not reimbursed for overhead, or paid the supplier's expenses for such items as software development, with the EDP servicer obtaining ownership of the software. At time of bank closings, these bank-vital services were threatened and the holding company extracted grossly excessive values for returning control of the financial records, including customer accounts, to the banks.

(4) Depository institution holding companies have purchased the servicing company from the subsidiary institutions at less than fair value and the institutions have then been charged at-profit fees fore redelivery of the services. These transactions effectively transferred value to the holding company at the insured institutions' cost and, as well, permit the holding company to then sell the servicing company to an unrelated third party at substantial profit.

(5) Depository institution holding companies have purchased assets (credit card receivables, trust departments, loans, etc.) from the subsidiary institutions at less than fair value and subsequently sold the same at profit which was retained by the holding company.

(6) Depository institutions have made payments (in the form or royalty fees) to the holding company for use of the holding company's trade name. These payments bore no justifiable relationship to any tangible asset or service provided by the holding company, but merely served to provide funds to the holding company by means other than dividend payments.

These examples demonstrate that many holding companies can be structured and operated in a manner which results in the subsidiary insured institutions providing financial support to the holding company instead of the holding company providing the subsidiary insured institutions with financial support. The use of holding company subsididaries to generate fees and other income from affiliated insured institutions with the resulting profits and franchise value passing directly to the holding company should be the subject of careful scrutiny by regulators.

Accordingly, the FDIC is seeking suggestions and comments on how a regulation should be crafted to prevent such abuses and lost values. Several proposals have already been considered and preliminary discussions indicate that the more effective approaches are broad and will substantially disrupt the way in which many holding companies conduct their business and provide their member institutions with vital services. Other approaches which are much less disruptive are considered to be much less effective in preventing abuses because they essentially do not provide for any corrective action until after the abuse has occurred and been identified. It is strongly believed that any regulation dealing with adverse contracts with affiliates should be proactive (by preventing the inappropriate transfer of values from insured institutions to their holding companies) and not merely reactive (by simply addressing the problem after the transfers have occurred). It has been the FDIC's experience that when abuses are identified after the transfers have occurred that the values are generally lost to the insured institutions and only in rare instances are any of the values available to be reclaimed. Obviously, an approach which simply prohibits all contracts with non-depository affiliates would be the most effective but also the most disruptive. Some feel this is too draconian a step to take in order to eliminate the abuses while others feel that the required corrections and disruptions, while extensive, are necessary to prevent lost values and that the benefits created by these non-depository affiliates should be returned to the insured institutions where they rightfully belong.

Present Safeguards Not Adequate to Prevent Absues

Present safeguards which place restrictions on contracts between insured institutions and their affiliates include section 23B of the Federal Reserve Act (12 U.S.C. 371c-1). Unfortunately section 23B, by its terms, does not apply to some of the abusive contracts that have caused losses to the FDIC fund. In other instances the detailed factual evidence needed to establish a section 23B violation is difficult to adduce. Moreover, even where section 23B is clearly violated, the violations have been difficult to detect and correct. Quite often, also, administrative enforcement unfolds too late and too slowly in the terminal stages of an insolvency situation to prevent significant loss to the FDIC fund.

In any event, the fact that service contracts with affiliates are restricted by section 23B does not prevent them from being further restricted (*e.g.*, presumed adverse) under section 30. The abuses already encountered indicate that these transactions can be very sophisticated and the abuses are difficult to detect and prove. In almost all cases the safeguards already in existence have not been adequate to prevent the abuses that have caused losses to the FDIC fund. It is for this reason that the FDIC is considering whether affiliate contracts that may be covered by section 23B may also need to be covered by some additional restriction under regulations adopted pursuant to section 30.

An Approach Being Given Serious Consideration by FDIC

Serious consideration has been given in this connection to establishing a rebuttable regulatory presumption that certain types of contracts between an insured institution and any company which directly or indirectly controls it or which is under common control therewith are unsafe and unsound, unless such contracts are with an affiliated insured institution or a subsidiary of an insured institution. One way of rebutting the presumption that an affiliate contract is adverse might be for the parent holding company to agree to indemnify the insured institution in the event and to the extent its primary regulator (or FDIC or RTC if the institution has been placed in receivership or conservatorship) may subsequently determine to be necessary to eliminate the otherwise adverse effect of the contract on the institution's condition—such indemnity agreement to be secured by an effective pledge of readily marketable assets in an amount specified by the institution's primary regulator. Of course, this approach might not be feasible if the holding company were either insolvent or in a deteriorating financial condition, since in that case the pledge could potentially

be avoided by the trustee in a bankruptcy proceeding initiated within one year of pledging the collateral. Other ways of assuring that affiliate contracts are not utilized to affect adversely the safety and soundness of insured institutions may suggest themselves to interested parties, and specific alternative proposals for achieving this objective are earnestly solicited.

Several types of affiliate contracts that might be covered by such a rebuttable regulatory presumption as to the adverse nature of such contracts would be those involving any of the following:

(1) Making or purchasing loans;

(2) Servicing loans;

(3) Performing trust functions;

(4) Providing bookkeeping or data processing services;

(5) Furnishing management services;

(6) Selling or transferring any department or subsidiary;

(7) Payments for intangible assets (such as a trade name); or

(8) Transferring any asset for less than fair market value as evidenced by an independent written appraisal, or prepaying any liability more than 30 days prior to its due date.

Consideration is being given to including a wider range of affiliate contracts within the scope of any such presumption; however, the list is limited at this time to those types of affiliate contracts that have already occasioned substantial loss to the federal deposit insurance fund. Specific comment is requested on the advisability and feasibility of implementing such a rebuttable presumption as to the adverse nature of affiliate contracts. Comment of a detailed and specific nature is also solicited on any effective alternative approaches that could realize the same objectives and afford comparable protection to the FDIC fund.

It should be pointed out that such a rebuttal presumption would not prohibit all contracts between financial institutions and affiliates. Only certain specified types of contracts would be covered and contracts with other insured institutions or with subsidiaries of insured institutions would be excluded from being presumed adverse. Even in those enumerated areas where contracts between financial institutions and affiliates would be covered by the presumption, if a financial institution and its affiliate could establish that the particular contract would not be adverse, then the appropriate banking agency would not bring any enforcement proceedings in connection therewith.

Effects on Holding Companies and on Services Provided to Insured Institutions by Affiliates

If service subsidiaries would be essentially limited to being subsidiaries of an insured institution, the holding company could still receive the financial benefits of the arrangement; the only change would be that the holding company would receive the benefit directly from dividends from the banks, not indirectly through its subsidiaries profiting from providing services for the captive banks. The benefits would merely flow through the lead or other designated insured institution. The insured institutions would continue to benefit from the economies of scale, management expertise and financial support in such arrangements. However, the holding company would receive little or no benefit from these subsidiaries should the insured institutions become troubled or financially distressed. Such a presumption would not prohibit nor limit a holding company from offering any other services by means of a non-insured subsidiary so long as it did not do so by contract with an insured subsidiary. Serious, substantive, constructive and detailed comment on the presumption and other effective means of remedying the described abuses of affiliate contracts is solicited by this advance notice of proposed rulemaking.

Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act, the Board of Directors hereby certifies that the rule will not, if promulgated have significant economic impact on a substantial number of small entities. The requirements of 5 U.S.C. 603 and 604 that initial and final regulatory flexibility analyses be made do not apply to this proposal since this proposed rule would not add an economic burden to small entities. In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 334

Affiliates, Banks, Banking, Bank deposit insurance, Contracts, Insured depository institutions, Savings associations, Subsidiaries, Unsafe or unsound practice.

For the reasons set out in the preamble, the FDIC hereby proposes to add a new part 334 to title 12 of the Code of the Federal Regulations to read as follows:

PART 334—CONTRACTS ADVERSE TO SAFETY AND SOUNDNESS OF INSURED DEPOSITORY INSTITUTIONS

Sec.
334.0 Purpose and scope.
334.1 Definitions.
334.2 Accounting principles.
334.3 General principles applicable to contracts.
334.4 Burden of proof.
334.5 Enforcement.

Authority: Sec. 225, Pub. L. 101–73, 103 Stat. 183, 275–76 (12 U.S.C. 1818 ["Seventh" and "Tenth"], 1831g).

§ 334.0 Purpose and scope.

This part applies to contracts between any institution insured by the FDIC and persons who provide it with goods, products or services where the institution's safety or soundness is or may be adversely affected or misrepresented as a result thereof. It also addresses the authority of the appropriate federal banking agency to take enforcement action against an institution or a person with whom it enters into such a contract, and the officers, directors, principals and agents of any such person or institution.

§ 334.1 Definitions.

(a) *Appropriate federal banking agency* has the meaning set forth in 12 U.S.C. 1813(q).

(b) *Adverse contract* means any contract made by or on behalf of an institution if such contract violates any law or regulation, breaches a fiduciary duty, adversely affects or misrepresents the institution's safety or soundness, or is likely to have any such result, including any such contract that does not derive from an arms-length relationship.

(c) *Company* means any institution, partnership, firm, joint venture, corporation, trust, association or other legal entity.

(d) *Contract* means any express or implied, oral or written contract, agreement, arrangement, obligation, or understanding of any kind for goods, products or services and includes all modifications, amendments, renewals and extensions thereof.

(e) *Institution* means an insured depository institution as defined in 12 U.S.C. 1813(c)(2).

(f) *Institution-affiliated party* has the meaning set forth in 12 U.S.C. 1813(u).

(g) *Person* includes any individual or company.

§ 334.2 Accounting principles.

The records and reports of an institution shall reflect all contracts in accordance with generally accepted

accounting principles and standards consistently applied, except as otherwise expressly required by instructions for reports of condition and income.

§ 334.3 General principles applicable to contracts.

(a) No person may enter into or perform or accept any benefit under an adverse contract. Whether a particular contracts is adverse shall be determined on the basis of, among other criteria, its own terms and a comparison with the terms of similar contracts entered into by the institution and by other institutions, taking into account any other contract or financial relationship entered into by or on behalf of the institution which directly or indirectly involves the same or related parties.

(b) A contract would be adverse, by way of example and not in limitation of the foregoing, if it provides or allows for termination, cancellation or rescission by the person dealing with an institution and fails expressly to provide the institution (including its successor, receiver or conservator) with sufficient reasonable prior notice (including any necessary information and materials, *e.g.*, computer programs and related documentation, data files, and machine-readable tapes) and an opportunity to provide for substitute or replacement goods, products or services at fair market terms consistent with safety and soundness,[1] or if the contract requires an unreasonable period of prior notice of termination by the institution.

§ 334.4 Burden of proof.

In any examination or other supervisory proceeding where the appropriate federal banking agency initially has made a determination that an institution has entered into an adverse contract in violation of 12 U.S.C. 1831g and this part, and in any administrative enforcement proceeding where such an agency initially has made a showing to that effect, the institution and other contracting parties involved in the proceeding shall be required to demonstrate the propriety and legality of the contract hereunder by establishing that, under all the relevant circumstances, the contract is not an adverse contract.

[1] In this connection, 12 U.S.C. 1821(e)(12)(A) authorizes the FDIC as conservator or receiver to "enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver."

§ 334.5 Enforcement.

Institutions and institution-affiliated parties, including any independent contractor, may be subject to removal and/or prohibiton orders, cease and desist orders, and the imposition of civil money penalties pursuant to section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), as amended, for violation of this part, as well as any other action or remedy authorized by law.

By order of the Board of Directors.

Dated at Washington, DC, this 26th day of March 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-7549 Filed 3-29-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0022]

RIN 0905-AA06

Phenylpropanolamine Hydrochloride for Over-the-Counter Weight Control Use; Safety and Effectiveness Discussion; Public Meeting and Reopening of the Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Public meeting and reopening of the administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record and announcing that a public meeting will be held to discuss the safety and effectiveness of phenylpropanolamine hydrochloride for over-the-counter (OTC) weight control use. One part of the discussion will include possible misuse of the drug. The meeting is part of the ongoing review of OTC drug products conducted by FDA and will be structured to discuss the specific topics and to seek answers to the specific questions listed in this notice.

DATES: The meeting will be held on May 9, 1991, at 8:30 a.m. The agency anticipates that the meeting will last 1 day. However, if there is sufficient interest in participation, the meeting will be extended an additional day at the discretion of the chairperson. Relevant data and notice of participation by May 1, 1991. Administrative record to remain open until August 7, 1991. Comments regarding matters raised at the meeting by August 7, 1991.

ADDRESSES: Relevant data, notice of participation, and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Meeting to be held in Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen Cothran or Mary Robinson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8006.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 26, 1982 (47 FR 8466), FDA published an advance notice of proposed rulemaking on OTC weight control drug products based on the recommendations and the report of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel). In that report, the Panel recommended that single doses of 25 to 50 milligrams (mg) and a total daily dose of not more than 150 mg of phenylpropanolamine hydrochloride be generally recognized as safe and effective in an OTC drug product for weight control use. However, in the preamble to the Panel's report, the agency limited the Panel's recommended dosage of phenylpropanolamine hydrochloride for OTC weight control use to the level present in products marketed as of December 4, 1975, i.e., a maximum daily dose of 75 mg, immediate release doses of 25 to 37.5 mg, and a timed-release (over 12 to 16 hours) dose of 75 mg of phenylpropanolamine hydrochloride. The Panel further recommended that OTC weight control drug products bear the statement, "This product's effectiveness is directly related to the degree to which you reduce your usual daily food intake. Attempts at weight reduction which involve the use of this product should be limited to periods not exceeding three months, because that should be enough time to establish new eating habits."

Reports, which became available after the Panel completed its evaluation, indicated that phenylpropanolamine hydrochloride doses higher than those currently marketed caused elevation of blood pressure. Therefore, in the preamble to the Panel's report (47 FR 8466), the agency requested comments and information to resolve the safety questions raised in these reports. The agency has received numerous data and comments regarding the safety and effectiveness of phenylpropanolamine

hydrochloride. These data and comments are on public display in the Dockets Management Branch under Docket No. 81N-0022.

As the agency was completing its review of the data and information submitted to this rulemaking on OTC weight control drug products, the House Small Business Subcommittee on Regulation, Business Opportunities, and Energy, chaired by Congressman Ron Wyden, held a hearing on September 24, 1990, to examine adolescent dieting behavior, diet pills containing phenylpropanolamine hydrochloride, and Federal research efforts on obesity. In a letter sent to FDA on September 26, 1990 (Ref. 1), Chairman Wyden stated that witnesses had presented very disturbing testimony about the misuse of phenylpropanolamine diet pills at the hearing, as follows:

1. A new epidemiological study demonstrates that phenylpropanolamine hydrochloride OTC preparations of all types lead all other OTC remedies in both number of serious and fatal adverse effects in people under 29 years old, as well as in number of contacts with Poison Control Centers each year.

2. New clinical trials confirm statistically significant increases in blood pressure in study subjects, corroborating the evidence of increased reactions in the population at large.

3. The majority of purchasers misuse the drug and do not follow the current label instructions or indications.

4. The majority of users find phenylpropanolamine hydrochloride to be ineffective.

5. Phenylpropanolamine hydrochloride diet pills have become a primary pathological pathway in the deterioration of patients with anorexia nervosa.

6. New research on obesity documents the deleterious effects of diet practices that cause rebound or yo-yo weight loss, then regain. Testimony indicates that phenylpropanolamine hydrochloride effects may be limited to temporary weight loss that is quickly regained as fat, and so predisposes the user to further diet failure.

7. New research on obesity documents the deleterious effects of diet practices that waste lean muscle mass. Apparently, there simply exists no research on this possible undesirable effect as the primary mechanism of phenylpropanolamine hydrochloride weight loss, such as it may be.

Chairman Wyden stated that all witnesses expressed concern about the previously narrow focus of FDA's consideration of the efficacy and safety of phenylpropanolamine hydrochloride. He added that the Federal Trade Commission testified that population data showing wide misuse should weigh in any FDA decision on phenylpropanolamine's OTC status. Other scientific experts called for a wider consideration of efficacy than the narrow scope, short term clinical studies that constituted the prior focus of FDA scrutiny. One national society of physicians and several of the scientific witnesses called for removal of phenylpropanolamine hydrochloride from the OTC market entirely.

Subsequently, the agency received two submissions (Refs. 2 and 3) in rebuttal to the testimony given at the September 24, 1990 hearing and objecting to the data used to support testimony on phenylpropanolamine hydrochloride misuse in OTC weight control drug products.

In a letter sent to the agency on November 29, 1990 (Ref. 4), Congressman Wyden raised several additional issues for FDA consideration, as follows:

1. Does phenylpropanolamine hydrochloride cause or contribute to a rebound weight gain?

2. Does phenylpropanolamine hydrochloride cause muscle loss rather than loss of fat?

3. If phenylpropanolamine hydrochloride only works during the time it is taken, is life-long medication then required in order to maintain weight loss? If so, has this fact been considered in determining phenylpropanolamine hydrochloride's OTC classification?

4. Are phenylpropanolamine hydrochloride diet products generally used by consumers instead of exercise and behavioral change? Does phenylpropanolamine hydrochloride use in an unstructured and unsupervised setting actually decrease compliance with these essential components of successful weight loss?

Congressman Wyden also included with his letter a subcommittee staff report entitled "Phenylpropanolamine Diet Pills: Epidemiological Surveys, Adverse Drug Reactions, and Contacts with Poison Control Centers. A Comparison with Over-the-Counter Aspirin and Acetaminophen" (Ref. 5) and asked the agency to specifically address the following areas.

1. Any methodological problems with the assessment.

2. Any contradictory findings you may have on teen use and adult misuse.

3. Any contradictory findings you may have on the number of adverse incidents with phenylpropanolamine hydrochloride.

4. Any other population-based information about phenylpropanolamine hydrochloride's effect on weight loss.

In view of the new information related to phenylpropanolamine hydrochloride, the agency considers it necessary to resolve these issues regarding the safety, effectiveness, and possible misuse of phenylpropanolamine hydrochloride before publishing its tentative final monograph for OTC weight control drug products in the **Federal Register.** Therefore, the agency has concluded, under 21 CFR 10.65, that it would be in the public interest to hold an open public meeting to discuss the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use.

In order to provide a framework for the meeting, the agency believes that it will be useful to provide a discussion of the agency's review and evaluation on phenylpropanolamine hydrochloride prior to the information raised at the House Small Business Subcommittee on Regulation, Business Opportunities and Energy hearing held on September 24, 1990.

Safety

Studies measuring the effect on blood pressure of doses of phenylpropanolamine hydrochloride from 25 to 250 mg were submitted to the rulemaking for OTC weight control drug products (Refs. 6 and 7). The studies show that a single dose of phenylpropanolamine hydrochloride, which is an indirect-acting sympathomimetic amine, gives an early (lasts a few hours) dose-related pressor response and a later dose-related and position-related (principally in the erect position) depressor response. There appears to be tolerance to these effects such that additional doses have little or no pressor effect. It appears that phenylpropanolamine hydrochloride in doses below 50 mg immediate release and below 75 mg controlled (timed) release give pressor responses that would not be expected to be harmful. A 25 mg immediate release dose, for example, gives a mean pressor effect of 2 to 5 millimeters (mm) mercury (Refs. 8 and 9). Doses of the immediate release product above 50 mg immediate release give larger responses, and response to controlled release products above 75 mg are not well studied. An issue not resolvable by the available data is whether there are rare hyperresponsive patients, but such patients have not been identified.

Apart from effects on measured blood pressure, safety concerns regarding phenylpropanolamine hydrochloride

have arisen principally because of published reports of serious central nervous system adverse effects, especially stroke and intracranial hemorrhage. (See, e.g., Lake, et al. (Ref. 10) for a recent summary of published reports of adverse effects occurring following the use of phenylpropanolamine hydrochloride.) FDA has received similar reports as well. The presumed mechanism of these reported events, if indeed they are caused by phenylpropanolamine hydrochloride, is an exaggerated hypertensive response, although in most cases no large elevation was seen when the adverse effect was observed. Given the apparent rapid tolerance that develops to the hypertensive response to phenylpropanolamine hydrochloride (see discussion above), the adverse reaction reports that most plausibly represent an effect of phenylpropanolamine hydrochloride are those occurring after the first dose, or at least during the first day of phenylpropanolamine hydrochloride therapy, or after a pause in therapy and resumption of the drug. Only a few of the reported cases clearly meet this description (in others, precise time and dose information is not available). The relatively few first dose/first day cases, combined with the short duration and seemingly modest size of the phenylpropanolamine hydrochloride hypertensive response, tend to argue against phenylpropanolamine hydrochloride being the cause of these serious reactions. On the other hand, most reports of serious reactions involve single doses of at least 150 mg (two 75 mg controlled release dosage forms—not the recommended dose and presumably not the most commonly used dose—which could suggest a dose response relationship). Such a finding would make a causal relationship more plausible. The agency recognizes that it is possible, of course, that the excess of reports with higher doses could be a reporting artifact, the relatively large dose stimulating reporting of that event by making phenylpropanolamine hydrochloride cause seem more likely.

Although increased blood pressure after phenylpropanolamine hydrochloride use has generally been the major concern expressed, other mechanisms of an adverse central nervous system effect have also been suggested and these need to be considered, such as spasm/vasculitis (Refs. 11 and 12).

Affecting all of the safety considerations is the extreme difficulty of evaluating isolated reports, often missing critical data, of relatively rare events, especially in the OTC drug-use setting, where use information is extremely sparse and little is known about reporting practices. These are problems with evaluation of any spontaneous reports, but evaluation is even more difficult in the OTC drug-use setting. Without knowledge of use patterns and the ages of users, the agency has found it very difficult to determine whether the reported instances of central nervous system bleeding are excessive in relation to background rate. Nonetheless, if reasonable estimates of the background rate of spontaneous intracranial bleeds in relatively young women could be obtained, it might be possible to identify what seems like a marked excess of such events in persons who use phenylpropanolamine hydrochloride.

It should also be noted that, despite very wide use of phenylpropanolamine hydrochloride in cough-cold preparations at single doses of 25 mg and controlled release doses of 75 mg, very few instances of intracranial hemorrhage or stroke have been reported in this population. This could suggest that dose is indeed critical and that single doses of 25 mg immediate release and 75 mg controlled release are rarely exceeded by users of cough-cold products, or that less frequent reporting in this population (or excess reporting in the population using phenylpropanolamine hydrochloride weight control drug products) is a fundamental difference in the user populations.

In considering the extent and implications of possible misuse of phenylpropanolamine hydrochloride as an OTC weight control drug product, it is important that the term "misuse" be defined and differentiated from the term "abuse." In lay use, the word "abuse" is synonymous with "misuse." However, drugs with a potential for "abuse" are regulated under the Controlled Substances Act (21 U.S.C. 801 and 951), which is enforced by the Drug Enforcement Administration. Drugs that come under the jurisdiction of the Controlled Substances Act usually have the potential for causing psychic or physiological dependence. Phenylpropanolamine hydrochloride is currently not regulated under the Controlled Substances Act, and FDA is not aware of any specific information that it causes psychic or physiological dependence. On the other hand, misuse of a drug involves incorrect or unknowledgeable handling. Misuse of a drug would include overdosing, double dosing, or use in an inappropriate population, etc., but does not necessarily mean that the drug in question is a drug of abuse. In considering misuse of a drug with respect to its OTC availability, one must consider factors such as whether the drug has an adequate margin of safety under recommended conditions of use, whether the drug can be adequately labeled for its intended use, and whether its toxicity or other potentiality for harmful effect, or the method of its use, renders it not safe for use except under the supervision of a physician. As a general rule, misuse of a drug by a subset of the population has not been considered a sufficient reason for withholding such a drug from legitimate OTC uses by a majority of the population for whom the drug would be safe and effective, but this general rule could be reconsidered if miscuse were very dangerous or very widespread.

Effectiveness

The Panel reviewed a number of studies and concluded that phenylpropanolamine hydrochloride was effective as an OTC weight control drug product (47 FR 8466 at 8474 to 8476). The agency considers these studies as supportive but insufficient to establish this claim. However, more recently, the agency has reviewed two adequate and well-controlled studies that support the effectiveness of phenylpropanolamine hydrochloride (Refs. 13 and 14). The two studies are of similar design, i.e., randomized, double-blind, and placebo-controlled. The studies were conducted with patients who were 15 to 45 percent overweight. The main difference between the two trials was of duration; one (Ref. 13) was conducted over a 6-week period and the other (Ref. 14) over a 12-week period. All patients were placed on a 1,200 calorie diet and received 75 mg controlled release phenylpropanolamine hydrochloride capsules or palcebo at 10 a.m. each day. Both studies were positive in showing a statistically significantly greater weight loss in the phenylpropanolamine hydrochloride group. At the end of the 6-week study, the mean weight loss from baseline was 5.7 pounds for the phenylpropanolamine hydrochloride group and 2.4 pounds for the placebo group. In the 12-week study, the mean weight loss from baseline was 6.0 pounds for the phenylpropanolmine hydrochloride group and 2.4 pounds for the placebo group. Essentially all of the weight loss occurred by 8 weeks and was simply maintained for the remaining 4 weeks. The agency finds that these studies, together with some of the previously submitted data, support the effectiveness of phenylpropanolamine hydrochloride in a

75 mg controlled release dosage form when used in conjunction with an appropriate weight loss diet. A question that needs to be addressed is whether clinical studies in which subjects are periodically seen by a doctor, nurse, or health technician who provides dietary advice and scheduled follow-up (i.e., studies in a medically supervised setting) can document effectiveness in the OTC drug-use (i.e., no medical supervision) setting.

The agency is inviting interested individuals or groups to discuss the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use at an open meeting to be held on May 9, 1991. At that meeting, the agency will consider all of the issues raised in the above discussion. The following topics and questions are of particular importance:

I. Questions Relating to Safety

A. General

1. Are there clinical data that show that phenylpropanolamine hydrochloride at recommended OTC doses causes significant increases in blood pressure in some individuals?

2. Considering the above discussion of serious reported adverse events and other information, do data suggest a real, even if small, ability of phenylpropanolamine hydrochloride to induce major central nervous system adverse events at the recommended dose or at slightly excessive doses, or are the reports of such events not distinguishable from the spontaneous rate of these events?

3. Does the new epidemiological study (Ref. 5) contribute evidence that OTC phenylpropanolamine hydrochloride drug products represents a serious hazard to consumers, especially those under age 30?

4. Is there evidence that phenylpropanolamine hydrochloride diet pills have become a primary contributor to the deterioration of patients with anorexia nervosa?

B. Misuse

1. Is there evidence that a substantial fraction of purchasers of phenylpropanolamine hydrochloride products misuse the drug and do not follow the current label instructions or indications? What are the consequences of this misuse, if it occurs?

2. It has been claimed that phenylpropanolamine hydrochloride is misused by teenagers and young adults. What behavior would constitute misuse and what data are available to demonstrate that this use occurs and to document its adverse consequences? If misuse does occur and the adverse consequences are considered an important problem, would this be a basis for limiting the use of phenylpropanolamine hydrochloride to adults 18 years and over? How could this be done?

3. Are there adequate data demonstrating that some individuals, e.g., anorexics and bulimics, misuse phenylpropanolamine hydrochloride? If so, what are the documented consequences of this misuse?

II. Questions Relating to Efficacy

A. General

1. Anorectic agents, prescription or OTC, have been approved by FDA on the basis of evidence of short-term (6–12 week) weight loss. While long-term effects are pertinent, the agency believes that the question of long-term use is relevant to both prescription and OTC anorectic agents and should be taken up in a different context. Considering just the short-term results, does the fact that the studies were carried out in a medical setting decrease their usefulness as support for an OTC (no medical supervision) use?

2. Are there any data to suggest that phenylpropanolamine hydrochloride causes a loss of lean muscle mass rather than a loss of fat? If there are no pertinent study data, is it plausible that it would do so?

3. Are there data indicating that phenylpropanolamine hydrochloride causes or contributes to rebound weight gain? New research on obesity suggests that some diet practices, especially those leading to rapid weight loss, are associated with rebound weight gain. Testimony presented at the September 24, 1990 hearing contended that phenylpropanolamine hydrochloride effects may be limited to temporary weight loss that is quickly regained as fat, and so predisposes the user to further diet failure. Can phenylpropanolamine hydrochloride related weight loss be distinguished from other weight loss in this respect?

B. Labeling

1. There are no data to indicate that phenylpropanolamine hydrochloride at doses higher than 75 mg per day are more effective than the 75 mg dose, yet these doses have been used. How best can weight control drug products be labeled to convey to consumers that effectiveness is not increased with an increase in dose?

2. Assuming that phenylpropanolamine hydrochloride remains OTC for weight control use, in addition to the labeling proposed by the Panel, what specific labeling should be recommended?

In this document, the agency is asking for comment and any new data on these and other issues specifically related to the safety and effectiveness of phenylpropanolamine hydrochloride for OTC weight control use. Any comments, new data, and presentations at the public meeting should be organized in such a manner to address specifically these issues. Data previously submitted to the rulemaking for OTC weight control drug products need not be resubmitted.

The safety of phenylpropanolamine hydrochloride for nasal decongestant use is not specifically at issue during the public meeting. However, if evidence becomes available indicating that there may be safety problems connected with the use of phenylpropanolamine hydrochloride in cough-cold nasal decongestant drug products, appropriate action(s) will be taken.

The agency requests information on the above questions from any interested person. Any individual or group wishing to submit data relevant to the questions above prior to the public meeting should send them on or before May 1, 1991, to Docket No. 81N–0022, Dockets Management Branch (address above). Any individual or group wishing to make a presentation at the public meeting should contact Helen Cothran or Mary Robinson, Division of OTC Drug Evaluation (HFD–210), Office of Drug Standards, Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8006. Interested persons who wish to participate must also send a notice of participation on or before May 1, 1991, to the Dockets Management Branch (address above). All notices submitted should be identified with the docket number found in brackets in the heading of this document and should contain the following information: Name; address; telephone number; business affiliation, if any, of the person desiring to make a presentation; and the subject and approximate amount of time requested for the presentation.

Groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. After reviewing the notices of participation, FDA will notify each participant of the schedule and time allotted to each person.

The administrative record for the rulemaking for OTC weight control drug products is being reopened to specifically include all data submitted

since the record previously closed on July 26, 1982 and the proceedings of this public meeting. The administrative record will remain open until August 7, 1991 to allow comments on matters raised at the public meeting. Thereafter, the administrative record will remain closed until the agency publishes its proposed regulation for OTC weight control drug products.

References

(1) Letter from The Honorable Ron Wyden, United States House of Representatives Committee on Small Business, to James S. Benson, FDA., comment No. LET60, Docket No. 81N-0022, Dockets Management Branch.

(2) Comment No. C32, Docket No. 81N-0022, Dockets Management Branch.

(3) Comment No. CP13, Docket No. 81N-0022, Dockets Management Branch.

(4) Letter from The Honorable Ron Wyden, United States House of Representatives Committee on Small Business, to James S. Benson, FDA, Comment No. C45, Docket No. 81N-0022, Dockets Management Branch.

(5) Raford, P., "Phenylpropanolamine Diet Pills: Epidemiological Surveys, Adverse Drug Reaction, and Contacts with Poison Control Centers. A Comparison with Over-the-Counter Aspirin and Acetaminophen," unpublished paper, dated September 24, 1990, in Comment No. C45, Docket No. 81N-0022, Dockets Management Branch.

(6) Comments No. RPT9 and RPT11, Docket No. 81N-0022, Dockets Management Branch.

(7) Comments No. RPT4 and RPT6, Docket No. 76N-052N, Dockets Management Branch.

(8) Dowse, R., S.S. Scherzinger, and I. Kanfer, "Serum Concentrations of Phenylpropanolamine and Associated Effects on Blood Pressure in Normotensive Subjects: a Pilot Study," "International Journal of Clinical Pharmacology, Therapy and Toxicology" 28:205-210, 1990.

(9) Blackburn, G.L., et al., "Determinants of the Pressor Effect of Phenylpropanolamine in Healthy Subjects," "Journal of the American Medical Association" 261:3267-3272, 1989.

(10) Lake, C.R., et. al., "Adverse Drug Effects Attributed to Phenylpropanolamine: A Review of 142 Case Reports," "The American Journal of Medicine," 89:195-208, 1990.

(11) Forman, H.P., et. al., "Cerebral Vasculitis and Hemorrhage in an Adolescent Taking Diet Pills Containing Phenylpropanolamine: Case Report and Review of Literature," "Pediatrics," 83:737-741, 1989.

(12) Fallis, R.J., "Cerebral Vasculitis and Hemorrhage Associated With Phenylpropanolamine," "Neurology," 35:405-407, 1985.

(13) Protocol 85-004, Comment No. CP11, Docket No. 81N-0022, Dockets Management Branch.

(14) Protocol 87-010, Comment No. CP11, Docket No. 81N-0022, Dockets Management Branch.

Dated: March 24, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-7517 Filed 3-29-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 92

RIN 1214-AA04

Redwood Employee Protection Program

AGENCY: Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor is responsible for administering significant aspects of the Redwood Employee Protection Program established by title II of the Redwood National Park Expansion Act of 1978 (Pub. L. 95-250). The statute provides benefits to eligible employees to timber harvesting and related wood processing firms adversely affected by the Park expansion. September 30, 1989 was the final date for industry workers to establish basic eligibility and it is our intent now to announce a date certain after which time any additional applications for benefits, or appeals of previous benefit decisions, will be considered untimely. The intended effect of this action is to bring to a close this Agency's responsibility under this statute. If there is any reason you believe this rule should not be adopted, the Department requests your comments.

DATES: Comments are due on or before May 1, 1990.

ADDRESSES: Submit written comments to Kelley Andrews, Director, Office of Statutory Programs, U.S. Department of Labor, room S-2203, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kelley Andrews of the Department of Labor at Fax: (202) 523-8762 or Telephone: (202) 357-0473. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title II of the Redwood National Park Expansion Act of 1978 provides monetary and non-monetary benefits to eligible employees of timber harvesting and related wood processing firms adversely affected (laid off, terminated or downgraded) by the Park expansion. Under the Act, employees were required to apply for benefits no later than September 30, 1980. Some older employees were eligible for benefits until age 65—about September 30,1989.

Determination Appeals

In accordance with title II of the Act, employees whose applications for benefits were rejected had the right to appeal to this agency for review and reconsideration prior to October 1, 1989. While new appeals have ceased, this regulation provides official notice of the expiration of the appeal process and completes this agency's determination review responsibility for benefit eligibility. Therefore, any appeal submitted to this agency for review and reconsideration after the adoption of this regulation will be considered untimely and dismissed. Any such appeal resulting from actions taken on any cases currently before the Secretary will, however, be considered timely.

Health Benefit Claims

Under title II of the Act, this agency has been reviewing health benefits claims for eligible employees and ensuring their payment. While no new health claims could be incurred after September 30, 1989, this agency has allowed a grace period for eligible employees to gather cost statements from health-care providers to submit to this agency. This regulation provides official notice of the expiration of the period allotted for the submission of health benefits claims. Therefore, claims submitted after the adoption of this regulation will be considered untimely and will be returned.

Pension Benefit Claims

Also under title II of the Act, this agency has been reviewing pension benefit claims for eligible employees. September 30, 1989 was the final date for pension eligibility. This regulation provides official notice of the expiration of the period allotted for the submission of pension claims. Therefore, claims submitted after the adoption of this regulation will be considered untimely.

E.O. 12291

This rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary under E.O. 12291.

Paperwork Reduction Act

There are no information collection requirements under this rule.

Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entitles. The Secretary has certified this fact to the Small Business Administration, and no regulatory impact analysis is necessary under the Regulatory Flexibility Act.

List of Subjects in 29 CFR Part 92.

Unemployment compensation, National parks. Accordingly, it is

proposed that 29 CFR part 92 be removed.

Dated at Washington, DC, this 25th day of March 1991.

H. Charles Spring,

Acting Deputy Under Secretary.

[FR Doc. 91-7483 Filed 3-29-91; 8:45 am]

BILLING CODE 4510-85-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Permit Issuance

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by the Illinois Department of Mines and Minerals (Department) to respond to recent changes in the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) and to make the requirements of the Illinois program no less effective than the Federal program. It concerns changes made to the Illinois Administrative Code (IAC), title 62, Mining chapter I.

This notice sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on May 1, 1991. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on April 26, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 16, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495.

Illinois Department of Mines and Minerals, 300 West Jefferson Street, suite 300, Springfield, Illinois 62791, Telephone (217) 782-4970.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492-4495.

SUPPLEMENTARY INFORMATION: .

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16 and 913.17.

II. Discussion of Proposed Amendment

On August 29, 1990, the Illinois General Assembly amended section 2.11(d) of the State act in order to make the issuance of coal mine permits in Illinois consistent with the counterpart provisions of section 541(c) of SMCRA. This amendment of the State Act requires that the Illinois program also be amended. Therefore, in response to the statutory change and in order to make the requirements of the Illinois progam no less effective than the Federal program, the Department by letter dated March 5, 1991 (Administrative Record No. IL-1144), submitted proposed changes to the State regulation at 62 IAC 1773.19, which sets forth its requirements for permit issuance. The proposed changes include the addition of the world "and" in subsection (b)(1); the deletion of subsection (b)(2), which required a 30-day waiting period for permit issuance after mailing written notification of the Department's final permit decision as provided in 62 IAC 1773.19(a); and the renumbering of subsection (b)(3) to (b)(2). The regulation now reads: "b) The permit shall be deemed to be issued when: (1) The permit application, as originally submitted or as modified, is approved by the Department; and (2) Permit fees and reclamation bond, in the form and amounts set by 62 Ill. Adm. Code 1777.17 and 1800, have been received and accepted by the Department."

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15.

If the amendment is deemed adequate, it will become part of the Illinois 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 OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

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 April 16, 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 persons 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 amendment may request a meeting at the OSM office listed under "ADDRESSES" by contacting the persons 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 912

Intergovernmental relations, Surface mining; Underground mining

Dated: March 22, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-7571 Filed 3-29-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[AMS-FRL-3918-4]

Fuel Economy Test Procedures; Alternative-Fueled Automobile CAFE Incentives and Fuel Economy Labeling Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for the notice of proposed rulemaking.

SUMMARY: This notice extends for an additional thirty days the comment period for EPA's proposed regulation to amend the fuel economy regulations to include alternative-fueled vehicles. This proposal was published in the **Federal Register** on March 1, 1991 (56 FR 8856).

DATES: Comments on the NPRM must be submitted on or before May 1, 1991.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to the U.S. Environmental Protection Agency, The Air Docket: Docket No. A-89-24, room M-1500 (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460. Materials relevant to this proposed rulemaking are contained in Docket No. A-89-24. The docket is located at the above address and may be inspected from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zerafa, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668-4331.

SUPPLEMENTARY INFORMATION: On March 13, 1991, the Motor Vehicle Manufacturers Association (MVMA) requested that EPA grant a thirty day extension to the April 1, 1991, deadline for submission of comments to Docket No. A-89-24 on the notice of proposed rulemaking, 56 FR 8856, published on March 1, 1991. The request was made based on the scope and technical nature of the proposed rulemaking. EPA has determined that granting such an extension will cause no detriment to industry, government, or other interested parties. Therefore, EPA is hereby extending the comment period an additional thirty days, through May 1, 1991.

Dated: March 26, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-7589 Filed 3-29-91; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 515, 543 and 552

[GSAR Notice No. 5-255]

General Services Administration Acquisition Regulation; Proposals for Adjustments and Equitable Adjustments—Construction Contract

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would revise section 515.804-6 to add Table 515-2 Instructions for Submission of a Contract Pricing Proposal (Construction); revise § 543.205 to amend the prescription for use of the clause at 552.243-70, Pricing of Adjustments, and revise the prescription for use of the clause at 552.243-71 to reflect the new title for the clause; and retitle and revise the text of the clause in § 552.243-71.

DATES: Comments are due in writing on or before May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, (202) 501-1224.

ADDRESSES: Comments should be submitted to Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th and F Streets NW., room 4026, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated September 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

B. Regulatory Flexibility Act

The proposed rule does not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it simply prescribes a contract clause for use in construction contracts, which essentially advises offerors of certain requirements in the Federal Acquisition Regulation (FAR) for submission of certified cost or pricing data in connection with proposals for adjustments and equitable adjustments, and provides instruction for submission of contract price proposals that are specific to construction contracts. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties.

C. Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 48 CFR Parts 515, 543 and 552

Government procurement.

It is proposed that 48 CFR parts 515, 543 and 552 be amended to read as follows:

1. The authority citation for 48 CFR parts 515, 543, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 515—[AMENDED]

Subpart 515.8—Price Negotiation

2. Section 515.804-6 is revised to read as follows:

515.804-6 Procedural requirements.

(a) Whenever an offeror refuses to provide the required cost or pricing data, the contracting officer shall refer the matter, through appropriate supervisory channels, to the HCA for resolution. (See FAR 15.804-6(e).)

(b) Contract pricing proposals submitted in connection with construction contracts or contracts for dismantling, demolishing, or removing improvements on SF-1411 with supporting attachments must be prepared to satisfy the instructions and appropriate format of Table 515-2.

Table 515-2—Instructions for Submission of a Contract Price Proposal (Construction)

1. SF-1411 provides a vehicle for the offeror to submit to the Government a pricing proposal of estimated and/or incurred costs by contract line item with supporting information, adequately cross-referenced, suitable for detailed analysis. A cost element breakdown, using the applicable format prescribed herein, shall be attached for each proposed line item and must reflect any specific requirements established by the contracting officer. Supporting breakdowns must be furnished for each cost element, consistent with offeror's cost accounting system.

When more than one contract line item is proposed, summary total amounts covering all line items must be furnished for each cost element. If agreement has been reached with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature. Depending on offeror's system, breakdowns shall include the following basic elements of cost, as applicable:

Direct Labor—Provide a summary of the proposed labor hours, hourly rates, and costs broken down by trade (e.g., plumbers, electricians, etc.) and by periods of performance for which differently hourly rates apply. Payroll taxes and fringe benefits may be included.

Material Costs—Provide a consolidated priced summary of individual material quantities and the basis for pricing (supplier quotes, invoice prices, etc.).

Other Direct Costs—List all other costs not otherwise included in the other categories of direct cost (e.g., equipment rental, scaffolding, bonds, etc.) and provide basis for pricing.

Subcontract Costs—Provide a consolidated priced summary of individual subcontracts and the basis for pricing (competitive quotes, etc.). For any subcontracts expected to exceed $100,000 when entered into, or subcontract modifications involving a price adjustment expected to exceed $100,000, the offeror/contractor shall require the subcontractor to submit cost or pricing data unless the price is based on adequate price competition, based on established catalog or market prices of commercial items sold in substantial quantities to the general public or set by law or regulation.

Indirect Costs—Indicate how offeror has computed and applied offeror's indirect costs, including cost breakdowns and showing trends and budgetary data, to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation. Indirect costs shall be proposed in a manner consistent with the contractor's accounting procedures. The indirect cost rate is normally expressed as a percentage of the offeror's total direct costs. In the case of any amounts proposed or claimed as unabsorbed/extended home office indirect costs, the contractor must provide evidence substantiating that such costs were incurred (e.g., the loss of bonding capacity and/or the inability to undertake new work to absorb fixed costs of doing business).

Profit—Indicate the profit rate, normally expressed as a percentage, to be applied to the total of direct and indirect costs. (Not applicable under the Suspension of Work clause—FAR 52.212-12).

2. As a part of the specific information required, the offeror must submit with offeror's proposal, and clearly identify as such, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined in FAR 15.801). In addition, submit with offeror's proposal any information reasonably required to explain offeror's estimating process, including—

a. The judgemental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

b. The nature and amount of any contingencies included in proposed price.

3. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror's possession, it must be promptly submitted to the contracting officer. The requirement for submission of cost or pricing data continues up to the time of final agreement on price.

4. In submitting offeror's proposal, offeror must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, any future additions and/or revisions, up to the date of agreement on price, must be annotated on a supplemental index.

5. By submitting offeror's proposal, the offeror, if selected for negotiations, grants the contracting officer or an authorized representative the right to examine, at any time before award, those books, records, documents and other types of factual information, regardless of form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

6. As soon as practicable after final agreement on price, but before award resulting from the proposal, the offeror shall, under the conditions stated in FAR 15.804-4, submit a Certificate of Current Cost or Pricing Data.

7. Headings for submission of line-item summaries:

A. New Contracts (including letter contracts).

Cost Elements	Proposed Contract Estimate-Total Cost	Proposed Contract Estimate-Unit Cost	Reference
(1)	(2)	(3)	(4)

Under Column (1)—Enter appropriate cost elements (e.g., Direct Labor, Material Costs, Other Direct Costs, Subcontract Costs, Indirect Costs, Profit).

Under Column (2)—Enter those necessary and reasonable costs that in offeror's judgement will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract or unpriced order), describe them on an attached supporting schedule.

Under Column (3)—Optional, unless required by the contracting officer.

Under Column (4)—Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

B. Contract Modifications (Including change orders).

Cost Elements	Estimated Cost of All Work Deleted	Cost of Deleted Work Already Performed	Net Cost To Be Deleted	Cost of Work Added	Net Cost of Change	Reference
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Under Column (1)—Enter appropriate cost elements. (e.g., Direct Labor, Material Costs, Other Direct Costs, Subcontract Costs, Indirect Costs, Profit.)

Under Column (2)—Include both (i) current estimates of what the cost would have been to complete deleted work not yet performed, and (ii) the cost of deleted work already performed.

Under Column (3)—Include the incurred cost of deleted work already performed, actually computed if possible, or estimated in the contractor's accounting records. Attach a detailed inventory of work, materials, subcontracts already purchased, manufactured, or performed and deleted by change, indicating the cost and proposed disposition of each line item. Also, if the offeror desires to retain these items or any portion of them, indicate the amount offered for them.

Under Column (4)—Enter the net cost to be deleted. This is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) less Column (3) = Column (4).

Under Column (5)—Enter the offeror's estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the contracting officer, provide full identification and explanation of costs.

Under Column (6)—Enter the net cost of change which is the cost of work added, less the net cost to be deleted. When this result is negative, place the amount in parentheses. Column (4) less Column (5) = Column (6)

Under Column (7)—Indentify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

PART 543—[AMENDED]

Subpart 543.3—Change Orders

3. Section 543.205 is revised to read as follows:

§ 543.205 Contract clauses.

(a) The contracting officer shall insert the clause at 552.243–70, Pricing of Adjustments, in solicitations and contracts (except for construction contracts or contracts for dismantling, demolishing, or removing improvements) when a contract other than a cost-type contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

(b) the contracting officer shall insert the clause at 552.243–71, Proposals for Adjustments and Equitable Adjustments—Construction, in solicitations and contracts for:

(1) Dismantling, demolishing, or removing improvements; or

(2) Construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

PART 552—[AMENDED]

Subpart 552.2—Text of Provisions and Clauses

4. Section 552.243–71 is revised to read as follows:

552.243-71 Proposals for Adjustments and Equitable Adjustments—Construction.

As prescribed in 543.205(b), insert the following clause:

Proposals for Adjustments and Equitable Adjustments—Construction (XXX 1991)

(a) The Contractor, in connection with any proposal submitted for an adjustment or equitable adjustment, shall submit certified cost or pricing data when directed to do so, by the Contracting Officer. In accordance with FAR 15.804–2, the Contractor will be directed to submit certified cost or pricing data for proposals that involve a price adjustment of more than $100,000 and may be directed to submit certified cost or pricing data for proposals that involve a price adjustment of more than $25,000 but less than $100,000 if needed to determine the reasonableness of the price. When certified cost or pricing data is not required, the Contracting Officer's request for a price breakdown and data will be limited to that necessary to determine the reasonableness of the price.

(b) Cost or pricing data will be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, with supporting attachments prepared in accordance with the Instructions for Submission of a Contract Price Proposal (Construction Contract) at 48 CFR 515.804–6, Table 515–2. Any proposal submitted for an adjustment or equitable adjustment, whether or not cost or pricing data is required, shall provide a breakdown in sufficient detail to permit an analysis of all material, direct labor, subcontract, other direct costs, and indirect costs, as well as profit. Such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. The proposal shall cover all work involved in the proposal, whether such work was deleted, added or changed. In the case of any amounts proposed or claimed as unabsorbed/extended home office direct cost, the Contractor shall provide evidence substantiating that such costs were incurred (e.g., the loss of bonding capacity and/or the inability to undertake new work to absorb fixed costs of doing business). If the proposal requests a time extension, a justification for entitlement therefor shall also be submitted.

(c) The proposal, together with any evidence to substantiate unabsorbed/extended home office overhead and time extension justification, shall be submitted within the time period specified, in the applicable contract clause or if no time period is specified by the date Contracting Officer, or any extension thereof.

(End of Clause)

Dated: March 21, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–7527 Filed 3–29–91; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

Atlantic Summer Flounder Fishery

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

ACTION: Partial disapproval of an amendment to a fishery management plan and withdrawal of proposed regulations.

SUMMARY: NOAA announces the partial disapproval of Amendment 1 to the Fishery Management Plan for Summer Flounder (FMP) and withdrawal of proposed regulations. The approved portion of Amendment 1 is the definition of overfishing, which is non-regulatory. The approved portion complies with 50 CFR part 602 of the "Guidelines for Fishery Management Plans," which requires each fishery management plan to specify a definition of overfishing. The measures contained in the proposed rule are withdrawn.

DATES: The proposed rules published January 10, 1991 (56 FR 976) are withdrawn February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, 508–281–9324.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder fishery is managed under the FMP, which was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. Implementing regulations are found at 50 CFR part 625, and are authorized under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 1 to the FMP (amendment) was also prepared by the Council in consultation with the New England and South Atlantic Fishery Management Councils. A notice of availability of the proposed amendment was published in the **Federal Register** on November 21, 1990 (55 FR 48660). The proposed rule to implement the amendment was published on January 10, 1991 (56 FR 976).

The amendment was intended to protect sublegal-sized summer flounder, with minimal burden on the industry, by implementing the following measures: (1) Otter trawl vessels that retain more than 500 pounds (226.8 Kilograms (kg)) of summer flounder must use a minimum of 5½ inch (13.97 centimeters (cm)) mesh; (2) vessels that apply for a special permit and fish seaward of a specified line are exempt from the mesh requirement; (3) vessels using fly nets are exempt from the mesh requirement; (4) vessels retaining more than 500 pounds (226.8 kg) of summer flounder must stow or lash-down smaller sized mesh according to certain specifications. In addition, the amendment proposed a definition of overfishing for the summer flounder resource.

Approved Measures

The approved portion of the amendment is the incorporation of the definition of overfishing into the FMP. Overfishing for the summer flounder fishery is defined as fishing in excess of the level that would result in maximum yield from the resource. F_{max} is the abbreviated term for the level of fishing that would produce maximum yield and is an indication of how close a stock is to full exploitation. F_{max} for the summer

flounder fishery is calculated to be 0.23. Currently, the fishery is operating at a rate of 1.4, or significantly in excess of F_{max}.

The definition of overfishing is based on the best scientific information available at this time. As additional information becomes available, the definition will be re-evaluated. Additional discussion and explanation of the Council's choice of this definition is contained in the amendment, which was available to the public during the comment period.

Disapproved Measures

The remaining measures, numbers 1 through 4 above, are disapproved.

Reasons for Disapproval

NOAA disapproved proposed measures 1 through 4 because (1) the measures will have minor effects in preventing overfishing, (2) the economic justification is inadequate, and (3) the measures are largely unenforceable

National standard 1 of the Magnuson Act requires that conservation and management measures prevent overfishing. The objective of the amendment, to reduce mortality on the 1989 and 1990 year-classes by implementing a minimum mesh size, if achieved, would likely result in only slight, short-term conservation benefits. In this instance, any benefit could be erased by increases in effort or by the current high level of fishing mortality being applied to the preserved year classes once they reach legal size. Once summer flounder reach the fully-recruited size of approximately 13 inches (33 cm), no protection would be afforded by the proposed measures. Although NOAA recognizes the value of eliminating waste in the fishery as an interim step toward preventing overfishing, the mesh regulation alone is of minor benefit on a long-term basis.

The economic analysis contained in the amendment fails to demonstrate that the benefits of the proposed action exceed the costs. This is inconsistent with national standard 7 and Executive Order (E.O.) 12291. National standard 7 requires fishery management plans and amendments to provide analyses that demonstrate that the benefits of the regulation are substantial relative to the added costs of enforcement, administration, and industry compliance. E.O. 12291 similarly requires that regulatory action not be undertaken unless the potential benefits to society outweigh the costs. The amendment included several exemptions to the mesh provision that would have compromised the conservation objective and increased the costs and burdens to enforcement and administration. These exemptions were: (1) A 500-pound (226.8 kg) summer flounder allowable bycatch threshold; (2) a complicated special permit exemption program; and (3) a bycatch allowance for small-mesh fly nets. In addition, the amendment would have allowed vessels to carry other sized mesh on board, which makes enforcement of mesh regulations difficult and costly.

The measures contained in the amendment would have required enforcement to be conducted at-sea, which in this particular fishery would be impractical. The 500-pound (226.8 kg) bycatch threshold would have added to the costs and burden of at-sea enforcement by requiring the Coast Guard to separate the summer flounder catch from other species and to make a determination about the threshold weight.

The allowance for multiple-size meshes on board posed a similar problem in that summer flounder could be harvested with sublegal-sized mesh some time prior to or after a boarding. Therefore, these regulations would have required either an extreme frequency of boardings, or even observer coverage, to ensure compliance with the measures.

Even at the level of enforcement assumed in the amendment, enforcement costs were significantly underestimated. The costs of additional boardings and the administrative burden of the proposed special permit program would have been significant and were not completely accounted for in the amendment's analysis of costs.

These reasons, the unenforceable design of the fly-net exemption, and the minor contribution toward preventing overfishing that the potential benefits would provide compelled NOAA to disapprove and withdraw the regulatory portions of this amendment.

NOAA received numerous comments both in support of and in opposition to the amendment. A segment of the commercial fishing industry proposed a six-point management program that would implement 5-inch (12.7 cm) mesh after November 1, 1991. Other commenters favored immediate implementation of 5½ inch (13.97 cm) mesh to conserve the stock. NOAA is encouraged by these comments, which demonstrate common concern for the resource. However, even in view of the supporting comments, NOAA cannot approve the amendment for the reasons explained above.

The only measures in the amendment that would have necessitated a regulatory change were the disapproved measures. Accordingly, the proposed regulatory changes published at 56 FR 976 (January 10, 1991) are not adopted and the proposed regulations are withdrawn.

Classification

The Assistant Administrator has determined that the approved portion of Amendment 1 is consistent with Management Act and other applicable law. The approved portion of Amendment 1 is non-regulatory; therefore, the Administrative Procedure Act, Regulatory Flexibility Act, and E.O. 12291 do not apply. The Paperwork Reduction Act does not apply since neither a collection-of-information nor a recordkeeping requirement is included in the amendment.

The Council determined that Amendment 1 is consistent to the maximum extent practicable with the approved coastal zone management programs of the applicable states. New Hampshire, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, and North Carolina submitted letters of agreement with this determination. None of the other states commented; therefore, consistency is inferred. The approval of the definition of overfishing is non-regulatory and does not directly affect the coastal zone in a manner not fully considered in the amendment and initial consistency determination.

This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment that would result from approval of the amendment. Based on the EA, the Assistant Administrator for Fisheries, NOAA, determined that the approved portion of the amendment would not significantly affect the quality of the human environment.

List of Subjects in 50 CFR Part 625

Fisheries, Fishing.

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

Dated: March 25, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-7498 Filed 3-29-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 62
Monday, April 1, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Blackfeet Tribe of Glacier County, MT

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Blackfeet Tribe of Glacier County, Montana, has been materially increased and become acute because of a severe snow storm and cold weather, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Blackfeet Tribe of Glacier County, Montana, for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing land of the tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the CCC may commence upon March 22, and shall be made available through April 20, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on March 22, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-7582 Filed 3-29-91; 8:45 am]

BILLING CODE 3410-05-M

Cooperative State Research Service

Joint Council on Food and Agricultural Sciences; Change of Meeting Place

SUMMARY: The Joint Council meeting originally scheduled to be held at the Capitol Holiday Inn has been changed. The new meeting site will be the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008. The dates, April 17-19, 1991, and times remain in the same.

CONTACT PERSON FOR AGENDA AND MORE INFORMATION: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, suite 302, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250-2200; telephone (202) 401-4662.

Done in Washington, DC this 22nd day of March 1991.

John Patrick Jordan,

Administrator.

[FR Doc. 91-7584 Filed 3-29-91; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

Sequoia National Forest, CA; Exemption From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Greenhorn Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision resulting from the Lone Star Insect Salvage Sales. The environmental analysis is being prepared in response to severe timber mortality in the Greenhorn Mountain area of the Sequoia National Forest. Unusual mortality is being caused by drought and related insect infestation. The Lone Star Insect Salvage analysis area is within the Poso Creek, and Freeman Creek watersheds, and is adjacent to the Davis Guard Station. The analysis area is approximately 15 miles east of Bakersfield, California.

There are currently higher than normal levels of three mortality occurring throughout the Sequoia National Forest as a result of five consecutive years of below normal precipitation. The Forest is proposing sawtimber harvest of 0.2 million board feet (MMBF) and proposing harvest of 1.3 MMBF of timber which will be sold in commercial fuelwood sales. Approximately 450 acres in the Lone Star Insect Salvage analysis are proposed for harvest and all harvest will be by tractor logging systems. No new road construction is planned. Some very minor road reconstruction may be required.

There will be no harvest in any Spotted Owl Habitat Area (SOHA), however, the area is adjacent to two SOHA's. The analysis area is within two separate emphasis areas as delineated by the Sequoia National Forest Land Management Plan. The two emphasis areas are dispersed recreation and sawtimber. An important analysis issue is reducing the fire hazard to the private homes located in the general vicinity of the proposed project area.

The drought has caused a high degree of stress within the trees which reduces their natural defense mechanisms and weakens them to the extent they are now predisposed to attack by bark and engraver beetles. Trees killed by insect attack deteriorate very rapidly. Deterioration has been accelerated by the last five years of drought. The Greenhorn District has experience with trees deteriorating within six months after the tree has started to fade from insect infestation, rendering the tree un-utilizable for sawtimber.

Prompt removal of the dead and dying timber minimizes value and volume loss. Excessive numbers of dead trees can lead to heavy fuel concentrations, making wildfire control extremely difficult.

The decision for the proposed project is scheduled to be issued in mid-April 1991. If projects are delayed because of appeals (delays can be up to 100 days with an additional 15-20 days for discretionary review by the Chief of the Forest Service), it is likely only a minor portion could be implemented this field season. This would result in a monetary loss for the proposed Lone Star Insect Salvage Sales.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals any decision relating to the harvest and restoration following drought-induced timber mortality in the Poso Creek, Greenhorn Creek, and Freeman Creek watersheds, Greenhorn Ranger District, Sequoia National Forest. An environmental document under preparation will address the effects of the proposed action on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705-2648, or James A. Crates, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257, (209) 784-1500.

ADDITIONAL INFORMATION: The environmental analysis for this proposal will be documented in the Lone Star Insect Salvage environmental document. In January and February of 1991, pursuant to 40 CFR 1501.7, scoping was conducted by the Greenhorn District Range to determine the issues to be addressed in the environmental analysis. Additionally, letters were mailed to over 100 local residents, representatives of various environmental groups, and the timber industry, to provide information on the projects and to generate public issues and concerns. The Forest is expected to complete the environmental documentation by April 15, 1991. The environmental document and related maps will be available for public review at the Greenhorn Ranger Station, 15701 Highway 178, Bakersfield, CA 93386, and at the Supervisor's Office, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

The catastrophic damage presently occurring in the Poso Creek, Greenhorn Creek, and Freeman Creek watershed covers 1,500 acres of National Forest land on the Greenhorn Ranger District of the Sequoia National Forest. Within this area approximately 450 acres with an associated 1.5 MMBF, is presently being analyzed for salvage because the percentages of dead and dying timber are highest in these areas. The value to the Forest Service of the salvage volume is estimated at $60,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Kern County will share 25% of the selling value for any timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention and fuels reduction.

The proposal is not expected to adversely affect snag dependent wildlife species. Initial review indicates that post-harvest snag numbers will exceed Forest Plan Standard and Guidelines of 1.5 snags per acre. Preliminary scoping for the Lone Star Insect Salvage analysis indicates that land owners and the local residents would like to see the dead and dying trees removed as soon as practical. There will be no harvest from this sale within any SOHA. No Wild and Scenic rivers, wetlands, wilderness areas, or threatened or endangered species are within the proposed project area.

Dated: March 25, 1991.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 91-7560 Filed 3-29-91; 8:45 am]

BILLING CODE 3410-11-M

Sequoia National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal; Hot Springs, Greenhorn, and Cannell Meadow Ranger Districts, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal any decisions related to the salvage of fire damage timber within the analysis area referred to as "Stormy II" on the Hot Springs, Greenhorn, and Cannell Meadow Ranger Districts, Sequoia National Forest.

The Stormy Complex fire was started by lightning strikes on August 5, 1990. The "Stormy II" analysis area includes approximately 20,000 acres contained within the 24,000 acre burned acres. There are approximately 8,000 acres of timberland within the analysis area. The Forest Service proposes to salvage log approximately 60 million board feet (MMBF) of the estimated 90 MMBF of dead and dying timber within this 8,000-acre area. It is expected that approximately 30 MMBF of the dead and dying timber will not be salvaged because of economic considerations, watershed and sensitive plant protection and other environmental constraints.

Terrain is suitable for cable yarding and tractor skidding systems. Difficult access in a significant portion of the analysis area makes helicopter yarding a feasible consideration. Some temporary access road construction and the reconstruction of some existing roads will be required. Depending on the selected alternative, up to five miles of new road construction would also be required. The Stormy II analysis area is located approximately six air miles southeast of California Hot Springs, California, in Townships 24 and 25 south, Range 32 east, MDB&M.

The value and volume of lumber recovered from burned timber declines rapidly as the wood deteriorates. Thus, the prompt removal of affected timber minimizes value loss. If dead timber is not removed promptly, the decline in value caused by deterioration will prevent economical removal.

If not removed in timber salvage operations, excessive numbers of dead trees can lead to heavy fuel concentrations. This compounds future fire suppression difficulty, which in turn increases the risk of further severe watershed disturbance. In some areas, ground cover was completely consumed, effectively preparing the ground for the planting of trees, but, to be effective in the long term, standing dead and damaged timber must first be removed. If left in place, this timber will eventually fall, damaging planted trees and creating barriers to cultural activities such as thinning and weeding If removal is delayed, the site preparation provided by the fire will be lost due to shrub and herbaceous regrowth, further delaying the time when a new timber stand can be established. Prompt timber harvest can replace some ground cover consumed in the fire with logging slash. Harvest activities also create disturbance that helps break up fire-caused "hydrophobic" soils that inhibit water infiltration. The combination of creating ground cover and increasing the ability of soils to absorb water helps to initiate watershed recovery in the shortest time possible.

A decision on the proposed salvage is expected in June 1991. If subsequent projects are delayed because of administrative appeal, it is likely economic value will decline to the point where salvage would be impossible during the 1992 logging season. The Sequoia National Forest has observed an unusually rapid onset of deterioration caused by drying and cracking (or "checking") within standing trees. This rapid drying appears to be associated with four years of extreme drought in California. This form of deterioration is expected to progress even more rapidly where the fire burned very hot.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal any decisions relating to the harvest and restoration of lands following fire induced timber mortality within the Stormy II analysis area on the Hot Springs, Greenhorn, and Cannell Meadow Ranger Districts, Sequoia National Forest. My decision is conditional upon the Forest Supervisor's determinig through analysis that there is good cause to proceed with projects to recover value in dead and dying timber, and to rehabilitate National Forest lands affected by catastrophic fire.

Environmental documents under preparation will address the effects of the proposed action on the environment, will document appropriate levels of public involvement given the nature of this emergency situation, and will address the issues raised by the public. Decisions made based upon the analysis will be documented in a Record of Decision, which will be supported by an Environmental Impact Statement (EIS).

EFFECTIVE DATE: This decision will be effective April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA. 94111 (415) 705-2648, or James A. Crates, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257, (209) 784-1500.

ADDITIONAL INFORMATION: A draft EIS, "Stormy II Watershed Recovery," has been completed and made public. The public comment period closes April 8, 1991.

Catastrophic damage caused by the Stormy Complex Fire covers approximately 24,000 acres. Within this area trees containing approximately 150 MMBF of salvable timber are severely damaged or killed. Selling value of salvage volume is estimated at nine million dollars. This does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply and construction industries. An estimated volume of 60 MMBF with a value of $3,000,000 is practical to salvage within the 20,000 acres included in this exemption.

A large part of the damaged timber lies within potential habitat delineations for California spotted owls (*Strix occidentalis occidentalis*) and a sensitive plant species, Shirley Meadow mariposa lily (*Calochortus westoni*). Other sensitive plants are known to exist within the burned area, but habitat for them is not likely to be disturbed in salvage logging. Appropriate surveys to determine the presence of sensitive species cannot be done until the spring of 1991; but will be done prior to any timber harvest. Habitat for populations of any sensitive species discovered in these surveys will be left undisturbed until subsequent analysis directs otherwise. Because of fire damage to spotted owl habitat, areas dedicated to this purpose have been relocated outside of the burned area (the analysis for this relocation is being documented separately from the Stormy II analysis).

Damaged timber will be harvested using the salvage prescription, and the salvaged stands will be similar in appearance to partial cutting and clearcutting prescriptions. Salvage harvests that resemble partial cutting will be prescribed where portions of an area have been burned and where there is an opportunity to save and protect the residual unburned and lightly burned trees. Salvage harvests that resemble clearcutting will be prescribed in areas burned at such a high intensity that essentially all trees are either dead or expected to die within the next few months. Some logging prescriptions will be designed specifically to meet watershed, wildlife habitat, and other resource value objectives.

Salvage projects are not expected to adversely affect snag dependent wildlife species beyond the current damage caused by the catastrophic fires. Snags will be left in numbers sufficient to meet or exceed guidelines stated in the Sequoia National Forest Land and Resource Management Plan. No giant sequoia groves or threatened or endangered plants or animals are located in the project areas. Sequoia National Forest Riparian Standards and Guidelines will be applied insofar as practicable in light of fire-related changes to soil and vegetation.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources within the timber sale project areas. These delays would result in significant timber volume and value losses.

Dated: March 26, 1991.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 91-7561 Filed 3-29-91; 8:45 am]

BILLING CODE 3410-11-M

Establishment of 20 New Research Natural Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of decision.

SUMMARY: Notice is hereby given that the Chief of the Forest Service has issued Decision Notices/Designation Orders to establish 20 new Research Natural Areas within the National Forest System. Establishment of these areas is subject to administrative appeal pursuant to the rules at 36 CFR 217.

DATES: The establishment of the areas is effective May 16, 1991. Also, pursuant to 36 CFR 217.8(b), the period for appealing this decision begins April 2, 1991 and any notice of appeal must be received in writing by May 16, 1991.

ADDRESSES: Copies of the establishment records and of the decision memo/designation orders for the 20 areas are available upon written request to Chief (4060), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. Copies are available for inspection in the Office of the Director of Forest Management Research, First Floor, Northwest Wing, Auditor's Building, 201 Fourteenth Street SW., Washington, DC. To facilitate entry into the building, visitors are encouraged to call in advance (202-453-9552).

Anyone who wishes to appeal must submit a notice of appeal to The Honorable Edward Madigan, Secretary of Agriculture, Fourteenth and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Russell M. Burns, Forest Management Research Staff (202) 453-9549.

SUPPLEMENTARY INFORMATION: Research Natural Areas are part of a national network of ecological areas on National Forest System lands designated in perpetuity for research, education, and/or maintenance of biological diversity. These areas are managed for nonmanipulative research, observation, and study, and they may assist in implementing provisions of special statutes, such as recovery of species under the Endangered Species Act and the monitoring provisions of the National Forest Management Act. The establishment of the 20 new areas will bring the total number of Research Natural Areas on National Forest System lands to 231.

The new areas to be established are as follows:

Name of RNA	State	County	National Forest	Acres
Moses Mountain	CA	Tulare	Sequoia	960
Cunningham Brake	LA	Natchitoches	Kisatchie	1,765
Gap Creek	AR	Montgomery	Quachita	1,125
Hall Canyon	CA	Riverside	San Bernardino	667
Atwood Ridge	IL	Union	Shawnee	955
Gunsight Peak	UT	Box Elder & Cache	Caribou	550
Tiak	OK	McCurtain	Ouachita	199
Davis Canyon	ID	Lemhi	Salmon	1,215
Dismal Hollow	AR	Newton	Ozark-St. Francis	2,077
Stoneface	IL	Saline	Shawnee	176
Barker Bluff	IL	Hardin	Shawnee	60
Cave Hill	IL	Saline	Shawnee	465
Whoopie Cat Mountain	IL	Hardin	Shawnee	17
Dry Gulch—Forge Creek	ID	Lemhi	Salmon	3,235
Timbered Cinder Cone	ID	Iron	Dixie	640
Four-Bit Creek	ID	Idaho	Clearwater	392
Theriault Lake	ID	Shoshone	St. Joe	120
Chateau Falls	ID	Clearwater	Clearwater	200
Bald Mountain	ID	Idaho	Clearwater	365
Snowy Top	ID	Boundary	Kaniksu	835

The designation order, when necessary, amends the relevant forest plan to assure consistency between the establishment record and the management direction in the forest plan. In these cases, notice of the establishment of a new RNA and notice of forest plan amendment are accomplished simultaneously by publication in the **Federal Register**.

The effective date of establishment has been delayed to permit giving public notice of the decision and to permit appeal as provided in 36 CFR part 217. Pursuant to 36 CFR 217.7(a), review of the Chief's decision by the Secretary is wholly discretionary.

Dated: March 22, 1991.

George M. Leonard,

Associate Chief.

[FR Doc. 91-7521 Filed 3-29-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rule and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 3 p.m. on April 30, 1991, at the Fort Des Moines Hotel, 10th & Walnut Streets, Des Moines, Iowa 50309. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, TDD (816) 426-5009. Hearing-impaired persons who will attend the meetings and require the services of a sign language interpreter should contact the Central Regional Division 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 Committee.

Dated at Washington, DC., March 22, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-7524 Filed 3-29-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rule and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m. on May 3, 1991, at the Wichita Royale, 125 North Market, Wichita, Kansas 67207. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, TDD (816) 426-5009. Hearing-impaired persons who will attend the meetings and require the services of a sign language interpreter should contact the Central Regional Division 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, March 22, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-7525 Filed 3-29-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rule and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on April 25, 1991, at the Holiday Inn Crowne Plaza, 4445 Main, Kansas City, Missouri 64111. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, TDD (816) 426-5009. Hearing-impaired persons who will attend the meetings and require the services of a sign language interpreter should contact the Central Regional Division 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, March 22, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-7526 Filed 3-29-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species; Issuance of Permit

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Permit: Dr. Boyd Kynard (P45I), U.S. Fish and Wildlife Service.

On January 8, 1991, notice was published in the **Federal Register** (56 FR 683) that an application had been filed by Dr. Boyd Kynard, Northeast Anadromous Fish Research Lab, U.S. Fish and Wildlife Service, P.O. Box 796, Turners Falls, Massachusetts 01376, to conduct scientific research which involves the capture, tagging, spawning, and release of shortnose sturgeon (*Acipenser brevirostrum*).

Notice is hereby given that on March 22, 1991, as authorized by the provisions of the Endangered Species Act (16 U.S.C. 1531–1544) and the National Marine Fisheries Service's regulations governing endangered fish and wildlife permits (50 CFR parts 217–222), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking, subject to certain conditions set forth therein.

The National Marine Fisheries Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a *bona fide* scientific purpose and does not involve the unnecessary duplication of research. No lethal taking is authorized.

Interested persons may review the Permit and documents submitted in connection with the application by appointment at the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427-2289); and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200).

Dated: March 22, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–7511 Filed 3–29–91; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals; Issuance of Permit; All-Union Scientific Institute of Fisheries and Oceanography, USSR, (P194E)

On February 13, 1991 notice was published in the **Federal Register** (56 FR 5204) that an application had been filed by the All-Union Scientific Research Institute of Fisheries and Oceanography (VNIRO), USSR Ministry of Fisheries, 17 V. Krasnosalskaya, Moscow, B–140, 107140, USSR, for a Permit to take by killing 200 Pacific walrus (*Odobenus rosmarus*) and 200 bearded seal (*Erignathus barbatus*) for the purpose of scientific research.

Notice is hereby given that on March 19, 1991, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit and related documents are available for review in the following offices:

By appointment: Director, Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Alaska Region, National Marine Fisheries Service, 709 W. 9th Street, Juneau, Alaska 99802 (907/586–7221); and Chief, Permit Branch, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2104).

Dated: March 19, 1991.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: March 19, 1991.

Richard K. Robinson,

Chief, Permit Branch, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 91–7512 Filed 3–29–91; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views form all interested parties about its agenda for fiscal year 1992, and its agendas and priorities for Commission attention during fiscal year 1993. Participation by members of the public is invited. Written comments and oral presentations concerning Commission agendas and priorities will become part of the public record.

DATES: The hearing will begin at 10 a.m. on May 1, 1991. Written comments will be accepted until April 24, 1991. Requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than April 17, 1991. Persons desiring to make oral presentations at this hearing must submit a written text or summary of their presentations not later than April 24, 1991.

ADDRESSES: The hearing will be in room 556 of the Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland. Written comments, requests to make oral presentations, and texts or summaries of oral presentations should be captioned "Agendas and Priorities" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 420, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make an oral presentation, call or write Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6800; telefax (301) 492–5783.

SUPPLEMENTARY INFORMATION: Section 105 of the Consumer Product Safety Improvement Act of 1990 (Pub. L. 101–608, 104 Stat. 3110, November 16,1990) requires the Commission to establish an agenda for action under the laws it administers, and priorities for action at least 30 days before the beginning of each fiscal year. Section 105 provides further that before establishing its agenda and priorities for action, the Commission shall conduct a public hearing and provide opportunity for submission of comments. Before the enactment of this legislation, the Commission had conducted a public meeting once each year to receive comments from all interested persons about priorities for Commission attention. The last such meeting was on May 17, 1990, to receive comments on selection of Commission priorities for fiscal year 1992.

On May 1, 1991, the Commission will conduct a public hearing to receive oral presentations from the public concerning its agenda for fiscal year 1992 (beginning October 1, 1991), and its

agenda and priorities for fiscal year 1993 (beginning October 1, 1992). The Commissoners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; and health and safety officers of state and local governments.

The Commission is charged by Congress with protection of the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers in or around their homes, in schools, in recreation, and other settings, its staff and budget are limited. For this reason the Commission must concentrate its resources on the most serious hazardous associated with consumer products within its jurisdiction in order to discharge its Congressional mandate effectively. Commission priorities are selected in accordance with the Commission policy governing establishment of priorities codified at 16 CFR 1009.8.

Persons who desire to make oral presentations at the hearing on May 1, 1991, should call or write Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6800, telefax (301) 492-5783, not later than April 17, 1991.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text or a summary of their presentations to the Office of the Secretary not later than April 24, 1991. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on May 1, 1991, and will conclude the same day.

Written comments on the Commission's agenda for fiscal year 1992, or on its agenda and priorites for fiscal year 1993, should be received in the Office of the Secretary not later than April 24, 1991.

Dated: March 27, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-7578 Filed 3-29-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Licensing of U.S. Patents Concerning Spread Spectrum Multiplexed Noise Codes

AGENCY: U.S. Army Communications-Electronics Command, DoD.

ACTION: Notice of availability for non-exclusive, exclusive, or partially exclusive licensing of U.S. Patents concerning Spread Spectrum Multiplexed Noise Codes.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability of U.S. Patent Numbers for licensing:

4,599,733	4,470,138	4,511,885
4,529,963	4,215,244	4,472,815
4,475,215	4,568,914	4,301,530
4,471,342	4,512,024	3,908,088
4,270,207	4,475,186	4,542,515
4,568,915	4,455,662	4,494,228
4,514,853	3,917,999	4,472,814
4,475,214	4,549,303	4,293,953

These patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, Attn: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000. Telephone: (908) 532-4112.

SUPPLEMENTARY INFORMATION: These patents involve the generation and compression (detection) of spread spectrum multiplexed noise codes and applications of these codes in communications, switching and control systems. These codes, as a class, are formed with mate code pairs which, when orthogonally multiplexed, transmitted, and detected in a matched filter, possess an impulse autocorrelation function, meaning they compress to a single impulse containing no sidelobes. Generally, the noise codes are comprised of binary digital structure which compress to a code bit width of (tau), where (tau) is equal to the reciprocal of the spread spectrum bandwidth.

By utilizing these multiplexed noise codes, all of the advantages associated with ideal noise codes in simplex and duplex wireless data transmission may be accomplished. These advantages include strong resistance to external interference, non-interference with other radiating systems in close proximity, security, reliability and large capacity. Further, these codes can provide orthogonal code division multiple access (orthogonal CDMA) for use in multiple access communication systems wherein each user may be assigned a different unique noise code pair selected from a subset of multiplexed noise codes whose cross-correlation function value is equal to zero. This completely eliminates self-interference and provides an extremely large access capacity (orders of magnitude larger than present technology provides). These codes are also applied to switching applications in switching orthogonal isolate and route single and multiple channels to different destinations.

Under the authority of section 11 (a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army as represented by the United States Army, Communications-Electronics Command wishes to license the above-mentioned United States Patents in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling devices covered by the above-mentioned patents.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-7532 Filed 3-29-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS90-30-000 (Phase I)]

Amoco Pipeline Co.; Informal Settlement Conference

March 25, 1991.

Taken notice that an informal settlement conference will be convened in the above-docketed proceeding on Thursday, April 11, 1991, at 10 a.m. in room 8300 at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. If negotiations are proceeding at a favorable pace, the parties should be prepared to meet again on Friday, April 12, 1991, in the Commission's offices.

Any party, as defined by 18 CFR 385.102(c) (1991), or any participant as defined by 18 CFR 385.102(b) (1991), is invited to attend. Persons wishing to

become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 395.214 (1991)).

For additional information, contact Robert L. Woods at (202) 208-0583.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7543 Filed 3-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-215-000]

Commonwealth Atlantic Limited Partnership; Issuance of Commission Order and Comment Period

March 22, 1991.

Take notice that on March 14, 1991, the Federal Energy Regulatory Commission issued an Order Accepting Rates for Filing, Noting Intervention, and Granting and Denying Waivers (March 14 order). On January 14, 1991, Commonwealth Atlantic Limited Parternship (Commonwealth) submitted for filing an amendment to an existing agreement with Virginia Electric and Power Company (Virginia Power) for the sale of an additional 70 MW of energy and capacity to Virginia Power.

The Commission stated in Ordering Paragraphs (F), (G), and (H) of the March 14 order:

(F) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuance of securities or assumptions of liability by Commonwealth should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1990)).

(G) Absent a request for hearing within the period set forth in Ordering Paragraph (F) above, Commonwealth is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person, provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Commonwealth's issuances of securities or assumption of liability.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is April 15, 1991.

Copies of the full text of the March 14 order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol St. NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7546 Filed 3-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP72-155-011 and CI85-513-013]

El Paso Natural Gas Co.; Report of Refunds

March 25, 1991.

Take notice that on February 27, 1991, El Paso Natural Gas Company (El Paso), tendered for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act and in compliance with ordering paragraph (E) of the order approving Stipulation and Agreement in Partial Settlement of Proceedings (Settlement), *Tenngasco Gas Supply Company, et al.* v. *Southland Royalty Company, et al.*, issued December 2, 1987 at Docket No. CI85-513-007 as modified by ordering paragraph (A) of the order modifying Settlement refund procedures issued October 17, 1990 at Docket No. CI85-513-012, its Report of Refund Flow Through Made on May 21, 1990 and January 31, 1991 to its interstate system sales customers entitled thereto.

El Paso states that pursuant to the Settlement, small working interest owners agreed to refund to El Paso the sum of $100,420.00 calculated in accordance with Article III, section 3. As provided by section 2 of Article V, El Paso is required to distribute to each of its jurisdictional customers entitled thereto their portion of the amount refunded by the small working interest owners, to be caluclated using the allocation factors which were attached as appendix B to the Settlement.

El Paso further states that the Report of Refund Flow Through reflects the allocation and distribution on May 21, 1990 and January 31, 1991 of $56,762.00 and $3,130.00, respectively, received by El Paso from certain small working interest owners.

El Paso states that copies of the reports were served upon all Sponsoring Parties in Docket No. CI85-513-000 as set forth in the Settlement, and otherwise upon all interestate pipeline system sales customers of El Paso who received a refund distribution and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federeal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 1, 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. 91-7545 Filed 3-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-122-000]

Granite State Gas Transmission, Inc.; Proposed Changes in FERC Gas Tariff

March 25, 1991.

Take notice that on March 21, 1991, Granite State Gas Transmission, Inc. (Granite State), filed with the Federal Energy Regulatory Commission the following tariff sheets to its FERC Tariff, Second Revised Volume No. 1, with the proposed effective date of April 21, 1991:

First Revised Sheet No. 20
Original Sheet No. 24A
First Revised Sheet No. 100
Original Sheet No. 145
Original Sheet No. 146
Original Sheet No. 147
Original Sheet No. 148
Original Sheet No. 149
Original Sheet Nos. 150-199

Granite State states that the filing is being made to establish the tariff mechanism to flow through to its customers take-or-pay buyout and buydown costs that will be directly billed to Granite State by Algonquin Gas Transmission Company (Algonquin).

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

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 18 CFR

385.214 and 485.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 1, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7544 Filed 3-29-91; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. RP91-54-000, RP91-52-000, and RP91-53-000]

Trunkline Gas Co. and Panhandle Eastern Pipe Line Corp.; Conferences to Discuss Settlement

March 25, 1991.

A conference will be held to explore the possibility of settlement of the take-or-pay related issues raised in the above-captioned proceedings. The conference will be held on Monday, April 8, 1991 at 10 a.m. and may continue on Tuesday, April 9, 1991.

These proceedings are not consolidated but the take-or-pay related passthrough issues for both pipelines will be discussed together because the issues related to Trunkline Gas Company affect the position of the parties on the issues related to Panhandle Eastern Pipe Line and vice-versa.

The conference will be held on April 8, 1991, in the Commission's meeting room at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. If the conference continues on April 9, 1991, it may be in another room to be designated on that day. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7542 Filed 3-29-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50720; FRL-3884-5]

Receipt of Notification of Intent To Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale field testing with genetically modified strains of *Bacillus thuringiensis*, subspecies *kurstaki*. EPA has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), EPA is soliciting public comments on this application.

DATES: Written comments must be received on or before May 1, 1991.

ADDRESSES: Comments in triplicate, should bear the docket control number OPP-50720 and should be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

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

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from Sandoz Crop Protection Corporation of Des Plaines, Illinois. Testing is to include genetically modified strains of *Bacillus thuringiensis*, subspecies *kurstaki*. These altered strains are designated as members of the RSRC 1000 Series, one of which (RSRC 1005) was previously determined not to require an experimental use permit by the Agency on July 13, 1990, for field testing during 1990. All strains in the RSRC 1000 Series are derived from the same donor and recipient microorganisms, and are produced with the same shuttle vector. The distinguishing characteristic of individual RSRC 1000 strains is the specific amino acid substitution(s) present in the cloned crystal protein.

The purpose of the proposed testing is to conduct field trails in one location each in the States of Florida and Mississippi during 1991. Test plots are proposed for a total area of 2.1 acres using a maximum of 6.75×10^{13} spores (2.63 Billion International Units). All treated crops will be destroyed.

Following the review of the Sandoz Crop Protection application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: March 24, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-7590 Filed 3-29-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-59294A; FRL-3886-8]

Toxic and Hazardous Substances; Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-91-10. The test marketing conditions are described below.

EFFECTIVE DATE: March 25, 1991.

FOR FURTHER INFORMATION CONTACT: Alan Cole, New Chemcals Branch, Chemical Control Division (TS-794), Office of Toxic Substances,

Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-3861.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-91-10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-91-10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-91-10

Date of Receipt: February 25, 1991.
Notice of Receipt: March 13, 1991 (56 FR 10557).
Applicant: (Confidential).
Chemical: (G) Modified bitumen.
Use: (S) Paving bitumen - used for construction and maintenance of asphalt pavements.
Production Volume: (Confidential).
Number of Customers: (Confidential).
Test Marketing Period: (Confidential).
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: March 25, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-7591 Filed 3-29-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Revision of a currently approved collection.
Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Bank).
Form Number: FFIEC 031, 032, 033, 034.
OMB Number: 3064-0052.
Expiration Date of Current OMB Clearance: February 28, 1993.
Frequency of Response: Quarterly.
Respondents: Insured state nonmember commercial and savings banks.
Number of Respondents: 7,847.
Number of Responses per Respondent: 4.
Total Annual Responses: 31,388.
Average Number of Hours per Response: 23.19.
Total Annual Burden Hours: 727,986.
OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0052), Washington, DC 20503.
FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted on or before May 2, 1991.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is submitting for OMB review changes to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial and savings banks. The revisions to the Call Reports that are the subject of this request are twofold. First, the three federal banking agencies (the FDIC, the Federal Reserve Board, and the Office of the Comptroller of the Currency) propose to add certain items to all four versions of the Call Report in order to monitor partially charged-off loans accruing interest at a market rate. These items would be needed as a result of an FFIEC proposal, published in the **Federal Register** on March 18, 1991, to amend the Call Report instructions to establish criteria for returning a nonaccrual loan with a partial charge-off of principal to accrual status without first recovering the partial charge-off or becoming fully current in accordance with the contractual terms. Second, at the request of the U.S. Department of Commerce, Bureau of Economic Analysis, the agencies have agreed to split the existing item on noninterest income in part II of Schedule RI-D, Income from International Operations, into two items. Schedule RI-D is collected only from certain banks with foreign offices that file the FFIEC 031 report forms. The effective date for these reporting changes, if approved, will be the June 30, 1991, report date.

Dated: March 26, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-7530 Filed 3-29-91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Vessel Operators Hazardous Materials Association Agreement

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.: 203-011290-006.
Title: Vessel Operators Hazardous Materials Association Agreement.
Parties:
Atlantic Container Line B.V.
America-Africa-Europe Line GmbH
Compagnie Generale Maritime
Crowley Maritime Corporation
Evergreen Marine Corporation (Taiwan), Ltd.
Farrell Lines, Inc.
Hamburg-Sudamerikanische Dampfshifffahrts Gesellschaft Eggert & Amsinck (Columbus Line)
Hapag-Lloyd A.G.
Independent Container Line Ltd.
A.S. Ivarans Rederi
Kawasaki Kisen Kaisha Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
Nippon Yusen Kaisha Line
P&O Containers, Ltd.
Sea-Land Service, Inc.
Senator Linie GmbH & Co. KG
Wilh. Wilhelmsen Ltd. AS.
Zim Israeli Navigation Shipping Co., Ltd.
Synopsis: The proposed amendment would modify Article 8.1 of the Agreement to permit changes in membership to be approved by majority vote of the Agreement's Executive Committee.

By order of the Federal Maritime Commission.

Dated: March 26, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 91-7533 Filed 3-29-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-16]

Meat Importers Council of America, Inc. v. Australia-Pacific Coast Rate Agreement, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Meat Importers Council of America, Inc. ("Complainant") against Australia-Pacific Coast Rate Agreement; ABC Container Line, N.V.; ACT/Pace Line; Australia-New Zealand Direct Line; and Columbus Line, Inc. (hereinafter collectively referred to as "Respondents") was served March 26, 1991. Complainant alleges that Respondents violate sections 10(b)(1), (6) and (12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(1), (6) and (12) through the manner in which they implement Rule 32 of intermodal tariff number 3 of the Australia-Pacific Coast Rate Agreement, relating to the application of terminal handling charges.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by March 27, 1992, and the final decision of the Commission shall be issued by July 27, 1992.

Joseph C. Polking,
Secretary.

[FR Doc. 91-7522 Filed 3-29-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0007]

Permeable Contact Lenses, Inc.; Premarket Approval of SGP 3™ (Unifocon A) Rigid Gas Permeable Contact Lens for Daily Wear (Clear, Blue, and Green Tinted)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Permeable Contact Lenses, Inc., Morganville, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the spherical SGP 3™ (unifocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear, blue, and green tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 18, 1990, of the approval of the application.

DATES: Petitions for administrative review by May 1, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850-4302, 301-427-1080.

SUPPLEMENTARY INFORMATION: On January 3, 1990, Permeable Contact Lenses, Inc., Morganville, NJ 07751, submitted to CDRH an application for premarket approval of the SGP 3™ (unifocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear, blue, and green tinted). The spherical lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from −20.00 D to +12.00 D and is to be disinfected using a chemical lens care system. The blue tinted lens contains the color additive D&C Green No. 6, and the green tinted lens contains the color additives D&C Green No. 6 and D&C Yellow No. 10, in accordance with the color additive listing provisions of 21 CFR 74.3206 and 74.3710, respectively.

On April 20, 1990, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 18, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at

CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the SGP 3™ (unifocon A) Rigid Gas Permeable Contact Lens for Daily Wear (clear, blue, and green tinted) states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 1, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 22, 1991.

Elizabeth D. Jacobson,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 91-7514 Filed 3-29-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91P-0075]

Cottage Cheese Deviating From Standard of Identity; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Bison Foods Co., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than July 1, 1991.

FOR FURTHER INFORMATION CONTACT:

Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0117.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Bison Foods Co., 196 Scott St., Buffalo, NY 14204.

The permit covers limited interstate marketing tests of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains from 0.1 to 0.3 percent milkfat. The food deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of cottage cheese is not less than 4.0 percent, and that the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 500,000 pounds (226,800 kilograms) in 454-gram (16-ounce) containers of the test product. The product will be manufactured at Bison Foods Co., Division of Upstate Milk Cooperatives, Inc., 196 Scott St., Buffalo, NY 14204, and distributed in Connecticut, Delaware, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, and West Virginia.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101.

This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than July 1, 1991.

Dated: March 22, 1991.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-7559 Filed 3-29-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91M-00113]

Sola/Barnes-Hind; Premarket Approval of Fluorocon™ (Paflufocon B) Rigid Gas Permeable Contact Lenses for Daily and Extended Wear (Clear and Tinted)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Sola/Barnes-Hind, Sunnyvale, CA, for permarket approval, under the Medical Device Amendments of 1976, of the spherical Fluorocon ™ (paflufocon B) Rigid Gas Premeable Contact Lenses for Daily and Extended Wear (Clear and Tinted). The lenses are

to be manufactured under an agreement with Paragon Optical, Mesa, AZ, which has authorized Sola/Barnes-Hind to incorporate information contained in its approved premarket approval application and related supplement for the FluoroPerm ™ (paflufocon A) Rigid Gas Permeable Contact Lenses for Daily Wear and FluoroPerm® 60 (paflufocon B) Rigid Gas permeable Contact Lenses for Daily and Extended Wear (Clear and Tinted). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 28, 1990, of the approval of the application.

DATES: Petitions for administrative review by May 1, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Drive, Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On September 29, 1989, Sola/Barnes-Hind, Sunnyvale, CA 94086-5200, submitted to CDRH a supplemental application for premarket approval of the spherical Fluorocon™ (paflufocon B) Rigid Gas Permeable Contact Lenses for Daily and Extended Wear (Clear and Tinted). The Fluorocon™ (paflufocon B) Rigid Gas Permeable Contact Lenses (Clear and Tinted) are indicated for daily wear and extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lenses are indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes who are myopic or hyperoic and may have corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The daily wear lenses range in powers from −20.00 D to +12.00 D and the extended wear lenses range in powers from −20.00 D to +8.00 D. These lenses are to be disinfected using a chemical lens care system. The lenses are available in untinted (clear), blue, or green tints. The tinted lenses contain one or both of the color additives, D&C Green No. 6 and D&C Yellow No. 10, in accordance with the color additive listing provisions of 21 CFR 74.3206 and 74.3710. The application includes authorization from Paragon Optical of Mesa, AZ 85204, to incorporate information contained in its approved premarket approval application and related supplement for the Fluoroperm™ (paflufocon A) Rigid Gas Permeable Contact Lenses for Daily Wear and FluoroPerm® 60 (paflufocon B) Rigid Gas Permeable Contact Lenses for Daily and Extended Wear (Clear and Tinted).

On December 28, 1990, CDRH approved the application by letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the Fluorocon™ (paflufocon B) Rigid Gas Permeable Contact Lenses for Daily and Extended Wear (Clear and Tinted) states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review, to be used, the persons who may participate in the review, the time and place where the review will occur, and othe details.

Petitioners may, at any time on or before (May 1, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 22, 1991.

Elizabeht D. Jacobson,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 91-7515 Filed 3-29-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91M-0089]

Vision Technologies International; Premarket Approval of Models A21-A and A21-B Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Vision Technologies International, San Dimas, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Models, A21-A and A21-B Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses (IOL's). The IOL's are to be manufactured under an agreement with Newlensco, Monrovia, CA, which has authorized Vision Technologies International to incorporate information contained in its approved premarket approval application for the Newlensco UV Classic Series™ Posterior Chamber IOL's. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 28, 1991, of the approval of the application.

DATES: Petitions for administrative review by May 1, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food

and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1212.

SUPPLEMENTARY INFORMATION: On August 7, 1990, Vision Technologies International, San Dimas, CA 91773, submitted to CDRH an application for permarket approval of Models A21-A and A21-B Ultraviolet-Absorbing Posterior Chamber IOL's. The lenses are indicated for use in the visual correction of aphakia in patients 60 years of age or older, who are undergoing a primary lens implantation in either the ciliary sulcus or capsular bag, following an extracapsular cataract extraction. The lenses are available in a range of powers from 10 diopters (D) through 30 D in 0.5-D increments. The application includes authorization from Newlensco, Monrovia, CA 91016, to incorporate information contained in its approved premarket approval application for the Newlensco UV Classic Series IOL's.

On February 28, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 1, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 22, 1991.

Elizabeth D. Jacobson,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 91-7516 Filed 3-29-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-464-FNC]

RIN 0938-AD48

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This final notice with comment period sets forth an updated schedule of limits on skilled nursing facility inpatient routine service costs for which payment may be made under the Medicare program.

DATES: Effective Date: The schedule of limits is effective for cost reporting periods begining on or after October 1, 1989

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 31, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-464-FNC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

Room 132, East High Rise Building, 3625 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-464-FNC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (301) 966-4597.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1) and 1888 of the Social Security Act (the Act) authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 413.30. Section 1888 of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding skilled nursing facilities (SNFs) by urban or rural area location.

Under the authority of section 1888 of the Act, we published a final notice on April 1, 1986 (51 FR 11253) announcing a schedule of limits for freestanding and hospital-based SNFs effective for cost reporting periods beginning on or after May 1, 1986.

That final notice contained provisions relating to: (1) Limits on adjusted SNF per diem inpatient routine service costs; (2) a "market basket" index developed to reflect changes in the price of goods and services purchased by SNFs; (3) adjustments to the cost limits by an area wage index developed from hospital industry wages; (4) a classification system based on whether the SNF is hospital-based or freestanding and

whether it is located in an urban or rural area; (5) a cost-of-living adjustment for the nonlabor portion of the limits for SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; (6) freestanding SNF cost limits set at 112 percent of the average per diem labor-related and nonlabor-related costs; (7) hospital-based SNF cost limits set at the limit for freestanding SNFs, plus 50 percent of the difference between the freestanding limit and 112 percent of the average per diem routine service costs of hospital-based SNFs; and (8) an administrative and general (A&G) add-on for hospital-based SNFs.

On October 2, 1987, we published a final notice (52 FR 37098) setting forth a revised schedule of limits on SNF inpatient routine service costs effective for cost reporting periods beginning on or after October 1, 1987. In developing those limits, we retained the same provisions and the same methodology as in the previous limits. Moreover, they incorporated the most recent SNF cost data available at that time for calculating the limits, as well as the most recent projections of the rates of increases in the costs included in the SNF market basket.

Section 6024 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) requires the Secretary to recompute the schedule of limits for cost reporting periods beginning on or after October 1, 1989 using data submitted by SNFs from cost reporting periods beginning not earlier than October 1, 1985. In preparing this schedule of limits, we used cost reports from cost reporting periods beginning on or after February 1, 1987 and before January 1, 1988, which is the most recent available cost report data.

Under the provisions of section 6024 of Public Law 101-239, this schedule of limits is effective for cost reporting periods beginning on or after October 1, 1989.

Even though these are the most recent data available, we recognize that the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) contains a provision whose implementation may result in some SNFs incurring some costs that will not be reflected in the cost limits. Section 4201(b) of Public Law 100-203 requires that facilities comply with the requirements of subsections (b), (c), and (d) of section 1819 of the Act (including the costs of conducting nurse aide training and competency evaluation programs), effective October 1, 1990. Therefore, in computing a provider's cost limit for cost reporting periods beginning on or after October 1, 1990, we are incorporating in the computation a per diem add-on of $1.45 to account for the costs associated with those additional requirements. The derivation and application of the per diem add-on is discussed in section V of this notice. In addition, we believe that facilities may have incurred costs prior to October 1, 1990 in order to comply with these additional requirements. The data necessary to develop a valid national cost estimate associated with these additional requirements do not exist for cost reporting periods beginning before October 1, 1990. This would present a problem only if the costs incurred in meeting those additional requirements cause the provider to exceed the cost limits, effective on October 1, 1989 through September 30, 1990. Under section 1861(v)(1)(E) of the Act, Congress mandated that the additional costs incurred by SNFs in complying with section 4201 of Public Law 101-203 be paid by the Medicare program. However, at this time HCFA does not have data available to establish a precise add-on factor to the limits that would compensate SNFs for these new costs. Therefore, we would provide financial relief for those costs by adjusting cost limits. An adjustment to the cost limit will be made to the extent the costs in excess of the limit are reasonable, actually incurred in the process of implementing the additional requirements, separately identified by the provider, and verified by the intermediary.

II. Update of Limits

In developing the limits set forth in this notice, we have retained the same provisions and the same basic methodology as in the limits effective for cost reporting periods beginning on or after October 1, 1987. We have updated the SNF cost report data using the most recent projections of the rates of increase in the costs included in the SNF market basket. In addition, we are continuing to use a hospital wage index based on hospital wage data to adjust for area wage differences. The wage index in this notice is based on 1984 hospital wage data. We intend to use the latest hospital wage index in the next notice of the schedule of limits for SNF inpatient routine service costs.

We will continue use of the HCFA hospital wage index to account for area wage differences. This is necessary because industry-specific data needed to calculate a wage index for SNFs are not available. Since hospitals and SNFs generally compete in the same labor market for employees, we believe that a hospital wage index, based on geographic variations in hospital wages, provides the best measure of comparable wages that would also be paid by SNFs. In setting the two previous schedules of limits (that is, the schedule of limits applicable to cost reporting periods beginning on or after May 1, 1986 but before October 1, 1987 and the schedule of limits applicable to cost reporting periods beginning on or after October 1, 1987), we used the HCFA hospital wage index that was developed based on 1982 hospital salary data determined from a survey conducted by HCFA. The methodology used to compute that wage index was described in the April 1, 1986 final notice published in the **Federal Register** (51 FR 11253), which set forth the schedule of limits applicable to cost reporting periods beginning on or after May 1, 1986.

For the schedule of limits effective with this notice, we are using a wage index based on 1984 hospital wage data. With the exception of those indices affected by recent corrections to the 1984 wage data, this wage index uses the same wage data as are used to compute the wage index for the hospital prospective payment system for discharges occurring on and after October 1, 1989. However, this wage index does not reflect the change in urban/rural designation certain rural hospitals required under section 1886(d)(8)(B) of the Act.

The methodology used to compute this wage index is the same as that used for the hospital prospective payment system. A detailed description of the methodology used to compute the hospital prospective payment wage index is set forth in the September 1, 1987 final rule (52 FR 33034).

Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met. (These requirements are explained in greater detail in the September 30, 1988 propsective payment final rule for Federal fiscal year (FY) 1989 (53 FR 38499) and the September 1, 1989 prospective payment final rule for FY 1990 (54 FR 36476).) Because of this provision, except in those areas where it would result in a lower wage index, it was necessary to reclassify the wage data for those rural hospitals as if they were located in the adjacent MSAs and to recompute the wage index values for the affected MSAs and rural hospitals. Since this provision (that is, section 1886(d)(8)(B) of the Act) does not apply to payments for SNFs, the wage indices

set forth in Tables II and III of this notice, which will be used for paying SNFs, do not include any of these changes.

In computing the wage index for the prospective payment system effective for discharges on or after October 1, 1988 (that is, FY 1989), we made several changes and corrections to the 1984 wage data. These revisions are discussed in the propsective payment final rules published on September 30, 1988 (53 FR 38493) and September 1, 1989 (54 FR 36475). All of these changes and corrections are also included in the wage index set forth in this document.

In addition to adopting 1984 hospital wage data for purposes of computing the SNF cost limits, we are also incorporating exceptions to the MSA classification system for certain New England counties. These exceptions have been recognized in setting hospital cost limits for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218) and were authorized under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21). That section requires that any area that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for the purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital propsective payment system:

- Litchfield County, CT in the Hartford-New Britain-Middleton-Bristol, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Manchester-Nashua, NH MSA.
- Newport County, RI in the Providence-Pawtucket-Woonsocket, RI MSA.

We are adopting these urban exceptions for the purpose of applying the HCFA wage index to the SNF cost limits. These changes will result in the same New England County Metropolitan Area (NECMA) definitions for both hospitals and SNFs. In New England, Metropolitan Statistical Areas (MSAs) are defined on town boundaries rather than on county lines. NECMAs are defined on county lines but exclude parts of four counties that would be considered urban under the MSA definition. This notice will make those four counties urban under both definintions, NECMA or MSA. It has no effect on any other definitions.

III. Provisions of the Limits

The schedule of limits set forth below applies to all SNFs including those low Medicare volume SNFs that are eligible to receive the optional prospective payment rate for routine services. Under section 1888(d) of the Act, a SNF's propsective payment rate, excluding capital-related costs, cannot exceed its routine service cost limits. The SNF propsective payment system is described in section 2820 of the Provider Reimbursement Manual (HCFA Pub. 15-1).

As required by section 6024 of Public Law 101-239, this schedule of limits is effective for cost reporting periods beginning on or after October 1, 1989.

We are using the same updated SNF data base for these cost limits and for the inpatient prospective payment rates for low Medicare volume SNFs. The prospective payment rates are also effective with cost reporting periods beginning on or after October 1, 1989. The data used to compute these limits are from SNF cost reports for the cost reporting periods ending on or after January 31, 1988 through December 31, 1988. In computing the previous schedule of limits, we used data from cost reporting periods ending October 31, 1982 through September 1983.

In the October 2, 1987 notice setting cost limits effective October 1, 1987, we explained that our data base, for the most part, contains data from unaudited cost reports and therefore may include unallowable Medicare costs. At that time, we did not adjust the limits for the unaudited costs since we were not able to develop a methodology to approximate the amount of allowable Medicare costs in our data base. We stated that when the methodology is developed, we will incorporate the adjustment into the next revision of the SNF cost limits. However, in calculating these limits, due to the complexity of the process of settling (with or without audit) cost reports to determine final Medicare payments, we were able to specifically quantify the amount by which "as submitted" inpatient routine service cost data (excluding ancillary and capital-related cost data) differ from settled inpatient routine service cost data. Therefore, we have not adjusted the data to reflect the exclusion of either unallowable Medicare costs or unallowable inpatient days in this schedule of cost limits. However, we are currently developing a methodology to identify this amount using a "cost report settlement adjustment factor". This factor would be used to adjust "as submitted" per diem costs in the data base to estimate the effects of settlement of the cost report. Before implementation, we will issue a proposed rule in the Federal Register, describing the methodology used to develop and apply the factor. We anticipate that this factor would be applied to cost limits with respect to cost reporting periods beginning on or after October 1, 1991.

This schedule of limits provides for the following:

A. Separate Group Limits for Labor-Related and Nonlabor-Related Components of Per Diem Routine Service Costs

We are retaining separate group limits for the labor-related and nonlabor-related components of per diem routine service cost. We calculate these separate limits as follows:

1. Actual SNF per diem inpatient routine service cost data are obtained for each SNF.
2. To make the data reflect current conditions more accurately, the cost data are adjusted by the SNF market basket index from the midpoints of the cost reporting periods represented in the data collection to the midpoint of the initial cost reporting period to which the limits apply.
3. Each SNF's per diem cost is separated into labor-related and nonlabor-related portions. The labor-related portion (82.869 percent) is divided by the wage index for the SNF's location (see Tables II and III).
4. Finally, separate group means are computed for the labor-related and nonlabor-related components. Each group mean is multiplied by 112 percent.

B. Adjustment of SNF Cost Data by Wage Index

We are using a wage index based on 1984 hospital wage data, as described above, to adjust for area wage differences. We are continuing to use the same methodology for the adjustment.

C. Use of SNF Market Basket

We will continue to base the cost limits on reported costs, adjusted for actual and projected cost increases by applying the SNF market basket index. This market basket index is used to adjust the SNF cost data to reflect cost increases occurring between the cost reporting periods represented in the data collection to the midpoints of the cost reporting periods to which the limits apply.

The market basket index is comprised of the most commonly used categories of SNF routine service expenses. The categories we use are based primarily

on those used by the National Center for Health Statistics in its National Nursing Home Surveys.

The categories of expenses are weighted according to the estimated proportion of SNF routine services costs attributable to each category (see Table V). The weights for all major categories of SNF costs are based on the National Nursing Home Surveys of 1973/1974 and 1977, conducted by the Office of Health Research, Statistics and Technology, National Center for Health Statistics of the Public Health Service. (As noted in footnote 1 at the end of Table V, the 1973/1974 survey contained 1972 cost data and the 1977 survey contained 1976 cost data.) These are the most current and comprehensive sources of national data on the distribution of costs in SNFs. (The second column of Table V specifies the weights used for each category.)

In developing the market basket index, we obtained historical and projected rates of increase in the price of goods and services in each category. The market basket index table, in the third and fourth columns, identifies the price variables used and the source of the forecast for calendar years 1985 through 1990 (Table V).

The market basket index also provides for adjustments in the limits if our forecasts of economic trends prove erroneous. If the final rate of change in the market basket index for a year differs from the estimated rate of change by at least 0.3 of one percentage point, we will adjust the limits. We will advise the Medicare intermediaries to use the actual rate to adjust each SNF's limit retroactively.

D. Application of the Adjusted Hospital Wage Index to Employee Benefits, Health Service Costs, Costs of Business Services, and Other Miscellaneous Expenses

In developing the schedule of limits effective for cost reporting periods beginning on or after October 1, 1987 (published October 2, 1987 (52 FR 37098)), we applied the wage index to five categories of labor-related costs: Wages, employee benefits, health service costs, business service costs, and other miscellaneous costs. We retained that methodology in developing this schedule of limits. The proportion of adjusted routine service costs that we will adjust by the wage index is 82.869 percent for cost reporting periods beginning on or after the effective date of this notice.

For purposes of applying the wage index, employee benefits include such items as FICA tax, health insurance, life insurance, facility contributions to employee retirement funds, and all other compensation that the SNF records in the "employee health and welfare" cost center on its Medicare cost report.

Health services costs is a category used by the National Nursing Home Survey conducted in 1977, noted above. This category includes the costs of routine services that are purchased under arrangement from outside sources. Business services costs include costs of banking, contract laundry, telephone, and other services that SNFs purchase at retail from outside suppliers. Other miscellaneous costs include various types of routine operating costs not allocated to any other category of the market basket.

Thus, we are continuing to apply the wage index to the total portion of cost (82.869 percent attributable to wages, fringe benefits, health service costs, business service costs, and other miscellaneous expenses) rather than to the wage portion (64.009 percent for cost reporting periods beginning on or after the effective date of this notice) only. We are continuing to use this method because our analysis of the data shows that area variations in routine per diem costs in these additional categories are closely related to area variations in prevailing wage levels. We believe that applying the wage index to the other categories of labor-related costs specified above, rather than to wages only, results in individual limits that are more equitable and more appropriate to each SNF's actual market environment.

E. Freestanding SNF Limits Set at 112 Percent of Mean

For cost reporting periods beginning on or after the effective date of this notice, we are continuing to maintain the limits at 112 percent of the average labor-related and average nonlabor-related costs of each group. We will continue to use the same methodology for freestanding SNFs as described in the October 2, 1987 notice (52 FR 37098).

F. Hospital-Based SNF Limits

For cost reporting periods beginning on or after October 1, 1989, the hospital-based limit will continue to equal the freestanding limit plus 50 percent of the difference between the freestanding limit and 112 percent of the mean per diem routine service costs of hosptial-based SNFs. The methodology for hospital-based SNFs will be the same as that used for current hospital-based SNF limits, effective for cost reporting periods beginning on or after October 1, 1987, as described in the October 2, 1987 notice (52 FR 37098). We are continuing to provide an add-on adjustment for A&G costs. The purpose of this add-on is to make an adjustment for the allocation of costs in the A&G cost center for hospital-based SNFs.

G. Cost-of-Living Adjustment for Alaska, Hawaii, Puerto Rico, and the Virgin Islands

To avoid disadvantaging SNFs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, we will continue to provide a cost-of-living adjustment for these areas. This is an adjustment of the nonlabor-related component of the limit that applies to these areas based on the amount of the most recently determined cost-of-living differentials developed by the Office of Personnel Management. Since we adjust the labor-related component by the applicable wage index as discussed above, this cost-of-living adjustment will apply only to the nonlabor-related components.

H. Exception to Cost Limits

An SNF may request an exception to the cost limits under the provisions of § 413.39(f). The request must be made to HCFA central office through the appropriate Medicare fiscal intermediary.

I. Classification System

We will retain the classification system based on whether an SNF is located within an MSA, as defined by the Office of Management and Budget (OMB), with exceptions for certain areas, as noted above in section II of this notice.

IV. Methodology for Determining Per Diem Routine Service Cost Limit

A. Development of Limits

1. Data

As previously mentioned, we used actual freestanding and hospital-based SNF inpatient routine service cost data, less capital-related costs allocated to general inpatient routine services, obtained from the latest Medicare cost reports available with cost reporting periods ending on or after January 31, 1988 through December 31, 1988.

We adjusted these data using the market basket index discussed above to inflate costs from the cost reporting periods in the data base to the midpoint of the first cost reporting period to which the limits will apply. The annual percentage increases in the market basket over the previous year that we used for this projection are:

1988	5.25
1989	[1] 6.13
1990	[1] 6.98
1991	[1] 6.76
1992	[1] 5.75

[1] Forecasted increase.

An adjustment will be made to the limits if the forecasted market basket rate differs from the actual rate by at least 0.3 of one percentage point. Following the end of each year that the limits are in effect, we will determine the actual rate of increase or decrease in the market basket for that year. The data necessary to make this determination are usually available in the second quarter of the following year.

If the forecasted market basket rate differs from the actual rate by at least 0.3 of one percentage point, we will notify the Medicare intermediaries of the actual rate by at least 0.3 of one percentage point, we will notify the Medicare intermediaries of the actual rate of increase or decrease and advise them to adjust retroactively each SNF cost limit.

2. Use of Wage Index to Adjust Cost Data

We divided each SNF's adjusted per diem routine service costs into labor-related and nonlabor-related portions. We determined the labor-related portion by multiplying each SNF's adjusted per diem routine service cost by 82.869 percent, which is the labor-related portion of cost from the market basket. We then divided the labor-related portion of each SNF's per diem cost by the wage index value applicable to the SNF's location (see Tables II and III) to arrive at an adjusted labor-related portion of routine cost.

3. Group Means

We calculated separate means of labor-related and nonlabor-related adjusted routine service costs for each SNF group established in accordance with the SNF's MSA or non-MSA location.

4. Components of Limit

For each freestanding group, we multiplied the mean labor-related and mean nonlabor-related costs by 112 percent to arrive at the freestanding limits (Table I).

We then subtracted the freestanding limit for each group from 112 percent of the hospital-based mean for each group and multiplied the result by 50 percent. To arrive at the hospital-based limit (Table I), the 50 percent amount described above is added to the appropriate freestanding limit.

COST LIMIT DATA—HOSPITAL-BASED SNF'S

112 percent of hospital-based mean cost	Urban (MSA)	Rural (non-MSA)
Labor	$131.72	$121.24
Nonlabor	28.70	20.48
Total	160.42	141.72

CALCULATION OF 50 PERCENT OF DIFFERENCE BETWEEN 112 Percent of Hospital-Based Mean Cost and Freestanding Limit

[Urban (MSA)]

	Labor	Nonlabor
112 Percent of Hospital-Based Mean Cost	$131.72	$28.70
Freestanding Limit (Table I)	69.95	15.25
Difference	61.77	13.45
50 Percent of Difference	30.89	6.73
Plus Freestanding Limit	69.95	15.25
Hospital-Based Limit (MSA)	100.84	21.98

[Rural (Non-MSA)]

112 Percent of Hospital-Based Mean Cost	121.24	20.48
Freestanding Limit (Table I)	70.82	12.23
Difference	50.42	8.25
50 Percent of Difference	25.21	4.13
Plus Freestanding Limit	+70.82	+12.23
Hospital-Based Limit (Non-MSA)	96.03	16.36

[A&G Difference]

	Urban	Rural
1. Hospital-Based SNF A&G Mean [2]	$8.13	$7.22
2. Freestanding SNF A&G Mean [2]	5.70	5.64
3. Difference	$2.43	$1.58
Amount of A&G included in the 50 percent difference between 112 percent of the hospital-based mean costs and the freestanding limit		
4. A&G Difference (line 3)	2.43	1.58
5. 112 Percent of Hospital-Based Mean Cost (Total)	160.42	141.72
6. Average Routine Cost (line 5 divided by 112 percent)	143.23	126.54

[A&G Difference]

	Urban	Rural
7. Percent of A&G Difference to Average Routine Cost (line 4 divided by line 6)	1.70%	1.25%
8. 50 Percent of Difference between 112 Percent of Hospital-Based SNF Mean Cost and Freestanding SNF Limit	37.62	29.34
9. Amount of A&G Difference Included in line 8 (line 7 times line 8)	.64	.37
[A&G Add-On]		
10. A&G Difference from (line 3)	2.43	1.58
11. Less Amount from line 9	.64	37
12. A&G Add-on (line 10 less line 11)	1.79	1.21
13. Labor-Related Component of A&G Add-on (Line 12 times 82.869 percent)	1.48	1.01
14. Nonlabor-Related Component of A&G Add-on (Line 12 times 17.131 percent)	.31	.21

[2] Wage deflated means.

B. Adjustment of Limits

1. Adjustment of Labor-Related Component by Wage Index

a. Freestanding SNFs. To arrive at a labor-adjusted limit for each SNF, we multiply the labor-related component of the limit for the SNF's group by the wage index developed from wage levels for hospitals workers in the area in which the SNF is located (see Tables II and III). The adjusted limit that applies to a SNF is the sum of the nonlabor-related component, plus the adjusted labor-related component, unless the SNF qualifies for the cost reporting year adjustment discussed in section IV.B.2, below.

EXAMPLE—CALCULATION OF ADJUSTED LIMIT FOR A FREESTANDING SNF (A) LOCATED IN DALLAS, TEXAS

Labor-Related Component	$69.95	(Table I).
Nonlabor-Related Component.	$15.25	(Table I).
MSA Wage Index	1.0142	(Table II).

COMPUTATION OF ADJUSTED LIMIT

Labor-related component	$69.95
Wage index	×1.0142

COMPUTATION OF ADJUSTED LIMIT—Continued

Adjusted labor component	$70.94
Nonlabor-related component	+15.25
Adjusted limit	$86.19

b. Hospital-Based SNFs. To arrive at a labor-adjusted limit for each hospital-based SNF, we add the labor-related component of the limit and the labor-related component of the A&G add-on for the hospital-based SNF's group and multiply the sum by the wage index developed from wage levels for hospital workers in the area in which the hospital-based SNF is located (see Tables II and III). We then add the nonlabor-related component of the limit and the nonlabor-related component of the A&G add-on. The adjusted limit that applies to a hospital-based SNF is the sum of the adjusted labor-related component and add-on and the nonlabor-related component and add-on unless the facility qualifies for the cost reporting year adjustment discussed in section IV.B. 2, below.

EXAMPLE—CALCULATION OF ADJUSTED LIMIT FOR A HOSPITAL-BASED SNF (B) LOCATED IN SCRANTION, PENNSYLVANIA

Labor-Related Component:		
Limit	$100.84	(Table I).
Add-on	$1.48	(Table I).
Nonlabor-Related Component:		
Limit	$21.98	(Table I).
Add-on	$0.31	(Table I).
MSA Wage Index	0.9239	(Table II).

COMPUTATION OF ADJUSTED LIMIT

Labor-related component:	
Limit	$100.84
Add-On	+1.48
Wage index	×0.9239
Adjusted Labor Component	$94.53
Nonlabor-Related Component:	
Limit	21.98
Add-on	+0.31
Adjusted Limit	$116.82.

2. Adjustment for Cost Reporting Period

If a facility has a cost reporting period beginning in a month after October 1989, the intermediary will increase the limit that otherwise would apply to the SNF by the factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the projected annual increase in the market basket index and will be used to account for inflation in costs that will occur after the date on which the limits are effective.

Cost Reporting Year End Adjustment

Example: The following is a computation of a revised hospital-based limit for the previously cited SNF (B). Hospital-based SNF (B) has a cost reporting period beginning November 1, 1989. The base adjusted limit for SNF (B) is —$116.82. The revised limit for SNF (B) applicable to its cost reporting period is—$117.50.

Individual SNF adjusted base limit	$116.82
Adjusted Factor from Table IV	×1.00575
Revised Limit	$117.50

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor will be calculated. This is necessary because projections are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV are based on an assumed 12-month reporting period. For cost reporting periods of other than 12 months, the calculation must be done for the midpoint of the specific cost reporting period. The SNF's intermediary will obtain this adjustment factor from HCFA central office.

V. Per Diem Add-on to the Cost Limits Effective for Cost Reporting Periods Beginning on or After October 1, 1990

We have developed a per diem add-on to take into account the costs associated with the additional requirements (including the costs of conducting nurse aide training and competency evaluation programs) placed on SNFs by section 18(v)(1)(E) of the Act as amended by 4201(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). The per diem add-on ($1.45) is applied after all other adjustments are made to the cost limit. This per diem add-on is effective for cost reporting periods beginning on or after October 1, 1990.

Because the additional burden placed on SNFs under section 1861(v)(1)(E) of the Act is virtually identical with the burden placed on Medicaid nursing facilities under sections 1902(a)(13)(A) and 1902 (a)(28) of the Act, as amended by section 4211(b) of Public Law 100–203, the amount of the per diem add-on was determined based on data contained in 36 Medicaid State plans that had been approved effective October 1, 1990. These Medicaid State data are currently the only data available for basing a national estimate of the costs associated with the additional requirements under section 1861(v)(1)(E) of the Act. (As of October 31, 1990, 36 out of 50 State plans were approved by HCFA. We believe that data in the 36 approved State plans yield a valid national estimate for Medicare purposes.) The nursing facility data (from Medicaid SNFs and intermediate care facilities (ICFs)) submitted with each State plan amendment contains a projected Medicaid per diem rate increase associated with the additional requirements.

We have computed the per diem add-on by using the same methodology as that used to compute the basic Medicare SNF cost limits. That is, using the data reported by each State, we have computed an average per diem cost that is weighted by Medicaid nursing facility days. The per diem add-on has been set at 112 percent of this average. Based on 1988 Medicaid nursing facility days and the Medicaid per diem rate increase, we computed the total nursing facility increase in costs for each State. We computed a weighted average for the 36 States by dividing the sum of all increase by the sum of all days. This resulted in an average per diem increase of $1.295. Therefore, the amount of per diem add-on is $1.45 (112 percent of $1.295) effective for cost reporting periods that begin on or after October 1, 1990.

The data used to compute a SNF's cost limit is the same as that shown in Tables I, II, and III, and, if applicable. Table IV of this notice.

An example of the application of the per diem add-on to the revised limit for a freestanding SNF located in Dallas, Texas with a cost reporting period beginning on October 1, 1990 follows:

Labor-related Component.	$69.95	(From Table I).
Nonlabor-related Component.	$15.25	(From Table I).
MSA Wage Index	1.0142	(From Table II).
Cost Report Year End Factor.	1.06815	(From Table IV).
Per Diem Add-on	$1.45	

COMPUTATION OF COST LIMIT

Labor-related Component	$69.95
Wage Index	×1.0142
Adjusted Labor Component	$70.94
Nonlabor-related Component	+15.25
Adjusted Limit	$86.19
Cost Report Year End Factor	×1.06815
Revised Limit	$92.06
Per Diem Add-on	+1.45
Final Limit	$93.51

If a SNF's per diem cost exceeds the cost limit as a result of the additional cost of Public Law 100–203, the SNF may seek an adjustment under section 1861(v)(1)(E) of the Act. Under section 1861(v)(1)(E) of the Act, Congress mandated that the additional costs incurred by SNFs in complying with section 4201 of Public Law 100–203 be paid by the Medicare program. However, at this time HCFA does not have data available to establish a precise add-on factor to the limits that would compensate SNFs for these new costs. Based upon the data available to us at the present time we have estimated the add-on at $1.45, and expect to approve routinely the payment of additional costs up to this amount. Because section 4201 of Public Law 100–203 requires that these additional costs be paid by Medicare, SNFs will be afforded the opportunity to present documentation justifying payment of an add-on in excess of the $1.45 estimated by HCFA. An adjustment to the cost limit will be made to the extent the costs in excess of the limit are reasonable, actually incurred in the implementation of the additional requirements, separately identified by the SNF, and verified by the intermediary.

When HCFA updates the SNF cost limits using a later data base that includes the costs of complying with these additional requirements under 1861(v)(1)(E) of the Act, a per diem add-on will no longer be needed because those updated limits would include these costs in the basic routine cost limit.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to reuslt in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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.

Under this final notice with comment period, the schedule of limits on payments for SNF inpatient routine services has been revised to reflect more recent cost report and wage index data. We estimate that the revised schedule of limits will result in increased payments for SNF services under the Medicare program compared to expenditures under October 1, 1987 limits adjusted for inflation as follows:

Fiscal year	Cost (in millions) *
1991	$170
1992	$120
1993	$130
1994	$140

* Rounded to nearest $10 million.

The Medicare expenditures for FY 1991 include costs which were shifted from FY 1990 because payment to most SNFs for FY 1990 allowable costs will occur in FY 1991. These increased payments will be applicable for cost reporting periods beginning on or after October 1, 1989.

This is a major rule under E.O. 12291 threshold criteria and we have prepared the following regulatory impact analysis. Overall SNF Medicare program costs will increase by 6 percent. However, since SNF payments represent 2 percent of all Medicare expenditures, the actual increase to Part A Medicare program expenditures is only 0.1 percent.

The effect of the revised cost limits is to substantially reduce the number of SNF's exceeding the SNF limits in all categories, as follows:

	Total SNFs	Exceeding old limits	Exceeding new limits
Freestanding SNFs:			
Urban	3,213	1,601	656
Rural	863	432	187
Hospital Based SNFs:			
Urban	451	360	295
Rural	473	324	237

Overall, SNFs will realize a substantial increase in Medicare payments using the revised schedule of limits. We believe the higher limits may increase SNF participation in the Medicare program.

B. Regulatory Flexibility Act

For final notices such as this, we prepare and publish a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that the notice will not have a significant economic impact on a substantial number of small entities. We consider all SNFs to be small entities under the RFA.

A substantial number of SNFs will be affected by this final notice. However, it is our practice not to consider an economic impact on small entities to be significant unless the annual total costs or revenues of a substantial number of entities will be increased or decreased by at least three percent. The revised limits will not result in a significant number of facilities' total revenues being increased or reduced by three percent or more over the October 1, 1987 limits adjusted for inflation since Medicare does not account for a high proportion of SNF utilization or revenue. Currently, for example, Medicare SNF expenditures account for only two percent of total national nursing home expenditures. Therefore, we have determined, and the Secretary certifies, that this final notice will not have a significant economic impact on a substantial number of small entities. Thus, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We have not prepared a rural impact statement since we have determined and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VII. Other Required Information

A. Paperwork Burden

This final notice will comment period does not impose information collection requirements; consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

B. Waiver of Proposed Notice and 30-Day Delay in Effective Date

In adopting cost limits such as these, we ordinarily first publish a proposed schedule of cost limits in the **Federal Register** with a 60-day period for public comment. In addition, we normally provide a delay of 30 days in the effective date. However, as required by section 6024 of Public Law 101–239, this schedule of limits is effective for cost reporting periods beginning on or after October 1, 1989. In addition, this

schedule of limits conforms to the clear direction provided in sections 1861(v)(1) and 1866 of the Act, the implementing regulations at § 413.30, and section 6024 of Public Law 101-239. For these reasons, we find good cause to waive the proposed notice and comment procedures because they would be contrary to the public interest in updating these limits. In addition, because section 6024 of Public Law 101-239 requires that this schedule be effective for cost reporting periods beginning on or after October 1, 1989, we find good cause to waive the usual 30-day delay in the effective date.

In order to implement the revised limits at this time, we are eliminating the publication of a proposed notice, and are publishing this notice, which is effective for cost reporting periods beginning on or after October 1, 1989, as a final notice with a 60-day comment period.

C. Public Comment

Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of the preamble to this notice, and, if we make any changes to this notice, we will respond to the comments in the preamble to that notice.

VIII. Schedule of Limits

Under the authority of sections 1861(v) and 1888 of the Act, the following group per diem limits will apply to the adjusted SNF inpatient routine service costs paid for under Medicare for cost reporting periods beginning on or after October 1, 1989. Medicare fiscal intermediaries will compute the adjusted limits for SNFs using the methodology set forth in this notice and will notify each SNF of its applicable limit. These limits, as adjusted by the applicable wage indexes and the cost reporting year adjustments, will remain in effect for cost reporting periods beginning on or after October 1, 1989.

TABLE I.—SNF GROUP LIMITS

Location	Labor-related component	Nonlabor component [3]
Freestanding:		
MSA	$69.95	$15.15
Non-MSA	$70.82	$12.23
Hospital-Based MSA:		
Limit	$100.84	$21.98
Add-on	$1.48	$0.31
Non-MSA Limit	$96.03	$16.36
Add-on	$1.01	$0.21

[3] The nonlabor portion of the limits for SNFs located in the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands will be increased by the following cost-of-living adjustments:

	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Mai, Lanai and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.8832
Taylor, TX	
Aguadilla, PR	0.4591
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9619
Portage, OH	
Summit, OH	
Albany, GA	0.7791
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8696
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	0.9949
Bernalillo, NM	
Alexandria, LA	0.8467
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9873
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9512
Blair, PA	
Amarillo, TX	0.9589
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2180
Orange, CA	
Anchorage, AK	1.4319
Anchorage, AK	
Anderson, IN	0.9148
Madison, IN	
Anderson, SC	0.7798
Anderson, SC	
Ann Arbor, MI	1.1579
Washtenaw, MI	
Anniston, AL	0.7672
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9511
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.4369
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8672
Buncombe, NC	
Athens, GA	0.7718
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9293
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	0.9848
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.8777
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9878
Kane, IL	
Kendall, IL	
Austin, TX	1.0294
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0878
Kern, CA	
Baltimore, MD	0.9863
Anne Arundel, MD	
Baltimore, MD	
Baltimore, City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9042
Penobscot, ME	
Baton Rouge, LA	0.9555
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9640
Calhoun, MI	
Beaumont-Port Aurther, TX	0.9456
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0453
Columbiana, OH	
Beaver, PA	
Bellingham, WA	1.0844

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Whatcom, WA	
Benton Harbor, MI	0.8481
Berrien, MI	
Bergen-Passaic, NJ	1.0483
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9882
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8030
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9212
Broome, NY	
Tioga, NY	
Birmingham, AL	0.9352
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.9269
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.9112
Monroe, IN	
Bloomington-Normal, IL	0.9655
McLean, IL	
Boise City, ID	1.0167
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.0812
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0770
Boulder, CO	
Bradenton, FL	0.8931
Manatee, FL	
Brazoria, TX	0.8766
Brazoria, TX	
Bremerton, WA	0.9573
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1305
Fairfield, CT	
Brownsville-Harlingen, TX	0.8697
Cameron, TX	
Bryan-College Station, TX	0.9739
Brazos, TX	
Buffalo, NY	0.9395
Erie, NY	
Burlington, NC	0.7633
Alamance, NC	
Burlington, VT	0.9390
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.3973
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8902
Carroll, OH	
Stark, OH	
Casper, WY	0.9276
Natrona, WY	
Cedar Rapids, IA	0.8909
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8903
Champaign, IL	
Charleston, SC	0.8542
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9646
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	0.8372
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.8845
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.8880
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.8785
Laramie, WY	
Chicago, IL	1.0842
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0549
Butte, CA	
Cincinnati, OH-KY-IN	1.0236
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7268
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0764
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0255
El Paso, CO	
Columbia, MO	1.0378
Boone, MO	
Columbia, SC	0.8444
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7346
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9471
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8284
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.9121
Allegeny, MD	
Mineral, WV	
Dallas, TX	1.0142
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7628
Danville City, VA	
Pittsylvania, VA	
Davenport-Report Island-Moline, IA-IL	0.9446
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9918
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8487
Volusia, FL	
Decatur, AL	0.7085
Decatur City, AL	
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8902
Macon, IL	
Denver, CO	1.1755
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9710
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0783
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7892
Dale, AL	
Houston, AL	
Dubuque, IA	0.9456
Dubuque, IA	
Duluth, MN-WI	0.9602
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8865
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8887
El Paso, TX	
Elkhart-Goshen, IN	0.9197
Elkhart, IN	
Elmira, NY	0.9134
Chemung, NY	
Enid, OK	0.9149
Garfield, OK	
Erie, PA	0.9568
Erie, PA	
Eugene-Springfield, OR	1.0198
Lane, OR	
Evansville, IN-KY	1.0301
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1 0039
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8158

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cumberland, NC	
Fayetteville-Springdale, AR	0.7383
Washington, AR	
Flint, MI	1.1652
Genesee, MI	
Florence, AL	0.7089
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.7703
Florence, SC	
Fort Collins-Loveland, CO	1.0292
Larimer, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0258
Broward, FL	
Fort Myers-Cape Coral, FL	0.9003
Lee, FL	
Fort Pierce, FL	1.0479
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.8747
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8181
Okaloosa, FL	
Fort Wayne, IN	0.9008
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	0.9543
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1136
Fresno, CA	
Gadsden, AL	0.8523
Etowah, AL	
Gainesville, FL	0.8727
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0819
Galveston, TX	
Gary-Hammond, IN	1.0492
Lake, IN	
Porter, IN	
Glens Falls, NY	0.8735
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9627
Grand Forks, ND	
Grand Rapids, MI	1.0075
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9839
Cascade, MT	
Greeley, CO	1.0214
Weld, CO	
Green Bay, WI	0.9661
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.8558
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.9321
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.8715
Washington, MD	
Hamilton-Middletown, OH	0.9680

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	1.0514
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1002
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.8212
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1364
Honolulu, HI	
Houma-Thibodaux, LA	0.7485
Lafourche, LA	
Terrebonne, LA	
Houston, TX	0.9867
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9177
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8260
Madison, AL	
Indianapolis, IN	0.9902
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.0950
Johnson, IA	
Jackson, MI	0.9283
Jackson, MI	
Jackson, MS	0.8074
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7559
Madison, TN	
Jacksonville, FL	0.8920
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7218
Onslow, NC	
Jamestown-Dunkirk, NY	0.7963
Chautauqua, NY	
Janesville-Beloit, WI	0.8998
Rock, WI	
Jersey City, NJ	1.0736
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8772

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.9149
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0420
Grundy, IL	
Will, IL	
Joplin, MO	0.8635
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1088
Kalamazoo, MI	
Kankakee, IL	0.9024
Kankakee, IL	
Kansas City, KS-MO	1.0092
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0527
Kenosha, WI	
Killeen-Temple, TX	1.1226
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8202
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9410
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.9685
LaCrosse, WI	
Lafayette, LA	0.9002
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8842
Tippecanoe, IN	
Lake Charles, LA	0.8899
Calcasieu, LA	
Lake County, IL	1.0853
Lake, IL	
Lakeland-Winter Haven, FL	0.8189
Polk, FL	
Lancaster, PA	0.9942
Lancaster, PA	
Lansing-East Lansing, MI	1.0360
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7359
Webb, TX	
Las Cruces, NM	0.8468
Dona Ana, NM	
Las Vegas, NV	1.1146
Clark, NV	
Lawrence, KS	0.9909
Douglas, KS	
Lawton, OK	0.8522

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Comanche, OK	
Lewiston-Auburn, ME	0.9191
Androscoggin, ME	
Lexington-Fayette, KY	0.9160
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.9177
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.9428
Lancaster, NE	
Little Rock-North Little Rock, AR	0.9239
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8154
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.9361
Lorain, OH	
Los Angeles-Long Beach, CA	1.2412
Los Angeles, CA	
Louisville, KY-IN	0.9547
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.9714
Lubbock, TX	
Lynchburg, VA	0.8497
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.7802
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0071
Dane, WI	
Manchester-Nashua, NH	0.9385
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8895
Richland, OH	
Mayaguez, PR	0.4807
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7679
Hidalgo, TX	
Medford, OR	0.9652
Jackson, OR	
Melbourne-Titusville, FL	0.8893
Brevard, FL	
Memphis, TN-AR-MS	0.9412
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0053
Merced, CA	
Miami-Hialeah, FL	1.0224
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	0.9928

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0510
Midland, TX	
Milwaukee, WI	1.0131
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1344
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8234
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.0698
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9386
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.8149
Ouachita, LA	
Montgomery, AL	0.8038
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.9652
Delaware, IN	
Muskegon, MI	0.9904
Muskegon, MI	
Naples, FL	1.0000
Collier, FL	
Nashville, TN	0.8892
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2106
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9478
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0768
New Haven, CT	
New London-Norwich, CT	1.0668
New London, CT	
New Orleans, LA	0.9352
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3182
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.0878

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8545
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.9267
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4028
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8142
Marion, FL	
Odessa, TX	0.9274
Ector, TX	
Oklahoma City, OK	0.9861
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0539
Thurston, WA	
Omaha, NE-IA	0.9736
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.8899
Orange, NY	
Orlando, FL	0.9123
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8951
Daviess, KY	
Oxnard-Ventura, CA	1.3900
Ventura, CA	
Panama City, FL	0.7899
Bay, FL	
Parkersburg-Marietta, WV-OH	0.9064
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8749
Jackson, MS	
Pensacola, FL	0.8250
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.9793
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.0773
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0015
Maricopa, AZ	
Pine Bluff, AR	0.7990

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Jefferson, AR	
Pittsburgh, PA	1.0106
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0241
Berkshire, MA	
Ponce, PR	0.5473
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9618
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1214
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	0.9399
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	0.9727
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	0.9734
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	0.9274
Utah, UT	
Pueblo, CO	0.9294
Pueblo, CO	
Racine, WI	0.9182
Racine, WI	
Raleigh-Durham, NC	0.9395
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8525
Pennington, SD	
Reading, PA	0.9117
Berks, PA	
Redding, CA	0.9900
Shasta, CA	
Reno, NV	1.1256
Washoe, NV	
Richland-Kennewick, WA	0.9719
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.8864
Charles City, Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1290
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8224
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0538

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Olmsted, MN	
Rochester, NY	0.9489
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9805
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2071
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0768
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9889
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.8691
Buchanan, MO	
St. Louis, MO–IL	1.0125
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0502
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2581
Monterey, CA	
Salt Lake City-Ogden, UT	0.9271
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8394
Tom Green, TX	
San Antonio, TX	0.8334
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1,2358
San Diego, CA	
San Francisco, CA	1.4349
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4701
Santa Clara, CA	
San Juan, PR	0.5363
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1721
Santa Barbara, CA	
Santa Cruz, CA	1,2324
Santa Cruz, CA	
Santa Fe, NM	0.9487
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma CA	1.4190
Sonoma, CA	
Sarasota, FL	0.9255
Sarasota, FL	
Savannah, GA	0.8415
Chatham, GA	
Effingham	
Scranton-Wilkes Barre, PA	0.9239
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0900
King, WA	
Snohomish, WA	
Sharon, PA	0.9209
Mercer, PA	
Sheboygan, WI	0.9329
Sheboygan, WI	
Sherman-Denison, TX	0.8911
Grayson, TX	
Shreveport, LA	0.8936
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	0.9026
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.9492
Minnehaha, SD	
South Bend-Mishawaka, IN	0.9712
St. Joseph, IN	
Spokane, WA	1.0763
Spokane, WA	
Springfield, IL	1.0039
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8865
Christian, MO	
Greene, MO	
Springfield, MA	1.0039
Hampden, MA	
Hampshire, MA	
State College, PA	1.0462
Centre, PA	
Steubenville-Weirton, OH–WV	0.9121
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1372

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
San Joaquin, CA	
Syracuse, NY	0.9760
Madison, NY	
Onondage, NY	
Oswego, NY	
Tacoma, WA	1.0246
Pierce, WA	
Tallahassee, FL	0.8359
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	08996
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8217
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	0.8027
Miller, AR	
Bowie, TX	
Toledo, OH	1.0659
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9901
Shawnee, KS	
Trenton, NJ	1.0309
Mercer, NJ	
Tucson, AZ	0.9776
Pima, AZ	
Tulsa, OK	0.9238
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.9422
Tuscaloosa, AL	
Tyler, TX	0.9615
Smith, TX	
Utica-Rome, NY	0.8100
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2272
Napa, CA	
Solano, CA	
Vancouver, WA	1.0569
Clark, WA	
Victoria, TX	0.8248
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9807
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.2796
Tulare, CA	
Waco, TX	0.8587
McLennan, TX	
Washington, DC-MD-VA	1.0826
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.9455

TABLE II—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9617
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	0.9472
Palm Beach, FL	
Wheeling, WV-OH	0.8553
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.0225
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8315
Wichita, TX	
Williamsport, PA	0.9086
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0278
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8179
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	0.9416
Worcester, MA	
Yakima, WA	0.9915
Yakima, WA	
York, PA	0.9403
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0015
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0089
Sutter, CA	
Yuba, CA	

TABLE III.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.6962
Alaska	1.3733
Arizona	0.8781
Arkansas	0.7070
California	1.0136
Colorado	0.8553
Connecticut	1.0174
Delaware	0.8331
Florida	0.8146
Georgia	0.7445
Hawaii	0.8840
Idaho	0.8567
Illinois	0.7983
Indiana	0.8032
Iowa	0.7933
Kansas	0.7888
Kentucky	0.7938
Louisiana	0.7584
Maine	0.8233
Maryland	0.7965
Massachusetts	1.0134
Michigan	0.9089
Minnesota	0.8929
Mississippi	0.7175
Missouri	0.7483
Montana	0.8498
Nebraska	0.7679
Nevada	0.9472

TABLE III.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
New Hampshire	0.8872
New Jersey [1]	
New Mexico	0.8048
New York	0.8037
North Carolina	0.7636
North Dakota	0.8394
Ohio	0.8649
Oklahoma	0.7908
Oregon	0.9907
Pennsylvania	0.8738
Puerto Rico	0.5370
Rhode Island [1]	
South Carolina	0.7192
South Dakota	0.7556
Tennessee	0.7043
Texas	0.7609
Utah	0.8612
Vermont	0.8399
Virginia	0.7867
Washington	0.9916
West Virginia	0.8469
Wisconsin	0.8453
Wyoming	0.9025

[1] All counties within the State are classified urban.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS [1] EFFECTIVE OCTOBER 1, 1989

If a SNF cost reporting period begins:	The adjustment factor is:
November 1, 1989	1.00575
December 1, 1989	1.01134
January 1, 1990	1.01715
February 1, 1990	1.02282
March 1, 1990	1.02796
April 1, 1990	1.03369
May 1, 1990	1.03926
June 1, 1990	1.04505
July 1, 1990	1.05069
August 1, 1990	1.05654
September 1, 1990	1.06242
October 1, 1990	1.06815
November 1, 1990	1.07410
December 1, 1990	1.07989
January 1, 1991	1.08591
February 1, 1991	1.09106
March 1, 1991	1.09574
April 1, 1991	1.10094
May 1, 1991	1.10600
June 1, 1991	1.11125
July 1, 1991	1.11635
August 1, 1991	1.12165
September 1, 1991	1.12698

[1] Based on compounded projected market basket inflation rates of 6.98 percent for 1990, 6.76 percent for 1991 and 5.75 percent for 1992. These adjustment factors are subject to change based on later estimates of cost increases or decreases.

If for any reason we do not publish a new schedule of limits to be effective October 1, 1991 or do not announce other changes in the current schedule by that date, the current limits will continue in effect with the last adjustment factor above multiplied by 1.00479 once for each month between September 1, 1991 and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued; for example, if the cost reporting period begins on November 1, 1991, 1.12698 would be multiplied by 1.00479 twice and the resulting factor would equal 1.13780 (1.12698 × 1.00479 × 1.00479 = 1.13780).

TABLE V.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS

Category of costs	Relative [1] importance 1990	Forecaster percent changes (1985-1990)	Price variable used
Payroll Expenses	64.009	DRI-CFS [2]	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table C-2.
Employee Benefits	7.667	DRI-MM [3]	Supplements to wages and salaries per worker in nonagricultural establishments. For supplements to wages. Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Table 1.11. For total employment. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly), Table B-4.
Food	7.873	DRI-MM	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
		DRI-MM	Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 22.
Other business services	5.099	DRI-MM	Service component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Fuel and other utilities	4.054	DRI-MM	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, (*monthly*), Table 7.11.
		DRI-MM	B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis.
		DRI-MM	C. Implicit price deflator for natural gas (derived from utility (piped) gas component of Consumer Price Index). Source: Same as electricity above.
		DRI-CFS	D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Supplies	3.131	DRI-MM	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Drugs	2.074	DRI-CFS	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes*, (monthly), Table 6.
Health services	1.522	DRI-CFS	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Miscellaneous	4.571	DRI-MM	All Item Consumer Price Index, all urban.
	100.00		Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for homes certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973-April 1974, DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

[2] DRI-CFS refers to Data Resources, Inc., Cost Forecasting Service (CFS 901), 1750 K Street, NW., Washington, DC 20006.

[3] DRI-MM refers to Data Resources, Inc., Trendlong (TRLG 0190), 29 Hartwell Avenue, Lexington, Massachusets 02173.

Authority: Sections 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy), sec. 6024 of Pub. L. 101-239, and 42 CFR 413.30.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: August 12, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: January 24, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-7225 Filed 3-29-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-91-3246]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone (202) 708-0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within ten (10) days.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement; and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 8, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Proposal: Collection requirements for the auction of section 221(g)(4) multifamily mortgages and billing for interest enhancement (subsidy) payments under section 221(g)(4).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This collection consists of project data that will be made available to potential purchasers participating in the auction of section 221(g)(4) mortgages. The data will provide information on the mortgage, property, and the mortgagor, and will allow potential purchasers to make informed bids at the mortgage auction. The project data will be submitted on a Project Summary Data Sheet. Subsequent to the sale, the mortgage that purchased the mortgage is entitled to receive monthly interest enhancement (subsidy) payments. HUD Form 93487 will be used by the purchasing mortgagee to bill HUD for the interest enhancement (subsidy) payment.

Forms: 1. HUD Form 93487—Billing for Monthly Interest Subsidy—Multifamily Auction. Mortgagees (primarily lending institutions and mortgage companies) will utilize this form to bill HUD for monthly interest enhancement (subsidy) payments on section 221(g)(4) multifamily mortgages purchased by them at the auction. The monthly billing will include the following: (a) The amount due, (b) billing period, (c) project name and project number, (d) mortgagee identification number, and (e) an indication as to whether the mortgage has been sold, transferred, or otherwise disposed of.

2. FORMAT for Project Data Summary Sheet. The following project information will be submitted to HUD by the mortgage to HUD under section 221(g)(4) that will be included in the auction: (a) Project name, address and HUD project number, (b) mortgage balance and current interest rate as of the date of election to assign, (c) interest rate on the original mortgage, maturity date, date of final endorsement, (d) annual fee for servicing mortgage, and (e) type of subsidy and number of units.

3. Copies of physical inspection report(s) completed within the last year but not yet submitted to HUD.

4. Statement of fiscal status of the mortgage at time of election, including default status.

Respondents: HUD-approved mortgagees who hold mortgages insured under section 221 of the National Housing Act prior to November 30, 1983, and who elect to assign to HUD any such mortgage not in default at the end of twenty years from the date of final endorsement.

Frequency of Submission: Information collected on the Project Data Summary Sheet will be submitted at the time of election to assign. Information collection on HUD Form 93487 will be submitted monthly by the mortgagee that purchases the mortgage at the auction.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Reporting Burden:							
HUD Form 93487	100		12		.25		300
Proj Data Sheet	30		12		1.5		540

Status: New.

Contact: James T. Tahash, HUD (202) 708-3944, Wendy Sherwin, OMB (202) 395-6880.

Dated: March 8, 1991.

Supporting Statement

Reporting requirements for the auction of section 221(g)(4) multifamily mortgages and billing for interest enhancement payments of section 221(g)(4) mortgages.

A. Justification

1. a. Explain the circumstances that make the collection of information necessary.

Section 221(g)(4) of the National Housing Act provided mortgagees with mortgages insured under section 221 pursuant to a commitment issued prior to November 30, 1983, the option to assign to HUD any such mortgage not in default at the end of twenty years from the date of final endorsement. The statute further provided that, upon assignment, HUD would issue to the mortgagee debentures with a face amount equal to the amount of the unpaid principal balance of the mortgage as of the date of the assignment.

Section 336 of the Cranston-Gonzalez National Affordable Housing Act of 1990 provides that when a mortgagee elects to assign a mortgage to HUD under section 221(g)(4), HUD shall, in lieu of accepting the assignment, arrange an auction sale of the mortgage and pay the purchaser monthly interest

enhancement payments. The monthly interest payment to the mortgagee whose bid is accepted by HUD, will be paid in an amount equal to the difference between the stated interest due on the mortgage loan and the lowest interest rate necessary to accomplish a sale of the mortgage loan, and will continue until maturity, prepayment, or default and assignment of the loan to HUD and payment of full insurance benefits. The purchasing mortgagee will use HUD Form 93487 to bill HUD for monthly interest payments.

Section 336 of the Cranston-Gonzalez National Affordable Housing Act of 1990 requires that a mortgagee who elects to assign a mortgage will provide HUD and bidding mortgagees with certain project information. This information will be submitted on a Project Summary Data Sheet and will provide pertinent information on the mortgage, project, and the mortgagor. The information will be used to assist potential purchasers in making informed bids at the mortgage auction.

b. Statutory Authority. Section 221(g)(4) of the National Housing Act (12 U.S.C. 17151(g)(4)) provides mortgagees with mortgages insured under section 221 pursuant to a commitment issued prior to November 30, 1983, with the option of assigning to HUD mortgages not in default at the end of twenty years from the date of final endorsement. Upon assignment, the National Housing Act required HUD to issue to the mortgagee debentures equal to the amount of the unpaid mortgage as of the date of the assignment. Section 336 of the Cranston-Gonzalez National Affordable Housing Act amended section 221(g)(4) by authorizing HUD to, in lieu of accepting assignment of the assignment, arrange an auction sale of the mortgage. Subparagraph 221(g)(4)(C)(ii)(II) requires the mortgagee to provide the Secretary and potential bidders with relevant information about the mortgage and the property.

c. Regulatory Authority. 24 CFR 221.770 provides a mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983, the option to assign, transfer and deliver to HUD the mortgage not in default at the end of twenty years from the date of final endorsement. Regulations implementing section 336 of the Cranston-Gonzalez National Affordable Housing Act are being drafted. Section 221(g)(4)(C)(vi) requires HUD to implement section 336 within 30 days of enactment, but does not require the issuance of regulations until 6 months after enactment.

2. Indicate how, by whom, and for what purpose the information is to be used and the consequence to Federal program or policy activities if the collection of information was not conducted.

Potential purchasers of mortgages need information on the mortgage, the property, and the mortgagor in order to decide whether to bid and how much to bid. If the information is not collected by HUD, participation in the mortgage auctions would be minimal because it would require each interested bidder to expend time and money contacting the mortgagee holding the note to obtain the necessary information on the mortgage. Further, mortgagees would be bombarded by the number of potential bidders contacting them for the information. Since HUD will collect the information and put it in the auction announcement, the information will be available to all potential bidders.

Mortgagees who purchase section 221(g)(4) mortgages at the auction will use HUD Form 93487 to submit billings to HUD for the monthly interest enhancement payments on each mortgage. This Form is used by HUD staff to ascertain the correct amount of monthly subsidy to each payee, and to advise HUD of additions or deletions to individual mortgagee loan portfolios. In the absence of the information on HUD Form 93487, HUD could pay the incorrect amount in interest enhancement payments.

3. Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing them.

Computer generated versions of the forms will be acceptable.

4. Describe efforts to identify duplication.

HUD Form 93487 has been carefully designed to require the minimum of information from each payee. Address information will be taken from an existing Master File, rather than requested on each month's billing. Multiple properties will be listed on each form, rather than individually on separate forms.

There is no duplication of information required by the Project Summary Data Sheet since each mortgage has only one mortgage that will be providing the information.

5. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2.

This is an entirely new program. Similar information either does not exist or it is not up-to-date and accurate.

6. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The information collected will not be from small businesses.

7. Describe the consequences to Federal program or policy activities if the collection were conducted less frequently.

The information on the Project Data Summary Sheet must be collected for each mortgage at the time the mortgagee makes an election to assign under section 221(g)(4). By statute, the information must be made available to potential bidders prior to the auction, and, therefore, can not be collected less frequently. The information contained on the Project Data Summary Sheet will not be collected more than once.

The statutorily-mandated interest enhancement payments cannot be properly paid unless HUD receives the information on the HUD Form 93487, Billing for Monthly Interest Subsidy. The purchasing mortgagee must submit a monthly billing to advise HUD of the amount of the interest enhancement due and of any changes in the portfolio of mortgages upon which the payments are based. Therefore, it is not possible to collect the information less frequently.

8. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

Collection of data is consistent with the requirements in 5 CFR 1320.6.

9. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A meeting was held with representatives of the mortgage banking industry shortly after section 336 was enacted. At that time, issues related to collection of data on the project that would be included in the auction were discussed.

Those attending the meeting indicated that the information is readily available, and the frequency of collection is appropriate and not burdensome.

No individuals outside HUD were consulted regarding the information to be collected on HUD Form 93487. However, the information requested has been reduced to a minimum. Further, the information required to complete the Form is needed in order to issue the monthly interest enhancement payment. All required information is readily available in the mortgagee files.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

None of the information requested is of a personal or confidential nature.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions contained that could be considered on a sensitive nature.

12. Provide estimates of annualized cost to the Federal Government and to the respondents. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead printing, and support staff), and any other expense that would not have been incurred without the paperwork burden.

Information collected on the Project Data Summary Sheet by HUD on 360 mortgages annually will be entered into a computer by HUD staff. It will take ½ hour per mortgage at $30 per hour for HUD staff to enter the data. The cost to HUD will be $5,400 per year (360 mortgages x $15 per mortgage).

It is estimated that 1,200 Billings for Monthly Interest Subsidy Payment (Form 93487) will be received annually Information submitted monthly to HUD on each HUD Form 93487 will require approximately one hour in preparing and processing the interest subsidy payments. At a rate of $30 per hour, the total cost to HUD in processing 1,200 form is $36,000 annually. It is also anticipated that an additional $100,000 annually will be spent in providing automated system support in processing and distributing payments to mortgagees.

It should typically take the respondents 1½ hours to gather and forward the information for the Project Data Summary Sheet. Using $30 per hour for salaries and overhead and projecting 15 mortgages per auction at 2 auctions each year, the total annual cost to the respondents is $16,200 (30 × 12 × 1.5 hours).

Each mortgagee entity will service an average of 10 loans which must be entered on the billing form. Securing information from 100 mortgagee files for each loan will take an estimated 15 minutes which produces an annual cost of $9,900 (100 × 12 × .25 × $30).

13. Provide estimates of the burden of the collection of information.

It is estimated that there will be 15 respondents at 2 auctions per year for a total of 30 respondents. Each respondent should take 1½ hours to provide project information on 12 mortgages per auction for a total of 540 annual burden hours (15 respondents × 2 auctions × 1.5 hours × 12 mortgages).

Each of the 100 respondents submitting HUD Form 93487 will service an average of 10 loans. Securing information from mortgagee files for each loan will take an estimated 15 minutes which produces annual burden hours of 300 hours (100 × .25 × 12).

14. Explain reasons for changes in burden, including the need for any increase.

This is a new information collection, and, therefore, there is no change in burden. However, in the future, the burden may change from year-to-year, because the number of mortgages eligible for assignment will vary from year to year.

15. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication.

The information collected will not be published for statistical use.

B. Collections of Information Employing Statistical Methods

Not applicable.

Format for Project Summary Data Sheet Part A—General Information

1. Project Name _____
2. Project Address _____
3. FHA Project Number _____
4. HUD Field Office with jurisdiction over Project _____

5. Mortgagee _____
Address _____
(Contact person and phone number) _____

6. Servicer _____
Address _____
(Contact person and phone number) _____

7. Management Agent _____
Address _____
(Contact person and phone number) _____

Part B—Mortgage Information

1. Section of National Housing Act:
Section 221(d)(3) BMIR _____
Section 221(d)(3) MR _____
Section 221(d)(4) _____

2. Original Mortgage Amount:
$_____

3. Mortgage Balance as of _____-_____-_____:
$_____

4. Interest Rate: _____ %

5. Monthly Payment to P & I:
$_____

6. Start of Amortization: _____-_____

7. Mortgage Maturity Date: _____-_____

8. Data of Final Endorsement: _____-_____

9. Annual Servicing Fee:
$ _____
_____ % of principal balance

Part C—Mortgagor Information

1. Mortgagor Entity:
Name of Entity _____
Name of Principal _____
Title _____
Address _____

2. Type of Owner: Check all that apply
Nonprofit _____
Limited Divided _____
Profit-motivated _____
Cooperative _____
Individual _____
Partnership _____
Corporation _____
Other _____

BILLING CODE 4210-27-M

Billing for Monthly Interest Subsidy—Multifamily Auction

U.S. Department of Housing & Urban Development
Office of Housing

OMB Approval No. 25XX-XXXX (exp.99/99/99)

Public reporting burden for this collection of information is estimated to average 0.25 hour 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 Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0005), Washington, D.C. 20503.

Instructions:

1. If more space is needed, use additional forms. Number pages at bottom center.
2. Use the following codes in the Additions or Deletions to the Portfolio Column:
   If there have been no additions or deletions, no entry is necessary.
   - A Mortgage assigned to the HUD Secretary
   - P Mortgage purchased from another mortgagee. Attach copy of Form HUD 92080.
   - T Mortgage prepayment. Attach copy of Form HUD 9807.
   - S Mortgage sold to another mortgagee. Attach original of Form HUD 92080. Enter "0" in Scheduled Amount Due.
   - V Voluntary termination. Attach copy Form HUD 9807.
   - N New auction purchase.
3. The amount of subsidy due on prepayment cases must be calculated using a daily factor of 3.33. Example: Termination on the 14th - Schedule Amount Due = $5,000. Subsidy due = 14 days X 3.33 X $5,000 = $2331.
4. Bills must be received by the 20th of the month for which interest is claimed in order to assure payment by the first of the following month.
5. Mail to: U.S. Department of Housing & Urban Development,
   P.O. Box XOOOOX, Washington, DC XXXXX-XXXX

This billing is for: Month: Year:

Mortgagee / Servicer HUD ID Number:

Mortgagee / Servicer Name:

Contact Person's Name & Telephone Number (including area code):

	FHA Project Number (8 digits)	Project Name	Additions or Deletions to the Portfolio	Payment Number From Interest Subsidy Schedule	Scheduled Amount Due
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					

I certify that the amounts claimed were calculated in accordance with HUD regulations and are true & correct; furthermore, the amounts have not been previously claimed or paid. A copy of this billing and supporting records will be provided to Federal auditors upon request.

Mortgagee's Authorized Representative

Signature:

Title, & Date:

HUD will prosecute false claims & statements. Conviction may result in civil and/or criminal penalties. (U.S. Code, Title 18, Section 1001 & Title 31, Section 3279)

Total this page:

Grand Total all pages:

HUD use only: Voucher number and date:

Forms supply: May be reproduced on local office copiers. Page____of____Pages form HUD-93487 (2/6/91)

[FR Doc. 91-7550 Filed 3-29-91; 8:45 am]
BILLING CODE 4210-27-C

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purposes of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Sisseton-Wahpeton Sioux Tribe and the State of South Dakota executed on December 31, 1990.

DATES: This action is effective April 1, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 4614 MS/MIB, 1849 "C" Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC (202) 208-7445.

Dated: March 25, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-7587 Filed 3-29-91; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-010-01-4333-12]

Closure Of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of select public lands in Big Horn County, Wyoming, to protect the health and safety of the public (casual users) on public land administered by the Bureau of Land Management.

SUMMARY: Notice is hereby given that effective immediately, select lands administered by the Bureau of Land Management in the Little Mountain area of Big Horn County, Wyoming, are closed to casual public use. Casual use includes recreational uses such as camping, hunting, off-road vehicle use, and noncommercial activities and does not apply to licensed or permitted uses, right-of-way grantees/holders, mining claimants, or other BLM-authorized uses. This action is being taken to provide for public safety and prevent health risks from the presence of uranium mine tailings and the associated hazard of high levels of radon gas (airborne radioactive material) in and around mine and tailing sites.

EFFECTIVE DATE: This closure will be effective April 1, 1991, and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Bob Dieli, Outdoor Recreation Planner, Cody Resource Area, P.O. Box 518, 1714 Stampede Avenue, Cody, Wyoming 82414, Telephone: (307) 587-2216.

SUPPLEMENTARY INFORMATION: Specific restrictions are as follows. (1) The entire area as described is closed to casual public use: The area known as the Lisbon (a/k/a Dirty Beast) Mine: T. 58 N., R. 94 W., Section 23: W½NE¼SW¼, E½NW¼SW¼, E½SW¼SW¼, and SE¼SW¼; and section 26: NE¼NW¼, E½NW¼NW¼; and the area known as the Titan Mine located at T. 58 N., R. 94 W., section 20: W½NE¼SE¼ and NW¼SE¼ (comprising 220 acres). (2) Access roads leading to these areas are also closed to casual use. All closed areas and roads will be signed and posted. Specific legal descriptions and maps are available at the Cody Resource Area office, 1714 Stampede Avenue, Cody, Wyoming 82414.

Authority for closure orders is provided under 43 CFR subpart 8364.1. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: March 21, 1991.

Charles F. Wilkie,

Acting District Manager, Worland, Wyoming.

[FR Doc. 91-7531 Filed 3-29-91; 8:45 am]

BILLING CODE 4310-22-M

[WO-320-4214-10; NMNM-55234]

Proposed Modification, Waste Isolation Pilot Plant Project; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior, with the consent of the Secretary of Energy, proposes to modify Public Land Order No. 6826 for the purpose of prohibiting the transportation or emplacement, for test purposes, of any radioactive nuclear waste material within the Waste Isolation Pilot Plant site near Carlsbad, New Mexico, until June 30, 1991. This action is being taken to accommodate concerns raised in Resolution No. 4 of the House Committee on Interior and Insular Affairs about environmental, safety, and public health matters. The Committee asked that Congress have the opportunity to participate further in authorizing the use of this site. This notice invites public comment as to the proposed modification.

DATES: Comments must be received on or before July 1, 1991.

ADDRESSES: Comments should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM New Mexico State Office, 505-988-6071.

SUPPLEMENTARY INFORMATION: Public Land Order No. 6826, effective January 28, 1991, modified Public Land Order No. 6403 to, among other things, (1) expand the stated purpose of the order to include conducting the test phase of the project using retrievable, transuranic radioactive nuclear waste at the site, and (2) delete paragraph 5 of Public Land Order No. 6403 which prohibited the use of the land for the transportation, storage, or burial of radioactive materials. Public Land Order No. 6826 provides, however, that no radioactive waste will be transported to or emplaced at the Waste Isolation Pilot Plant site until such time as the Department of Energy has obtained all required permits and provided copies to the Bureau of Land Management, or certifies that all environmental permitting requirements have been met and the Bureau of Land Management issues a Notice to Proceed to be published in the **Federal Register**.

This proposed modification to Public Land Order No. 6826 is to prohibit the transportation or emplacement, for test purposes, of any radioactive nuclear waste materials in the Waste Isolation Pilot Plant site until June 30, 1991. The subject land is described in Public Land Order No. 6826, published in the **Federal Register**, 56 FR 3038, January 28, 1991.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed modification may present their views in writing to the New Mexico State Director of the Bureau of Land Management.

Notice is hereby given that a public meeting will be held in connection with the proposed modification. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Dated: March 28, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-7667 Filed 3-29-91; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicant have applied for a permit 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-756866

Applicant: Howard K.O. Chong, Honolulu, HI

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by F. Bowker, Thornkloof, Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

PRT-697819

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 4

The applicant requests amendment to their current permit to include take of fringed campion (*Silene polypetala*), Florida salt marsh vole (*microtus pennsylvanicus dukecampbelli*), yellow-blotched map turtle (*Graptemys flavimaculata*), Tulotoma snail (*Tulotoma magnifica*), pallid sturgeon (*Scaphirhynchus albus*), and Virgin Island tree boa (*Epicrates monensis granti*) for the purpose of scientific research and enhancement of propagation or survival of the species in accordance with Recovery documents or other Service work.

PRT-697830

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 3

The applicant requests amendment to their current permit to include take of Neosho madtom (*Noturus placidus*), Pallid sturgeon (*Scaphirhynchus albus*), Fanshell [*Cyprogenia stegaria* (=*irrorata*], Michigan moneky flower (*Mimulus glabratus* var. *michiganesis*) for the purpose of scientific research and enhancement of propagation or survival of the species in accordance with Recovery documents or other Service work.

PRT-756261

Applicant: Duke University Primate Center, Durham, NC

The applicant requests a permit to import one wild caught female red-bellied lemur (*Lemur rubriventer*) which has been held in captivity since 1984 at Louis Pasteur University Stasbourg, France. Lemur will be used in a captive-breeding program at Duke University Primate Center.

PRT-756268

Applicant: Dr. Philip R. Behrends, Solana Beach, CA

The applicant requests a permit to live-trap Stephen's kangaroo rat (*Dipodomys stephensi*) for species identification. This scientific research is to study the characteristics which distinguish the Stephen's kangaroo rat from the Pacific kangaroo rat (*Dipodomys agilis*). Hair samples will be taken, but all animals captured will be released at capture sites found within Riverside and San Diego Counties in California.

PRT-756766

Applicant: Steve Bedowitz, Dallas, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Henmyr Investments, Great Kei Nature Reserve, Bloemfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-756765

Applicant: Ralph Brockman, Monroe, LA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-756763

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import 41 serum samples from four Asian elephants (*Elephas maximus*) held in captivity at Calgary Zoological Garden, Alberta, Canada. Samples will be used to study circulating plasma vitamin E and nutritional needs of captive Asian elephants.

PRT-756767

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import 13 serum samples from captive-held and captive-born cheetahs (*Acinonyx jubatus*) held at the Metropolitan Toronto Zoo, Ontario, Canada. Serum samples will be used for basic vitamin and mineral assay for studying nutritional requirements of cheetahs.

PRT-756520

Applicant: Greater Baton Rouge Zoo, Baker, LA

The applicant requests a permit to import two male black lemurs (*Lemur macaco macaco*) born in captivity at Zoo Mulhouse, Mulhouse, France. Animals will be used for captive breeding and zoological display.

PRT-756521

Applicant: Greater Baton Rouge, Baker, LA

The applicant requests a permit to import two female black lemurs (*Lemur macaco macaco*) born in captivity at Louis Pasteur University, Strasbourg, France. Animals will be used for captive breeding and zoological display.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Driver, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: March 27, 1991.

Karen W. Rosa,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-7568 Filed 3-29-91; 8:45 am]

BILLING CODE 4910-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31857]

Georgetown Railroad Co.—Trackage Rights Exemption—Belton Railroad Co.

Belton Railroad Company has agreed to grant local trackage rights to Georgetown Railroad Company (GRR) over approximately 6.277 miles of track between milepost 0.0 in Belton, TX, and milepost 6.277 in Smith, TX.[1] The

[1] The trackage rights agreement is an interim arrangement to allow GRR to provide service to shippers over the line pending GRR's requested Commission authorization for acquisition of the line and related properties in Finance Docket No. 31856.

trackage rights were to become effective on or about March 28, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: March 26, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-7562 Filed 3-29-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31854]

New Orleans Lower Coast Railroad, Inc.; Acquisition and Operation Exemption; Missouri Pacific Railroad Co.

New Orleans Lower Coast Railroad, Inc. (NOLC), a noncarrier, has filed a notice of exemption to acquire and operate 23.7 miles of rail line owned by Missouri Pacific Railroad Company. The line extends between milepost 0.312, at Gouldsboro, LA, and milepost 24.0, at Myrtle Grove, LA. The parties contemplate consummating the transaction immediately after the March 15, 1991, effective date of the exemption.

This transaction is related to a notice of exemption filed concurrently in Finance Docket No. 31855, *RailTex, Inc.—Continuance in Control Exemption—New Orleans Lower Coast Railroad, Inc.*

Any comments must be filed with the Commission and served on Frank J. Pergolizzi, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

NOLC shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or order until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 26, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-7563 Filed 3-29-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31855]

Railtex, Inc.; Continuance in Control Exemption; New Orleans Lower Coast Railroad, Inc.

Railtex, Inc. (RailTex), a noncarrier, has filed a notice of exemption to continue to control New Orleans Lower Coast Railroad, Inc. (NOLC), upon NOLC's becoming a carrier. RailTex now controls seven nonconnecting Class III rail common carriers: Chesapeake and Albemarle Railroad Company, Inc., North Carolina & Virginia Railroad Company, Inc., Mid Michigan Railroad Company, Inc., San Diego & Imperial Valley Railroad Company, Inc., Austin & Northwestern Railroad Company, Inc., South Carolina Central Railroad Company, Inc., and Michigan Shore Railroad, Inc. The parties expect to consummate the transaction on March 15, 1991, the effective date of the exemption.

NOLC has filed a notice of exemption in Finance Docket No. 31854, *New Orleans Lower Coast Railroad, Inc.—Acquisition and Operation Exemption—Missouri Pacific Railroad Company*, to acquire and operate a 23.7-mile rail line between Gouldsboro and Myrtle Grove, LA.

RailTex indicates that: (1) The properties operated by the named railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Frank J. Pergolizzi, Slover & Loftus, 1224 17th Street NW., Washington, DC 20036.

Decided: March 26, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-7564 Filed 3-29-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-303 (Sub-No. 6X)]

Wisconsin Central Ltd.; Abandonment Exemption; in Eau Claire and Chippewa Counties, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Wisconsin Central Ltd. of 6.74 miles of rail line: (1) Between milepost 353.65, near Lake Hallie, Chippewa County, WI, and milepost 360.09, near Eau Claire, Eau Claire County, WI; and (2) between milepost 361.41 and the end of the line at milepost 361.71, near Eau Claire, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 1, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 11, 1991, petitions to stay must be filed by April 16, 1991, and petitions for reconsideration must be filed by April 26, 1991. Requests for a public use condition must be filed by April 11, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-303 (Sub-No. 6X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(1) Petitioner's representative: Janet H. Gilbert, Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017-5062.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building,

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Decided: March 21, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 91-7565 Filed 3-29-91; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKAN NATIVE AND HAWAIIAN NATIVE HOUSING

Meeting Announcement

AGENCY: The National Commission on American Indian, Alaskan Native and Hawaiian Native Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on American Indian, Alaskan Native and Hawaiian Native Housing announces a forthcoming meeting of the Commission.

DATES: April 4-6, 1991, 9 a.m. to 5 p.m.

ADDRESSES: Hotel Denver Downtown, 1450 Glenarm Place, Denver, CO 80202, (303) 573-1450.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 708-5702.

Type of meeting: Open.

Agenda:

Call to Order
Roll Call
Invocation
Chairman's Message
Introduction of Commissioners and Guests
Swear in New Commissioner
Discussion of Ethics Requirements
Committee Break Out
Full Commission Reconvene
Budget Discussion
Public Comments

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Lois V. Toliver,

Administrative Officer.

[FR Doc. 91-7577 Filed 3-29-91; 8:45 am]

BILLING CODE 6820-07-M

NUCLEAR REGULATORY COMMISSION

Correction to Bi-Weekly Notice; Application and Amendments to Operating Licenses Involving No Significant Hazards Consideration

March 25, 1991.

On March 6, 1991, the **Federal Register** publishes a Bi-Weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration. On page 9376, under Carolina Power & Light Company, Docket No. 50-261, second column, number 3, there are two references to Brunswick. The name Robinson should have appeared in those places.

Dated at Rockville, Maryland, this 25th day of March 1990.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-7575 Filed 3-29-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-528, STN 50-529, STN 50-530]

Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3); Exemption

I

Arizona Public Service Company (APS), Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority (the licensees) are the holders of Facility Operating Licenses No. NPF-41, No. NPF-51 and No. NPF-74, which authorize operation of the Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, respectively. The licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect. The facility consists of three pressurized water reactors (PWR) at the licensees' site located in Maricopa County, Arizona.

The revision of 10 CFR Part 55, "Operators' Licenses," which became effective on May 26, 1987, established requirements for the administration of operating tests on nuclear power plant simulators. These regulations, in conjunction with 10 CFR 50.54(i-1), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalification. These regulations further require that a certified or NRC-approved simulation facility must be used to administer operating tests after May 26, 1991. By letter dated January 25 1991, APS requested an exemption from the schedular requirements for certification of a plant-referenced simulator.

II

The licensee intends to comply with 10 CFR 55.45(b) by certifying a plant-referenced simulator. Section 55.45(b)(2)(iii) of 10 CFR part 55 requires that facility licensees proposing to use a simulation facility consisting solely of a plant-referenced simulator submit Form NRC-474, "Simulation Facility Certification," no later than 46 months after the effective date of this rule, that is, by March 26, 1991. On January 25, 1991, APS requested an exemption from this filing requirement to allow for the submittal of Form NRC-474 after March 26, 1991, but no later than May 24, 1991.

The PVNGS simulator became operational in October 1980, approximately 4 years before issuance of the Unit 1 operating license. The simulator was used for several years to conduct operator training and administer operating tests before the May 1987 revision to 10 CFR 55.45. Although an ongoing effort to incorporate plant modifications and maintain simular to fidelity was undertaken after the simulator became operational, significant simulator fidelity problems and performance deficiencies were noted after May 1987 and throughout 1988 and 1989.

In early 1989, APS began an intensive evaluation of the existing simulator utilizing a multi-disciplined team. On September 28, 1989, APS awarded a contract to upgrade the PVNGS simulator with an original scheduled certification date of March 21, 1991. However, the vendor has experienced unexpected problems such as obtaining experienced staff, resignation of key engineers, and computer system problems.

APS is concerned that additional problems may arise during the remainder of the acceptance testing of the upgraded PVNGS simulator which may require correction before certification. Should significant problems be uncovered, the required modifications and performance testing may not be completed in time to support submittal of the certification by March 26, 1991. Therefore, APS proposes to

certify the upgraded PVNGS simulator no later than May 24, 1991.

APS is not requesting an exemption from the requirements of 10 CFR 55.45(b)(2)(iv) at this time. APS believes that the deferral of submission of the simulator certification will not have an impact on the conduct of operating tests in accordance with NRC requirements. The first operating tests after May 26, 1991, are currently scheduled to begin on June 3, 1991. These tests are for the initial licensing of 20 reactor operator (RO) candidates.

III

The Commission has determined, pursuant to 10 CFR 55.11, that this exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission has determined pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This exemption grants a temporary relief period of 2 months from the March 1991 date for submittal of the PVNGS simulation facility certification. Good faith efforts to comply with the regulation were made as follows:

(1) The existing PVNGS simulator became operational in October 1980.

(2) On August 18, 1989, in a meeting at the NRC Region V offices, APS presented the status and plans for the simulator upgrade project.

(3) On August 30, 1989, APS provided an operator licensing examination schedule which voluntarily indicated that, at that time, the planned certification date was March 1991.

(4) On September 28, 1989, APS awarded a contract to upgrade the PVNGS simulator with a scheduled certification date of March 21, 1991.

(5) During an inspection of the operator requalification training program conducted in July of 1990, APS provided a schedule for the upgrading of the simulator which indicated that APS intended, at that time, to submit Form NRC-474 by March 21, 1991.

(6) Significant resources have been allocated to expedite the test program and certification submittal. These resources include additional operations personnel and vendor engineers assigned to all shifts, 20 hours per day of simulator time, and increased planning for coordination between various APS groups with responsibility for the simulator certification.

IV

The Commission hereby grants an exemption from the schedular requirements of 10 CFR 55.45(b)(2)(iii) for submittal of Form NRC-474, "Simulation Facility Certification." This exemption is effective until May 24, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the exemption will have no significant impact on the quality of the human environment (56 FR 12282, March 22, 1991).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 25th day of March, 1991.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-7572 Filed 3-29-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc. (Indian Point Nuclear Generating Unit No. 2); Exemption

I

Consolidated Edison Company of New York (Con Edison, the licensee) is the holder of Facility Operating License No. DPR-26 which authorizes operation of the Indian Point Nuclear Generating Unit No. 2 (IP-2). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect. The facility consists of one pressurized water reactor (PWR) at the licensee's site located in Westchester County, New York.

The revision to 10 CFR Part 55, "Operators' Licenses," which became effective on May 26, 1987, established requirements for the administration of operating tests on nuclear power plant simulators. These regulations, in conjunction with 10 CFR 50.54(i-1), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalification. These regulations further require that a certified or NRC-approved simulation facility must be used to administer operating tests after May 26, 1991. By letter dated January 11, 1991, Con Edison requested an exemption from the schedular requirements for certification of a plant-referenced simulator.

II

The licensee intends to comply with 10 CFR 55.45(b) by certifying a plant-referenced simulator. Section 55.45(b)(2)(iii) of 10 CFR part 55 requires that facility licensees proposing to use a simulation facility consisting solely of a plant-referenced simulator submit Form NRC-474, "Simulation Facility Certification," no later than 46 months after the effective date of this rule, that is, by March 26, 1991. On January 11, 1991, Con Edison requested an exemption from this filing requirement to allow for the submittal of NRC Form-474 after March 26, 1991, but no later than March 26, 1992. Additionally, Con Edison requested an exemption from the requirements of 10 CFR 55.45(b)(2)(iv) to allow the simulation facility portion of the operating tests to continue to be administered on the existing IP-2 simulator before the new simulator is certified and ready for training and examinations.

Con Edison completed proposal reviews and contract award for a new IP-2 simulator in September 1988, with an original ready for training date of March 14, 1991. However, the simulator vendor has advised Con Edison that additional time will be required. The New IP-2 simulator is currently expected to be ready for training and examinations by May 26, 1992.

The licensee intends to maintain the existing IP-2 simulator as appropriate to continue operator training and examinations until the new simulator is certified and ready for training and examinations. Con Edison initially planned to upgrade and certify the existing simulator, which became operational in 1973. During NRC-administered examinations conducted from October 24 to November 3, 1989, it was noted that the existing simulator had received improvements which incorporated control board changes and improved software. In a meeting at NRC Headquarters on October 3, 1990, the licensee informed the NRC of additional modifications which were either installed or planned.

During the proposed exemption period, from May 26, 1991, until certification of the new simulator, only one set of operating tests is scheduled. These tests, for licensed operator requalification, will include NRC-administered examinations and are scheduled for August of 1991. No other initial or requalification operating tests are scheduled before the planned certification date of March 26, 1992.

III

The Commission has determined, pursuant to 10 CFR 55.11, that this exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This exemption grants a temporary relief period of twelve months from the March 1991 date for submittal of the IP-2 simulation facility certification. Additionally, this exemption allows the licensee to continue to use the existing IP-2 simulator for the administration of the simulation facility portion of operating tests scheduled before May 26, 1992, or until the new simulator is certified and ready for training and examinations if this occurs sooner. Good faith efforts to comply with the regulation were made as follows:

(1) The existing IP-2 simulator became ready for training in 1973 and the licensee initially planned to certify it as a plant-referenced simulator.

(2) On January 27, 1987, in a meeting at the NRC's Region I offices, the licensee presented plans to upgrade the existing IP-2 simulator and certify it by the end of 1989.

(3) On October 29, 1987, in a meeting at NRC Headquarters, Con Edison discussed the details of the upgrade program for the existing IP-2 simulator.

(4) On May 11, 1988, in a meeting at NRC Headquarters, the licensee presented plans to procure a new IP-2 simulator while also upgrading the existing simulator.

(5) In September 1988 Con Edison awarded a contract for a new IP-2 simulator with an original ready for training date of March 14, 1991.

(6) On October 18, 1988, in a meeting at NRC Headquarters, Con Edison discussed plans for the development of the new simulator and maintenace and upgrading of the existing simulator. The estimated certification date was March 26, 1991.

(7) On November 14, 1988, in a meeting at NRC Headquarters, the licensee discussed the status of the new IP-2 simulator project. Although fabrication of hardware was approximately one month behind schedule, Con Edison still expected to meet the certification deadline.

(8) On October 3, 1990, in a meeting at NRC Headquarters, the licensee presented an updated status of the new IP-2 simulator project. Software integration was approximately five months behind schedule.

(9) The licensee intends to certify the new IP-2 simulator by March 26, 1992, and to maintain the existing simulator until that time.

The Commission hereby grants an exemption from the schedular requirements of 10 CFR 55.45(b)(2)(iii) for submittal of NRC Form 474, "Simulation Facility Certification." This exemption is effective until March 26, 1992. Furthermore, the Commission hereby grants an exemption from the requirement of 10 CFR 55.45(b)(2)(iv) for administration of the simulation facility portion of operating tests only on certified or approved simulation facilities after May 26, 1991. This exemption is effective until receipt of NRC Form 474 plus the time required for training but does not include any operating tests after May 26, 1992.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (56 FR 12283).

The licensee's initial exemption request dated January 11, 1991, is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

The Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of March 1991.

For the Nuclear Regulatory Commission.

Edward G. Greenman,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-7574 Filed 3-29-91; 8:45 am]

BILLING CODE 7950-01-M

[Docket No. 50-397]

Washington Public Power Supply System (Nuclear Project No. 2); Exemption

I

Washington Public Power Supply System (Supply System, the licensee) is the holder of Facility Operating License No. NPF-21 which authorizes operating of the Nuclear Project No. 2 (WNP-2). The license provides, among other things, that the licensee is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect. The facility is a boiling water reactor located on the licensee's site in Benton County, Washington.

The revision to 10 CFR part 55, "Operators' Licenses," which became effective on May 26, 1987, established requirements for the administration of operating tests on nuclear power plant simulators. These regulations in conjunction with 10 CFR 50.54(i-1), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalification. These regulations further require that a certified or NRC-approved simulation facility must be used to administer operating tests after May 26, 1991.

II

The licensee intends to comply with 10 CFR 55.45(b) by certifying a plant-referenced simulator. Section 55.45(b)(2)(iii) of 10 CFR part 55 requires that facility licensees proposing to use a simulation facility consisting solely of a plant-referenced simulator, submit Form NRC-474 "Simulation facility Certification" no later than 46 months after the effective date of this rule, that is by March 26, 1991. On April 4, 1990, the Supply System requested an exemption from this filing requirement to allow for the submittal of Form NRC-474 after March 26, 1991, but no later than December 31, 1991. Additionally, the Supply System requested an exemption from the requirements of 10 CFR 55.45(b)(2)(iv) to allow the simulation facility portion of the operating tests to be administered on the existing, upgraded WNP-2 simulator prior to certification of their new simulator. By letter dated September 27, 1990, the Supply System amended their April 4, 1990 letter and requested an additional extension to submit Form NRC-474 no later than September 30, 1992 following completion of acceptance testing.

In the Fall of 1988, after assessing the capabilities of the existing WNP-2 simulator pursuant to the requirements for its certification, the Supply System elected to replace its current simulator. Although the existing simulator could have been extensively upgraded to meet minimum requirements, the licensee decided to purchase a new simulator to improve operations personnel training and provide for future expansion. The exemption was requested because the replacement simulator will not be ready for certification by March 26, 1991.

The licensee initially expected completion of the new simulator in July of 1991 and requested an exemption until December 31, 1991. However, the vendor has had technical difficulties

modeling the facility's nuclear steam supply system. The licensee now anticipates delivery of the new simulator no sooner than December 31, 1991. The additional nine month period proposed (until Form NRC-474 submittal) is based on the Supply System's estimate of a realistic schedule to complete certification and included time for training the operators on the new simulator before using it for examinations.

During the proposed exemption period, from May 26, 1991 until certification of the new simulator, only two sets of operating tests are scheduled. In August of 1991, any operator who fail the March 1991 requalification examinations or the April 1991 initial examinations are scheduled to be reexamined. In March of 1992 the Supply System is scheduled to conduct there own requalification program annual operating tests.

The next examinations, currently scheduled for August of 1992 for initial operator licensing, are to be conducted on the new simulator. In order to allow adequate preparation time for these operating tests, this Exemption grants only a fifteen month relief period, to June 30, 1992, rather than the eighteen months requested.

The Supply System has performed upgrades to its existing simulator to support its continued use until certification of its new simulator. The licensee has replaced the existing simulator's boiler and recirculation models to allow training on an increased number of transient and off-normal operating condition. Significant changes were also made to key main energy loop models to support the simulator's improved malfunction response.

In March of 1990, the existing simulator was used during the conduct of a requalification program evaluation. Simulator deficiencies were identified by the combined licensee and NRC review team during the examination validation period. The affected scenarios were then modified to mitigate the deficiencies sufficiently to maintain adequate examination coverage and objectivity before administering the operating tests. The simulator operated satisfactorily during the examinations and, with similar pre-exemption validation effort, is capable of supporting the limited number of operating tests scheduled during the proposed exemption period.

III

The Commission has determined, pursuant to 10 CFR 55.11, that this exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This Exemption grants a temporary relief period of fifteen months from the March 1991 date for submittal of the WNP-2 simulation facility certification. Additionally, this Exemption allows the licensee to continue to use the existing WNP-2 simulator for the administration of the simulation facility portion of operating tests for scheduled operator examinations up to, but not including, the initial operator licensing examinations currently scheduled for August of 1992. Good faith efforts to comply with the regulation were made as follows:

(1) The existing WNP-2 simulator became ready for training in 1983 and the licensee initially planned to certify it as a plant-referenced simulator.

(2) In August 1988, the Supply System performed an evaluation of upgrade and new procurement options.

(3) On December 8, 1988, in a meeting at the NRC's Regional V offices, the licensee presented plans to replace the existing WNP-2 simulator while also upgrading it during the interim.

(4) On January 16, 1989, the Supply System entered a contract for construction of a certifiable plant-referenced simulator.

(5) On April 19, 1999, in meeting at NRC headquarter, the licensee presented the status of the new simulator project and existing simulator upgrade program.

(6) The Supply System has upgraded the existing WNP-2 simulator and continues to provide support for its continued use until receipt of the new simulator.

IV

The Commission hereby grants an exemption from the scheduler requirements of 10 CFR 55.45(b)(2)(iii) for submittal of Form NRC-474 "Simulation Facility Certification." This Exemption is effective until June 30, 1992. Furthermore, the Commission hereby grants an exemption from the requirement of 10 CFR 55.45(b)(2)(iv) for administration of the simulation facility portion of operating tests only on certified or approved simulation facilities after May 26, 1991. This Exemption is effective until receipt of Form NRC-474, but does not include any operating tests after June 30, 1992.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (56 FR 887).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 26th day of March, 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 91-7572 Filed 3-29-91 8:45 am]

BILLING CODE 7590-01-M

Wisconsin Public Service Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-43, issued to Wisconsin Public Service Corporation (the licensee), for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee, Wisconsin.

The proposed amendment would revise Technical Specification (TS) 4.2.b to clarify how motorized rotating pancake coil (MRPC) eddy current indications in the steam generator (SG) hot leg tubesheet crevice area will be dispositioned during the spring 1991 refueling outage. This amendment would be an interim measure for the 1991-1992 operating cycle. During the spring 1992 refueling outage, flexible sleeving technology may be used which will extend the sleeving boundary to all but the outermost tubes. At that time, the hot leg crevice area indications will be plugged or repaired by sleeving and this clarification of the TS will no longer be required.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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 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 would not involve a significant increase in the probability or consequences of an accident previously evaluated. The accidents of interest are the steam line break (SLB) and the steam generator tube rupture (SGTR). The probability of an SLB is independent of SG tube integrity and has been shown to be small. SG tubes with through-wall cracking confined to within the tubesheet do not burst during normal operation or postulated accident conditions due to the support provided by the tubesheet. Therefore, the criteria of Regulatory Guide § 1.121 for tube burst are inherently satisfied for the tubesheet crevice cracks due to the presence of the tubesheet.

The consequences of an accident previously evaluated would not be increased by the proposed TS change. The SLB is most limiting relative to the potential for offsite dose consequences. The offsite dose acceptance criteria used for this analysis was 30 rem thyroid; i.e., 10 percent of the 10 CFR part 100 guideline, which corresponds to an allowable primary-to-secondary leakage rate of 260 gpm. If all of the known and projected hot leg tubesheet crevice indications were to develop a leak during an SLB, the postulated leakage is conservatively bounded by KNPP's SLB analysis of record. With an allowable leakage rate of 260 gpm, the acceptable number of through-wall cracks in the hot leg crevice region with an operating leakage limit of 200 gpd, is 388. Therefore, the limit of 388 tubes per SG is specified in the TS.

The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated. Specifying the method to disposition motorized rotating pancake coil (MRPC) eddy current indications will not alter the plant configuration or plant performance. Since the indications are confined to within the tubesheet, tube integrity will be maintained during normal and plant transient conditions. The administrative primary-to-secondary leakage limit of 200 gpd is being implemented to ensure that radiological consequences of leakage from the crevice indications do not exceed a small fraction of 10 CFR part 100 limits during the SLB.

The proposed change would not involve a significant reduction in the margin of safety The structural integrity of the tubes, the leakage rate of restricted and unrestricted tube to tubesheet crevices under normal and SLB conditions, and the radiological consequences were evaluated in detail. Even the worst case conditions, i.e., the growth of all known and projected hot leg tubesheet crevice indications to a through-wall crack, will not result in a tube burst or cause offsite doses to exceed a small fraction of 10 CFR part 100 limits during SLB conditions.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

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, DC 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, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 30, 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, NW., Washington, DC 20555 and at the local public document room located at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin. 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 amendment 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 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 request 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. 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, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 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 John N. Hannon: 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, DC 20555, and to David Baker, Esq., Foley and Lardner, P.O. Box 2193, Orlando, Florida 31082, 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 Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the 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 dated March 19, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 26th day of March 1991.

For the Nuclear Regulatory Commission.

John H. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 91-7576 Filed 3-29-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Demonstration Project; Pacer Share: A Federal Productivity Enhancement Program

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment of the Pacer Share Demonstration Project Plan.

SUMMARY: This action provides for a change to the final project plan published in the **Federal Register** November 20, 1987 (52 FR 44782), and amended March 30, 1990 (55 FR 12079) and March 21, 1991 (56 FR 12046). This amendment clarifies the applicability of the Demonstration On-Call (DOC) program. The plan is amended to specify possible inclusion of excepted appointments, such as Veterans Readjustment Act appointments, under the DOC program, in addition to career-conditional appointments. The original project plan described the DOC program only with respect to career conditional appointments.

DATES: Comment Date: To be considered, written comments must be received no later than May 1, 1991.

ADDRESSES: Comment address: Send or deliver written comments to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, 1900 E Street, NW. room 7433, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: At the Sacramento Air Logistics Center, Technology and Industrial Support Directorate, Ms. Anita Clevenger, (916) 643-6030; Pacer Share Personnel Office, Mr. Jack Givens, (916) 643-1370; at OPM, Mr. Les Bodian, (202) 606-2820.

SUPPLEMENTARY INFORMATION: Background: The Air Force implemented a demonstration project in February 1988, under title VI of the Civil Service Reform Act of 1978, entitled Pacer Share: A Federal Productivity Enhancement Program. The purpose of the 5-year project is to demonstrate that the productivity of a Federal installation can be improved significantly through the implementation of a more flexible personnel system. The demonstration project covers approximately 1,500 employees in the Technology and Industrial Support Directorate (TI) of the Sacramento Air Logistics Center McClellan Air Force Base, CA. On April 21, 1991, some of these employees will become part of the Sacramento Specialized Distribution Site, Defense Distribution Region West, Defense Logistics Agency. The project tests 5 major changes to current personnel management policies and procedures: (1) A simplified classification system, (2) a simplified compensation system, (3) elimination of annual performance ratings in favor of organizational performance measures and statistical quality control procedures, (4) a productivity gainsharing system based on organizational performance, and (5) a modified on-call employment program for new hires.

This amendment clarifies the coverage of the latter intervention. Ambiguities in the original project plan regarding the applicability of the Demonstration On-Call (DOC) program are clarified. The plan is amended to allow inclusion of excepted appointments, such as Veterans Readjustment Act (VRA) appointments, under the DOC program, in addition to

career-conditional appointments. The original project plan described the DOC program only with respect to career conditional appointments. The amendment applies only to new hires into the Pacer Share project on or after May 31, 1991; current VRA appointees hired under the on-call program will continue to be covered by traditional on-call provisions.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

This demonstration project plan published in the **Federal Register** November 20, 1987 (52 FR 44782) and amended March 30, 1990 (55 FR 12079), is amended as follows:

On page 44800, the paragraph beginning with the heading Characteristics of the DOC Employment Program, is replaced with the following:

Nature of Appointments. New employees under the DOC will be hired under either career-conditional appointments or excepted appointments, including Veterans Readjustment Act (VRA) appointments. Career and career-conditional employees on board at the time Pacer Share provisions were implemented are excluded from the DOC program, but may serve on on-call schedules consistent with traditional provisions for other-than-full-time career employment. VRA employees on board prior to the effective date of this amendment are also excluded from the DOC program, but may also serve on traditional on-call schedules.

[FR Doc. 91-7557 Filed 3-29-91, 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Lower Columbia River Wildlife Amendments

March 14, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed wildlife amendments to the Columbia River Basin Fish and Wildlife Program (Lower Columbia River wildlife amendments).

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then. In 1989, the Council amended the program to establish wildlife mitigation goals and a process for adopting wildlife loss estimates developed by wildlife agencies and Indian tribes as starting points for wildlife mitigation measures. To be used as starting points, loss estimates must first be amended into the Council's program.

On March 10, 1991, the Council voted to initiate proceedings pursuant to section 4(d)(1) of the Northwest Power Act to consider amending the program to include wildlife loss estimates for the McNary, John Day, The Dalles, and Bonneville hydroelectric projects. Comments are solicited on the proposed amendments. This notice describes how to obtain a full copy of the proposed amendments and background information concerning them, and explains how to participate in the amendment process.

PUBLIC COMMENT: All written comments must be received in the Council's central office, 851 S.W. Sixth Avenue, suite 1100, Portland, Oregon, 97204, by 5 p.m. Pacific time on July 10, 1991. Comments should be submitted to Dulcy Mahar, Director of Public Involvement, at this address. Comments should be clearly marked "Lower Columbia Wildlife Comments."

After the close of written comment, and up to the time of the Council's final decision on the proposed amendments, the Council may hold consultations with interested parties to clarify points made in written comments.

HEARINGS: Public hearings will be held in Idaho, Montana, Oregon, and Washington, at each of the Council's regular meetings in April, May, June, and July, 1991. Specific locations for the hearings will be announced in the Council's Update! publication. No prior reservations for hearings are necessary. To participate, simply sign up at the door and commentors will be taken in order of signup. For further information on hearing times and locations, contact Judi Hertz in the Council's Public Involvement Division, 851 S.W. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon.

FINAL ACTION: The Council expects to take final action on the proposed wildlife amendments at its May 1991 meeting. The actual data on which the Council will make its final decision will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

FOR FURTHER INFORMATION: The Council's wildlife mitigation process is explained in a document called "Wildlife Mitigation Rule and Response to Comments," paper no. 89-35. This paper explains the nature of wildlife loss estimates and the rule they play in the Council's wildlife program. In addition, the Council has prepared a short paper, called "Lower Columbia Projects' Wildlife Loss Summaries," which summarizes the loss estimates involved in this amendment process, and contains an actual draft of the proposed program amendments. Finally, the loss estimates themselves, entitled "Wildlife Impact Assessment, McNary Project, Oregon and Washington," "Wildlife Impact Assessment, John Day Project, Oregon and Washington," "Wildlife Impact Assessment, The Dalles Project, Oregon and Washington," "Wildlife Impact Assessment, Bonneville Project, Oregon and Washington," and "Assigning Mitigation Credit to Residual Wildlife Habitat at Bonneville, The Dalles, John Day, and McNary Dams," are available from the Council upon request. Those wishing to receive copies of any of these papers should contact the Council's Public Involvement Division at the address or telephone numbers listed above.

Bobbe Fendall,

Liaison Officer.

[FR Doc. 91-7523 Filed 3-29-91, 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

New

Rule 15g-3, File No. 270-346
Rule 15g-4, File No. 270-347
Rule 15g-5, File No. 270-348
Rule 15g-6, File No. 270-349
Rule 15g-7(a), File No. 270-350

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the following proposed rules under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*):

Rule 15g-3 would require that brokers and dealers disclose to customers

current quotation prices or similar market information in connection with transactions in certain low-priced, over-the-counter securities ("penny stocks"). It is estimated that approximately 270 respondents would incur an average burden of 100 hours annually to comply with the proposed rule.

Rule 15g-4 would require brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents would incur an average of 100 hours annually to comply with the proposed rule.

Rule 15g-5 would require brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. It is estimated that approximately 270 respondents would incur an average burden of 100 hours annually to comply with the proposed rule.

Rule 15g-6 would require brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. It is estimated that approximately 270 respondents would incur an average burden of 90 hours annually to comply with the proposed rule.

Rule 15g-7(a) would require brokers and dealers that effect transactions in penny stocks and are the only market makers with respect to such securities to disclose this fact in connection with such transactions. It is estimated that approximately 270 respondents would incur an average burden of 50 hours annually to comply with the proposed rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7585 Filed 3-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29005; File No. SR-AMEX-90-33]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Modification of the Equity Options Price Maintenance Requirement

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1990,[1] the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX proposes to modify the stock price maintenance standard required to continue listing options on certain low-priced equity securities by adding the following new Commentary .04 to Amex Rule 916:[2]

.04 Notwithstanding paragraph 4 to Commentary .01 and Commentary .01 and Commentary .02, the Exchange may continue to open from trading additional series of options contracts of a class covering an underlying security, provided:

(a) The aggregate market value of the underlying security equals or exceeds $50 million;

(b) Customer open interest (reflected on a two-sided basis) equals or exceeds 4,000 contracts for all expiration months;

(c) Trading volume in the underlying security (in all markets in which the underlying security is trading) has been at least 2,400,000 shares in the preceding twelve months; and

(d) The market price per share of the underlying security closed at $3 or above on a majority of the business days during the preceding six calendar months, as measured by the highest closing price reported in any market in which the underlying security traded, and further provided the market price per share of the underlying security is at least $3 at the time such additional series are authorized for trading.

The Amex also proposes to add a new Commentary .06 to Exchange Rule 916 that deals with the re-listing of options on equity securities that have previously failed to satisfy the maintenance price requirement. The proposed Commentarv .06 is as follows:[3]

.06 In the event the Exchange delists a class of options due to the failure of the underlying security to meet the market price per share requirement, the Exchange may relist options on such underlying security within 6 months of delisting provided the market price per share of the security is at least $7.50 and further, provided the underlying security meets the Exchange requirements for continuance of approval set forth in Commentary .01 herein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Amex proposes to amend Exchange Rule 916 to modify the stock price requirements established for the continued listing of certain equity options. Exchange Rule 916 sets forth maintenance standards which an underlying security must satisfy for an option on the security to continue trading. The maintenance standards, uniform among the options exchanges, are designed to measure either the "quality of the issuer" or the "quality of the market" for a particular security. Presently, two provisions of Exchange Rule 916 impact the Exchange's ability to list options on low-priced securities.

[1] The proposal was modified by an amendment filed with the Commission on March 11, 1991. *See* File No. SR-AMEX-90-33, Amendment No. 1.

[2] The Amex proposes to redesignate current Commentary .04 as Commentary .03 and current Commentary .03 as Commentary .08. The Amex also has proposed several changes to Exchange Rule 916 in File No. SR-Amex-86-19, which is pending currently with the Commission. *See* Securities Exchange Act Release No. 23417 (July 11, 1986), 51 FR 26084 ("Revised Listing Standards Proposal").

[3] The Amex proposes to redesignate current Commentary .06 as Commentary .07

One provision restricts the Amex from listing new series of options at any time when the underlying security is trading below $5. A second provision requires the Amex to begin to delist options when the underlying security has traded below $5 for a majority of the business days in the previous six-month period.

Market conditions over the past several months have resulted in an erosion of share prices for a number of securities underlying options traded on the Amex as well as other exchanges. While share price is considered to be a "quality of market" standard, in nearly every case where a stock price has declined, there has been no corresponding lessening of any "quality of issuer" standards since the underlying companies continue to meet (if not exceed) all other maintenance standards.

The Amex has developed additional quality of market criteria which would permit the continued listing of options on low-priced stocks and yet continue to minimize the opportunity for market manipulation and speculative abuse, concerns the per share price criterion was designed to address. Under the proposed criteria, the Amex would be able to list additonal options series when the price of the underlying security is below $5 if the following conditions are satisfied:

(1) The underlying security has a market value of at least $50 million;

(2) there has been trading volume in the underlying security of at least 2.4 million shares for the past 12 months;

(3) the market price of the underlying stock closes at $3 or above, and has not closed below $3 during the majority of the trading days during the previous six months; and

(4) there is customer open interest of at least 4,000 contracts (on a two-sided basis) for all outstanding options series overlying such security.

The Exchange believes that imposing a $50 million minimum market value and a heightened trading volume criteria will assure the continued existence of a liquid market in the underlying security. Currently, an underlying security with a per share market price of $5 must have minimum market value of only $31.5 million ($5 multiplied by 6,300,000, the minimum maintenance requirement for stock float) and a twelve month trading volume of 1,800,000 shares to continue to be the subject of options trading. Moreover, the proposed higher trading volume requirement for lower priced stocks is the same as that currently applied to new options candidates, while the $50 million minimum market value is comparable to the minimum market value that would result if the Commission were to approve the Exchange's proposed modifications to the initial listing standards contained in File No. SR-AMEX-86-19.[4]

Because the Exchange, at this time, recognizes that the continued listing of options on an underlying security with a market price lingering at a very low level is inappropriate, it has fixed a minimum $3 per share requirement for continuous options eligibility. This $3 price per share requirement is consistent with the minimum market price fixed by the Exchange for a company's shares to be eligible for equity listing on the Exchange. Under this proposal, the Exchange will not list additional options series at any time an underlying security closes below $3 per share and will commence the delisting process when the price of the underlying security closed below $3 on the majority of the trading days during the preceding six months. This approach parallels that currently existing for stocks with prices below $5.

Further, the Amex has proposed a minimum customer open interest requirement to assure that there is a public need being met by the continued listing of additional options series on low-priced stocks. The Exchange has selected customer open interest of at least 4,000 contracts in a low-priced option as a barometer of public interest. This criterion will assure that investors will continue to be afforded viable investment opportunities without creating a myriad of options series with no discernible economic function.

Notwithstanding these criteria, options will continue to be delisted due to the failure of any underlying stock to meet a price maintenance requirement. The Exchange believes that it should be permitted to relist such options when the price of the underlying security rises to a reasonable price level, without having to wait until a price history of three full calendar months is established, as is currently the case. Rather, the Exchange proposes to be permitted to relist such options within six months of their respective delisting dates if the market price of the relevant underlying security reaches $7.50, the proposed original listing price level,[5] and meets the remaining option maintenance requirements. In this way both the quality of the issuer and the quality of the market will be assured.

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Options Committee, a committee of the Amex Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change. No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washngton, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

[4] *See* Revised Listing Standards Proposal, *supra note 1.*

[5] *See* Revised Listing Standards Proposal, *supra* note 1.

inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washngton, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 22, 1991.

Dated: March 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7536 Filed 3-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29006; File No. SR-AMEX-91-03]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Exchange's Index Option Trading Halt Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 4, 1991, the American Stock Exchange, Incorporated ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 918C, Commentary .07 to eliminate the requirement that the Amex halt trading in a class of broad-based index options after the primary Standard and Poor's 500 Index ("S&P 500" of "Index") futures contract has reached a price limit triggered by an Index decline of 30 points from its closing value on the previous trading day.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose. Currently, Exchange Rule 918C, Commentary .07 provides for a trading halt in broad-based index options when the primary S&P 500 Index futures contract traded on the Chicago Mercantile Exchange ("CME") has reached a price limit triggered by an Index decline of 30 points from its closing value on the previous trading day. In December 1990 the CME modified its rules to provide that the maximum daily price limit for the S&P 500 futures contract is 20 points, rather than 30 points, from its previous day's closing value. Because the CME's rule change renders Exchange Rule 918C, Commentary .07 obsolete, the Amex proposes to amend its rules to delete the requirement that the Exchange halt trading in broad-based index options based upon a specific 30-point decline in the S&P 500 futures contract. The Amex notes that existing Exchange rules give the Exchange the discretion to take into consideration all applicable market conditions, including the activation of price limits on the S&P 500 futures contract, in determining whether to halt trading in broad-based index options based upon unusual conditions which are detrimental to the maintenance of a fair and orderly market.[1]

(2) Basis. The Amex believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will facilitate transactions in securities and protect investors and the public interest while promoting just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[2] Specifically, the Commission finds that eliminating the Amex's reference to the CME's now non-existent 30-point daily price limit is consistent with section 6(b)(5) it will avoid investor confusion and perfect the mechanism of a free and open market by clarifying the Amex's authority to declare a trading halt in a class of index options if the CME's maximum 20-point daily price limit for the S&P 500 futures contract is reached. In particular, a 20-point decline in the S&P 500 futures contract would be one of the unusual conditions or detrimental circumstances which the Exchange would consider in exercising its discretion under Exchange Rule 918C(b) to halt or suspend trading in stock index options in the interests of

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[1] Exchange Rule 918C(b) authorizes the Amex to halt or suspend trading of stock index options after a trading halt or suspension in the primary market(s) of any combination of underlying stocks accounting for a minimum percentage of current index group value, or when the Exchange deems such action appropriate in the interest of a fair and orderly market or to protect investors. In exercising its discretion to halt or suspend trading in stock index options, the Exchange may consider the following factors: (1) The unavailability of the current calculation of the numerical index value derived from the current market prices of the index's underlying stocks; (2) the halt or suspension of trading in the primary market(s) of one or more of the component stocks in the index under circumstances indicating that the stocks are likely to re-open at prices significantly different from the prices at which they traded prior to the halt; (3) the halt or suspension of trading in the primary market(s) of any combination of stocks accounting for at least 20% of the current index group value; and (4) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. Under the proposal, the Amex would take into account the activation of the maximum daily price limit on the S&P 500 futures contract traded on the CME (currently 20 points) when determining whether to exercise discretion under Exchange Rule 918C to halt or suspend trading in broad-based index options based on the presence of unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. *See* letter from Claire P. McGrath, Senior Counsel, Legal & Regulatory Policy Division, Amex, to Yvonne Fraticelli, Staff Attorney, SEC, dated march 15, 1991.

[2] 15 U.S.C. 78f(b)(5) (1988).

a fair and orderly market or the protection of investors.[3] Since the CME has modified its rules so that the maximum daily price limit is 20 points, instead of 30 points, the Amex's current requirement to halt trading when the CME reaches a 30-point maximum daily price limit is no longer valid. Accordingly, the Commission believes that it is appropriate for the Amex to delete this reference to the CME's maximum 30-point daily price limit in order to better align the Amex's trading halt policy with the CME's price limits. The Commission notes that Exchange Rule 918C permits the Amex to consider all applicable market conditions, including the activation of price limits on the S&P 500 futures contract, in determining whether to halt trading in broad-based index options. Moreover, because of the decreased magnitude of the price decline in the Dow Jones Industrial Average necessary to trigger the 20-point limit, the Commission believes it is reasonable for the Amex to authorize a trading halt in stock index options when the S&P 500 futures reaches the 20-point price limit, but not to require a trading halt, as was previously the case with the 30-point price limit.

The Commission notes that the Amex's proposal may be an interim adjustment in response to modifications to the CME's price limits. Recently the Commission released a report by the Division of Market Regulation ("Division") examining the performance of the securities markets during October 13 and 16, 1989.[4] In the report, the Division analyzed the performance of the Amex on October 13, 1989, in halting trading in its index options. The Division discussed possible alternatives that the Amex should consider to improve its handling of trading halts. While this proposal is not responsive to these recommendations, neither is it inconsistent with them. The proposed rule change is intended merely to address an anomaly in the Amex's rules due to the changing of the S&P 500 price limits. The Commission still expects the Amex to consider seriously the recommendations in the Report and to adopt those that the Exchange finds workable.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** As discussed above, the proposal will delete Exchange Rule 918C, Commentary .07, thereby eliminating the inaccuracy which was created after the CME amended its rules to provide that its maximum daily price limit would be 20 points, rather than 30 points. The Commission believes that the proposal will ensure that Amex rules governing the declaration of trading halts will be consistent with the CME's maximum daily price limit, thus avoiding authority as to the Amex's authority to declare a trading halt if the 20-point price limit is reached. Accordingly, since the CME's new maximum 20-point daily price limit is already in place, and since the Commission has given accelerated approval to a similar rule change proposed by the Chicago Board Options Exchange,[5] the Commission believes that it is consistent with section 6(b)(5) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 22, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR-AMEX-91-03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7541 Filed 3-29-91; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* letter from Claire P. McGrath to Yvonne Fraticelli, *supra* note 1.

[4] *Market Analysis of October 13 and 16, 1989,* A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (December 1990), at Chapter Three.

[5] *See* Securities Exchange Act Release No. 28771 (January 14, 1991), 56 FR 2055 (order approving SR-CBOE-90-33).

[6] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34-29004; International Series No. 245; File No. SR-CBOE-91-07]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing of Reduced Value Index Options on the Financial Times-Stock Exchange 100 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 11, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Chapter XXIV of the Exchange's Rules, the CBOE proposes to list and trade cash-settled, European-style index options on a reduced value Financial Times-Stock Exchange 100 Index ("FT-SE 100" or "Index"). Each reduced value Index point will be valued at one U.S. dollar.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to allow the CBOE to list for trading cash-settled, European-style options (exercisable only on the last business day prior to the option's expiration) based on the Index. The FT-SE 100 is an internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized British stocks traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE"),[1] an investment exchange recognized by the Securities and Investment Board ("SIB") of the U.K. All of the Index's component stocks are traded on the ISE by means of the ISE's Stock Exchange Automated Quotation System ("SEAQ"), an electronic information and communications system which provides competing market maker prices for securities traded over the system. SEAQ's quotations of the stocks traded on the ISE are available to all exchanges listing those stocks. The system is solely that of the ISE and its dealers and does not reflect markets from the other exchanges.

Index Design

The FT-SE 100 is designed and operated by the ISE. It aims to provide a proxy for movements in the U.K. equity market as a whole. Currently, the London International Financial Futures Exchange trades futures on the Index, and the London Traded Options Market trades options on the Index.

Index Construction and Calculation

To qualify for inclusion in the Index, a company must satisfy the following conditions: (1) It must not be regarded as an overseas resident company for U.K. tax purposes; (2) it must not be a subsidiary of another Index constituent; (3) it must pay a dividend (except for existing constituents); and (4) it must have at least 25 percent of its shares publicly held. The Index is reviewed on a quarterly basis to ensure that its component stocks are representative of the state of the equity market for the largest U.K. companies.

The value of the Index is calculated by adding the price of each stock times its shares outstanding and dividing that sum by a divisor that represents the total Index capitalization on its base date of December 30, 1983. To maintain the continuity of the Index, the divisor is continuously adjusted to reflect changes in market capitalization, including, among other things, stock dividends.

The Index is updated each minute from 9 a.m. to 5:30 p.m. (London time) (3:00 a.m. to 11:30 a.m. Chicago time) using the mid-point of the best bid and best offer prices currently available for each component stock. The Index and the prices of its component stocks are disseminated in Europe and the U.S. by the ISE via market information vendors.

Index Options Trading

On February 7, 1991, the Index closed at 2243.7. Because the CBOE believes that this level is too high for successful options trading in the U.S. market, the CBOE proposes to base trading in Index options on a fraction of the value calculated by the ISE. The precise amount of the fraction will be determined immediately prior to the commencement of options trading. Given the current Index level, the CBOE anticipates that a U.S. Index level of one-tenth of the FT-SE 100 would be appropriate. After dividing the Index by the divisor, the CBOE will disseminate the reduced value of the Index to vendors through the Options Price Reporting Authority system.

Each reduced value Index point will be valued at one U.S. dollar, so that the option premium values will change in U.S. dollar terms. This will allow option premiums to be quoted in U.S. dollars and trading accounts to be denominated in U.S. dollars. All Exchange, Options Clearing Corporation and clearing member systems will be able to accommodate trading and clearance and settlement of the options without alteration, thereby facilitating the trading of FT-SE 100 Index options by U.S. retail customers.

Exercise

The Exchange proposes to trade FT-SE 100 options on Exchange business days just as it trades European-style options on the Standard and Poor's 500 Stock Index. The proposed Index options will expire on the Saturday following the third Friday of the expiration months. The current index value for exercise ("CIV") will be calculated based on SEAQ prices between 11 and 11:20 a.m. London time (5 a.m. and 5:20 a.m. Chicago time) on the day following the last day of trading in the expiring contracts. Normally, trading in the expiring contract month will cease on a Thursday at 3:15 Chicago time unless a holiday occurs. Therefore, the CIV for exercise of the proposed options will be determined during the Friday morning ISE trading session, that is, between 5 a.m. and 5:20 a.m. Chicago time on Friday morning. If a stock does not trade during this interval, or if it fails to open for trading, the last available price for the stock will be used in the calculation of the Index as is done currently for listed indexes. When expirations are moved according to Exchange holidays, such as when the CBOE is closed on the Friday before expiration, the last trading day for expiring options will be Wednesday and the CIV for exercise will be calculated during the Thursday trading session on the ISE, even if the ISE is open on Friday. If the ISE is closed on the Friday before expiration but the CBOE remains open, then the last trading day for expiring options will be moved up to Wednesday as if the CBOE had had a Friday holiday.

The ISE will calculate and disseminate a separate CIV for exercise based on the average (excluding the high and low) of the Index values for each minute in the interval from 11 a.m. and 11:20 a.m. London time. Therefore, the ISE's Index settlement value will be the average of nineteen separate prices taken over a twenty-one minute period. The CBOE's CIV will represent an amount in U.S. dollars equal to the fraction of the ISE's CIV.

Exchange Rules Applicable to Stock Index Options

The proposed Index option will be very similar to the two broad-based Standard and Poor's Index options presently listed for trading on the CBOE, including position and exercise limits, expiration months, strike price intervals, and the multiplier. Therefore, the Exchange proposes to establish the same position limits used for existing stock index options, *i.e.*, 25,000 contracts on each side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month. The Exchange intends to list a March quarterly cycle of expiration months, and may list two additional long-term options series at two and three year intervals.

The CBOE proposes to amend several Exchange Rules to accommodate trading of the proposed options. Exchange Rule 24.6 (Days and Hours of Business) will be amended to authorize the Board's designee to determine the days and hours of trading in foreign index options. Exchange Rule 24.7 (Trading Halts or Suspensions) will be modified to letter the paragraphs and to provide that when the trading hours of the primary securities market for an index's

[1] A list of the constituent companies in the Index can be obtained from the Office of the Secretary, CBOE and at the Commission.

component stocks do not coincide with the CBOE's trading hours, the only applicable provision of Exchange Rule 24.7 shall be paragraph (a)(iii), which authorizes Exchange officials to halt trading in an index option when unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Exchange Rule 24.9 (Terms of Option Contracts) will be amended to provide for the European exercise of FT-SE 100 Index options. Exchange Rule 8.7 (Obligations of Market Makers), Interpretation .02, which prohibits market makers from purchasing an option at more than $.25 below parity and from making bids $1 less than or offers $1 greater than the preceding transaction price, will be amended to specify that its provisions shall apply only when the trading hours of the primary market for an index's component securities coincide with the trading hours of the CBOE.

Surveillance Agreements

The Exchange expects to apply its existing index options surveillance procedures to the proposed Index option. The CBOE has market surveillance agreements with both The Securities Association ("TSA") in the U.K. and with the ISE. The Exchange believes that these agreements will enable the Exchange to fulfill its regulatory responsibilities regarding surveillance of trading related to the Index. The Exchange will be able to obtain information from the records of TSA and the ISE which will provide the CBOE with an effective means of surveilling the trading of the Index's component stocks on SEAQ.

Economic Rationale

The U.K. is one of the three largest equity markets in the world, and is well positioned to maintain its position as the premier financial center of Europe in the coming years. The CBOE is proposing a cash-settled option on the FT-SE 100 Index, which is the premier real-time (during European trading hours) index available on the U.K. stock market as a whole, that will provide a performance measure and evaluation guide for stock portfolios with exposure to this market. As a result, the Index option could provide an effective means for hedging the risks of U.K. equity investments by U.S. investors, and provide a low-cost means of altering the composition of an international portfolio of stocks without incurring substantial transaction costs.

(b) Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that they are designed to promote just and equitable principles of trade, to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to sumit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 22, 1991

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 25, 1991.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 91-7537 Filed 3-29-91; 8:45 am]

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[Release No. 34-29007; International Series Release No. 246; File No. SR-OCC-91-02]

Self-Regulatory Organizations; The Options Clearing Corporation; Proposed Rule Change Relating to Amending the Capital Provisions of August 20, 1987 Clearing Agreement Between the Options Clearing Corporation and the ACHA Associate Clearing House Amsterdam B.V.

March 25, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934,[1] notice is hereby given that on February 11, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the associate clearinghouse agreement ("Clearing Agreement") dated August 20, 1987 by and between OCC and ACHA Associate Clearing House Amsterdam B.V. ("ACHA") [2] and the corresponding letter agreement dated August 20, 1987 ("Letter Agreement").[3] The proposed

[1] 15 U.S.C. 78s(b).

[2] ACHA is a limited liability company organized under the laws of the Netherlands. ACHA is a wholly-owned subsidiary of the European Stock Options Clearing Corporation B.V. [the clearing corporation for the European Options Exchange ("EOE")].

[3] As noted *infra*, the Clearing Agreement and the Letter Agreement set forth terms by which OCC would guarantee and clear transactions of ACHA's participants in the Major Market Index ("XMI") index option that is traded on the American Stock Exchange, Inc. ("Amex") and on the EOE. XMI, an index option designed by Amex, is based on the value of 20 underlying blue-chip stocks. XMI's price movements bear a high correlation with the price movements of the Dow Jones Industrial Average.

amendments will: (1) Increase ACHA's permanent capital requirements, (2) provide OCC with an "early-warning" mechanism whereby OCC is to be notified of certain reductions of ACHA's capital, and (3) obligate ACHA to maintain an overdraft facility.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On August 20, 1987, OCC and ACHA entered into the Clearing Agreement whereby OCC would guarantee and clear transactions of ACHA's participants in the XMI index option. The terms of the Clearing Agreement were approved by the Commission.[4] The agreement is a unique arrangement in that ACHA is both an associate clearinghouse of OCC and an index clearing member. OCC's relationship with ACHA, therefore, differs in several respects from that between OCC and its other clearing members.

Since the commencement of this relationship in 1987, the number of transactions that OCC has cleared on behalf of ACHA has increased continually. As a result, OCC has requested that ACHA increase its capital requirements from the greater of 10% of its aggregate daily margin requirement or $250,000 (U.S.) to the greater of 10% of its aggregate daily margin requirement or $750,000 (U.S.). Although ACHA has been able to meet all of its margin calls to date, OCC has requested that ACHA increase its permanent capital due to increased volatility in the options markets. ACHA has responded affirmatively to these requests and has taken the steps necessary to increase its capital notwithstanding the fact that, according to ACHA's representations, certain laws in the Netherlands make it difficult to raise capital without approval from government regulators. This situation caused OCC and ACHA to review the current Clearing Agreement and the computation of ACHA's capital.

As a result of that review, an understanding was reached between OCC and ACHA to amend the Clearing Agreement and the corresponding Letter Agreement. The SRO believes that the proposed amendment to the Clearing Agreement will accomplish two objectives: (1) It will increase the amount of permanent capital that ACHA must have and will allow ACHA to use a certain portion of subordinated debt in calculating such permanent capital; and (2) it will provide an "early-warning" mechanism, similar to that imposed on OCC's domestic clearing members,[5] to notify OCC when ACHA's permanent capital becomes less than the greater of 12.5% of its aggregate daily margin requirement or $1,000,000 (U.S.).

Further, under the proposal, the Letter Agreement will be amended to provide that ACHA must maintain an overdraft facility in an amount equal to the greater of $5,000,000 (U.S.) or the aggregate amount of the greater of either the upside or downside intra-day margin call requirement for each ACHA Participant at a 100% variance as reported in the OCC-prepared Estimated Intra-Day Margin Call Report. ACHA has advised OCC that it has taken steps to secure this facility. The effectiveness of both the proposed amendment to the Clearing Agreement and the proposed amendment to the Letter Agreement are contingent upon Commission approval.

The SRO believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because: it obligates ACHA to: (1) Increase its capital requirements, (2) provide an early-warning mechanism when its permanent capital approaches potentially unsafe levels, and (3) obligates ACHA to maintain an overdraft facility. These higher financial standards are designed to promote the prompt and accurate clearance and settlement of options transactions and the safeguarding of funds and options related thereto.

(B) SRO's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the SRO consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File Number SR-OCC-91-02 and should be submitted by April 22, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7540 Filed 3-29-91; 8:45 am]

BILLING CODE 8010-01-M

[4] Securities Exchange Act Release No. 24832 (August 28, 1987), 52 FR 32377 [SEC File No. SR-OCC-87-09].

[5] The domestic "early warning" system is imposed pursuant to OCC Rule 303 (Early Warning Notice).

[6] 17 CFR 200.30-3(a)(12).

[Release No. 35-25282]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 25, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 18, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

KU Energy Corporation (70-7451)

KU Energy Corporation ("KU Energy") (formerly Holdings, Inc.), One Quality Street, Lexington, Kentucky 40507, a newly formed Kentucky corporation, has filed an amended and restated application under section 3(a)(1), 9(a)(2) and 10 of the Act.[1]

KU Energy proposes to acquire all of the outstanding common stock of Kentucky Utilities Company ("KU"), a Kentucky electric utility and a holding company exempt from registration by order under section 3(a)(2) of the Act, and, through such acquisition, KU's holdings of all of the outstanding shares of capital stock of Old Dominion Power Company ("ODP") a Virginia electric utility, and 20% of the outstanding shares of capital stock of Electric Energy, Inc. ("EEI"), an Illinois electric utility.[2]

KU is principally engaged in the generation, transmission, distribution and sale of electricity to approximately 390,000 customers in more than 600 communities and adjacent areas in central, southeastern and western Kentucky, and to 8 customers in Claiborne County, Tennessee. Total consolidated operating revenues for 1990 were $553,781,000. At December 31, 1990, KU had outstanding 37,817,878 shares of its common stock, no par value.

ODP furnishes electric service to approximately 26,800 customers in 40 communities and adjacent areas in five counties of southwestern Virginia. Total operating revenues for 1990 were $38,890,000. For the year ended December 31, 1990, ODP represented approximately 6.8% of consolidated operating revenues of KU, 1.3% of consolidated net income, 4.4% of consolidated net utility plant and 4% of consolidated total assets.

EEI owns a 1,000 MW generating station at Joppa, Illinois. KU and other utility companies ("Sponsoring Companies") organized EEI in 1950, primarily to supply a substantial portion of the electric power requirements of a federal atomic power installation at Paducah, Kentucky, now administered by the Department of Energy ("DOE"). DOE and the Sponsoring Companies purchase all the electricity sold by EEI.[3] As of December 31, 1990, KU's interest in EEI was less than 1% of KU's total assets. During the year then ended, KU's share of EEI's net income was $2,423,425, representing 3.03% of KU's net income for that period.

Pursuant to an Exchange Agreement, KU Energy will acquire all of the outstanding common stock of KU in exchange for shares of its authorized common stock. Immediately thereafter, ODP will be merged into KU with KU as the surviving corporation. Because the Virginia Constitution requires incorporation under Virginia law for public service corporations operating in Virginia, KU will also be incorporated as a Virginia corporation, while remaining a Kentucky corporation. KU will continue to own 20% of the capital stock of EEI. The Exchange Agreement will be submitted for shareholder approval at the next annual meeting of KU shareholders scheduled for April 23, 1991.

The amended and restated application states that the proposed reorganization is a response to the changing business environment in the electric utility industry and that it will improve opportunities for investment in nonutility activities, while ensuring that there will be no adverse impact on KU's customers. Following the reorganization, KU Energy will be a public utility holding company as defined in section 2(a)(7) of the Act. KU Energy therefore requests an order of exemption under section 3(a)(1) of the Act from all provisions except section 9(a)(2). The application states that KU Energy will derive a material part of its income from KU but not EEI, and that both KU Energy and KU will be predominantly intrastate in character and will carry on their business substantially in Kentucky.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 91-7534 Filed 3-29-91; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission issued a notice of the original application on December 22, 1988 (Holding Co. Act Release No. 24,789).

[2] KU also owns 2½% of Ohio Valley Electric Corporation ("OVEC"), an electric utility organized in 1952 to provide a portion of the power requirements of a Department of Energy project at Portsmouth, Ohio. OVEC is not an "affiliate" or "subsidiary company" of KU within the meaning of the Act. The Commission authorized KU to acquire its interest in OVEC in Ohio Valley Elec. Corp., 34 SEC 323, 327, 334 (1952).

[3] The Commission authorized KU to acquire its interest in EEI in Central Illinois Public Service Co., 32 SEC 202, 204 (1951) and Electric Energy, Inc., 28 SEC 658, 660 (1958).

[Release No. 35-25280]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 22, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 15, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for

hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company et al. (70-7837)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned electric public-utility subsidiary companies, Alabama Power Company ("Alabama Power"), 600 North 18th Street, Birmingham, Alabama 35291, Georiga Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company ("Gulf Power"), 500 Bayfront Parkway, Pensacola, Florida 32501, Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi 39501 (collectively, "Operating Companies"), and its wholly owned service company subsidiary, Southern Company Services, Inc. ("Services"), 800 Shades Creek Parkway, Birmingham, Alabama 3509, have filed an application-declaration citing sections 9, (c)(3), 10 and 12(d) of the Act and Rules 40(a)(4) and 43 thereunder.

Southern, the Operating Companies and Services have executed a Settlement Agreement dated as of December 21, 1990 ("Settlement Agreement") in connection with the settlement of litigation relating to power sales contracts entered into with Gulf States Utilities Company ("Gulf States"). Gulf States is a public utility that claims an exemption under section 3(a)(2) pursuant to Rule 2 of the Act.

The Settlement Agreement provides that, subject to certain conditions, the Operating Companies will receive at closing: (1) approximately $70 million deposited by Gulf States in the court's registry and accrued interest); (2) Gulf States notes in the aggregate principal amount of $160 million ("Notes"); (3) six million shares of Gulf States' authorized an unissued common stock, no par value ("Shares"); and (4) an agreement by Gulf States to pay the $18.25 Differential ("Differential Agreement") and issue the $18.25 Notes ("$18.25 Notes"), as discussed below. The net present value of the proposed settlement to the Operating Companies is estimated to be up to $300 million.

The Notes will be due and payable in full on January 1, 1999, subject to mandatory prepayments to the extent that Gulf States has "adequate cash," as defined, on any January 1st commencing January 1, 1993. The principal balance of the Notes will begin to accrue interest on January 1, 1993 at the rate of 1% in excess of the prime rate, compounded quarterly. The Notes may be immediately due and payable upon the occurrence of an Event of Default, as defined, and may be prepaid without premium or fee.

The Shares will be issued and delivered by Gulf States pursuant to the Acquisition Agreement. The Shares represent approximately 5.3% of the 108,055,065 shares of Gulf States common stock outstanding at September 30, 1990. The Operating Companies may sell all or any portion of the Shares at any time without Gulf States' consent or approval. The Operating Companies must sell all of the shares on or before the later of (1) December 31, 1995, or (2) a date twelve months after Gulf States has fulfilled the last of its payment obligations under the Settlement Agreement, the latter date (assuming no default by Gulf States) being no later than January 1, 2000.

The Shares are to be fully paid and nonassessable with the same rights and privileges afforded all shares of Gulf States' common stock, except as provided in a Voting Agreement ("Voting Agreement") to be executed by the Operating Companies and Services at closing. Under the Voting Agreement, the Operating Companies have executed an irrevocable proxy whererby the Secretary of Gulf States is to vote the Shares as specified in the Voting Agreement. The Voting Agreement requires that, as long as the Operating Companies or any of their affiliates own the Shares, Gulf States' Secretary vote the Shares in the same proportion to the votes cast for and against any particular issue by the holders of other common stock of Gulf States voting on such issue. However, the Operating Companies will have the right to vote or direct the voting of the Shares upon the occurrence of any event of default by Gulf States. Absent a default by Gulf States, the Operating Companies will remain passive holders of the Shares.

Gulf States also will execute and deliver at closing the Differential Agreement and the $18.25 Notes pursuant to which Gulf States will agree to pay the Operating Companies the "$18.25 Differential," as defined in the Differential Agreement. The $18.25 Differential generally is an amount equal to six million times the difference between $18.25 and the highest average of the highest prices at which Gulf States's common stock trades on the New York Stock Exchange for five consecutive days during the period between the closing date and January 1, 1993. If such highest five day average price reaches or exceeds $18.25 at any time during the relevant period, Gulf States will have no obligation to make any payment to the Operating Companies under the Differential Agreement or the $18.25 Notes. The $18.25 Notes will be due and payable, and the unpaid prinicpal balance will accrue interest, in accordance with terms that are substantially the same as those contained in the Notes.

The Notes, the Differential Agreement and $18.25 Notes will be secured by: (1) A continuing guaranty executed by GSG&T, Inc. ("GSG&T"), a wholly owned public-utility subsidiary of Gulf States; (2) a first mortgage lien created by GSG&T under a Deed of Trust ("Deed of Trust") and for the benefit of the Operating Companies on the Lewis Creek Generating Station, a 520 megawatt gas-fired facility located in Texas; and (3) a pledge to the Operating Companies of all of GSG&T capital stock ("GSG&T Stock") under a pledge agreement ("Pledge Agreement"). The Pledge Agreement provides that the GSG&T Stock will be held by an agent and that the Operating Companies will have no rights or powers with respect to such stock except upon Gulf States' default under the Notes, the Differential Agreement or the $18.25 Notes. Under the Pledge Agreement and the deed of Trust, a default may result in the Operating Companies becoming the owners of Lewis Creek, GSG&T Stock, or both.

The Operating Companies have designated Services as their agent to act under the Settlement Agreement and the Stock Acquisition Agreement. Services will receive and distribute to the Operating Companies all payments received from Gulf States, to be allocated as follows: (1) Funds deposited in the court registry will be allocated (a) 37.18% to Alabama Power, (b) 47.58% to Georgia Power, (c) 10.25% to Gulf Power and (d) 4.99% to Mississippi Power, which is the same basis upon which the deposited amounts representing contract revenues would have been allocated under the power sales contracts had Gulf States made payment to the Operating Companies; and (2) all other settlement proceeds are expected to be allocated (a) 34.50% to Alabama Power, (b) 53.57% to Georgia Power, (c) 9.89% to Gulf Power and (d) 2.04% to Mississippi Power, reflecting the proportion of the estimated total revenues each of the Operating Companies would have received under the contracts from the time Gulf States ceased making deposits in the court registry through the end of the contract term with due recognition

for the time value of money. Additionally, certificate(s) representing the Shares will be registered in the name of Services as agent for the Operating Companies.

Southern also proposes to purchase all or a portion of the Shares, the Notes and/or the $18.25 Notes from one or more of the Operating Companies.

Gulf Power Company (70–7840)

Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32501, an electric public-utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 50 and 50(a)(5) thereunder.

Gulf proposes to issue and sell on or before September 30, 1993, up to $125 million of first mortgage bonds ("Bonds") and up to $50 million of preferred stock, par value of up to $100 per share ("Preferred"). Gulf proposes to issue the Bonds and Preferred Stock under an exception from the competitive bidding requirements of Rule 50 as modified (HCAR No. 22623, September 2, 1982, and as further modified HCAR No. 23122, November 17, 1983) or, alternatively, under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. Gulf also proposes to enter into a loan agreement or installment sale agreement ("Agreement") relating to the issuance of up to $100 million of pollution control revenue bonds ("Revenue Bonds") by various counties in Florida, Georgia and Mississippi ("County" or "Counties") for the purpose of financing or refinancing the costs of pollution control and sewage and solid waste disposal facilities at one or more of Gulf's electric generating plants or other facilities located in the Counties.

The Bonds will be issued under the Mortgage as modified or to modified by supplemental indentures ("Mortgage"). Each series of Bonds will have a term of not less than five nor more than thirty years. The Bonds, or any series thereof, may bear interest at a fixed rate. The terms of the Bonds, or any series thereof, also may provide for an adjustable interest rate ("Adjustable Rate Bonds"), determined on a periodic basis, rather than a fixed interest rate, with the initial rate of interest at a fixed rate per annum. Thereafter, the interest rate would be adjusted periodically by auction or remarketing procedures, or in accordance with a formulae based upon certain reference rates, or by other predetermined methods.

The Mortgage may provide that none of the Bonds of any series will be redeemed for up to a five-year period, commencing on or about the first day of the month of issuance, at a regular redemption price if redemption is for the purpose or in anticipation of refunding the Bonds through the use, directly or indirectly, of funds borrowed by Gulf at an effective interest cost to Gulf of less than the effective interest cost to Gulf of the Bonds of such series. This limitation will not apply to redemptions at a special redemption price by operation of the improvement fund or the maintenance and replacement provisions of the Mortgage or by the use of proceeds of released property.

Gulf may also covenant that it will not redeem the Bonds of any series: (1) In any year prior to the fifth year after the issuance of such series, through the operation of the improvement fund provisions of such indenture in a principal amount which would exceed one percent of the initial aggregate principal amount of such series, or (2) in any calendar year, through the operation of the maintenance and replacement provisions of the Mortgage in a principal amount which would exceed one percent of the initial aggregate principal amount of such series.

Further, any series of Adjustable Rate Bonds may not be redeemable at the option of Gulf during certain short-term interest periods. The non-refunding limitation described above, as well as the restriction on redemptions through operation of the improvement fund provisions, may apply with respect to each long-term interest period commencing with the first day of the month in which any such interest period begins.

Gulf proposes to restrict redemption of the Adjustable Rate Bonds during certain short-term interest periods, and, therefore, seeks authority to deviate from the Commission's Statement of Policy Regarding First Mortgage Bonds, HCAR No. 13105, February 16, 1956 and HCAR No. 16369, May 8, 1969 ("FMB-Statement of Policy"). The FMB-Statement of Policy Stipulates that during the first five years following issuance, an issuer may not redeem outstanding securities through the issuance of another security bearing a lower rate of interest, and, after such five year period, the outstanding securities must be freely redeemable. To the extent the proposed redemption provisions may constitute a deviation from the FMB-Statement of Policy, Gulf hereby requests approval of such deviation.

Any series of Bonds may also be subject to a mandatory cash sinking fund. In connection therewith, Gulf may have the non-cumulative option in any year of making an optional sinking fund payment in an amount not exceeding such mandatory sinking fund payment.

In order to enhance the marketability of the Bonds, Gulf states that it may be desirable to cause an insurance company to issue a policy insuring payment of the Bonds.

The Preferred Stock will be sold for a price to Gulf, before giving effect to purchasers' compensation, of not less than 100% of the stated par value per share. The Preferred Stock may be issued with a fixed dividend rate. The terms of the Preferred Stock may also provide for an adjustable dividend rate ("Adjustable Preferred"), determined on a periodic basis, with the dividend rate for an initial period at a fixed amount or rate per annum. Thereafter, the rate would be periodically adjusted by auction or remarketing procedures, or by other predetermined methods.

The terms of the Preferred Stock may provide that no share of a particular series will be redeemed for up to a five year period commencing on or about the first day of the month of issuance, if such redemption is for the purpose or in anticipation of refunding such share directly or indirectly, through incurring debt, or through issuing stock ranking equally with or prior to the Preferred Stock as to dividends or assets, if such debt has an effective interest cost to Gulf or such stock has an effective dividend cost to Gulf of less than the effective dividend cost to Gulf of the respective series of the Preferred Stock.

Gulf proposes to restrict redemption of the Adjustable Rate Preferred during certain short-term interest periods, and, therefore, seeks authority to deviate from the Commission's Statement of Policy Regarding Preferred Stock (HCAR Nos. 13106 and 16758, February 16, 1956 and June 22, 1970, respectively) ("Statement of Policy"). The Statement of Policy stipulates that during the first five years following issuance, an issuer mays not redeem outstanding securities through the issuance of another security bearing a lower rate of interest, and, after such five year period, the outstanding securities must be freely redeemable. To the extent the proposed redemption provisions may constitute a deviation from the Statement of Policy, Gulf hereby requests approval of such deviation.

The Preferred Stock may also be subject to a cumulative sinking fund for the benefit of a particular series which would retire a certain number of shares

of such series annually, commencing five years or later after the sale. In connection therewith, Gulf may have the non-cumulative option of redeeming up to an additional like number of shares of such series annually.

Under the Agreement, the Revenue Bonds are to be issued and secured under an indenture ("Indenture") to be entered into between the County and a Trustee ("Trustee"). The proceeds ("Proceeds") from the sale of the Revenue Bonds are to be deposited with the Trustee and loaned to Gulf for the purpose of financing or refinancing, on or before September 30, 1993, the cost of the Facilities ("Project"). Additionally, Gulf proposes to use the proceeds to refund outstanding pollution control revenue obligations.

Gulf proposes to issue, under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, a non-negotiable promissory note ("Note") to the County, or to purchase the corresponding Project from the County. Gulf may, if it is not in default, prepay amounts due under the Note, including interest, in whole or in part, in an amount(s) sufficient to redeem or purchase the outstanding Revenue Bonds as provided in the indenture.

The Indenture will provide that the Revenue Bonds have maturities of one to thirty years. Revenue Bonds with a maturity of fifteen to thirty years may be subject to a mandatory redemption sinking fund. Revenue Bonds will be redeemable in whole or in part at the option of Gulf, and may, under certain circumstances require the payment of a premium. The Revenue Bonds will bear interest, as determined by the issuing County, at either (1) a fixed rate, which may be convertible to a fluctuating rate, fluctuating in accordance with specified prime or base rates or pursuant to certain remarketing or auction procedures, or (2) a fluctuating rate, which may be convertible to a fixed rate.

Under the Indenture and Agreement, Gulf may be required by the holders of Revenue Bonds bearing interest at a fluctuating rate to purchase such Revenue Bonds from time-to-time, and arrangements may be made to remarket such bonds. Gulf may also be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time, if the interest thereon is determined to be subject to federal income tax. In the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Gulf may be required to indemnify the bondholders against any other additions to interest, penalties, and additions to tax.

The Revenue Bonds will be sold by the County pursuant to arrangements with one or more purchases or underwriters, which will provide that the terms of the Revenue Bonds and their sale by the County shall be satisfactory to Gulf, and that Gulf may provide for delayed or future delivery of the Revenue Bonds. Under the Agreement, Gulf will be obligated to pay the fees and charges of the Trustee.

Gulf may secure its obligations under the Note and/or Agreement by issuing, under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, a series of its first mortgage bonds ("Collateral Bonds"). The Collateral Bonds will be issued under an indenture supplemental to the Mortgage, will mature on the maturity date of such Revenue Bonds and will be non-transferable by the Trustee. The Collateral Bonds may be issued in principal amount either (1) equal to the principal amount of Revenue Bonds or (2) equal to the sum of such principal amount of Revenue Bonds plus interest payments thereon for a specified period. Collateral Bonds, in the case of (1) above, would bear interest at a rate(s) equal to the interest rate(s) to be borne by the related Revenue Bonds and, in the case of (2) above, would be non-interest bearing. The Collateral Bonds may be subject to mandatory or optional redemption provisions.

Alternatively, Gulf proposes to: (1) Issue an irrevocable Letter of Credit ("LOC") up to an amount necessary in order to pay principal of and accrued interest on the Revenue Bonds when due; (2) secure an insurance policy ("Policy") which will (a) guarantee the payment when due of the principal and interest on the Revenue Bonds, (b) extend for the term of the related Revenue Bonds and (c) be non-cancelable by the insurance company; (3) convey a subordinated security interest; or (4) guarantee ("Guarantee") payment of the principal of, premium, if any, and interest on the Revenue Bonds. Gulf proposes that the LOC, the Policy and the Guarantee be excepted from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder.

Of the proceeds derived from the foregoing sales of securities, Gulf proposes to use up to $80 million of Revenue Bonds, $100 million of Bonds and $40 million of Preferred to redeem or otherwise retire outstanding pollution control revenue bonds, first mortgage bonds or preferred stock, respectively. Gulf asserts that it will not use such proceeds to refund outstanding securities unless the estimated present value savings derived from the net difference between interest payments on any security to be issued for refunding purposes and the specific securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. Such discount rate is based on the estimated after-tax interest rate on the securities issued for refunding purposes. Gulf may also use the proceeds, along with other funds, to pay a portion of its cash requirements to carry on its electric utility business.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7535 Filed 3-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25281]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 25, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 18, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Narragansett Electric Company (70-7835); Proposal to Extend the Authority to Raise Celing on Unsecured Debt; Order Authorizing Proxy Solicitation

Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, an electric public-utility subsidiary company of New England Electric Company, a registered holding company, has filed an application-declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

Narragansett proposes to: (1) Extend, until September 30, 1998, Narragansett's authority to incur unsecured indebtedness up to 20% of the aggregate of the principal amount of all bonds and other secured indebtedness and the capital and surplus (capital and retained earnings) of Narragansett, and (2) solicit proxies from shareholders of Narragansett's cumulative preferred stock ("Cumulative Preferred") for use at a special meeting of such shareholders, to be held June 5, 1991, for approval of such proposal.

The preference provisions of Narragansett's Cumulative Preferred provide that, without the vote of a majority of the holders of all series of said stock then outstanding, Narragansett's unsecured indebtedness shall not exceed 10% of the aggregate of the principal amount of all of its bonds and other secured indebtedness and its capital and surplus (capital and retained earnings). At a special meeting of the shareholders of Narragansett's Cumulative Preferred held on September 12, 1984, the shareholders approved a proposal authorizing Narragansett to incur unsecured indebtedness not exceeding 20% of the aggregate of the principal amount of all of its bonds and other secured indebtedness and its capital and surplus (capital and retained earnings). By orders dated July 19, 1984 and August 13, 1984 (HCAR Nos. 23370 and 23394, respectively), the Commission authorized the proxy solicitations and the raising of the unsecured debt ceiling through September 30, 1991.

Narragansett now proposes to continue the current authorization to incur unsecured indebtedness in excess of the 10% limitation thereon through September 30, 1998, provided: (i) Such indebtedness be issued not later than September 30, 1998; (ii) such indebtedness shall have a maturity not later than September 30, 1998; and (iii) all unsecured indebtedness of Narragansett not exceed 20% of the aggregate of the principal amount of all bonds and other secured indebtedness and the capital and surplus (capital and retained earnings) of Narragansett.

Narragansett thus requests authority to solicit proxies from the shareholders of the Cumulative Preferred for use at a special meeting of such shareholders, to be held on June 5, 1991, with respect to the approval of the proposal to extend the authority to raise the unsecured debt ceiling to 20%. Narragansett has filed its proxy solicitation material and requests that its declaration, with respect to the solicitation of proxies from its Cumulative Preferred shareholders with regard to the proposal, be permitted to become effective as provided in Rule 62(d) of the Act.

It appearing to the Commission that Narragansett's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7539 Filed 3-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18061; File No. 812-7606]

Security First Life Insurance Company, et al.

March 25, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Security Firist Life Insurance Company ("Security First Life"), Security First Life Separate Account A (the "SFL Account"), and Security First Financial, Inc. ("First Financial").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges and a distribution expense charge from the assets of the SFL Account pursuant to certain group variable annuity contracts.

FILLING DATES: The application was filed on October 9, 1990 and amended on March 15, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m. on April 19, 1991. Request a hearing in writing, giving and nature of your interest, the reasons for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secertary of the SEC, along with proof of service by affidavit or, in the case of attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Wendy B. Finck, Staff Attorney, at (202) 272-3045, or Barry D. Miller, Senior Attorney, at (202) 272-3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security First Life is a stock life insurance company organized under the laws of the State of Delaware.

2. The SFL Account is a separate account of Security First Life established to fund certain group variable annuity contracts (the "Contracts"). The SFL Account is registered as a unit investment trust under the Act.

3. First Financial is a broker-dealer registered under the Securities Exchange Act of 1934 and is the principal underwriter for the SFL Account.

4. Purchase payments under the Contracts are allocated to three series of the SFL Account, each of which is invested in the corresponding series of the Security First Trust (the "Fund"): the Money Market Series, the Board Series, and the Growth and Income Series. Other series may be added in the future. The Fund is a Massachusetts business trust registered under the Act as a diversified, open-end management investment company.

5. The Contracts are designed to provide annuity benefits to employees of public school systems and certain tax-exempt organizations as tax-deferred annuity contracts qualified under section 403(b) of the Internal Revenue Code (the "Code"), to retirement plans that qualify under section 401 of the Code, to employees covered under deferred compensation plans described under section 457 of the Code, and to individuals as individual retirement annuities.

6. Purchase payments under the Contracts may be allocated between the general account of Security First Life and the SFL Account. The minimum monthly purchase payment is $20 with an annual minimum premium of $240. There is no initial sales charge. Amounts invested in the SFL Account may be transferred among the series at any time any number of times and may be transferred from the SFL Account to the general account at any time before being applied to a variable annuity option. Amounts allocated to the general account may be transferred to the SFL Account subject to certain limitations as to time and amount. A transaction fee of $10 will be deducted from the contract value for each transfer among the series or between the SFL Account and the general account.

7. A surrender charge (contingent deferred sales charge) may be deducted if the Contract owner requests a full or partial surrender from the SFL Account. Prior to the end of the ninth full calendar year after the certificate of participation is issued, the surrender charge amounts to 7% of purchase payments received within 60 months of the date of surrender. After the ninth full calendar year following the certificate date, there is no surrender charge imposed on any surrender under the Contract. The registration statement for the SFL Account, which is incorporated by reference into the application, states that no surrender charge will be made for that part of the first surrender in a calendar year that does not exceed 10% of the participant's interest in the SFL Account. A transaction charge of the lesser of $10 or 2% of the amount withdrawn will be deducted from the remaining contract value upon each surrender.

8. Premium taxes payable to any state or other governmental agency may be deducted from the Contract owner's account on or after occurrence.

9. An annual administrative fee of $21.50 per account, plus $2.50 for each series in the SFL Account with accumulation units and for amounts allocated to the general account, is deducted for administrative expenses from each participant's account at the end of each year. This fee will be deducted on a pro-rata basis from the participant's account values in the series of the SFL Account and values in the general account, if any, on the basis of the relative values of each as of the date of the deduction.

10. Security First Life assumes the risk that the administrative fee will be insufficient to cover the cost of administering the Contracts. For assuming this expense risk, Security First Life deducts an expense risk charge from the SFL Account. The charge is computed and deducted daily from each series an annual rate of 0.45% of the total net assets of the series. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts, Security First Life will bear the loss; however, if the charge is more than sufficient, the excess will be a gain to Security First Life. To the extent Security First Life realizes any gain, those amounts may be used at its discretion to offset losses when the expense risk charge is insufficient. The expense risk charge may not be changed under the Contracts.

11. Annuity payments will not be affected by the mortality experience (death rate) of persons receiving such payments or the general population. The annuity rates cannot be changed after issuance of a Contract. For assuming the risks that the death of a participant will occur at a time when the series' values under the Contract are less than the gross purchase payments made to such series (adjusted for withdrawals), in which case the death benefit payable will be the gross purchase payments so adjusted, and that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates, Security First Life deducts a mortality risk charge from the SFL Account. The charge is computed and deducted daily from each series at an annual rate of 0.80% of the total net assets of each series. If the mortality risk charge is insufficient to cover the actual costs of assuming the mortality risks, Security First Life will bear the loss; however, if the charge proves more than sufficient, the excess will be a gain to Security First Life. To the extent Security First Life realizes any gain, those amounts may be used at its discretion to offset losses experienced when the mortality risk charge is insufficient. The rate imposed for the mortality risk charge may not be changed under the Contracts.

12. Security First Life will deduct a distribution expense charge (which may be deemed to be a deferred sales charge) from the assets of the SFL Account. The charge is computed and deducted daily from each series at an annual rate of 0.10% of the total net assets of the series. If the distribution expense charge is insufficient to cover the cost of selling the Contracts, Security First Life will bear the loss; however, if the charge is more than sufficient, the excess will be a gain to Security First Life. To the extent Security First Life realizes any gain, these amounts may be used at its discretion to offset losses when the distribution expense charge is insufficient. The rate imposed for the distribution expense charge may not be changed under the Contracts.

13. With respect to the distribution expense charge, applicants represent that the amount of any contingent deferred sales load imposed when added to any distribution expense charge previously paid will not exceed 9% of purchase payments and that Security First Life will monitor each Participant's account for the purpose of ensuring that this limitation is not exceeded.

14. Applicants assert that the mortality and expense risk charges and the distribution expense charge are reasonable in relation to the risks assumed by Security First Life under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing Security First to undue risk of loss, and fall within the range of similar charges imposed under competitive variable annuity products. Applicants represent that the risk and expense charges are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates. Applicants further represent that Security First Life will maintain at its home office a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and result of, Security First Life's comparative survey.

15. Security First Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the SFL Account and Contract owners. Security First Life will maintain and make available to the Commission upon request a memorandum setting forth the basis for such conclusion.

16. Security First Life also represents that the SFL Account will only invest in management investment companies that undertake, in the event such company adopts a plan to finance distribution expenses pursuant to rule 12b-1 under the Act, to have a board of directors (or trustees) a majority of whom are not interested persons of the company formulate and approve such plan.

17. Applicants undertake to include, in the prospective forming part of the SFL Account's registration statement under the Securities Act of 1933, statements (a) describing the purpose of the distribution expense charge, and (b) that the staff of the Commission deems such charge to constitute a deferred sales charge.

18. Based upon the foregoing reasons, Applicants request exemptions from sections 26(a) and 27(a)(2) of the Act to the extent necessary to allow Security First Life to deduct from the SFL Account the mortality and expense risk charges and the distribution expense charge imposed under the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7538 Filed 3-29-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 03/03-0195]

CIP Capital, Inc.; Application for License to Operate as a Small Business Investment Co.

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 et seq.) has been filed by CIP Capital, Inc., 300 Chester Field Parkway, suite 200, Malvern, Pennsylvania 19355, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1991).

The proposed officers, directors, and owner of CIP Capital, Inc. are as follows:

Name and address	Position	Percentage of ownership
Winston J. Churchill, Bean Tree Farm, Hollow Road, Philadelphia, PA 19421.	President and Director.	100
Wayne B. Weisman, 220 Locust Street, 16A, Philadelphia, PA 19106.	Vice President and Director.	.....
Joseph L. Jackson, 470 Hickory Lane, Berwyn, PA 19312.	Secretary and Treasurer Director.	.....

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business primarily in the states of Pennsylvania and New Jersey. Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Malvern, Pennsylvania.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 20, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-7567 Filed 3-29-91; 8:45 am]

BILLING CODE 8025-01-M

DSC Ventures II, LP; Issuance of a Small Business Investment Co. License

[License No. 09/09-0391]

On June 14, 1990, a notice was published in the **Federal Register** (54 FR 36087) stating that an application has been filed by DSC Ventures II, LP with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1990)) for a license as a small business investment company.

Interested parties were given until close of business July 14, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0391 on March 1, 1991, to DSC Ventures II, LP to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 25, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-7566 Filed 3-29-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 9-91]

Treasury Notes of March 31, 1993, Series Y-1993

March 21, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $11,500,000,000 of United States securities, designated Treasury Notes of March 31, 1993, Series Y-1993 (CUSIP No. 912827 A2 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated April 1, 1991, and will accrue interest from that date, payable on a semiannual basis on September 30, 1991, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date

is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, March 26, 1991, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, March 25, 1991, and received no later than Monday, April 1, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an ageement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, April 1, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, March 28, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an

amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-7641 Filed 3-28-91; 10:35 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 10-91]

Treasury Notes of March 31, 1996, Series M-1996

March 21, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $8,500,000,000 of United States securities, designated Treasury Notes of March 31, 1996, Series M-1996 (CUSIP No. 912827 A3 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the Price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated April 1, 1991, and will accrue interest from that date, payable on a semiannual basis on September 30, 1991, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, March 27, 1991, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 26, 1991, and received no later than Monday, April 1, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the part amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4,

noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, April 1, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, March 28, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completely timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-7640 Filed 3-28-91; 10:35 am]

BILLING CODE 4810-40-M

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 1990

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor and reference price for calendar year 1990 as required by section 29(d)(2)(A) of the Internal Revenue Code (26 U.S.C. 29(d)(2)(A)).

SUMMARY: The inflation adjustment factor and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATES: The 1990 inflation adjustment factor and reference price apply to qualified fuels sold during calendar year 1990.

INFLATION FACTOR: The inflation adjustment factor for calendar year 1990 is 1.6730.

PRICE: The reference price for all qualified fuels is $20.03 per equivalent barrel for the 1990 calendar year.

Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor—Thomas Thompson, PR:R, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 233-1210 (not a toll-free number).

For the reference price—David McMunn, CC:P&SI:6, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 566-3553 (not a toll-free number).

Kenneth K. Kempson,

Acting Associate Chief Counsel (Technical).

[FR Doc. 91-7518 Filed 3-29-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Conversion of Custom Molded Shoes from Decentralized Schedule Contracting to Multiple Award Federal Supply Schedule Group 65, Part II, Section B

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is proposing to convert Custom Molded Shoes, currently under Decentralized Schedule Contracting, to Federal Supply Schedule Group 65, Part II Multiple Award Schedule (MAS). This proposed action is published in accordance with General Services Administration Handbook, Supply Operations, Chapter 38 (FSS P2901.2A), and Federal Acquisition Regulations (FAR) 38.2.

DATES: Written comments must be received on or before May 1, 1991, and should include consideration of potential impact on small business concerns. Comments will be available for public inspection until May 13, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Carol J. Calhoun, Federal Supply Division (904C), Department of Veterans Affairs, Marketing Center, (708) 216-2514.

Dated: March 20, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-7513 Filed 3-29-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 62
Monday, April 1, 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).

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Reauthorization Committee Hearing; Notice

TIME AND DATE: A hearing of the Board of Directors Reauthorization Committee will be held on April 19, 1991. The hearing will commence at 9 a.m.

PLACE: The Chicago Marriott Downtown Hotel, 540 North Michigan Avenue, The Purdue Wisconsin Room, Chicago, Illinois 60611, (312) 836-0100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Public Comment on Reauthorization of the Legal Services Corporation. Persons wishing to offer testimony at this hearing are requested to notify the Corporation by Monday, April 8, 1991. Written testimony to be presented to the Committee should also be submitted to the Corporation by Monday, April 8, 1991.

CONTACT PERSON FOR INFORMATION: Patricia Batie or Alan Severson, Executive Office, (202) 863-1839.

Date Issued: March 28, 1991.

Patricia D. Batie,

Corporation Secretary.

[FR Doc. 91-7732 Filed 3-28-91; 2:04 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Reauthorization Committee Meeting; Notice

TIME AND DATE: A meeting of the Board of Directors Reauthorization Committee will be held on April 20, 1991. The meeting will commence at 9:00 a.m.

PLACE: The Chicago Marriott Downtown Hotel, 540 North Michigan Avenue, The Michigan/Michigan State Room, Chicago, Illinois 60611, (312) 836-0100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Consideration of Public Comment and Possible Recommendation to the Board of Directors Regarding the Reauthorization of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Dated Issued: March 28, 1991.

Patricia D. Batie,

Corporation Secretary.

[FR Doc. 91-7733 Filed 3-28-91; 8:45 am]

BILLING CODE 7050-01-M

RESOLUTION TRUST CORPORATION:

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:40 p.m. on Tuesday, March 26, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider a recommendation from the National Sales Center for a pilot test of a pre-approved participating buyer program for $300 million of RTC office properties.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr. and Directive T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550 17th Street, N.W., Washington, DC.

Dated: March 27, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-7688 Filed 3-28-91; 12:51 pm]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 1, 8, 15, and 22, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 1

Wednesday, April 3

10:00 a.m.
Periodic Briefing on Progress of Resolution of Generic Safety Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Appeal from a Licensing Board Order LBP-91-1 in the Shoreham Proceeding (Tentative)
b. Appeal of Licensing Board Decision LBP-91-02 on Standing to Intervene in the Turkey Point Proceeding (Tentative)

Week of April 8—Tentative

Friday, April 12

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 15—Tentative

Friday, April 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 22—Tentative

Tuesday, April 23

1:30 p.m.
Discussion/Possible Vote on Browns Ferry Unit 2 Restart

Wednesday, April 24

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (If needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill—(301) 492-1661.

Dated: March 27, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-7717 Filed 3-28-91; 1:45 pm]

BILLING CODE 7590-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Reauthorization Committee Hearing; Notice

TIME AND DATE: A hearing of the Board of Directors Reauthorization Committee will be held on April 5, 1991. The meeting will commence at 9:00 a.m.

PLACE: The Pan Pacific Hotel San Franciso, 500 Post Street, The Olympic Room, San Francisco, California 94102, (415) 771–8600.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Public Comment on Reauthorization of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: March 27, 1991.

Patricia D. Batie,

Corporation Secretary.

[FR Doc. 91–7627 Filed 3–27–91; 4:08 pm]

BILLING CODE 7050–01–M

Corrections

Federal Register
Vol. 56, No. 62
Monday, April 1, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 900941-0342]

RIN 0648-AC43

Pacific Coast Groundfish Fishery

Correction

In rule document 90-30640 beginning on page 736 in the issue of Tuesday, January 8, 1991, make the following corrections:

1. On page 737, in the first column, in the heading, appearing after the third full paragraph, "Purposes" should read "Purpose".

§ 611.70 [Corrected]

2. On page 739, in the second column, under § 611.70(c)(1)(ii), in the second line, "percentages" should read "percentage".

3. On page 740, in the first column, in the same section, in paragraph (h)(1), in the tenth line, "Devices of" should read "Devices or".

§ 663.2 [Corrected]

4. On page 741, in the third column, in § 663.2(p), in the first line "*bottom*" should read "*bobbin*".

5. On page 742, in the 1st column, in § 663.2(w), under *Rockfish*, in the 19th line from the bottom, "Ocean" should read "ocean".

§ 663.6 [Corrected]

6. On page 743, in the 3rd column, in § 663.6(a), in the 11th line, "56"should read "65".

§ 663.7 [Corrected]

7. On page 744, in the first column, in § 663.7(b), in the eighth line, "or" should read "of".

Appendix to Part 663 [Corrected]

8. On page 752, in the first column, in the fifth line from the top, "in" should read "is".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No.16]

RIN C960-AD09

Supplemental Security Income; Determining Disability for a Child Under Age 18

Correction

In rule document 91-3123 beginning on page 5534 in the issue of Monday, February 11, 1991, make the following corrections:

1. On page 5550, in the table, under Low Estimate, on the 1st line, Federal SSI benefits, the entry under FY'93 "$334" should read "344".

§416.924 [Corrected]

2. On page 5554, in the 3rd column, in §416.924(b), in the 20th line from the top "will" should read "with".

§416.924 [Corrected]

3. On page 5555, in the 1st column, in §416.924(f), in the 14th line "or" should read "of".

§416.924a [Corrected]

4. On the same page, in the 1st column, in §416.924a(a), in the 14th line "or" should read "on".

§416.924a [Corrected]

5. On the same page, in the 2nd column, in §416.924a(b)(1), in the 10th line "finding" should read "findings".

§416.994a [Corrected]

6. On page 5563, in the 2nd column, in §416.994a(d), in the 19th line "your" should read "you".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AB36

[Regulations No. 4 and 16]

Disability Insurance and Supplemental Security Income; Determinations of Disability—Compliance and Other Changes Involving Administrative Requirements and Procedures

Correction

In rule document 91-5708 beginning on page 11012 in the issue of Thursday, March 14, 1991, make the following correction:

§ 416.1020 [Corrected]

On page 11022, in the first column, in § 416.1020(a), in the first line, "ares" should read "areas".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28889/February 15, 1991, International Series Release No. 231/ February 15, 1991]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

Correction

In notice document 91-4171 beginning on page 7424 in the issue of Friday, February 22, 1991, make the following correction:

On page 7424 the agency identification line appearing in the heading, should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0952-86]

RIN 1545-AM20

Allocation and Apportionment of Interest Expense

Corrections

In proposed rule document 91-5587, beginning on page 10397, in the issue of Tuesday, March 12, 1991, make the following corrections:

1. On page 10399, in the first column:

a. The ninth line from the top of the page should read "United States affiliated group's holdings of related CFC group indebtedness in each category.".

b. In the 1st full paragraph, the 14th line should read "classification of liabilities as indebtedness, the classification of certain loans between".

§ 1.861-10 [Corrected]

2. On page 10402, in the second column, in § 1.861-109(e)(9)(v), the ninth line should read "related group indebtedness or excess U.S. shareholde· indebtedness, the indebtedness of the"

BILLING CODE 1505-01-D

federal register

Monday
April 1, 1991

Part II

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Amendment to Benzene Rule for Coke By-Product Recovery Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3837-1]

National Emission Standards for Hazardous Air Pollutants; Amendment to Benzene Rule for Coke By-Product Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 14, 1989, EPA published a final rule promulgating national emission standards for hazardous air pollutants (NESHAP) for benzene emissions from coke by-product recovery plants (54 FR 38044). On November 13, 1989, the American Coke and Coal Chemicals Institute (ACCCI) filed a petition for review of the September 14, 1989 final benzene NESHAP with the U.S. Court of Appeals for the District of Columbia Circuit. The EPA and ACCCI entered into a settlement agreement on May 17, 1990 with respect to that litigation. The record in the case was remanded to EPA, thereby permitting EPA to propose a revision to the benzene NESHAP under authority of section 112 of the Clean Air Act (CAA) as in effect prior to November 15, 1990 (CAA Amendments of 1990 section 112(q)(1)). In accordance with the settlement, EPA is proposing to revise 40 CFR part 61, subpart L, the coke by-product recovery plant NESHAP, to add provisions for the use of carbon adsorbers and vapor incinerators as alternative means of complying with the standards for process vessels, storage tanks and tar-intercepting sumps. The proposed provisions would not change the stringency of the standards. The proposed provisions also include testing, monitoring, recordkeeping and reporting requirements for these alternative controls. No other changes to the September 14, 1989 benzene NESHAP are proposed in this notice.

DATES: *Comments.* Comments must be received on or before May 1, 1991.

Public Hearing. If requested, a public hearing will be held on April 23, 1991 from 9 a.m. to 1 p.m. Persons wishing to present oral testimony at the public hearing must notify EPA at the address below by April 19, 1991.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Docket No. A-79-16, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public hearing. If requested, a public hearing will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina 27711. Persons wishing to present oral testimony should notify Julia Stevens, Standards Development Branch, Emission Standards Division (MD-13), USEPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-79-16 contains supporting information on the proposed rulemaking. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the basis and content of this proposed rulemaking, contact Ms. Gail Lacy at (919) 541-5261, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For further information on the emission testing aspects of this proposed rule, contact Mr. William Grimley at (919) 541-1065, Emission Measurement Branch, Technical Support Division (MD-19) at the above address.

SUPPLEMENTARY INFORMATION:

Background and Applicability

On September 14, 1989, EPA published a final NESHAP under the authority of section 112 of the CAA, as amended, to control benzene emissions from coke by-product recovery plants (54 FR 38044). The rule is contained in subpart L of 40 CFR part 61. On November 13, 1989 ACCCI filed a petition for review of the benzene NESHAP with the U.S. Court of Appeals for the District of Columbia Circuit. The EPA and ACCCI entered into an agreement to settle this litigation. The agreement, submitted to the Court on May 22, 1990, is based on EPA's adding provisions to the NESHAP allowing the use of carbon adsorbers and vapor incinerators that achieve as much emission reduction as gas blanketing as an alternative means of compliance for sources subject to 40 CFR 61.132. The record in the case was remanded to EPA, thereby permitting EPA, in accordance with section 112(q) of the CAA Amendments of 1990, to revise the NESHAP on the basis of section 112 as in effect prior to November 15, 1990.

As a result, EPA is proposing to revise subpart L to add provisions for the use of carbon adsorbers and vapor incinerators to control sources subject to 40 CFR 61.132. These control devices would be alternatives to a gas-blanketing system, the control technology on which the standards were based. To comply with the proposed standards, carbon adsorbers and vapor incinerators would have to be designed and operated to achieve emission reductions equivalent to those achieved by gas-blanketing systems. The sources subject to § 61.132 are process vessels, tar-intercepting sumps, and storage tanks. Process vessels are defined in subpart L as tar decanters, flushing liquor circulation tanks, light-oil condensers, light-oil decanters, wash-oil decanters, and wash-oil circulation tanks.

This proposal includes detailed, step-by-step provisions designed to assure that each carbon adsorber and vapor incinerator achieves emission reductions equivalent to gas blanketing. These provisions are design, operational, testing, monitoring, recordkeeping and reporting requirements.

Emission Limitations

The standard in subpart L of 40 CFR part 61 for process vessels, tar-intercepting sumps, and storage tanks (§ 61.132) is based on the use of a gas-blanketing system. Gas-blanketing systems that would comply with § 61.132 are estimated to achieve at least 98 percent control of benzene emissions. Any alternative control technique must achieve an emission reduction equivalent to that achieved by the promulgated standard, as described in § 61.136 of subpart L. The gases entering and exiting carbon adsorbers and vapor incinerators can be feasibly measured (in contrast to the gas-blanketing system, for which an equipment standard was necessary). Therefore, the proposed rule would require that, to be in compliance with the NESHAP, each carbon adsorber and vapor incinerator achieve at least 98 percent control of benzene emissions.

To ensure that the emissions from the source are vented to the control device (i.e., the carbon adsorber or vapor incinerator), the proposed rule would require that the source be enclosed and sealed. The ductwork and connections would be required to operate with no detectable emissions. However, an access hatch, pressure relief device, vacuum relief device, and sampling port would be allowed on each source. The access hatch and sampling port would be required to have a gasketed cover that would be removed only when the hatch or port were in use. In addition,

the owner or operator would be permitted to leave open the portion of the liquid surface of a tar decanter needed to operate a sludge conveyor. The requirements described in this paragraph are already included in the rule under §§ 61.132 (a)(1), (a)(2) (i), and (ii), and (b). Therefore, the proposed provisions for carbon adsorbers and vapor incinerators reference these sections. Furthermore, the owner or operator of a carbon adsorber or vapor incinerator would be subject to any other requirements of subpart L for the referenced sections, such as recordkeeping and reporting requirements.

Compliance Testing

Compliance with the 98 percent reduction requirement would be determined by an emission test on each carbon adsorber and vapor incinerator. The test would be conducted in accordance with the testing provisions in § 61.13 of the General Provisions, subpart A of 40 CFR part 61. An initial compliance test would be required by the deadlines specified in § 61.13(a). However, if a waiver of compliance has been granted under § 61.11 of the General Provisions, the completion date for the initial compliance should be incorporated into the terms of the waiver. Compliance tests would also be required to be conducted at the request of EPA.

The compliance test would be required to be run under representative emission concentration and vent flow rate conditions, in addition to specific requirements discussed below. For sources with intermittent flow rates, typical emission surges should be included. An example is a storage tank that would have an emission surge during the loading process. The benzene concentrations should be measured at both the inlet and outlet of the control device, so that the percent reduction by the control device could be determined. The inlet and outlet samples of the emission stream should be taken simultaneously. The test should comprise three separate sampling runs; the measurements from these runs should be averaged to determine the percent reduction of benzene across the control device. Each run should consist of at least 1 hour of sampling.

All methods that would be required to be used for the compliance test are codified in appendix A of 40 CFR part 60. Method 1 or 1A, whichever is applicable, should be used for locating measurement sites. Method 2, 2A, or 2D, whichever is applicable, should be used for measuring vent flow rates. Method 18 should be used for determining the concentration of benzene in the samples. This method uses gas chromatography to separate benzene from the rest of the sample for the analysis specified in the method.

Requirements Specific To Vapor Incinerators

Monitoring: Monitoring the temperature of the vapor incinerator would be required to indicate the continuous performance of the incinerator. The monitor would be required to have an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius, or ±0.5 °C, whichever is greater. For all vapor incinerators other than catalytic incinerators, this monitor would be installed in the firebox. For catalytic incinerators, temperature monitors would be installed in the gas stream immediately before and after the catalyst bed.

The incinerator temperature would be required to be recorded during the compliance test and continuously thereafter. For any 3-hour period of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent emission test, the incinerator would be considered in exceedance of the parameter boundary. The owner or operator would be required to record and report the exceedance, as described later in this preamble.

The owner or operator also would be required to install and operate a flow indicator on each gas stream intended to be vented to the vapor incinerator. The flow indicator would be required to record, at least once every hour, whether or not there is flow to the incinerator.

Requirements Specific to Regenerative Carbon Adsorbers

A regenerative carbon adsorber is one in which the carbon beds are regenerated in the location where they were installed. Such an adsorber has several carbon beds as part of one control device. When one bed is saturated with compounds from the gas stream, the gas stream is directed to a fresh bed, and the spent bed is regenerated in place. Typically, these adsorbers are designed to switch beds every few hours.

Compliance testing: For emission testing performed to determine compliance with the percent reduction emission limit, the proposed rule would contain additional specifications to those described above. Each test run would be required to take place in one adsorption cycle, to include a minimum of 1 hour of sampling immediately preceding the initiation of carbon bed regeneration. This timing is important because it is when the emission potential is highest.

Operation: To ensure that benzene is not emitted during the regeneration of the carbon bed, during which the captured benzene is removed from the carbon, the rule would require that the benzene be recycled or destroyed in a manner that prevents benzene emissions to the atmosphere. Eventually the carbon bed itself would need to be replaced because of the long-term buildup of adsorbed materials that were not removed during the regeneration cycles. The adsorbed materials would be expected to include benzene. Therefore, the proposed rule also would require the prevention of benzene emissions during the regeneration, recycling or destruction of the carbon.

The proposed rule also would set a limit on the maximum concentration of emissions from a spent carbon bed before the gas stream is switched to a regenerated bed. This limit would be called the maximum concentration point. It could be either a benzene concentration or compound concentration level (provided that the conditions for monitoring organic compounds are met). The proposed rule would specify that the emissions from the source be vented to a regenerated carbon bed and the regeneration of the spent carbon bed be initiated no later than when the benzene concentration (or organic compound concentration level, if applicable) in the adsorber outlet vent reaches the maximum concentration point. The maximum concentration point is defined as being the concentration at the outlet of the carbon adsorber that corresponds to 2 percent of the inlet benzene concentration measured during the most recent emission test. The method for determining the maximum concentration point for each carbon adsorber will be described later in this section.

Monitoring: The proposed rule would require that the owner or operator install and operate continuously a monitoring device at the outlet of each regenerative carbon adsorber. The measurements from the monitoring device would be used for determining if the maximum concentration point has been exceeded.

The monitor could either be one that measures benzene concentration, or one that measures the concentration level of all organic compounds in the gas stream, provided measurement of organic compound levels reasonably indicates benzene concentrations. The qualities of

a reasonable indication are that the organic compound monitor readings increase predictably and measurably when benzene breaks through or is about to break through. This increase should be distinguishable from the typical variation in the organic measurements when all the benzene is being adsorbed. An example of an unreasonable indication would be if a low molecular weight compound like methane, which typically is not adsorbed well by activated carbon, were present in large enough quantities to cause the organic compound concentration levels to stay the same before and after the benzene has broken through.

To monitor benzene emissions, the owner or operator would be required to use a gas chromatographic method, following specifications in Method 18. To monitor organic compounds, the owner or operator would be required to use one of the following detection principles: infrared absorption, flame ionization, catalytic oxidation, photoionization, or thermal conductivity. The monitoring device would be required to meet certain requirements of Method 21 in 40 CFR part 60.

Determination of the maximum concentration point: The value of the maximum concentration point for a regenerative carbon adsorber would be required to be determined by a comparison of data from the monitor with data taken using Method 18 in 40 CFR part 60. The outlet of the carbon adsorber would be required to be measured simultaneously with Method 18 and the monitor. The sampling schedule should be designed to take frequent samples near the expected maximum concentration point. The maximum concentration point would be defined as the concentration, as indicated by the monitoring device, for the last data point at which the benzene concentration is less than 2 percent of the average value of the benzene concentration at the inlet to the carbon adsorber during the most recent emission test on the adsorber for determining compliance with the 98 percent emission limit.

If the maximum concentration point is expressed as a benzene concentration, the owner or operator would be given the option to determine it by calibrating the monitoring device with benzene at the concentration that is 2 percent of the average benzene concentration measured at the inlet to the carbon adsorber during the most recent compliance test. The reading on the monitoring device corresponding to the calibration concentration would then be the maximum concentration point. This option would replace the comparison of monitoring and Method 18 measurements. The reason for this option is that Method 18 specifications would be required to be followed when monitoring benzene concentrations.

The maximum concentration point would be determined initially in the same period that the compliance test has to be completed. It would also be required to be determined at the request of EPA or at any other time chosen by the owner or operator.

Requirements Specific to Non-regenerative Carbon Adsorbers

A non-regenerative carbon adsorber is one in which the spent carbon bed is either never regenerated or is moved from where it was installed for regeneration. Once the carbon bed in the carbon adsorber is saturated, it is replaced by a new bed. A common example is a carbon canister, which is totally replaced upon saturation. Typically a non-regenerative adsorber would be applied to a source with relatively low flow or organic concentration, so that the bed would need to be replaced only after several months of operation.

Operation: The proposed rule would specify when the carbon bed would need to be replaced with a fresh one. The scheduled replacement time would be the day that the bed reached the estimated 90 percent of its demonstrated bed life, measured in days from the date of the installation of the bed. However, if the emissions at the outlet of the adsorber reached or exceeded the concentration that had previously been determined to be the maximum concentration point before the scheduled replacement time, the bed would be required to be changed as soon as practicable (but no later than 16 hours) after the detection of the exceedance. The proposed rule would require that the spent carbon be regenerated, recycled or destroyed in a manner that prevents benzene emissions to the atmosphere.

Monitoring: To track the continued performance of the adsorber and check for exceedances of the maximum concentration point, the proposed rule would require periodic monitoring of the outlet emissions. A portable monitoring device would most likely be used for this purpose. Either benzene concentration or organic concentration levels could be monitored. However, to monitor organic compounds, the measurements must be reasonable indicators of benzene emissions. This condition is further described under the section for regenerative carbon adsorbers. The required monitoring techniques for benzene and for organic compounds would be essentially the same as those for regenerative adsorbers (i.e., Method 18 and Method 21).

The basic monitoring schedule would be as follows: Once during the first week after installation, and then once per month until 10 days before the scheduled replacement time. Ten days before the scheduled replacement time, daily monitoring would begin. This basic schedule would be used for each replacement carbon bed except for when it replaces one for which the maximum concentration point was exceeded before the scheduled replacement time. In that case, the rule would require that daily monitoring begin earlier to minimize the possibility that another exceedance of the maximum concentration point could be undetected for several days. There would be two different cases described below.

The first case would be when the exceedance of the maximum concentration point for a carbon adsorber is detected during the monthly monitoring or on the first day of daily monitoring. Once that bed is replaced, daily monitoring of the replacement carbon bed would be required to begin on the day after the last scheduled monthly monitoring before the exceedance was detected, or 10 days before the point in the cycle where the exceedance was detected, whichever is longer. For example, the scheduled replacement time for an adsorber is the 105th day after installation. According to the basic schedule, monthly monitoring is done on the 30th, 60th and 90th days, and daily monitoring begins on the 95th day. Assume an exceedance of the maximum concentration point is detected on the 90th day after installation. On the replacement carbon bed, daily monitoring would begin on the 61st day after installation (i.e., the day after the last scheduled monthly monitoring before the exceedance was detected). If instead, the exceedance were detected on the first bed on the 95th day, the daily monitoring of the replacement bed would begin on the 85th day after installation (i.e., 10 days before the point in the cycle where the exceedance was detected).

The second case for changing the monitoring schedule would be when an exceedance of the maximum concentration point is detected during the daily monitoring, other than the first day of the daily monitoring. For the replacement carbon bed, the owner or operator would be required to begin

daily monitoring 10 days before the exceedance was detected. Using the same example as above with a carbon bed for which the scheduled replacement time is the 105th day after installation, assume the maximum concentration point is detected on the 100th day after installation, during the scheduled daily monitoring. For the replacement bed, daily monitoring would begin on the 90th day after its installation (i.e., 10 days earlier than when the exceedance was detected on the previous bed).

If the owner or operator is monitoring on one of the special schedules described in the last two paragraphs, and the scheduled replacement time is reached without exceeding the maximum concentration point, the owner or operator would be permitted to return to the basic schedule on the subsequent carbon bed. Otherwise, the special schedule would continue to be followed. The determination of the demonstrated bed life is described in the next section.

Determination of the maximum concentration point and the demonstrated bed life: The maximum concentration point would be required to be determined for each non-regenerative carbon adsorber in a similar manner to regenerative carbon adsorbers. A series of simultaneous measurements of the outlet of the carbon adsorber using Method 18 and the monitoring device would be required to be taken, with frequent samples near the expected maximum concentration point. The maximum concentration point would be defined as the concentration as indicated by the monitoring device, for the last data point at which the benzene concentration is less than 2 percent of the inlet benzene concentration measured during the most recent compliance test on that adsorber.

The demonstrated bed life for a non-regenerative adsorber would be defined as the time, measured in days, from the installation of the carbon bed to the time when the maximum concentration point is reached during the determination of the maximum concentration point; it would remain unchanged until the next time the maximum concentration point for that adsorber is determined.

If the maximum concentration point is expressed as a benzene concentration, the owner or operator would be given the option to determine it by calibrating the monitoring device with benzene at a concentration that is 2 percent of the average benzene concentration measured at the inlet to the carbon adsorber during the most recent compliance test. The reading on the monitoring device corresponding to the calibration concentration would then be the maximum concentration point. However, if this operation were chosen, the owner or operator still would be required to do the series of measurements during the life of the bed, with frequent samples near the expected maximum concentration point, to determine the demonstrated bed life. To make these measurements, the owner or operator would be allowed to use only the monitoring device, instead of simultaneous monitoring and Method 18 samples. This is because monitoring devices that measure benzene concentration would be required to follow Method 18 specifications.

The proposed rule would require that the maximum concentration point be determined on the first carbon bed installed in each adsorber, at the request of EPA, and at any other time chosen by the owner or operator. In addition, a determination would be required after the maximum concentration point has been exceeded (before the scheduled replacement time) for three previous carbon beds in the adsorber since the most recent determination.

Recordkeeping and Reporting

The owner or operator would be required to keep records of the design of the control device and a plan for operation, maintenance, and remedial action for the life of the control device. Records of the compliance tests and measurements determining parameter limits for monitoring would be required to be kept for at least 2 years or until the next compliance test, whichever is longer. The parameter limits include the determinations of the maximum concentration point for carbon adsorbers and the firebox temperature for vapor incinerators. Any exceedance of a maximum concentration point or temperature boundary would be required to be recorded for at least 2 years, along with a brief description of the remedial action taken. Also, any period during which there is no flow to or flow is diverted from the vapor incinerator would be required to be recorded for at least 2 years.

The deadlines for reporting the emission test results are outlined in § 61.13 of the General Provisions. Exceedances of any maximum concentration points and the temperature boundaries would be required to be reported quarterly. The report would be required to include a brief description of the action taken to correct the exceedance. It would also be required to include periods without flow or during which flow was diverted from the vapor incinerator. Quarterly reporting is important to let enforcement groups know of any major problems that may not have been sufficiently corrected. However, in the event that no exceedances of a maximum concentration point or temperature boundary occur in a quarter for which no semiannual report is due under the remainder of subpart L, the reporting could be skipped for that quarter.

Miscellaneous

Docket: The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

Paperwork Reduction Act: The information collection provisions associated with the proposed rules have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Act (PRA) of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA" as well as to Chief, Information Policy Branch (PM-223), USEPA, 401 M Street SW., Washington, DC 20460. The final rule will respond to any OMB or public comments on the information collection requirements.

During the first 3 years that the proposed rule would be in effect, the public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be 190 hours per year per respondent. This paperwork burden is required for owners or operators who choose to use carbon adsorbers or vapor incinerators to comply with subpart L. However, the use of these alternative controls instead of gas-blanketing, the control on which 40 CFR 61.132 is based, is optional.

Public Hearing: A public hearing will be held, if requested, to discuss the proposed action, in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations

should contact EPA at the address given in the ADDRESSES section of the preamble. Any member of the public may file a written statement before, during, or within 30 days of the hearing. Written statements should be addressed to the Air Docket address given in the ADDRESSES section of this preamble and should refer to Docket No. A-79-16.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket in Washington, DC (see ADDRESSES section of this preamble).

Executive Order 12291: Under Executive Order 12291, EPA must judge whether a regulatory action is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This proposed rule is not major because it is a technical amendment to allow alternative controls to be used to comply with an existing regulation and, therefore, results in none of the significant adverse economic effects described in the Order.

This rulemaking was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are included in Docket No. A-79-16. The docket is available for public inspection at EPA's Air Docket listed under the ADDRESSES section of this notice.

Regulatory Flexibility Act: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this proposed amendment imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: March 21, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, 301 of the Clean Air Act as amended (40 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Section 61.130 of subpart L is amended by revising the section heading and by adding paragraphs (c) and (d) to read as follows:

§ 61.130 Applicability, designation of sources, and delegation of authority.

* * * * *

(c) In delegating implementation and enforcement authority to a State under section 112 of the Act, the authorities contained in paragraph (d) of this section shall be retained by the Administrator and not transferred to a State.

(d) Authorities that will not be delegated to States: § 61.136(d).

3. Section 61.131 of subpart L is amended by adding the following definitions in alphabetical order:

§ 61.131 Definitions.

* * * * *

Non-regenerative carbon adsorber means a series, over time, of non-regenerative carbon beds applied to a single source or group of sources, where non-regenerative carbon beds are carbon beds that are either never regenerated or are moved from their location for regeneration.

* * * * *

Regenerative carbon adsorber means a carbon adsorber applied to a single source or group of sources, in which the carbon beds are regenerated without being moved from their location.

* * * * *

Vapor incinerator means any enclosed combustion device that is used for destroying organic compounds and does not necessarily extract energy in the form of steam or process heat.

* * * * *

4. Section 61.139 of subpart L is revised to read as follows:

§ 61.139 Provisions for alternative means for process vessels, storage tanks, and tar-intercepting sumps.

(a) As an alternative means of emission limitation for a source subject to § 61.132(a)(2) or § 61.132(d), the owner or operator may route gases from the source through a closed vent system to a carbon adsorber or vapor incinerator that is at least 98 percent efficient at removing benzene from the gas stream.

(1) The provisions of § 61.132(a)(1) and § 61.132(a)(2) (i) and (ii) shall apply to the source.

(2) The seals on the source and closed vent system shall be designed and operated for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined by the methods specified in § 61.245(c).

(3) The provisions of § 61.132(b) shall apply to the seals and closed vent system.

(b) For each carbon adsorber, the owner or operator shall adhere to the following practices:

(1) Benzene captured by each carbon adsorber shall be recycled or destroyed in a manner that prevents benzene from being emitted to the atmosphere.

(2) Carbon removed from each carbon adsorber shall be regenerated or destroyed in a manner that prevents benzene from being emitted to the atmosphere.

(3) For each regenerative carbon adsorber, the owner or operator shall initiate regeneration of the spent carbon bed and vent the emissions from the source to a regenerated carbon bed no later than when the benzene concentration or organic vapor concentration level in the adsorber outlet vent reaches the maximum concentration point, as determined in § 61.139(h).

(4) For each non-regenerative carbon adsorber, the owner or operator shall replace the carbon at the scheduled replacement time, or as soon as practicable (but not later than 16 hours) after an exceedance of the maximum concentration point is detected, whichever is sooner.

(i) For each non-regenerative carbon adsorber, the scheduled replacement time means the day that is estimated to be 90 percent of the demonstrated bed life, as defined in § 61.139(h)(5).

(ii) For each non-regenerative carbon adsorber, an exceedance of the maximum concentration point shall mean any concentration greater than or equal to the maximum concentration point as determined in § 61.139(h).

(c) Compliance with the provisions of this section shall be determined as follows:

(1) For each carbon adsorber and vapor incinerator, the owner or operator shall demonstrate compliance with the efficiency limit by a compliance test as specified in § 61.13 and § 61.139(g). If a waiver of compliance has been granted under § 61.11, the deadline for

conducting the initial compliance test shall be incorporated into the terms of the waiver. The benzene removal efficiency rate for each carbon adsorber and vapor incinerator shall be calculated as in the following equation:

$$E = \frac{\sum_{i=1}^{n} Q_{bi}C_{bi} - \sum_{j=1}^{m} Q_{aj}C_{aj}}{\sum_{i=1}^{n} Q_{bi}C_{bi}} \times 100$$

Where:

E=percent removal of benzene.

C_{aj}=concentration of benzene in vents after the control device, parts per million (ppm).

C_{bi}=concentration of benzene in vents before the control device, ppm.

Q_{aj}=volumetric flow rate in vents after the control device, standard cubic meters/minute (scm/min).

Q_{bi}=volumetric flow rate in vents before the control device, scm/min.

m=number of vents after the control device.

n=number of vents before the control device.

(2) Compliance with all other provisions in this section shall be determined by inspections or the review of records and reports.

(d) For each regenerative carbon adsorber, the owner or operator shall install and operate a monitoring device that continuously indicates and records either the concentration of benzene or the concentration level of organic compounds in the outlet vent of the carbon adsorber. The monitoring device shall be installed, calibrated, maintained and operated in accordance with the manufacturer's specifications.

(1) Measurement of benzene concentration shall be made according to § 61.139(g)(2).

(2) All measurements of organic compound concentration levels shall be reasonable indicators of benzene concentration.

(i) The monitoring device for measuring organic compound concentration levels shall be based on one of the following detection principles: infrared absorption, flame ionization, catalytic oxidation, photoionization, or thermal conductivity.

(ii) The monitoring device shall meet the requirements of part 60, appendix A, Method 21, sections 2, 3, 4.1, 4.2, and 4.4. For the purpose of the application of Method 21 to this section, the words "leak definition" shall be the maximum concentration point, which would be estimated until it is established under § 61.139(h). The calibration gas shall either be benzene or methane and shall be at a concentration associated with 125 percent of the expected organic compound concentration level for the carbon adsorber outlet vent.

(e) For each non-regenerative carbon adsorber, the owner or operator shall monitor either the concentration of benzene or the concentration level of organic compounds at the outlet vent of the adsorber. The monitoring device shall be calibrated, operated and maintained in accordance with the manufacturer's specifications.

(1) Measurements of benzene concentration shall be made according to § 61.139(g)(2). The measurement shall be conducted over at least one 5-minute interval during which flow into the carbon adsorber is expected to occur.

(2) All measurements of organic compound concentration levels shall be reasonable indicators of benzene concentration.

(i) The monitoring device for measuring organic compound concentration levels shall meet the requirements of § 61.139(d)(2) (i) and (ii).

(ii) The probe inlet of the monitoring device shall be placed at approximately the center of the carbon adsorber outlet vent. The probe shall be held there for at least 5 minutes during which flow into the carbon adsorber is expected to occur. The maximum reading during that period shall be used as the measurement.

(3) Monitoring shall be performed at least once within the first 7 days after replacement of the carbon bed occurs, and monthly thereafter until 10 days before the scheduled replacement time, at which point monitoring shall be done daily, except as specified in paragraphs (e)(4) and (e)(5) of this section.

(4) If an owner or operator detects an exceedance of the maximum concentration point during the monthly monitoring or on the first day of daily monitoring as prescribed in paragraph (e)(3) of this section, then, after replacing the bed, the owner or operator shall begin the daily monitoring of the replacement carbon bed on the day after the last scheduled monthly monitoring before the exceedance was detected, or 10 days before the exceedance was detected, whichever is longer.

(5) If an owner or operator detects an exceedance of the maximum concentration point during the daily monitoring as prescribed in paragraph (e)(3) of this section, except on the first day, then, after replacing the bed, the owner or operator shall begin the daily monitoring of the replacement carbon bed 10 days before the exceedance was detected.

(6) If the owner or operator is monitoring on the schedule required in paragraph (e)(4) or paragraph (e)(5) of this section, and the scheduled replacement time is reached without exceeding the maximum concentration point, the owner or operator may return to the monitoring schedule in paragraph (e)(3) of this section for subsequent carbon beds.

(f) For each vapor incinerator, the owner or operator shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±0.5 °C, whichever is greater.

(i) Where a vapor incinerator other than a catalytic incinerator is used, the temperature monitoring device shall be installed in the firebox.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) A flow indicator that provides a record of vent stream flow to the incinerator at least once every hour for each source. The flow indicator shall be installed in the vent stream from each source at a point closest to the inlet of each vapor incinerator and before being joined with any other vent stream.

(g) In conducting the compliance tests required in § 61.139(c), and measurements specified in § 61.139 (d)(1), (e)(1) and (h)(3)(ii), the owner or operator shall use as reference methods the test methods and procedures in appendix A to 40 CFR part 60, or other methods as specified in this paragraph, except as specified in § 61.13.

(1) For compliance tests, as described in § 61.139(c)(1), the following provisions apply.

(i) All tests shall be run under representative emission concentration and vent flow rate conditions. For sources with intermittent flow rates, representative conditions shall include typical emission surges (for example, during the loading of a storage tank).

(ii) Each test shall consist of three separate runs. These runs will be averaged to yield the volumetric flow rates and benzene concentrations in the equation in § 61.139(c)(1). Each run shall be a minimum of 1 hour.

(A) For each regenerative carbon adsorber, each run shall take place in one adsorption cycle, to include a minimum of 1 hour of sampling immediately preceding the initiation of carbon bed regeneration.

(B) For each non-regenerative carbon adsorber, all runs can occur during one adsorption cycle.

(iii) The measurements during the runs shall be paired so that the inlet and outlet to the control device are measured simultaneously.

(iv) Method 1 or 1A shall be used as applicable for locating measurement sites.

(v) Method 2, 2A, or 2D shall be used as applicable for measuring vent flow rates.

(vi) Method 18 shall be used for determining the benzene concentrations (C_{aj} and C_{bi}. Either follow § 7.1, "Integrated Bag Sampling and Analysis," or § 7.2, "Direct Interface Sampling and Analysis Procedure." A separation column constructed of stainless steel, 1.83 m by 3.2 mm, containing 10 percent 1,2,3-tris (2-cyanoethoxy) propane (TECP) on 80/100 mesh Chromosorb P AW, with a column temperature of 80 °C, a detector temperature of 225 °C, and a flow rate of approximately 20 ml/min may produce adequate separations. The analyst can use other columns, provided that the precision and accuracy of the analysis of benzene standards is not impaired. The analyst shall have available for review information confirming that there is adequate resolution of the benzene peak.

(A) If § 7.1 is used, the sample rate shall be adjusted to maintain a constant proportion to vent flow rate.

(B) If § 7.2 is used, then each performance test run shall be conducted in intervals of 5 minutes. For each interval "t," readings from each measurement shall be recorded, and the flow rate (Q_{aj} or Q_{bi}) and the corresponding benzene concentration (C_{aj} or C_{bi}) shall be determined. The sampling system shall be constructed to include a mixing chamber of a volume equal to 5 times the sampling flow rate per minute. Each analysis performed by the chromatograph will then represent an averaged emission value for a 5-minute time period. The vent flow rate readings shall be timed to account for the total sample system residence time. A dual column, dual detector chromatograph can be used to achieve an analysis interval of 5 minutes. The individual benzene concentrations shall be vent flow rate weighted to determine sample run average concentrations. The individual vent flow rates shall be time averaged to determine sample run average flow rates.

(2) For testing the benzene concentration at the outlet vent of the carbon adsorber as specified under §§ 61.139 (d)(1), (e)(1) and (h)(3)(ii), the following provisions apply.

(i) The measurement shall be conducted over one 5-minute period.

(ii) The requirements in § 61.139(g)(1)(i) shall apply to the extent practicable.

(iii) The requirements in § 61.139(g)(1)(vii) shall apply. Section 7.2 of Method 18 shall be used as described in § 61.139(g)(1)(vi)(B) for benzene concentration measurements.

(h) For each carbon adsorber, the maximum concentration point shall be expressed either as a benzene concentration or organic compound concentration level, whichever is to be indicated by the monitoring device chosen under § 61.139 (d) or (e).

(1) For each regenerative carbon adsorber, the owner or operator shall determine the maximum concentration point at the following times:

(i) No later than the deadline for the initial compliance test as specified in § 61.139(c)(1);

(ii) At the request of the Administrator; and

(iii) At any time chosen by the owner or operator.

(2) For each non-regenerative carbon adsorber, the owner or operator shall determine the maximum concentration point at the following times:

(i) On the first carbon bed to be installed in the adsorber;

(ii) At the request of the Administrator;

(iii) On the next carbon bed after the maximum concentration point has been exceeded (before the scheduled replacement time) for each of three previous carbon beds in the adsorber since the most recent determination; and

(iv) At any other time chosen by the owner or operator.

(3) The maximum concentration point for each carbon adsorber shall be determined through the simultaneous measurement of the outlet of the carbon adsorber with the monitoring device and Method 18, except as allowed in paragraph (h)(4) of this section.

(i) Several data points shall be collected according to a schedule determined by the owner or operator. The schedule shall be designed to take frequent samples near the expected maximum concentration point.

(ii) Each data point shall consist of one 5-minute benzene concentration measurement using Method 18 as specified in § 61.139(g)(2), and of a simultaneous measurement by the monitoring device. The monitoring device measurement shall be conducted according to § 61.139 (d) or (e), whichever is applicable.

(iii) The maximum concentration point shall be the concentration level, as indicated by the monitoring device, for the last data point at which the benzene concentration is less than 2 percent of the average value of the benzene concentration at the inlet to the carbon adsorber during the most recent compliance test.

(4) If the maximum concentration point is expressed as a benzene concentration, the owner or operator may determine it by calibrating the monitoring device with benzene at a concentration that is 2 percent of the average benzene concentration measured at the inlet to the carbon adsorber during the most recent compliance test. The reading on the monitoring device corresponding to the calibration concentration shall be the maximum concentration point. This method of determination would affect the owner or operator as follows:

(i) For a regenerative carbon adsorber, the owner or operator is exempt from the provisions in paragraph (h)(3) of this section.

(ii) For a non-regenerative carbon adsorber, the owner or operator is required to collect the data points in paragraph (h)(3) of this section with only the monitoring device, and is exempt from the simultaneous Method 18 measurement.

(5) For each non-regenerative carbon adsorber, the demonstrated bed life shall be the carbon bed life, measured in days from the time the bed is installed until the maximum concentration point is reached, for the carbon bed that is used to determine the maximum concentration point.

(i) The following recordkeeping requirements are applicable to owners and operators of control devices subject to § 61.139. All records shall be kept updated and in a readily accessible location.

(1) The following information shall be recorded for each control device for the life of the control device:

(i) The design characteristics of the control device and a list of the source or sources vented to it.

(ii) A plan for proper operation, maintenance, and corrective action to achieve at least 98 percent control of benzene emissions.

(iii) The dates and descriptions of any changes in the design specifications or plan.

(iv) For each carbon adsorber, the plan in paragraph (i)(1)(ii) of this section shall include the method for handling captured benzene and removed carbon to comply with § 61.139(b) (1) and (2).

(v) For each carbon adsorber for which organic compounds are monitored as provided under § 61.139 (d) and (e), documentation to show that the

measurements of organic compound concentrations are reasonable indicators of benzene concentrations.

(2) For each compliance test as specified in § 61.139(c)(1), the date of the test, the results of the test, and other data needed to determine emissions shall be recorded as specified in § 61.13(g) for at least 2 years or until the next compliance test on the control device, whichever is longer.

(3) For each vapor incinerator, the average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured and averaged over the most recent compliance test shall be recorded for at least 2 years or until the next compliance test on the incinerator, whichever is longer.

(4) For each carbon adsorber, for each determination of a maximum concentration point as specified in § 61.139(h), the date of the determination, the maximum concentration point, and data needed to make the determination shall be recorded for at least 2 years or until the next maximum concentration point determination on the carbon adsorber, whichever is longer.

(5) For each carbon adsorber, the dates of and data from the monitoring required in § 61.139 (d) and (e), the date and time of replacement of each carbon bed, the date of each exceedance of the maximum concentration point, and a brief description of the corrective action taken shall be recorded for at least 2 years. Also, the occurrences when the captured benzene or spent carbon are not handled as required in § 61.139(b) (1) and (2) shall be recorded for at least 2 years.

(6) For each vapor incinerator, the data from the monitoring required in § 61.139(f), the dates of all periods of operation during which the parameter boundaries established during the most recent compliance test are exceeded, and a brief description of the corrective action taken shall be recorded for at least 2 years. A period of operation during which the parameter boundaries are exceeded is a 3-hour period of operation during which the average combustion temperature is more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test.

(7) For each vapor incinerator, records of the flow indication, as required in § 61.139(f)(2), and of all periods when the vent stream is diverted from the incinerator or has no flow rate, shall be recorded for at least 2 years.

(j) The following reporting requirements are applicable to owners or operators of control devices subject to § 61.139:

(1) Compliance tests shall be reported as specified in § 61.13(f).

(2) The following information shall be reported on a quarterly basis. Two of the quarterly reports shall be submitted as part of the semiannual reports required in § 61.138(f).

(i) For each carbon adsorber:

(A) The date and time of detection of each exceedance of the maximum concentration point and a brief description of the time and nature of the corrective action taken.

(B) The date of each time that the captured benzene or removed carbon was not handled as required in § 61.139(b) (1) and (2) and a brief description of the corrective action taken.

(C) The date of each determination of the maximum concentration point, as described in § 61.139(h), and a brief reason for the determination.

(ii) For each vapor incinerator:

(A) The date and duration of each exceedance of the boundary parameters recorded under § 61.139(i)(6) and a brief description of the corrective action taken.

(B) Each period recorded under § 61.139(i)(7) when the vent stream is diverted from the control device or has no flow rate.

(3) If, for a given quarter in which no semiannual report is due under § 61.138(f), there is no information to report under § 61.139(j)(2) (i)(A), (i)(B), (ii)(A), and (ii)(B), then the owner or operator may submit a statement to that effect along with the information to be reported under § 61.139(j)(2)(i)(C) in the next semiannual report, rather than submitting a report at the end of the quarter.

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federal register

Monday
April 1, 1991

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

Indian Housing Development; Notice of Funding Availability for Fiscal Year 1991

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. -N-91-3229; FR-2947-N-01]

NOFA for Indian Housing Development Announcement of Funding Availability for Fiscal Year 1991

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for fiscal year 1991.

DATE: Applications must be physically received by the Indian field office having jurisdiction over the Indian housing authority (IHA) applicant on or before 5:15 p.m. (Field Office local time) May 16, 1991. The IHA applicant shall submit their application(s) for new housing units on Form HUD-52730 with all supporting documentation required by section III of this notice, "Checklist of Application Submission Requirements," and for demolition or disposition in accordance with Notice PIH 91-XX, "Fiscal Year 1991 Public and Indian Housing Demolition or Disposition Application Submission;" 24 CFR part 905, subpart M; and Notice PIH 89-19.

SUMMARY: This notice announces the availability of funding for Fiscal Year (FY) 1991 for the development of Indian Housing (IH) and provides the applicable criteria, processing requirements and development action dates. All eligible Indian Housing Authorities are invited to submit applications for Indian Housing developments in accordance with the requirements of this NOFA. This NOFA is not applicable to the Public Housing program.

FOR FURTHER INFORMATION CONTACT: IHA applicants may contact the appropriate Indian field office. Refer to section V (c) for a complete list of Field Offices (FOs) and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the information collection requirements contained in these application procedures for development funds were reviewed by the Office of Management and Budget and assigned OMB control number 2577-0030.

I. Purpose and Substantive Description

(a) Authority

Secs. 5 and 6, United States Housing Act of 1937 (42 U.S.C. 1437c, 1437d), as amended; U.S. Department Of Housing and Urban development and Independent Agencies' Appropriations Act for Fiscal Year 1991 (Pub. L. No. 101-507). All 24 CFR 905 citations contained in this NOFA can be found at 55 FR 24721, June 18, 1990.

(b) Allocation Amount

The amount of funding provided under the FY 1991 HUD Appropriations Act (Pub. L. No. 101-507) for new Indian housing (IH) developments is $233,361,000.

This notice announces that ninety percent of the appropriated amount, that is, $210,024,900, is being made available for basic Indian Housing Development grants for the fiscal year.

The other ten percent ($23,336,100) of the appropriated amount is being set aside for Family Self-Sufficiency purposes, in accordance with section 23 of the United States Housing Act of 1937 (as amended by section 554 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101-625, approved November 28, 1990). Those funds will be made available for competition in a separate NOFA for the Family Self-Sufficiency Program, scheduled for publication in late May 1991.

Funds needed for replacing units that have been approved for demolition or disposition must be funded from the amount available for new IH development as a priority. HUD is withholding $8,000,000.00, which has been determined to be an amount that will adequately meet the FY 1991 funding needs for demolition or disposition and will be used to fund replacement units approved in accordance with 24 CFR 905 subpart M. This amount retained is not to be considered a ceiling on funding for demolition or disposition because all demolition or disposition applications that are approved by August 1, 1991 will be funded. (If additional funds are needed, regional allocations will be reduced by the same ratios that were used to make the original allocation.) Each of the six FO service areas has been designated as the smallest practicable area for allocation of assistance. The funds available for new units in FY 1991 will be assigned to the FOs in accordance with 24 CFR 791.403(d). If funds retained for replacement units are not reserved by the FOs by August 1, 1991, they will be distributed to the FOs in the same manner as the amounts for new units were allocated.

A competitive process, described below, will be used to select those IHA applications which are to be funded. The following chart specifies the amount of grant authority available for new units for FY 1991 for each of the six Indian FOs. Included in these figures are the monies to be expended on off-site sewer and water for the development of the housing units.

Indian region	Amount
Chicago	$26,551,600
Oklahoma City	22,136,400
Denver	28,948,500
Phoenix	73,504,600
Seattle	13,887,400
Anchorage	37,056,400
Total	202,024,900

(c) FY 1991 Amendment Funds

The amount provided for Amendments to existing contracts is $40,000,000. Requests for amendment funds will be submitted to the applicable FO as the need arises, in accordance with section (f) below. IHAs may submit requests for amendment funds throughout FY 1991.

(d) Eligibility

Applications for new Indian housing units are invited from Indian Housing Authorities that: (1) Are organized in accordance with either 24 CFR 905.125 or 905.126; (2) have executed the required Tribal or local cooperation agreements as required by the U.S. Housing Act of 1937; and (3) maintain administrative capability in accordance with 24 CFR 905.135. Indian Housing Authorities that have developments assisted under the U.S. Housing Act of 1937 and meet the requirements of 24 CFR Part 905, subpart M, may apply for funds to replace units in connection with demolition or disposition. Indian Housing Authority that have any projects that are currently under an ACC may apply for amendment funds in accordance with the priorities outlined in section (f) below.

(e) Selection Criteria/Ranking Factors: New Housing Units

Rating and ranking of applications from IHAs for new Indian housing units will be done in accordance with 24 CFR 905.220(b)(2), which provides:

(1) Group Priority: The statutory priority for families requiring three or more bedrooms will be provided as follows. For each program type (low rent or Mutual Help), the applications will be

sorted into three groups according to unit size, based upon the proposed bedroom distribution indicated on the original application. Group I will be composed of applications for projects consisting only of units with three or more bedrooms. Group II will be composed of applications for projects that have a mix of units with three or more bedrooms and units of fewer than three bedrooms. Group III will be composed of applications for projects containing only units of fewer than three bedrooms. Applications in Group I will receive priority funding over Group II, and Group II applications will receive priority over Group III applications.

(2) *Rating and ranking:* Complete and eligible applications of Group I, Group II, and Group III will be ranked separately for each program. The score calculated for the application of an IHA that has not previously been funded will be adjusted, before ranking, by multiplying the IHA's score by a factor of 2.5 to compensate for a lack of experience on which to base a rating. The rankings will be based on awarding points to each application for the following categories:

i. The relative unmet IHA need for housing units compared to the other eligible applications in that group, based on IHA waiting lists and the total number of units in management and in the development pipeline. For IHAs that have not previously been funded, the points for this category will be 40. For all other IHAs, this need will be measured for each program type by dividing the number of families on the waiting list for the size of units involved, by the IHA's total number of units in management and under development. If the result of this division is greater than 1.00, the points for this category shall be 40. Otherwise, the result of this division shall be multiplied by 40. The maximum number of points an IHA can receive is 40 points.

ii. The relative IHA occupancy rate, compared to the occupancy rates of other eligible IHA applications in that group. The occupancy rate for an IHA shall be derived from the most recent data entered in the HUD Multifamily Information Retrieval System national data base, which reports total units available and total units occupied based on information supplied by IHAs on forms submitted periodically to HUD. For all IHA projects in management, the total number of units occupied is divided by the total number of units available, multiplied by 100. This occupancy rate for an IHA will then be divided by the highest occupancy rate of any IHA in the group (never to exceed 97%, in any event), and this ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base an occupancy rate, and they shall receive no points for this category. The maximum number of points that an IHA can receive is 20 points.

iii. Length of time since the last Program Reservation date. The number of days from January 1, 1991 to the date of the last Program Reservation for an IHA shall be divided by the longest time, in number of days, since the last Program Reservation for any IHA in the group. This ratio shall be multiplied by 20 to calculate an IHA's points for this category. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category. The maximum number of points than an IHA can receive is 20 points.

iv. Current IHA development pipeline activity. Each IHA will start with 20 points. For each IHA development that was not completed by January 1, 1991, points will be deducted as follows (for this purpose "completed" means the Date Of Full Availability (DOFA)):

A. For each IHA development not having an approvable Development Program submitted within one year of Program Reservation date (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

B. For each IHA development not achieving construction start within 30 months (not counting days under statutory exclusions), 4 points are deducted—up to a maximum deduction of 20 points.

C. For each IHA development not meeting HUD requirements for administration of development contracts as set forth in the regulations and handbooks, 4 points are deducted—up to a maximum deduction of 20 points.

D. The maximum number of points an IHA can receive is 20 points. IHAs that have not previously been funded do not have any experience on which to base a rating, and they shall receive no points for this category.

(3) *Computation:* Scores for ranking shall be carried out to two significant digits (xx.xx).

(4) *Selection:* A. The ranking process will produce an ordered list of IHAs that may receive funding. The order is established by the total number of points the application received in the rating process. The application with the highest point total among Group I applications will be funded first, the next highest will be funded second, continuing through the Group I applications and then through Group II applications, and then Group III applications until funds are exhausted.

B. The size of projects awarded shall be based upon the following table to ensure meaningful competition based on need. Exceptions to the maximum size of projects awarded based on the table shall be made only where good cause exists.

Total of all units IHA requested in application(s) by program type	Maximum units awarded (subject to availability)
1,000 and above	300
750 to 999	200
500 to 749	150
400 to 499	100
300 to 399	80
200 to 299	60
199 or fewer	40

If an IHA that serves more than one distinct Indian community submits applications for housing units in several of the communities, each application will be treated separately, for purposes of the number of units awarded.

(5) *Tie breaker:* In the case of ties, priority will be given to the application that has the highest ratio of pre-approved sites to:

A. Units, and, if there is still a tie,

B. BIA-approved leases (or similar site control on non-trust land) for the proposed project site(s).

(f) *Requests for Amendment Funds:* Amendment funds will not be distributed to FOs on the same basis as funds for new units. Instead, they will be distributed by HUD Headquarters on the basis of (1) emergency requests from FOs, (2) amendment funds related to the impact of the change in calculation to Total Development Cost calculations mandated by Public Law 101-144 (103 Stat. 846), or (3) in response to amendment money need surveys submitted by the FOs as requested. Requests that are not emergency requests and that are not in response to the change in Total Development Cost calculations will be evaluated using the following order of priority:

A. Projects under construction with HUD-approved litigation settlement payable.

B. Projects that require a cost increase to cover immediate HUD-approved correction of a safety or health hazard that is not associated with off-site sewer and water needs.

C. Projects under construction with a cost increase needed to cover a HUD-approved off-site sewer and water component.

D. Projects under construction that require nominal HUD-approved change orders.

E. Projects with active Invitation to Bid or Request for Proposal status that require a nominal HUD-approved cost increase to execute construction contract or contract of sale.

F. Projects with an active Indian Health Service project summary that require a HUD-approved cost increase before a memorandum of agreement can be executed.

G. Projects that require a HUD-approved nominal cost increase to achieve project close-out.

H. Projects that require a HUD-approved cost increase for any reason not listed above.

II. Application Process for New Housing Units

(a) Application Due Date

In IHA may submit an application for a project at any time after April 1, 1991, to the Indian field office having jurisdiction over the IHA applicant. Applications must be received on or before 5:15 p.m. (FO local time) on May 16, 1991. The application shall be submitted on Form HUD-52730 and shall be accompanied by all the legal and administrative attachments required by the form. The application may include comments by the Chief Executive Officer on behalf of the unit of local government where the project is to be located. Where provisions for the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or a copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application.

(b) Application Kits

Application Form HUD-52730 for new Indian housing units for FY 1991 may be obtained from any Indian field office listed at paragraph V(c) below, complete with sample copies of all certifications, or from the Indian Housing Development Handbook 7450.1, chapter 2. Requests for amendment funds will be made by submitting a revised Development Budget, HUD Form 53045.

(c) Submittal of Complete Application

Completed applications must be submitted to the Indian field office having jurisdiction of the IHA applicant at the address/location listed at paragraph V(c) below.

(d) Action on Application

HUD will acknowledge receipt of the application by noting the date and time of receipt. A receipt indicating the date and time the application was received will be provided to the IHA. The FO will begin review of the application within 30 days after receipt. The application must be complete, must demonstrate legal sufficiency, and the IHA must have satisfied any requirements imposed in accordance with § 905.135. If it is evident that any application fails to satisfy these technical requirements, the HUD field office will immediately return the application and will identify in writing the deficiencies and permit the IHA an opportunity to make corrections within 14 calendar days from the date of receipt of the HUD notification letter.

(e) Statutory Priority for Large Families

In accordance with section 6(j) of the United States Housing Act of 1937, as amended, proposed developments for housing consisting of three or more bedrooms per unit shall receive priority.

(f) HUD Reform Act Disclosure

(1) Disclosures by Applicants: All IHA applicants are required to disclose information with respect to any additional funds that can reasonably be expected to be received by them as assistance in excess of $200,000 (in the aggregate) during the Fiscal Year that will be related to the project.

Disclosure must be made regarding any related assistance from the Federal Government (agencies or instrumentalities other than HUD), a State, or a unit of general local government that is expected to be made available with respect to the project for which the applicant is seeking assistance.

The assistance shall include, but not be limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

(2) Updates: The IHA applicant shall update this disclosure within 30 days of any substantial change. This update is required during the period when an application is pending or assistance is being provided.

(g) Statutory Requirement: Development Cost Priority

In accordance with section 6(h) of the United States Housing Act of 1937, every application submitted in FY 1991 for a new construction development must be accompanied by evidence that the cost of new construction is less than the cost of acquisition, or acquisition plus rehabilitation. In the alternative, the IHA may submit a certification that there is insufficient existing housing in the community to undertake the development of housing through acquisition of existing housing or rehabilitation.

(h) IHA Applications for Replacement Housing

IHA applications for demolition or disposition require a plan for the provision of an additional decent, safe and sanitary, and affordable dwelling unit for each Indian housing dwelling unit to be demolished or disposed of under the application. IHAs are to process requests for Demolition or Disposition in accordance with Notice PIH 91-XX, "Fiscal Year 1991 Public and Indian Housing Demolition or Disposition Application Submission;" 24 CFR Part 905, subpart M; and Notice PIH 89-19.

(i) State Established IHAS Requirements—Lobbying

Section 319 of the FY 1990 Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101-121), hereafter referred to as "the Byrd amendment," prohibits grantees from using any federally appropriated funds to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts. The Department has determined that the requirements of the Byrd Amendment do not apply to IHAs established by an Tribal government exercising its sovereign powers. However, the Byrd Amendment does apply to IHAs established under State law. The "Byrd Amendment" requires all IHAs established under State law to submit the following documents for applications for grants exceeding $100,000.00:

1. A Certification that no federal appropriated funds will be used for lobbying purposes. (The certification shall be submitted on the Form entitled "certification shall be submitted on the Form entitled "certification for Contracts, Grants, Loans and Cooperative Agreements," and;

2. A document disclosing any lobbying activities on Standard Form (SF)-LLL, where any funds other than federally appropriated funds will be or have been used to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts.

III. Checklist of Application Submission Requirements

(a) Application Form HUD-52730

_____ Complete application on Form HUD-52730.

(b) IHA Resolutions

Each application must be accompanied by an IHA Resolution which contains the following:

_____ A statement that authorizes the submission of the application for units.

_____ A statement explaining how solid waste disposal for the proposed development will be addressed.

_____ A statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development.

_____ The IHA Resolution must advise HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty days of any substantial change.

(c) Certifications

Each application must contain the following certifications provided by the Executive Director on IHA letterhead.

_____Certification Regarding Drug-Free Workplace Requirements as directed by 24 CFR 24630(b). The IHA must submit this certification with its application,

_____Certification that the IHA will comply with 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973.

_____Certification that the IHA will comply with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

_____Certification that there is insufficient existing housing in such neighborhood to undertake the development of housing through acquisition of existing housing or rehabilitation.

_____Certification that the IHA will adhere to the Uniform Accessibility Standards/Architectural Barriers Act of 1968.

_____For IHAs Established under State law. A Certification that no Federal appropriated funds will be used for lobbying purposes. (Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements."

(d) Letters

Each IHA application must be accompanied by a letter of support signed by the CEO of the General local government indicating:

_____support for the proposed Indian housing application and development.

_____an authorization to apply for planning funds for the Indian housing development.

_____assurance to HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR part 170; 57 BIAM 4 and supplement 4; and 24 CFR part 905 B, appendix I, item 6.

(e) Supporting Documentation

Each application must be accompanied by the following supporting documentation:

_____Evidence that the cost of new construction is less than the cost of acquisition or acquisition plus rehabilitation if there is no certification to this effect by the IHA.

_____Disclosure of additional assistance from other sources that will be used in association with the project for which the applicant is seeking assistance.

_____Demonstration of financial feasibility for the proposed development.

_____Statement about the overall and relative need in the area.

_____Waiting list of applicant families that represent each housing bedroom size Group (i.e. Group I, II, III).

_____Disclosure of lobbying activities on Standard Form (SF)-LLL.

(f) Items That Should Be Submitted, If Not Previously Submitted

_____Certified copy of the Transcript of Proceedings containing the IHA resolution pursuant to which the Application is being made.

_____IHA Organization Transcript or General Certificate.

_____Tribal Ordinance.

_____Cooperation Agreements. Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application.

(g) Optional Items

_____Preliminary Site Reports indicating pre-approved sites, and BIA approved leases for the proposed project site(s), if any.

IV. Corrections to Deficient Applications

All applications will be reviewed to ensure that they are complete. The FO will immediately return the application and will identify in writing the technical deficiencies and permit the IHA an opportunity to make corrections, to any minor technical deficiencies, within 14 calendar days from the date of receipt of the HUD notification letter.

Only letters, certifications (other than the Drug-Free workplace certification), resolutions and similar materials may be remedied by correction. The correction process may not be used to improve the competitive standing of an applicant's submission.

V. Other Matters

(a) Errors in Scores for Ranking and Rating in Prior FYs

A. Correction of Scoring Errors: Errors in scoring made by a FO in a prior fiscal year's Indian housing development application during the rating and ranking, that resulted in an IHA not being funded when it otherwise would have, may be corrected as follows: i. The FO will reconstruct the IHA's score, correcting the error, and will re-rank the IHA's application, and ii. if the re-ranking places the application in a position where it would have been funded, except for the error, the FO will determine the number of units that would have been approved and fund the amount that would have been awarded in the prior year.

B. Remedy of Error: To remedy the error, the FO will deduct from the current year allocation, the amount necessary to fund the prior year application before any rating and ranking is completed for the current year.

C. Effect on Current Year Application(s): The FO's will ensure that data provided in an IHA's current year application will reflect that the IHA was funded for a prior year application. The data will reflect that the IHA received funding as of the first program reservation date for the prior year.

(b) Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The

Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

(c) Listing—Indian Field Offices

(1) Region V—Chicago, Mr. Leon Jacobs, Director, Rm. 524, Chicago Office of Indian Programs, 626 West Jackson Boulevard, Chicago, Illinois 60606-5601, (800) 735-3239 or (312) 886-4532

(2) Region VI—Oklahoma, Mr. Hugh Johnson, Director. Rm. 803, Oklahoma City Division of Indian Programs, Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102-3202, (405) 231-4101

(3) Region VIII—Denver, Mr. John Dibella, Director, Denver Office of Indian Programs, Executive Tower Building, 28th Floor, 1405 Curtis Street, Denver, Colorado 80202-2349, (303) 844-2628

(4) Region IX—Phoenix, Mr. Raphael Mecham, Director, Phoenix Office of Indian Programs, Two Arizona Center, 400 N. 5th Street, suite 1650, Phoenix, Arizona 85004, (602) 261-4156

(5) Region X—Seattle, Mr. Jerry L. Leslie, Director, Seattle Office of Indian Programs, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 89101-2058, (206) 553-0330

(6) Region X—Anchorage, Mr. Marlin Knight, Director, Rm. A-19, Anchorage Indian Program Division, 222 W. 8th Avenue, #64, Anchorage, Alaska 99513-7537, (907) 271-4633.

Dated: March 19, 1991.

Joseph P. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-7555 Filed 3-29-91; 8:45 am]

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federal register

Monday
April 1, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

Initial Escrow Account Statement; Annual Escrow Account Statement Advice; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-91-3190, FR-2955-N-01]

Initial Escrow Account Statement; Annual Escrow Account Statement Advice

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

ACTION: Notice.

SUMMARY: This notice sets forth instructions for an initial escrow account statement. Such a statement is required under section 10(c)(1) of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2609) as amended in section 942 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the Act). Such statement may either be an addition to the HUD-1 uniform settlement statement (the HUD-1) or a separate statement, given to the borrower at closing or sent to the borrower within 45 days from the establishment of an escrow account. The Notice also sets forth information on the annual escrow account statement required by the new section 10(c)(2) of RESPA. For purposes of this initial escrow account statement, the Act applies to any escrow account established on or after the date of this notice; for purposes of an annual escrow account statement, it applies to any escrow account established in connection with a federally-related mortgage loan (as defined in section 3(1) of RESPA), whether established before or after the effective date of RESPA (December 22, 1974).

PAPERWORK REQUIREMENTS: The information collection requirements contained in this Notice have been approved for a period of 60 days by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned OMB control number 2502-0457. The public reporting burden for each of these collections of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided below. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, within 30 days from the date of this Notice to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

	Initial Statement	Annual Statement	Total
Number of respondents.	20,000	10,000 [1]	20,000
Frequency of response.	Once per loan.	Annually	
Annual responses.	3 million	40 million	43 million
Burden per response.	0.2 hour	0.25 hour	
Annual burden.	600,000 hours [2].	10 million [2].	10,600,000 hours
Annual cost	$6 million	$120 million [3].	$126 million

[1] These 10,000 are included in the 20,000 loan originators.
[2] Hourly pay estimated at $10.00.
[3] Includes $0.50 per loan for postage, copying and miscellaneous costs.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell or John B. Shumway, Office of General Counsel, (202) 708-1550, room 10248, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 942 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the Act) added new section 10(c)(1)(C) to RESPA, which required, *inter alia*, that HUD amend within 90 days its HUD-1 uniform settlement statement (the HUD-1) to add an initial escrow account statement provision. The Department is issuing this Notice establishing initial escrow account statement requirements and setting forth the necessary changes to the HUD-1. The provisions of this Notice relating to the new section 10(c)(1) of RESPA, regarding initial escrow account statements, are effective upon the date of publication of this Notice. This Notice also sets forth information regarding annual escrow account statements required by section 10(c)(2).

As required by section 4 of RESPA, the HUD-1 is used by the settlement agent, the person responsible for completing the settlement, to reflect charges paid in connection with the settlement by the buyer and seller, for any residential real estate transaction involving a federally-related mortgage loan, which includes nearly every one- to four-family residential mortgage loan in the United States. Some transactions, including most refinancings and home equity loans, are exempt under RESPA or the implementing regulations at 24 CFR 3500.5(d) and 3500.8(d). If a transaction is exempt under 24 CFR 3500.5(d), no escrow account statements are required under section 10(c)(1) of RESPA. Section 3500.8(d) created limited administrative exemptions from the use of the HUD-1 for otherwise covered federally-related mortgage loans. The Department anticipates abolishing or modifying the 3500.8(d) exemptions in future rulemaking. Even if the settlement agent chooses not to use the HUD-1 based on a current 3500.8(d) exemption, the agent shall use the format set below for the initial escrow account statement.

If the initial escrow account statement is not completed at settlement, but is provided by a lender at a later date, such initial statement must be provided to the borrower within 45 days of the establishment of such escrow account. Section 10(d) makes the lender or escrow account servicer responsible for providing to the borrower a correct initial escrow account statement.

In response to new section 10(c)(1)(C) of RESPA, the Department hereby prescribes the following format for the initial escrow account statement:

Initial Escrow Account Statement Required by Section 10(c)(1) of the Real Estate Settlement Procedures Act (RESPA)

The terms of your loan require you to have an escrow account to assure that certain obligations relating to the mortgaged property, such as taxes, insurance premiums and other charges are paid. The amount specified below will be collected, along with your mortgage principal and interest payments, during the first 12 months after your account is opened to pay these anticipated expenses:

Escrow Account

Beginning Date: _____
Your escrow account payment will be $ ____ per _____
(month or other period)

Payee	Purpose	Anticipated date due	Est. amount
			$
Annual total due.			$

The Department hereby approves the use of the above format as a permissible deviation to the HUD-1 under § 3500.9 of Regulation X. The statement may either be attached as an additional page to the HUD-1, or included in the basic

text of the HUD-1 when computer printouts or other permissible variations under § 3500.9 are used. The Department recognizes that an escrow account is called an "impound account" or "reserve account" in some jurisdictions. The format may be varied to substitute either term if this is consistent with local practice.

Section 10(c)(2) requires servicers to submit an escrow account statement to the borrower not less than once a year for each 12-month computation period beginning on or after January 1, 1991 Any servicer's annual escrow account year (computation period) which begins on or after January 1, 1991 is covered by this provision. Within 30 days after the conclusion of each computation period, the servicer must provide to the borrower an escrow statement which clearly itemizes, as a minimum, the following information:

(a) The amount of the borrower's monthly payment, including principal and interest; (b) the portion of the monthly payment placed in the escrow account; (c) the total amount paid into the escrow account during the period; (d) the total amount paid out of the escrow account for each separately identified escrowed item; (e) the balance in the escrow account at the end of the period; (f) all interest, if any, paid on escrow account funds; and (g) notice of any shortage of funds in the escrow account (unless such notice has already been given to the borrower within this annual escrow account year).

In section 942 of the Act, section 12 of RESPA is also amended to state that a lender or servicer may not charge the borrower a fee for the preparation of escrow account statements. In section 941 of the Act, new section 6(g) requires the lender or servicer to make payments from the escrow account for taxes, insurance premiums, and other charges in a timely manner as such payments become due

The new section 10(d) of RESPA states that where a lender or servicer fails to submit an initial or annual escrow statement to a borrower, the Department shall assess a civil penalty of $50 for each violation, but the total amount assessed against the lender or servicer during a single year may not exceed $100,000. If intentional disregard of the disclosure requirements is found, the Department shall assess $100 per violation and there shall be no limitation on the amount assessed for a single year.

The Department believes that it would be inappropriate under the Administrative Procedure Act (5 U.S.C. 553) for a federal agency to collect damages or costs until there has been rulemaking implementing all the requirements of section 942 and setting out the procedures for establishing the penalties. Therefore, while the initial escrow account format and the instructions for following the provisions regarding annual escrow account statements are to be used as of the date of this notice, HUD will not seek to assess civil penalties until the Department issues a final rule on section 942 of the Act. That rule will set out in greater detail the requirements of new section 10(b) concerning notification of escrow account shortages, and section 10(c)(2) of RESPA concerning annual escrow statements, in addition to new section 10(d) concerning penalties. The Department contemplates utilizing 24 CFR part 30, subpart E, set forth in a proposed rule on September 10, 1990 (55 FR 37290) in its final format when developing rulemaking for the penalty provisions in section 942

Dated: March 25, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 91-7554 Filed 3-29-91; 8:45 am]

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federal register

Monday
April 1, 1991

Part V

Department of Health and Human Services

Public Health Service
Health Resources and Services Administration

45 CFR Part 60

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners; Final Regulations and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

45 CFR Part 60

RIN 0905-AD50

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This final rule amends the existing regulations governing the National Practioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank), codified at 45 CFR part 60, authorizing the reporting and release of information concerning: (1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions or claims; and (2) certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentitists. This final rule revises § 60.12 to change the process for collecting user fees from eligible individuals and entities requesting disclosure of information from the Data Bank.

EFFECTIVE DATE: These regulations will be effective May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Fitzhugh Mullan, M.D., Director, Bureau of Helath Professions, Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-5794.

SUPPLEMENTARY INFORMATION: The Department is revising the process used to collect fees from users of the Data Bank. This process is described in § 60.12(c), "*Assessing and collecting fees.*" The process, as described in the current regulations, was designed to allow for the flexibility of charging different fees for different types of transactions. Under this system, when a request is processed, a bill would be generated which reflects the number and nature of the individual requests. However, in developing the fees to be charged, it was determined that, in fact, there was no significant difference in the costs related to one type of transaction compared to another. As a result, user fees are based on a uniform charge being applied to each name contained in the request. Thus, the requester can easily determine the charge for its request before the request is submitted. The Secretary has therefore determined that it will be more efficient to administer and manage fee collections by requiring that fees be remitted at the time the request is made, thereby avoiding the need to generate bills, enforce colleciton of delinquent accounts, or charge interest on late payments. Section 60.12(c) is revised accordingly, and also provides that if the correct fee is not remitted with the request, the request will be rejected. Similar to an incomplete query form (i.e., missing required information, improperly completed, or unsigned), a query submitted without the appropriate fee is not considered to be a request for information made to the Data Bank. Further, a new paragraph (c)(4) is added to enable the Department to modify the payment method for greater efficiency, effectiveness, and convenience for the Department or the Data Bank users. These changes result in a more efficient means of collecting fees and will improve significantly the management, administration, and cash flow of the Data Bank.

Justification for Omitting Notice of Proposed Rulemaking

This regulation will improve the cash flow for the operation of the Data Bank by: (1) Requiring user fees to be sent to the Data Bank earlier in the query process; and (2) eliminating the burden upon the fee collection and management system pertaining to billing, the pursuit of delinquent accounts and interest charges. The Data Bank's fiscal viability, and, accordingly, its mission to protect the public from medical malpractice, is in part dependent upon the improvement of its cash flow. This revision will not have substantial impact upon the querying entities and individuals, since it is simply the time of payment of the user fee which is revised. Accordingly, the Secretary has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that notice and opportunity for public comment on the regulations set out below are impracticable, unnecessary, and contrary to the public interest.

Paperwork Reduction Act of 1980

These amendments do not affect the recordkeeping or reporting requirements in the existing regulations for the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners.

List of Subjects in 45 CFR Part 60

Health professions, Malpractice, Insurance companies.

Dated: February 21, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: March 28, 1991.

Louis W. Sullivan,

Secretary.

Accordingly, 45 CFR part 60 is amended as set forth below:

PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

1. The authority citation for 45 CFR part 60 continues to read as follow:

Authority: Secs. 401-432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99-660, 100 Stat. 3784-3794, as amended by section 402 of Pub. L. 100-177, 101 Stat. 1007-1008 (42 U.S.C. 11101-11152).

2. Section 60.12 is amended by revising paragraph (c) to read as follows:

§ 60.12 Fees applicable to requests for information.

* * * * *

(c) *Assessing and collecting fees.* (1) A request for information from the Data Bank must be accompanied by the appropriate fee.

(2) In the event that a requester, except those referred to in paragraph (a) of this section, fails to include the appropriate fee with the request, the request for information will be rejected.

(3) Fees must be paid by check or money order made payable to "U.S. Department of Health and Human Services."

(4) The Department may modify the above payment method or use other methods which are efficient or effective, for the convenience of the Date Bank users or the Department.

[FR Doc. 91-7777 Filed 3-29-91; 10:24 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank Change in User Fee

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (DHHS), is announcing a change in the fee that is charged entities and individuals authorized to request information from the National Practitioner Data Bank (Data Bank).

The $2.00 user fee that has been in effect since the Data Bank opened on September 1, 1990, was announced in the **Federal Register** on July 24, 1990 (55 FR 30037). That announcement indicated that the fee would be reviewed periodically and revised as necessary, based upon experience.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99-660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60, published in the **Federal Register** on October 17, 1989, set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement. These regulations govern the reporting and disclosure of information concerning:

(1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions and claims; and

(2) Certain adverse actions taken regarding the licenses, clinical privileges, and membership in professional societies of physicians and dentists.

In accordance with §§ 60.10 and 60.11 of the regulations, information in the Data Bank will be available to the following persons, entities, or their authorized agents:

(1) A hospital that requests information at the time a physician, dentist, or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital.

(2) A hospital that requests information concerning a physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital.

(3) A physician, dentist, or other health care practitioner who requests information concerning himself or herself.

(4) Boards of Medical Examiners or other State licensing boards.

(5) Health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist, or other health care practitioner, or to which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff.

(6) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. Provided, that this information will be disclosed only upon the submission of evidence that the hospital failed to request information from the Data Bank as required by § 60.10(a) of the regulations, and may be used solely with respect to litigation resulting from the action or claim against the hospital.

(7) A health care entity with respect to professional review activity.

(8) A Federal agency authorized to request information from the Data Bank. The agency must employ or otherwise engage under arrangement (e.g., such as a contract) the services of a physician, dentist, or other health care practitioner, or have the authority to sanction such practitioners covered by a Federal program and enter into a memorandum of understanding with DHHS regarding its participation in the Data Bank.

(9) A person or entity requesting information in a form which does not permit the identification of any particular health care entity, physician, dentist, or other health care practitioner.

Effective with the opening of the Data Bank, on September 1, 1990, a fee of $2.00 has been charged for authorized queries for information concerning an individual physician, dentist, or other health care practitioner.

A reassessment of the costs related to processing requests for disclosure of Data Bank information and of providing such information indicates that revenues generated through application of the $2.00 fee are not sufficient to cover the present transaction processing costs. This determination is based on a review of actual operating costs during the first 4 months of the Data Bank's operation. This review shows that the numnber of staff and the amount of staff time needed to process a transaction are significantly greater than what was originally projected.

Accordingly, the Department is increasing the user fee to $6.00 per request. This increase will be effective May 1, 1991. All requests received on or after this date will be subject to the new fee.

In determining the amount of this new $6.00 fee, HRSA applied the criteria set forth in § 60.12(b) of the regulations. The criteria include such cost factors as: electronic data processing time, equipment, materials, operators or other employees; and preparation of reports—materials, photocopying, postage and personnel.

When a request is for information on more than one physician, dentist, or other health care practitioner, the total fee will be $6.00 times the number of individuals about whom information is being requested. For example, if a hospital submits a request for information about each of the 30 physicians comprising its medical staff, the fee would be: $6.00 × 30 = $180.00. Individuals requesting information about themselves will not be charged the fee, in accordance with the Department's Privacy Act regulation (45 CFR part 5b).

During its first year of operation, the Data Bank is not processing requests for "aggregate information," i.e., information in a form which does not permit the identification of any particular health care entity, physician, dentist, or other health care practitioner. The Secretary will announce in the **Federal Register** at a later date the fee that will be charged entities and individuals requesting "aggregate information" from the Data Bank.

In accordance with the process set forth in § 60.12 of the regulations, as amended, users will be required to submit the appropriate fee at the time the request for information is made. Checks should be made payable to the U.S. Department of Health and Human Services, and sent to: National Practitioner Data Bank, P.O. Box 6048, Camarillo, California 93011-6048.

The fee charged will be reviewed periodically, and revised as necessary, based upon experience. Any changes in the fee, and the effective date of the change, will be announced in the **Federal Register**.

Dated: January 28, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-7776 Filed 3-29-91; 10:24 am]

BILLING CODE 4160-15-M

Reader Aids

Federal Register

Vol. 56, No. 62

Monday, April 1, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

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TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

13261-13390.....1

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title

LIST OF PUBLIC LAWS

Last List March 28, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.R. 1176/Pub. L. 102-20, Foreign Relations Persian Gulf Conflict Emergency Supplemental Authorization Act, Fiscal Year, 1991. (Mar. 27, 1991; 105 Stat. 68; 2 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$12.00	Jan. 1, 1991
3 (1989 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1990
4	15.00	Jan. 1, 1991
5 Parts:		
1-699	17.00	Jan. 1, 1991
700-1199	13.00	Jan. 1, 1990
*1200-End, 6 (6 Reserved)	18.00	Jan. 1, 1991
7 Parts:		
0-26	15.00	Jan. 1, 1991
27-45	12.00	Jan. 1, 1991
46-51	17.00	Jan. 1, 1990
52	24.00	Jan. 1, 1991
53-209	19.00	Jan. 1, 1990
210-299	25.00	Jan. 1, 1990
*300-399	12.00	Jan. 1, 1991
400-699	20.00	Jan. 1, 1990
700-899	22.00	Jan. 1, 1990
900-999	29.00	Jan. 1, 1990
1000-1059	16.00	Jan. 1, 1990
1060-1119	12.00	Jan. 1, 1991
1120-1199	10.00	Jan. 1, 1991
1200-1499	18.00	Jan. 1, 1991
1500-1899	11.00	Jan. 1, 1990
1900-1939	11.00	Jan. 1, 1990
1940-1949	22.00	Jan. 1, 1991
1950-1999	24.00	Jan. 1, 1990
2000-End	9.50	Jan. 1, 1990
8	14.00	Jan. 1, 1990
9 Parts:		
1-199	20.00	Jan. 1, 1990
200-End	18.00	Jan. 1, 1990
10 Parts:		
0-50	21.00	Jan. 1, 1990
51-199	17.00	Jan. 1, 1990
200-399	13.00	[2] Jan. 1, 1987
400-499	21.00	Jan. 1, 1990
500-End	26.00	Jan. 1, 1990
11	12.00	Jan. 1, 1991
12 Parts:		
1-199	12.00	Jan. 1, 1990
200-219	12.00	Jan. 1, 1990
220-299	21.00	Jan. 1, 1990
300-499	19.00	Jan. 1, 1990
500-599	17.00	Jan. 1, 1991
600-End	17.00	Jan. 1, 1990
13	24.00	Jan. 1, 1991
14 Parts:		
1-59	25.00	Jan. 1, 1990
60-139	24.00	Jan. 1, 1990
140-199	10.00	Jan. 1, 1990
200-1199	21.00	Jan. 1, 1990
1200-End	13.00	Jan. 1, 1991
15 Parts:		
0-299	11.00	Jan. 1, 1990
300-799	22.00	Jan. 1, 1990
800-End	15.00	Jan. 1, 1990
16 Parts:		
0-149	5.50	Jan. 1, 1991
*150-999	14.00	Jan. 1, 1991
*1000-End	19.00	Jan. 1, 1991
17 Parts:		
1-199	15.00	Apr. 1, 1990
200-239	16.00	Apr. 1, 1990
240-End	23.00	Apr. 1, 1990
18 Parts:		
1-149	16.00	Apr. 1, 1990
150-279	16.00	Apr. 1, 1990
280-399	14.00	Apr. 1, 1990
400-End	9.50	Apr. 1, 1990
19 Parts:		
1-199	28.00	Apr. 1, 1990
200-End	9.50	Apr. 1, 1990
20 Parts:		
1-399	14.00	Apr. 1, 1990
400-499	25.00	Apr. 1, 1990
500-End	28.00	Apr. 1, 1990
21 Parts:		
1-99	13.00	Apr. 1, 1990
100-169	15.00	Apr. 1, 1990
170-199	17.00	Apr. 1, 1990
200-299	5.50	Apr. 1, 1990
300-499	29.00	Apr. 1, 1990
500-599	21.00	Apr. 1, 1990
600-799	8.00	Apr. 1, 1990
800-1299	18.00	Apr. 1, 1990
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22 Parts:		
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700-1699	24.00	Apr. 1, 1990
1700-End	13.00	Apr. 1, 1990
25	25.00	Apr. 1, 1990
26 Parts:		
§§ 1.0-1-1.60	15.00	Apr. 1, 1990
§§ 1.61-1.169	28.00	Apr. 1, 1990
§§ 1.170-1.300	18.00	Apr. 1, 1990
§§ 1.301-1.400	17.00	Apr. 1, 1990
§§ 1.401-1.500	29.00	Apr. 1, 1990
§§ 1.501-1.640	16.00	[3] Apr. 1, 1989
§§ 1.641-1.850	19.00	Apr. 1, 1990
§§ 1.851-1.907	20.00	Apr. 1, 1990
§§ 1.908-1.1000	22.00	Apr. 1, 1990
§§ 1.1001-1.1400	18.00	Apr. 1,1990
§§ 1.1401-End	24.00	Apr. 1, 1990
2-29	21.00	Apr. 1, 1990
30-39	15.00	Apr. 1, 1990
40-49	13.00	[3] Apr. 1, 1989
50-299	16.00	[3] Apr. 1, 1989
300-499	17.00	Apr. 1, 1990
500-599	6.00	Apr. 1, 1990
600-End	6.50	Apr. 1, 1990
27 Parts:		
1-199	24.00	Apr. 1, 1990
200-End	14.00	Apr. 1, 1990
28	28.00	July 1, 1990

Title	Price	Revision Date
29 Parts:		
0–99	18.00	July 1, 1990
100–499	8.00	July 1, 1990
500–899	26.00	July 1, 1990
900–1899	12.00	July 1, 1990
1900–1910 (§§ 1901.1 to 1910.999)	24.00	July 1, 1990
1910 (§§ 1910.1000 to end)	14.00	July 1, 1990
1911–1925	9.00	[4] July 1, 1989
1926	12.00	July 1, 1990
1927–End	25.00	July 1, 1990
30 Parts:		
0–199	22.00	July 1, 1990
200–699	14.00	July 1, 1990
700–End	21.00	July 1, 1990
31 Parts:		
0–199	15.00	July 1, 1990
200–End	19.00	July 1, 1990
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	24.00	July 1, 1990
190–399	28.00	July 1, 1990
400–629	24.00	July 1, 1990
630–699	13.00	[4] July 1, 1989
700–799	17.00	July 1, 1990
800–End	19.00	July 1, 1990
33 Parts:		
1–124	16.00	July 1, 1990
125–199	18.00	July 1, 1990
200–End	20.00	July 1, 1990
34 Parts:		
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300–399	14.00	July 1, 1990
400–End	27.00	July 1, 1990
35	10.00	July 1, 1990
36 Parts:		
1–199	12.00	July 1, 1990
200–End	25.00	July 1, 1990
37	15.00	July 1, 1990
38 Parts:		
0–17	24.00	July 1, 1990
18–End	21.00	July 1, 1990
39	14.00	July 1, 1990
40 Parts:		
1–51	27.00	July 1, 1990
52	28.00	July 1, 1990
53–60	31.00	July 1, 1990
61–80	13.00	July 1, 1990
81–85	11.00	July 1, 1990
86–99	26.00	July 1, 1990
100–149	27.00	July 1, 1990
150–189	23.00	July 1, 1990
190–259	13.00	July 1, 1990
260–299	22.00	July 1, 1990
300–399	11.00	July 1, 1990
400–424	23.00	July 1, 1990
425–699	23.00	[4] July 1, 1989
700–789	17.00	July 1, 1990
790–End	21.00	July 1, 1990
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	8.50	July 1, 1990
101	24.00	July 1, 1990
102–200	11.00	July 1, 1990
201–End	13.00	July 1, 1990
42 Parts:		
1–60	16.00	Oct. 1, 1990
61–399	5.50	Oct. 1, 1990
400–429	21.00	Oct. 1, 1990
430–End	25.00	Oct. 1, 1990
43 Parts:		
1–999	19.00	Oct. 1, 1990
1000–3999	26.00	Oct. 1, 1990
4000–End	12.00	Oct. 1, 1990
44	23.00	Oct. 1, 1990
45 Parts:		
1–199	17.00	Oct. 1, 1990
200–499	12.00	Oct. 1, 1990
500–1199	26.00	Oct. 1, 1990
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46 Parts:		
1–40	14.00	Oct. 1, 1990
41–69	14.00	Oct. 1, 1990
70–89	8.00	Oct. 1, 1990
90–139	12.00	Oct. 1, 1990
140–155	13.00	Oct. 1, 1990
156–165	14.00	Oct. 1, 1990
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200–499	20.00	Oct. 1, 1990
500–End	11.00	Oct. 1, 1990
47 Parts:		
0–19	19.00	Oct. 1, 1990
20–39	18.00	Oct. 1, 1990
40–69	9.50	Oct. 1, 1990
70–79	18.00	Oct. 1, 1990
80–End	20.00	Oct. 1, 1990
48 Chapters:		
1 (Parts 1–51)	30.00	Oct. 1, 1990
1 (Parts 52–99)	19.00	Oct. 1, 1990
2 (Parts 201–251)	19.00	Oct. 1, 1990
2 (Parts 252–299)	15.00	Oct. 1, 1990
3–6	19.00	Oct. 1, 1990
7–14	26.00	Oct. 1, 1990
15–End	29.00	Oct. 1, 1990
49 Parts:		
1–99	14.00	Oct. 1, 1990
100–177	27.00	Oct. 1, 1990
178–199	22.00	Oct. 1, 1990
200–399	21.00	Oct. 1, 1990
400–999	26.00	Oct. 1, 1990
1000–1199	17.00	Oct. 1, 1990
1200–End	19.00	Oct. 1, 1990
50 Parts:		
1–199	20.00	Oct. 1, 1990
200–599	16.00	Oct. 1, 1990
600–End	15.00	Oct. 1, 1990
CFR Index and Findings Aids	30.00	Jan. 1, 1990
Complete 1991 CFR set	620.00	1991
Microfiche CFR Edition:		
Complete set (one-time mailing)	185.00	1988
Complete set (one-time mailing)	185.00	1989
Subscription (mailed as issued)	188.00	1990
Subscription (mailed as issued)	188.00	1991

Title	Price	Revision Date
Individual copies	2.00	1991

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1991
January 1991 Editions and Projected April, 1991 Editions

This list sets out the CFR issuances for the January 1991 editions and projects the publication plans for the **April, 1991** quarter. A projected schedule that will include the **July, 1991** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1990–1991 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1991 editions:

Title

CFR Index*

1–2

3 (Compilation)*

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26
27–45
46–51
52
53–209
210–299*
300–399
400–699*
700–899
900–999*
1000–1059*
1060–1119
1120–1199
1200–1499
1500–1899*
1900–1939*
1940–1949
1950–1999*
2000–End*

8*

9 Parts:
1–199*
200–End*

10 Parts:
0–50
51–199
200–399 (Cover only)
400–499
500–End*

11

12 Parts:
1–199*
200–219*
220–299
300–499*
500–599
600–End*

13

14 Parts:
1–59*
60–139
140–199*
200–1199
1200–End

15 Parts:
0–299*
300–799*
800–End*

16 Parts:
0–149
150–999
1000–End

Projected April 1, 1991 editions:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199
200–499
500–699
700–1699
1700–End

25

26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599
600–End

27 Parts:
1–199
200–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 16	May 1	May 16	May 31	July 1
April 2	April 17	May 2	May 17	June 3	July 1
April 3	April 18	May 3	May 20	June 3	July 2
April 4	April 19	May 6	May 20	June 3	July 3
April 5	April 22	May 6	May 20	June 4	July 5
April 8	April 23	May 8	May 23	June 7	July 8
April 9	April 24	May 9	May 24	June 10	July 8
April 10	April 25	May 10	May 28	June 10	July 9
April 11	April 26	May 13	May 28	June 10	July 10
April 12	April 29	May 13	May 28	June 11	July 11
April 15	April 30	May 15	May 30	June 14	July 15
April 16	May 1	May 16	May 31	June 17	July 15
April 17	May 2	May 17	June 3	June 17	July 16
April 18	May 3	May 20	June 3	June 17	July 17
April 19	May 6	May 20	June 3	June 18	July 18
April 22	May 7	May 22	June 6	June 21	July 22
April 23	May 8	May 23	June 7	June 24	July 22
April 24	May 9	May 24	June 10	June 24	July 23
April 25	May 10	May 28	June 10	June 24	July 24
April 26	May 13	May 28	June 10	June 25	July 25
April 29	May 14	May 29	June 13	June 28	July 29
April 30	May 15	May 30	June 14	July 1	July 29